



Comparative Study of Restorative Justice Application: Evaluation of the Practise in Indonesia and Scotland

Hafiz Prasetya Akbar¹

¹Indonesian National Police

¹hafiz.prasetya.akbar@polri.go.id

ABSTRACT

Restorative justice is a growing justice concept being adopted worldwide. The Indonesian National Police and Attorney General have created regulations to ensure legal certainty of its application. However, their implementation has faced a number of impediments. Scotland has been making similar efforts to adopt restorative justice practices. Meanwhile, the implementation of this initiative is supported not just by legislative provisions but also by a thorough action plan. This study aims to compare Indonesia's progress in adopting restorative justice with Scotland's ongoing work in the same domain. Qualitative methods are utilised involving literature review, examination of socio-legal phenomena, and inductive reasoning to draw conclusions. The study's findings show that both Indonesia's police-led conferencing and Scotland's practitioner-led conferencing have advantages and drawbacks. However, Scotland's restorative justice has more involvement in community reconciliation after the conference than Indonesia's pursuit of crime clearance. Furthermore, while both jurisdictions show favourable support in the implementation of restorative justice, Indonesia emphasises macro-level criminal policy and resource conservation, while Scotland emphasises micro-level results like fewer re-offending and victim satisfaction.

Keywords: *Restorative Justice, Criminal Justice Policy, Police Conferencing, Victim-Offender Mediation, Alternate Dispute Resolution.*

ABSTRAK

Keadilan restoratif adalah konsep yang berkembang dan telah diadopsi di seluruh dunia. Kepolisian Negara Republik Indonesia dan Kejaksaan Agung telah membuat peraturan untuk menjamin kepastian hukum dalam penerapannya, namun dalam praktiknya masih menghadapi sejumlah kendala. Skotlandia, juga telah melakukan upaya serupa untuk menerapkan praktik keadilan restoratif. Sementara itu, penerapan inisiatif di Skotlandia tidak hanya didukung oleh ketentuan perundang-undangan namun juga oleh rencana aksi yang matang. Penelitian ini bertujuan untuk membandingkan kemajuan Indonesia dalam menerapkan keadilan restoratif dengan upaya yang telah dilakukan Skotlandia dalam bidang yang sama. Dengan menggunakan metodologi kualitatif yang melibatkan tinjauan pustaka, kajian fenomena sosial hukum, dan penalaran induktif untuk menarik kesimpulan. Temuan penelitian ini menunjukkan bahwa mediasi yang dipimpin oleh polisi di Indonesia dan mediasi yang dipimpin oleh praktisi di Skotlandia masing-masing memiliki kelebihan dan kekurangan. Namun, keadilan restoratif di Skotlandia lebih banyak terlibat dalam rekonsiliasi komunitas setelah mediasi dibandingkan upaya Indonesia yang lebih terfokus pada penyelesaian perkara. Meskipun kedua negara telah mendapat dukungan penerapan keadilan restoratif, Indonesia menekankan pada kebijakan kriminal di tingkat makro dan konservasi sumber daya, sementara Skotlandia menekankan pada hasil di tingkat mikro seperti lebih mengurangnya residivisme dan kepuasan korban.

Kata Kunci: Keadilan Restoratif, Kebijakan Hukum Pidana, Mediasi Polisi, Mediasi Korban-Pelaku, Alternate Dispute Resolution.

INTRODUCTION

Restorative justice is an emerging paradigm of justice that is experiencing significant growth and is increasingly being adopted on a global scale. Unbeknownst to us, however, restorative justice has always been practised in Indonesia under the pretence of customary law (*adat*) and traditional conflict resolution methods. Ancient modes of social control conceptualise crime as a transgression against the victim and their kin. To mitigate the perpetuation of retaliatory cycles of violence and revenge, it was imperative for perpetrators and their relatives to engage in the process of reconciling grievances with the victims and their relatives. This practice was particularly observable within a traditional community characterised by kin-based bonds (Van Ness & Strong, 2015). Nevertheless, ever since the period of imperialism, nations that were colonised have been exposed to the Western criminal justice system, which is distinguished by its emphasis on punitive measures and law enforcement, rooted in the notion that these practices constitute the suitable approach to addressing criminal behaviour (Monterosso, 2009).

Bard & Sangrey (1986) remarked that the punitive judicial system has been ineffective due to the uncertain rehabilitative effects of the penal system for offenders and its neglect of the rights and needs of victims. In contrast, restorative justice emphasises the rehabilitation of both the victim and offender's situations, as well as the preservation of social equilibrium. The integration of this restorative approach with traditional *adat* law in Indonesian pre-colonial society has been observed historically, predating the implementation of penal legislation. Indonesia, previously known for its adoption of punitive justice practises influenced by Western models, has embarked on a new endeavour by embracing a novel approach to justice. Research by Faried, et al. (2022) observed that Indonesia has made efforts to incorporate a legal framework to accommodate restorative justice application in the criminal justice process. This shift is evident through the introduction and implementation of two significant regulations: Attorney General Regulation No. 15 of 2020, which pertains to the termination of prosecution based on restorative justice, and Police Regulation No. 8 of 2021, which focuses on the handling of criminal acts based on restorative justice. This is further reinforced by the country's legal culture (Hadi, Ifitah, & Alamsyah, 2023) and political commitment to welfare-based policies (Supriyanto, Santiago, & Barthos, 2023).

