



**STUDY  
ON PUBLIC ATTITUDE  
TOWARD**

**Restorative Justice  
Implementation  
in Indonesia**

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Australian Government



BAPPENAS

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# EXECUTIVE SUMMARY

## **BACKGROUND AND ISSUES**

The continued focus on conventional punishments in Indonesia raises many issues for law enforcement, including recidivism, overcrowding of correctional institutions, and a failure to optimally fulfill victims' rights. One solution to these issues is the application of alternative forms of punishment. In this regard, restorative justice has been identified as a priority by the 2020-2024 National Mid Term Development Plan (RPJMN). So that restorative justice can take root in Indonesia, it is important to identify the extent to which Indonesian society accepts the restorative justice approach.

This study focuses on two issues: first, what are people's attitudes towards restorative justice in Indonesia and, second, understanding the forms of restorative justice that are considered most appropriate and feasible in the Indonesian context. The study findings provide baseline data that can be used to determine appropriate strategies to support the accelerated implementation of restorative justice in Indonesia. In addition, the study provides feedback to law enforcement institutions on how restorative justice can be implemented within the framework of the new Criminal Code and its ancillary regulations. Lastly, the findings of the study help to provide feedback for the designing of an effective public information campaign to increase people's awareness of, and support for, restorative justice.

## **LITERATURE REVIEW**

The study was designed based on the latest developments in the field of restorative justice study, and the links between restorative justice, on the one hand, and legal reform, justice and the rights of crime victims in general on the other hand. A number of concepts and theories of justice, law, and victim protection are discussed in depth so as to provide a conceptual basis for the arguments in favor of restorative justice both globally and nationally as part of the Indonesian Justice System.

As regards the various concepts of justice, such as retributive justice (Foucault, 1971 & Rammelink, 2003), utilitarian justice (Bentham, 1962), proportional justice (Hudson, 2003), and rehabilitative justice (Hamzah, 1993), an obvious conceptual limitation is that they have all traditionally failed to take into consideration both the victim's perspective and the circumstances of the perpetrator as part of an overall effort to improve social relations in society. By contrast, restorative justice has strong socio-historical roots in Indonesia, as evidenced by customary (adat) law practices in various parts of the country. Customary law exhibits both communal and cosmological characteristics, and is oriented towards maintaining balance and harmony (Supomo, 1963 and Zulva, 2010), which is in line with the restorative justice approach.

The study on public attitude towards punishment in Indonesia to date includes a study carried out by the Ministry of National Development Planning and Pulse Lab on the public's views on sentencing, as posted on Twitter during the timeline course of 2018. In addition, the University of Oxford conducted research in 2021 on Indonesian people's

perceptions of the death penalty, which identified a tendency towards disapproval and opportunities for the death penalty to be abolished in the future.

The final part of the literature-review chapter elaborates the frequently overlooked position of victims in the justice system. The neglect of victims is due to the fact that the criminal justice system has traditionally focused on the punishment of offenders. By contrast, the restorative justice approach prioritizes the recovery of victims, compensation, and apology by the perpetrator to the victim. Victims of crime are diverse, and include indirect and invisible victims (Nadler & Rose, 2003; Strobl, 2010), such as victims of corruption offences (Meng & Friday, 2014), and victims who are scapegoated so that they experience multiple victimization (Schafer, 1968 & Davies, et al., 2017), such as victims of human trafficking. Victim diversity also has an impact as regards the opportunities for the implementation of restorative justice.

## **METHODOLOGY**

The study employs a mixed methodology that combines the qualitative and quantitative approaches. The qualitative approach involved the conducting of a series of Focus Group Discussions (FGD) over the course of two stages. The first-stage FGDs were aimed at identifying existing conditions prior to conducting a national survey. The FGD participants consisted of 21 representatives of the law enforcement institutions, and state ministries and agencies, and 28 representatives of civil society groups from various cities and with various focuses. The second-stage FGDs participants consisted of 32 representatives of legislative bodies, law enforcement agencies, and state ministries and agencies. For the purpose of confirming the findings of the quantitative data, a further FGD was conducted with a panel of experts representing various disciplines, such as penology, sociology, anthropology and the criminal law, as well as the media and religious organizations.

Quantitative data was collected by means of an interview-based survey of 1,220 respondents that was conducted across 33 provinces of Indonesia. The survey was designed to take into account demographic differences, such as gender, age, social class, the urban-rural divide, and ethnicity. Random sampling was employed, with an estimated margin of error of approximately 2.9% with 95% confidence.

## **KEY FINDINGS**

### **a) Public Attitude towards Restorative Justice**

In general, the public tends to support the retributive approach (imprisonment) for offenders. However, when explored further, their views tend to be relative rather than dichotomous. Both concepts of justice -- restorative and retributive -- are capable of being concurrently accepted and trusted by individuals, depending on their personal experiences and perceptions of particular offences and social situations. Such individual acceptance is shaped by the specific variables and circumstances described in the study. Consequently, whether a particular individual would apply or support the application of either restorative or retributive justice would depend on the specific context.

One of the specific contexts investigated by the study is how society perceives imprisonment and non-imprisonment, respectively. The majority of respondents (94.4%) agree with the imprisonment approach, but this figure diminishes when they are aware of alternative forms of punishment (“agree with imprisonment” declines to

50%) and when victims are compensated (“agree with imprisonment” decreases to 46%). The public’s tendency to favor the punitive approach is in line with the study’s finding that there is a very low level of knowledge about restorative justice in society. Nearly 90% of the public have never heard of the terms restorative justice and retributive justice.

The low level of public support for restorative justice is influenced by three main factors: first, lack of knowledge about alternatives to punishment. The public only knows of one way in which justice can be done, i.e., imprisonment. When people were informed that there were alternatives to imprisonment, 50% of respondents were willing to accept such alternatives. Second, the public’s lack of awareness of special situations facing victims and perpetrators contributes to their punitive attitudes. People are more focused on how to punish offenders than on the recovery of victims. Third, the values of retributive / punitive justice continue to predominate in certain sections of society.

While the level of people’s knowledge about restorative justice is low, this does not mean that the restorative justice approach cannot be implemented in Indonesia. In reality, the values of restorative justice are in line with the traditional values of Indonesian society, including the customary law systems that have applied in many parts of the archipelago and guided people’s behavior since time immemorial. The Indonesian social values of balance, harmony and peace are essentially the same values that provide the foundation for restorative justice (Supomo, 1963 and Zulva, 2010). In addition, some of the communal and cosmology-oriented customary law practices in Indonesia allow for the application of alternative punishments (Supomo, 1963 and Zulva, 2010). Customary law in Indonesia prioritizes harmony and balance, both of which are in line with the values of restorative justice.

### **b) Forms of Restorative Justice that are Perceived as Appropriate**

The study found that there are five main factors that influence an individual’s preferences towards a particular form of justice. First, their legal knowledge. Knowledge of various alternative punishments influences a person’s choice of an appropriate form of justice. Second, the law that was violated / offence that was committed. People are of the option that certain types of offence, such as murder, sexual violence, corruption, organized gambler, and drug dealer, cannot be resolved using the restorative justice approach. Third, the characteristics of the offender. The public tends to be more in favor of restorative justice for juvenile offenders and first-time offenders. Fourth, the characteristics of the victim. The age and gender of the victim tends to influence people’s attitudes towards the implementation of restorative justice. Fifth, the losses caused by the offence. The public tends to favor restorative justice for theft/fraud cases involving less than Rp. 2,500,000 (two million five hundred thousand rupiah).

The survey findings identify certain categories of offences that are considered appropriate for restorative justice resolution, namely, (1) drug-use offences, (2) theft/fraud with an economic value of less than Rp. 2,500,000, (3) defamation offences, (4) domestic violence offences, (5) blasphemy offences, (6) assault offences that result in physical injury but not loss of life, (7) individual gambling, and (8) environmental offences. By contrast, certain categories of offences are considered as not being amenable to restorative justice resolution: (1) offences that result in loss of

life (both assault and murder), (2) sexual offences, (3) corruption offences, (4) sexual offences by adults against children, and (5) drug dealing offences.

This study findings show that the public is in favor of restorative justice being applied in the case of offences committed by children, first-time offenders, and offenders who sincerely show remorse. By contrast, the public tends to not be in favor of restorative justice being applied to adult offenders, offenders who are legally competent to face trial, repeat offenders, perpetrators of crimes that are perceived as serious (depending on the weight of evidence against the perpetrator).

The situation or position of the victim also influences people's choices as regards the appropriate justice concept to be applied. Offences where a victim is not immediately apparent, where the victim is viewed as an accomplice, where the status of victim is not accepted by society and where an actual victim is defined as not being a victim, as well as victimless offences, are perceived as less serious so that there is a trend in favor of the implementation of restorative justice to the perpetrators of these offences. By contrast, people generally choose retributive justice (even for minor crimes) where the victim is readily identifiable. However, in cases where victims do not feel themselves to be victims (designated victims), the public leans towards restorative justice.

Besides the characteristics of offenders and victims, another aspect that the public takes into consideration when choosing an appropriate form of justice is the nature of the crime itself. The study found three main patterns in this regard. First, people are more in favor of restorative justice being applied to misdemeanors. Conversely, they tend to be in favor of retributive justice for serious crimes of an inherently malicious nature (*mala in se*). Second, for crimes of theft/fraud involving less than Rp 2.5 million, the public tends to favor restorative justice, even where the offence fulfills the elements of *mala in se*, *mala prohibita*, and criminal intent (*mens rea*) of the perpetrator.