However, certain cases involving the implementation of restorative justice have faced substantial criticism, even when executed in accordance with the aforementioned standards. This can be illustrated through the examination of two prominent instances: The handling of a rape incident by the Bogor City Police Department (VOI, 2023) and the rehabilitation of a marijuana user by the Badung Police Department (Ginta, 2022). Halim (2023) points out that the lack of a comprehensive policy to facilitate the swift implementation of restorative justice measures in Indonesia could be seen as a significant contributing factor. This has resulted in several adverse effects, including a deficient understanding of the concept among both the public and officials, limited resources allocated towards its implementation, inadequate oversight of its application, and insufficient support and coordination among institutions. As a result, the application of restorative justice in Indonesia is widely regarded as being confined to its philosophical and theoretical underpinnings, characterised by a significant level of discretion and potential for errors.

As with the forcible implementation of a punitive justice system, there is concern that the flagrant adoption of a restorative justice system could be lost in translation and result in negative consequences. In the discourse of restorative justice studies, reviewing the application of restorative justice in other nations can provide valuable insights into both their successes and failures (Umbreit, Coates, & Vos, 2002); (Ismawansa, Ablisar, & Syahrin, 2022); (Islam, Li, & Anderson, 2023). Unfortunately, there is a lack of literatures that specifically compares Indonesia's implementation of restorative justice to that of other countries. Consequently, doing a comprehensive analysis of restorative justice in Indonesia in contrast to another country would be an entirely new and valuable research endeavour. Writers have frequently compared the United States when discussing the most effective methods for restorative justice. In particular, Nurviyantie (2022) and Gunawan, et al. (2024), the sole authors who at the time of this writing, have compared Indonesia's restorative justice system with that of other countries, have made comparisons with the United States. It is important to note that the United States has already seen a significant transition in its implementation of restorative justice, whereas Indonesia is currently in the process of doing so. Therefore, it is preferable to compare Indonesia's progress in adopting restorative justice with another country that is presently engaged in the process of developing optimal methods and gaining insights from others.

European nations are also progressively embracing restorative justice practice in the process of reversing the colonial impositions they formerly enforced, paradoxically. Scotland is a noteworthy nation that has made efforts to distinguish itself from their English counterpart, which is notorious for its conservative policies and judicial structure (Skinns, 2022). Over the past decade, Scotland has witnessed a growing inclination to enhance the judicial system's efficacy in addressing the needs of crime victims and promoting opportunities for offenders to take responsibility for their actions and seek restitution (Thomson, 2017). The transition towards a progressive legal system in Scotland is characterised by a commitment from the Scottish Government to prioritise the needs of those impacted by crimes and ensure their active participation within the justice system. This commitment is exemplified by the release of the Restorative Justice Action Plan (2019a) by the Scottish Government, which aims to establish best practices for Restorative Justice and make its services widely accessible throughout the country by the year 2023. Led by First Minister Humzah Yousaf, Scotland has made a strong commitment to implementing restorative justice. Yousaf has been dedicated to this cause since his tenure as Cabinet Secretary in June 2018 (Scottish Government, 2019a). With it designated as one of the administration's priority initiative, Scotland's actions are marked by a more comprehensive strategy, a feature that has not been observed in Indonesia.

Thus, the purpose of this article is to expand understanding in the field of restorative justice implementation in Indonesia by conducting a detailed comparison with its implementation in Scotland. The objective is to identify any potential oversights in Indonesia's interpretation of this novel justice approach and to include the action plan observed in Scotland. This study will analyse and contrast several aspects of restorative justice, including the distinctive definitions, different procedures, and varying levels of success seen by the two countries. First, this paper will explore the definition of restorative justice as supplied by both countries. Subsequently, an analysis will be conducted on the procedural elements included in the implementation of restorative justice within each respective jurisdiction. Finally, an assessment will be conducted to determine the relative levels of success attained by these nations in their implementation of restorative justice.

METHODOLOGY

This research employed a qualitative methodology, yielding comprehensive data through the process of inductive reasoning (Strauss & Corbin, 1997). The utilisation of inductive reasoning is vital in this study, as its objective is to thoroughly investigate the process of restorative justice in two countries and conduct a comparison analysis to determine the most effective way. Jensen (2016) clarifies that inductive reasoning involves the systematic gathering of information, followed by the creation of explanations and explorations in order to establish a new understanding of a previously unexplored topic. The process also involves the formulation of an initial theory or model, as well as the identification of patterns in interactions through a systematic literature review aimed at providing a thorough and panoramic viewpoint on the topic.

The data collection in this study involves conducting a systematic literature review on restorative justice practices in Indonesia and Scotland. Subsequently, an examination of socio-legal phenomena related to the implementation of restorative justice in both countries is conducted. Then, the study identifies and draws upon best practices derived from the accomplishment of restorative justice. The data is further processed to facilitate a clear analysis by accurately identifying the specific findings of each study that address the particular aspect of restorative justice under evaluation. This involves discerning the valuable information from the irrelevant information, specifically selecting the study findings that are pertinent to the comparison of restorative justice features, while disregarding findings that are not relevant.

RESULT AND DISCUSSION

In this section, we will first analyse how Indonesia and Scotland individually determine the term of restorative justice by considering their historical context, the evolution of concepts, and the establishment of codified definitions. By understanding the disparity in terminologies, we may examine and contrast the utilisation, goals, and focus on restorative justice across the two countries. After acknowledging the distinctions in definitions, we will proceed to examine the delivery of restorative justice in both countries. Specifically, we will study Indonesia National Police Regulation No. 8 of 2021 on Restorative Justice and Guidance for the Delivery of Restorative Justice

in Scotland. Finally, a thorough analysis will be carried out to evaluate the level of success attained by Indonesia and Scotland in their implementation of restorative justice. This will facilitate the acquisition of knowledge from the deficiencies and identification of the most effective methodologies employed in each country's enactment of restorative justice.

1. Definition of Restorative Justice

As previously stated, the principle of restorative justice, which aims to address conflicts and violations of the norm through conferencing in order to maintain social harmony, has long been observed in Indonesia prior to the implementation of punitive criminal law. Following the codification of the criminal statute *Wetboek van Strafrecht voor Nederlandsch-Indie* in the Dutch East Indies and subsequent modifications to adapt it into the Indonesian Criminal Code following Indonesian independence, a variety of alternate methods for conflict resolution continue to be implemented. These include informal approaches such as victim-offender mediation as a means of alternative dispute resolution, as well as the ongoing application of conflict resolution through local juridical systems and customary wisdom (Zulfa, 2012).

The first official practice of restorative justice can be traced back to the enactment of Law No. 11/2012, which pertains to the Juvenile Criminal Justice System. This legislation permits offences committed by individuals below the age of 18 to be resolved through a conference that includes the participation of the victim, offender, community members, professionals, and legal authorities. Subsequently, it has been observed that individuals increasingly acknowledge the limitations of relying solely on retributive methods to achieve their intended objectives, prompting them to explore alternative approaches such as mediation in addressing criminal infractions. Nevertheless, the absence of legal safeguards prevents the formal acknowledgement and enforcement of such alternative approaches. Professor Eddy Hiarij (2016), who at the time of the writing holds the position of Deputy Minister of Law and Human Rights, have observed and labelled this phenomenon as restorative justice. Restorative justice, as conceptualised by Hiarij, is a framework that should incorporate the following elements:

Settling disputes in accordance with criminal law by involving criminals, victims, families of victims, or perpetrators and other related parties to seek an equitable solution by emphasising restoration to its original state as opposed to retribution.

The absence of practitioners assuming the mediator has led to the criminal justice system of Indonesia taking on this responsibility. Specifically, the police and the prosecutor, who possess the authority to terminate a case, have been actively involved in facilitating victim-offender conferences. This method is commonly referred to as police-led conferencing (Young, 2003). Consequently, the Attorney General of Indonesia has included Hiarij's notion of restorative justice as outlined in Article 1(1) of Attorney General Regulation No. 15 of 2020.

Restorative Justice is the resolution of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasising restoration to the original condition and not retaliation.

While The Chief of the Indonesian National Police has also articulated Hiarij's perspective on the notion of restorative justice, as stated in Article 1(3) of Police Regulation No. 8 of 2021.

Restorative Justice is the resolution of criminal acts by involving the perpetrator, victim, perpetrator's family, victim's family, community leaders, religious leaders, traditional leaders or stakeholders to jointly seek a resolution through peace by emphasising restoration back to the original state.

The three definitions share common keywords, including the parties involved, the desired outcome (equitable, fair, and participatory), and the restoration of the situation to its initial state.

For Scotland, in the late 1980s, a non-profit organisation called Safeguarding Societies - Lowering Offence (SACRO) facilitated the first documented communal conflict resolution, which marked the beginning of restorative justice in the country (Mackay, 1988). However, the Scottish Government only first acknowledged the presence of restorative justice when the Scottish Council published The Instruction for the Processing of Restorative Justice in 2017. This instruction is derived from the United Kingdom's Ministry of Justice 2014 Action Plan, which defines restorative justice as “a justice system for healing victims' injuries attributable to crimes by organising collaborative contacts between the participants and deterring re-offending”. The participation of Non-Governmental Organisations (NGOs) in restorative justice initiatives in the United Kingdom,

such as SACRO in Scotland, has resulted in the inclusion of professional practitioners in victim-offender conferences. These conferences, sometimes referred to as practitioner-led conferences, entail the active involvement of trained professionals (Dignan & Marsh, 2003).