## **PRINCIPLES OF RESTORATIVE JUSTICE**

The study found that restorative justice is acceptable to society provided that it has regard to victim protection and obligates perpetrators to fulfill victims' rights. In upholding the interests of the victim, the "restorative" principles of punishment must ensure that:

- the victim receives the assistance needed to recover;
- the victim is compensated;
- the victim is given the opportunity to express what they feel; and
- the victim is given the opportunity to observe the perpetrator undergoing rehabilitation.

As regards the perpetrator, restorative justice must ensure that:

- the offender accepts responsibility;
- the offender apologizes;
- the perpetrator is supported by their family;
- the perpetrator is accepted back into the community;
- the perpetrator has hope for the future;
- the perpetrator receives support from the community during rehabilitation; and
- the perpetrator explains why they committed the crime to the victim.

## CONCLUSIONS AND RECOMMENDATIONS

In general, the study found that Indonesians are open to restorative justice and willing to see it being implemented, subject to the following qualifications:

- Quantitatively, the acceptance rate for restorative justice is 5.983 (on a scale of 1 for full acceptance of retributive justice to 10 for full acceptance of restorative justice). This means that there is a tendency to accept restorative justice as an alternative form of punishment in Indonesia. This finding may be interpreted as an opportunity to implement restorative justice more consistently in the future;
- Public attitudes towards restorative justice are not influenced by socio-demographic factors (including gender, age, place of residence, education, profession, and income). In principle, all socio-demographic respondent groups exhibited the same level of acceptance of restorative justice;
- The public's approach to restorative justice is not dichotomous or black and white (i.e., only retributive justice alone or restorative justice alone is acceptable). Rather, the two approaches to justice can subsist simultaneously in an individual, with the actual approach to be applied in a particular case depending on the context;
- Public support for restorative justice depends on the extent to which people have comprehensive information on its underlying values of the restorative justice principles. If the public is made aware that the rights of victims and the rehabilitation of offenders are at the heart of restorative justice, then the public is more likely to support the implementation of the restorative justice concept in practice.

The study findings show that people's attitudes towards restorative justice are determined by factors such as the types of crime, the circumstances of the perpetrator, the circumstances of the victim, and the lack of a uniformity of understanding towards restorative justice among law enforcement officials. For these reasons, the study makes the following recommendations:

- The government should strengthen the normative framework for restorative justice as it has been adopted as one of the strategies for improving the criminal justice system in the National Mid Term Development Plan 2020-2024 (RPJMN 2020-2024).
- The government, through a restorative justice working group involving representatives of law enforcement, ministries and agencies, should compile a manual on the implementation and crime-handling with the restorative justice approach. This manual would serve as a basic guide for those who are handling the crimes and campaigning for restorative justice. The manual should consist of the following sections:
  - definitions and principles of restorative justice;
  - classification of offences;
  - classification of suitable offenders for restorative justice mechanism;
  - classification of suitable victims for restorative justice mechanism;
  - processes, procedures and mechanisms for implementing restorative justice;
  - effective campaign strategies that accord with conditions in society.
- The government should conduct a public information campaign to familiarize people with the concept of restorative justice. The campaign should involve appropriate media, reach all levels of society, be sensitive to the diversity of values and cultures in Indonesian society, and include vulnerable groups;
- Government efforts to familiarize restorative justice must be conducted on a collaborative basis, involving all law enforcement institutions, ministries, and agencies;

- The government should develop a plan for the application of alternative punishments to imprisonment, such as a community work mechanism, fines, as well as a health-based approach to the rehabilitation of drug users;
- Civil society has a central role to advocate for the adoption of a legal umbrella for restorative justice, and in the efforts to familiarize the concept of restorative justice in society and provide legal education on restorative justice. This role can help counter the widespread but erroneous perception that restorative justice is solely about dropping the cases. In addition, civil society groups have an important role to promote good practices of the restorative justice implementation in particular parts of the country, so that their experiences can be replicated in other regions.



# **STUDY ON PUBLIC ATTITUDE TOWARD**

# **Restorative Justice Implementation in Indonesia**

Bappenas, in collaboration with the Department of Criminology at the University of Indonesia, with support provided by the Australia Indonesia Partnership for Justice 2 (AIPJ2) through The Asia Foundation (TAF), has conducted a study on public perceptions of restorative justice in Indonesia.

This study aims to comprehensively ascertain the bases for prevailing public attitudes towards restorative justice and its current level of acceptance.

The results of the study provide baseline data on public attitudes to restorative justice that can be availed of in the formulation of strategies aimed at moving the public's preferred paradigm away from punitive justice and towards restorative justice.