When examining the definitions set by the legal entities of both countries, it is evident that definitions offered by the Attorney General of Indonesia, The Indonesian National Police, and the Ministry of Justice of the United Kingdom all place an emphasis on participatory resolution between parties. Kirkwood (2018) stated that collaborative endeavours in the realm of restorative justice aim to achieve three primary objectives. First is victim reparation, which refers to the process of addressing criminal infractions by offering various tangible and symbolic benefits to victims, their families, and the communities impacted by such violations. Second, the concept of offender responsibility plays a crucial role in facilitating offenders' understanding of the consequences associated with their conduct. Consequently, this understanding prompts them to acknowledge their duty and take appropriate measures to rectify the harm caused. Finally, the concept of community care and reconciliation pertains to the active engagement of individuals from the broader social community in order to establish a sense of responsibility and accountability among wrongdoers. This is achieved through building enduring connections between individuals who have suffered harm and those who have inflicted it.

Nevertheless, the Indonesian definition lacks a precise criterion for determining what constitutes a "return to original condition," whereas the Scottish definition explicitly articulates that restorative measures aim to facilitate the recovery of victims from the harm inflicted upon them and prevent re-offending. Therefore, it fails to acknowledge the fundamental distinctions between victim-offender mediation and other forms of mediation, such as civil and commercial mediation. Strang (2002) highlighted the importance of recognising these differences, as restorative justice is based on the principle of victim-offender reparation following the occurrence of a crime, with the primary objectives being healing and preventing future offences, whilst the concept of a "return to original condition" may be considered imprecise and lacking in providing a specific restoration solution.

The study conducted by McCold and Watchel (2002) revealed a commonly held misperception regarding restorative justice. This misconception pertains to the belief that the participatory conference within restorative justice primarily emphasises the responsibility of the criminal or the restitution of the victim rather than prioritising the involvement of communities in fostering care and reconciliation. Consequently, this limited focus leads to a conclusion that is only partially restorative. Partial completion of the elements aforementioned will only yield a partly or mostly restorative outcome, which can be seen by the diagram released by McCold & Watchel below.

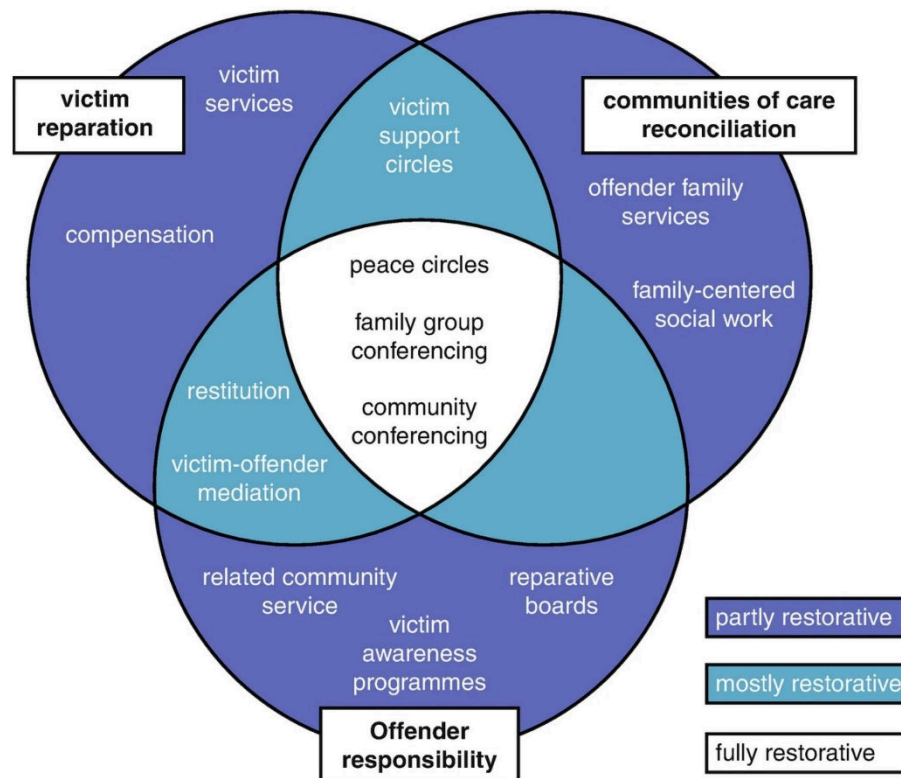


Image 1. Restorative justice typology (McCold & Wachtel, 2002, p. 3)

Indonesian legislation often exhibits a tendency to disregard the need to cultivate ties between the perpetrator, victim, and community, thereby impeding the advancement of a more prominent sense of reintegration (Eddyono, 2021). The mediation process, overseen by the investigator or prosecutor, lacks clear guidelines for the community's involvement, particularly in terms of their role during mediation and their responsibility to supervise reintegration efforts. Scottish NGOs, on the other hand, have the obligation to involve the community under Guidance for the Delivery of Restorative Justice in Scotland in order to accomplish reintegration into society and to monitor the victim and offender well after the meeting has long reached its conclusion (Scottish Government, 2017). The NGO, in its role as facilitator, brings together "Consultative Groups in the Neighbourhood" comprised of community members impacted by the offender's action and community leaders with the capacity to evaluate the details of each incident and devise a restorative justice sentence that will guide the perpetrator in making amends and re-entering society (Rosenblatt, 2014). The question then arises as to whether the Indonesian National Police or the Prosecutor's Office have adequate resources to conduct this monitoring process while being overburdened with their primary responsibilities.

2. Restorative Justice Procedure

Due to the adaptability and sensitive nature of restorative justice to contextual factors such as culture and politics, the processes in action may vary considerably in every particular jurisdiction around the world. The procedure depends on the fulfilment of a few fundamental values derived from its practices to activate its processes. In order to further examine the procedural aspects established by different countries, we will provide a comparative analysis of the restorative justice procedures in Indonesia and Scotland. This analysis will be based on the guidelines set by each jurisdiction.

Table 1. Comparison Between Indonesia's and Scotland's Restorative Justice Procedures

Indonesia National Police Regulation No. 8 of 2021 on Restorative Justice	Guidance for the Delivery of Restorative Justice in Scotland
Request letter to the Chief of the Police Department to conduct restorative justice mediation facilitated by the investigator.	After receiving a request for a victim-offender conference, the facilitator assesses the appropriateness of restorative justice for the participants.
-	The facilitator establishes the level of support necessary and the management of risks involved, especially in a serious or complex case.
The investigator invites the victim and offender for a scheduled victim-offender meeting. Other participants, such as community leaders, are encouraged to take part but not mandatory.	The facilitator prepares and briefs individuals to participate in a restorative justice process.
The investigator mediates a victim-offender meeting as the neutral party.	The mediation process can occur multiple times and serves as a means of facilitating both direct and indirect communication.
As a mediator, the investigator allows for the parties to reach a resolution, but cannot compel a decision.	The facilitator enables participants to reach a consensus on an outcome.
Drafting a Letter of Reconciliation along with a Declaration of Statement proving that the offender has returned or will return the victim's rights.	The parties thoroughly examine all the documentation pertaining to the conference and validate any agreements that have been made, as well as identify any outstanding matters that remain unresolved.
Case examination meeting to determine whether the case can be closed and to assess the associated risk.	The facilitator furnishes all participants with a written documentation of the agreed-upon outcomes.
In the name of the law, the investigator releases the warrant to conclude the case.	Evaluating, monitoring, and providing ongoing support after the process of restorative justice.

To evaluate the practises employed by the aforementioned countries, Daly (2016) offers a complete exposition highlighting three crucial values that should be embraced for the implementation of restorative justice. First, restorative justice mediation should be able to be scheduled at any stage of the legal process, including pre-arrest, during the investigation process, at the court hearing, and after the sentence has been handed down. In Indonesia, restorative justice could be administered during any of the four phases of the criminal justice system. Prior to the investigative process, the offender and victim could reconcile with the aid of the community or even a police officer conducting community policing. During the investigation and prosecution phases, the police and prosecutor each have their own restorative justice regulations. However, in Indonesia, restorative justice has never been utilised after a sentence has been handed down. On the other hand, restorative justice functions simultaneously with the criminal justice and youth justice systems in Scotland rather than serving as an alternative for them. The outcomes that are attained or mutually agreed upon through the implementation of restorative justice do not exert any influence on the decisions made within the criminal justice process (Scottish Government, 2019b).

Looking at the temporal aspects of restorative justice implementation, In Indonesia, restorative justice is emphasised as an alternative dispute resolution method, with the ultimate goal of making the criminal law procedure a last option, or "*Ultimum Remedium*" in the principle of Indonesian Criminal Law. Where conducting restorative justice ahead of an investigation aims to settle the case prior to the state's involvement, conducting it during the investigation or prosecution aims to close the case without going to court, and finally, settling the case after the imposition of a sentence is redundant because there ought to be the perception that justice has been served. In Scotland, however, while it is common for restorative justice to be administered concurrently with an investigation or prosecution, the result may not necessarily halt the legal process. The outcome of restorative justice, while it restores the victim's rights and holds the offender accountable, is only used as an input for sentencing decisions (Scottish Government, 2019a). Since the purpose of

restorative justice in Scotland is not to suspend the legal process but to reintegrate the offender into society, it has been implemented after a sentence has been handed down. If society could allow for a more successful reintegration than the penal system, then restorative justice outcomes could be used to alleviate imprisonment time.

The second essential value is that a neutral third party must organise a conference or series of meetings with the directly affected parties. Both perpetrators and victims meet with a neutral and trained third party to examine the consequences of the crime and form an agreement. Meléndez (2021) refers to this process as “victim-offender conversation” and “victim-offender reconciliation programme”. During this time, both parties can reflect on what occurred, express their sentiments, and achieve a mutually acceptable conclusion, such as an apology and/or compensation, while those associated with the perpetrator and those linked with the victim are welcome to attend the conference (Jackson, 1998). According to Police Regulation No. 8 of 2021, the victim-offender conversation is initiated by a request letter to the Chief of the Police Department to conduct mediation facilitated by the investigator. If the dialogue is successful, a Reconciliation Letter and Evidence of Restoration of Rights will be created to close the case. Unlike in Indonesia, the Scottish criminal justice system could not act as a neutral third party since it would interfere with its intent in prosecuting the crime. Scotland, on the other hand, relies on its numerous NGOs, such as the previously mentioned SACRO, or other organisations with mediating capabilities supplied by the city council. In Scotland, restorative justice services must only be rendered by individuals with the necessary skills and training. Any organisation that provides restorative justice services must be able to comply with statutory and other prescribed requirements and guidelines.

The implementation of the police-led conferencing system in Indonesia, which facilitates the involvement of the police and prosecutor in restorative justice processes, offers a more accommodating approach to victims. This is particularly relevant as not all victims necessarily seek the incarceration of offenders but rather desire compensation for their losses (van Camp & Wemmers, 2013). As a state apparatus, it will alleviate concerns that unsupervised organisations branding themselves restorative justice facilitators seek to profit by coercing repayment for a portion of victims' losses, as numerous cases in Indonesia have shown (CNN Indonesia, 2023). Additionally, McCold (1998) conducted a study which revealed that the police uniform is associated with a specific level of trust and respect. Though, we need to keep in mind the level of trust placed in the police as facilitators of restorative justice is closely linked to the public's perception of trust in their local police office. In the context of Iceland, empirical data from a survey conducted by Capacent in 2009 indicates that the general populace holds a positive perception of the police force, as evidenced by a trustworthiness rating of 72%. This substantial degree of public trust can be considered favourable in facilitating the implementation of police-led restorative justice initiatives within the Icelandic criminal justice system. In addition, by allowing the police and prosecutor to serve as restorative justice facilitators, the process would be streamlined significantly, as they would already be familiar with the case details and the parties' dispositions. Additionally, the government would not have to spend money on grants for the NGO's operating funds and training.

One concern raised by critics of police-led conferencing is the potential for the police to assume the role of “judge and jury” inside their own cases, given their existing power over the arrest, detention, and investigative processes (1999). Hence, in order to evade scrutiny, the Indonesian Police choose to assume a bystander role throughout the meeting, thereby transforming it into a mediation-like setting where they facilitate rather than exert direct control over the proceedings. Nevertheless, as McCold (2003) argues, restorative justice is not intended to maintain a neutral stance. The underlying premise of restorative justice philosophy is predicated on the shared consensus that acts deemed as “wrong-doing” are inherently morally objectionable and should not have transpired while also emphasising the imperative of preventing their recurrence. The offender bears a responsibility to rectify the situation, and according to McCold, this obligation is not a neutral position. Therefore, restorative justice should prioritise viewing the act as morally wrong rather than labelling the individual as inherently bad. By adopting this approach, it is argued that both the offender and the victim can be treated fairly and equally, as their respective needs are acknowledged simultaneously.

In contrast, the utilisation of an independent facilitator in the Scottish system, as opposed to involving agents from the legal system, enables investigators and prosecutors to concentrate only on their core responsibilities in a more professional manner. Investigators and prosecutors will not engage in lengthy efforts to delay the case merely because the victim is pursuing their loss akin to a “debt collector” (Putra, 2022). Rather, they will solely concentrate on concluding the case and

allowing the outcome to influence the judge's decision. By regulation, the Scottish Government mandates that restorative justice facilitators be trained and certified, thereby centralising the control and coaching of restorative justice practice (Scottish Government, 2019a). While Indonesian investigators and prosecutors are being educated concerning the facilitation of restorative justice, an action plan for expanding restorative justice beyond conveying its regulations and successes is lacking. During the development of the Action Plan, Scotland conducted an assessment of several European countries, with a specific focus on Norway and Belgium. These countries were recognised for their extensive restorative justice systems, which refer to the active involvement of NGOs in the restorative justice process (Scottish Government, 2019b).

Yet it has been revealed through study that the inclusion of a proficient and well-trained facilitator is not without associated expenses. Naturally, the financial feasibility of sustaining such a resource is not universally attainable for all nations, particularly if reliant exclusively on the prospect of philanthropic institutions sponsoring non-governmental organisations. In accordance with Siri's (1999) findings, it is important to take into account the financial ramifications linked to conferences organised by law enforcement agencies. The stated operating cost for police-led conferences in California, United States was found to be below \$60. In contrast, in Norway, where restorative justice is facilitated by volunteers, the cost per conference is over \$447. Although the idea of implementing a proficient, structured, and all-encompassing restorative justice system appears favourable, scholarly investigations into police-led conferencing studies and their comparison to scripted and facilitated conferencing have revealed that the former, as suggested by McCold (1998), tends to receive higher ratings of satisfaction and fairness from participants. This finding holds particularly true when addressing minor criminal offences. While having a well-trained, well-organised, and comprehensive restorative justice sounds good, research on police-led conferencing studies and comparison to scripted conferencing have demonstrated by McCold (1998) says that the "less skilled" approach is more often rated higher in satisfaction and fairness by participants than programs that do not use scripted restorative justice approaches. Particularly when addressing minor criminal offences, it is seen that law enforcement personnel possess greater expertise and experience in handling petty crimes compared to trained facilitators who are better equipped to handle major offences involving significant stress to the victim.

Last but not least, Daly (2016) emphasised that restorative justice should be delivered on an individual basis, as the procedure must take into account not only the distinctive nature of the crime but also the unique characteristics of the offender, victim, and community in order to provide the most effective response to restore the situation to its pre-crime state. Victim-offender mediation differs from conferencing in that the victim's loved ones and those affected by the crime are included (Meléndez, 2021). This restorative justice procedure aims to facilitate participation in decision-making and the repair of community ties. Although reaching an agreement in the form of an apology or restitution between participants in restorative justice sessions indicates a sign of permitting the offender back into the society as a whole, it scarcely occurs in truth (Shapland, et al., 2008). Based on the procedures outlined, it can be inferred that both Indonesia and Scotland have adhered to this last value by adopting a case-by-case approach to the implementation of restorative justice, while also acknowledging and accommodating its unique characteristics and requirements.

3. Indonesia's Success with Restorative Justice

The next two sub-sections aim to differentiate the intended goals and aspirations of the two jurisdictions in their adoption of restorative justice as an alternative approach to administering justice. The examination will commence with an evaluation of Indonesia's endeavours in this domain.

- a. Reduce Prison Overcrowding:** Based on data provided by the Criminal Investigation Agency (Bareskrim) of the Indonesian National Police (2023), correctional facilities across Indonesia are currently facing issues of overcrowding. The data reveals that these facilities, with an optimal capacity of 132,107 inmates, are currently accommodating 278,737 individuals, resulting in an alarming operational capacity of 210%. This situation gives rise to several evident challenges, including increased operational expenses, diminished rehabilitation quality, and compromised well-being of inmates. The most significant issue is the emergence of COVID-19, which has compelled the Ministry of Law and Human Rights to grant remissions, resulting in a surge of crime primarily perpetrated by recently released inmates (Nahdiyah &

Rinaldi, 2023). The implementation of Restorative Justice has resulted in a reduction in the incarcerated population by diverting criminal cases away from the traditional court system, hence decreasing the number of individuals convicted and sentenced to imprisonment.

- b. Lessen the Cost of Criminal Justice:** The reduction of the jail population entails a corresponding decrease in the financial resources required from public funds to sustain these institutions, hence alleviating the fiscal strain on other components of the criminal justice system. Including the costs associated with the investigation, prosecution, and legal hearing. As stated by Fadri (2018), a significant advantage of restorative justice within the criminal justice system is that it allows law enforcement agencies to allocate their resources towards addressing more critical criminal offences. From an administrative standpoint, a reduction in the number of submitted cases can lead to a decrease in the load on the state budget, thus allowing for a shift of resources to other sectors.
- c. Support from the People:** In a survey conducted by Litbang Kompas, restorative justice enjoys widespread support among the majority of individuals (KOMPAS, 2022). According to the survey results, a majority of 83 percent of the respondents expressed agreement with the notion that law enforcement places emphasis on mediation and peace accords as a primary approach in resolving minor criminal cases. The reason for this is that, as indicated by the participants, the resolution of cases is conducted in an equitable and impartial manner, with a focus on restoring the affected parties to their initial condition and reestablishing harmonious social dynamics. With Garcia, et al. (2020) also highlighting the notion of restorative justice aligns with the Indonesian cultural norms of harmonious community wisdom and the consensus achieved through discussions, as emphasised by the fourth tenet of the Pancasila, which serves as the fundamental philosophical framework in Indonesia.

Based on the studies mentioned previously, it can be inferred that the effectiveness of Indonesia's restorative justice system is primarily emphasised in terms of its impact on economic criminal justice policy, rather than the benefits experienced by individuals engaged in restorative justice processes. Limited scholarly research has been conducted on the topic of public perception towards individuals who have resolved their issues through restorative justice. Moreover, official reports published by Government agencies, such as by the Indonesian National Police (2023), primarily emphasise the impact on crime clearance rather than public impression. Although its advantages of the achievement remain deserving of recognition, the data presented by Bareskrim just indicates that a mere 5.1% of criminal cases handled by the Indonesian National Police across the entire country were resolved through the implementation of restorative justice in the year 2022. Nevertheless, the underlying principles of restorative justice remain aligned with the desired objectives, and it is imperative to establish a more robust framework to enhance the quality of restorative justice resolutions.

4. The Scots' Successes with Restorative Justice System

In this last section, we will review the evidence of the success of restorative justice in Scotland, including its ability to reduce recidivism, re-conviction, and client harm while ensuring client satisfaction.

- a. Lower Rates of Re-offending:** Experimental studies demonstrate that restorative justice reduces re-conviction by addressing the underlying cause of criminal behaviour by assisting the offender's rehabilitation (Bonta & Andrews, 2017). In addition, Braithwaite and Mugford's (1994) research on reintegrative shaming concludes that restorative justice reduces recidivism by making criminals feel embarrassed about their behaviour in front of those they hold dear by exposing clients' experiences of the crime. In further research that was conducted by Shapland, et al. (2008) on offenders indicates that those who participated in restorative justice committed significantly fewer crimes in the two years that followed than the control group, which undergoes the traditional criminal justice system.

- b. Reducing Harms to Victim:** According to a study written by Marshall (1999), 75% of individuals who participated in restorative justice were satisfied with the procedure because it aided them in overcoming their trauma of crime. Morris (2002) added that restorative justice practises assist victims in regaining a sense of security, self-respect, honour, and, most importantly, a sense of control of the justice process. Strang, et al. (2013) claim that restorative justice aids victims in refraining from feelings of self-blame because apologies from the offender are rarely provided to them in the traditional criminal justice system.
- c. Increased Victim Satisfaction for the Justice System:** In a number of observed studies, victims have expressed satisfaction with restorative justice procedures, so long as the mediation conferences are executed in accordance with the principles and the criminals fulfil the commitments they make during the conferences (Sherman & Strang, 2007). As noted by Camp and Wemmers (2013), victims are more content with restorative justice because their opinions are considered, as opposed to the traditional Criminal Justice approach, in which the state's prosecutor acts as the victim's advocate, severing their interest in a penal-based punishment, which is not always what the victim wants.

When examining the success of restorative justice in both countries, it becomes evident that there is significant public support for this approach. This can be attributed to the dissatisfaction with the conventional punitive justice system and the aspiration to transition towards a justice system that prioritises the needs of both the victim and society. This highlights the notion that penal punishment is not always the optimal solution. However, the effectiveness in terms of reducing recidivism rates and alleviating the harm victims suffered from psychological distress has been verified by The Scottish application of restorative justice, an aspect that has not been explored in restorative justice conducted in Indonesia.

CONCLUSION

Based on the research findings presented, it can be inferred that noticeable disparities exist, exerting a substantial impact on the fundamental attributes of restorative justice in the respective nations. First, in contrast to Scotland, Indonesia does not prioritise the initiation of community reconciliation as a central objective of restorative justice. Instead, its focus is primarily on addressing the harm caused and achieving restitution without placing significant emphasis on future rehabilitation. Consequently, this approach may result in a form of restorative justice that is only partially realised. Furthermore, regarding to the procedural aspect of restorative justice implementation, Indonesia endeavours to employ restorative justice as a substitute mechanism for resolving cases. This approach also elucidates the rationale behind its administration by the police and prosecutor as integral components of the criminal justice system. On the contrary, Scotland's implementation of restorative justice does not entirely cease the penal process; rather, it has the potential to impact the criminal justice process and judicial outcomes. Thus, restorative justice is typically implemented by skilled practitioners who are primarily affiliated with NGOs. Finally, although each country's practices have its advantages and disadvantages, both of their citizens value the transition towards restorative justice. It is worth mentioning that the success of Indonesia is mostly attributed to macro-level factors in its criminal justice policy, including resource conservation. In contrast, Scotland's success is more closely tied to micro-level advantages for both victims, such as harm reduction, and offenders, such as preventing re-offending.

The scope of this study is confined to a conceptual literature review, which, although valuable in advancing the research on best practices in implementing restorative justice, would benefit from the inclusion of empirical research on the process and outcomes in both countries. Such research would serve to complement and validate the findings presented in this paper. Moreover, in light of the forthcoming enforcement of the Indonesian Criminal Code of 2023, slated for 2026, additional research would be imperative to ensure the optimal utilisation of the recently proposed legal expediency. As the revised code integrates restorative justice principles into its core framework, encompassing not only punitive measures for criminal offences but also supplementary interventions such as supervision, monetary penalties, and social work. The primary objective of the novel approach in the criminal code is to address problems arising from criminal behaviour, reestablish equilibrium, and foster societal harmony.

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