



## Realizing Restorative Justice-Based Villages: Orientation and Formulation in a Progressive Legal Perspective

Ade Sathya Sanathana Ishwara

Faculty of Law, University of Mataram, Indonesia

E-mail: [adesathya20@gmail.com](mailto:adesathya20@gmail.com)

**Abstract:** *The concept of restorative justice which emphasizes the recovery of victims as well as community participation is appropriate to be applied at the village level as an effort to create a village based on restorative justice. This study aims to formulate the idea of a village based on restorative justice by involving community participation. This research is normative research that prioritizes conceptual and statutory approaches. The results of the study show that a village orientation based on restorative justice is intended to optimize the role of non-litigation dispute resolution in village communities. From a progressive legal perspective, a village based on restorative justice is a village with the aim of maintaining social harmony in resolving disputes in society. Therefore, the formation of Village Regulations is important as a guideline for implementing the concept of restorative justice in village communities.*

**Keywords:** *Progressive Law, Restorative Justice, Village.*

### 1. INTRODUCTION

The development of the concept of restorative justice (RJ) has become mainstream in the study of legal science, especially with regard to dispute resolution efforts. RJ is actually a conception that emphasizes the resolution of legal disputes based on humanist values and upholds the values of justice (Masna Nuros Safitri, 2022). The manifestation of the conception of RJ is the substance and effectiveness of legal disputes that are more optimal when compared to the process and procedure of legal disputes in general (Amal, 2022).

In general legal dispute resolution procedures, courts occupy important aspects that are supported by law enforcement officials, along with convoluted formulation of administrative procedures and technicalities. This conventional legal dispute resolution besides being ineffective also seems insubstantive because of the aspect of justice (Ilham, 2019). In law it is sometimes neglected by formal and procedural mechanisms in resolving legal disputes. The presence of the RJ concept is sought as a solution in overcoming the non-optimal legal dispute process which cannot be a solution but actually causes new problems. The formulation of the RJ concept in Indonesia has also not been optimally codified. This is because the concept of RJ in Indonesia in its formulation is still divided in each internal law enforcement institution. This can be seen from various regulations within the scope of the Supreme Court, Prosecutor's Office, to the Police that regulate the RJ approach in accordance

with the duties and functions of each institution (Rochaeti et al., 2023). Although there are no specific rules that comprehensively and codicatively regulate RJ, the existence of regulations in each internal law enforcement institution has become evidence that orientation related to RJ is part of the development of legal ideas in the future.

In addition to its effective orientation in resolving legal disputes, RJ is also relevant associated with efforts to revitalize the value of community locality in resolving legal disputes (Budi Bahreisy, Ferdy Saputra, 2022). In general, people with a strong cultural base in Indonesia prefer traditional legal dispute resolution over formal disputes through the courts (Gunawan Hasibuan & Rodiyah Nurratih, 2022). Therefore, the presence of the RJ conception is intended so that people can resolve a legal dispute while maintaining cultural values and characteristics that have been inherited from era to age.

One of the efforts to drive the RJ concept in the community is through optimizing the role of village government. The village is the smallest formal institution in society (Mustanir et al., 2020). In addition, the village also has genealogical legitimacy where the people of one village consider the environment of one village to be relatives or relatives who must be maintained relationships and relationships (Arofah, 2020). This has relevance to the application of the RJ conception where the resolution of legal disputes is based on the view that between the perpetrator and the victim are relatives so that the settlement of legal disputes must cause a win-win solution for the parties (Karmilia, 2022).

This study aims to analyze RJ-based village orientation efforts in a progressive legal perspective. The progressive legal perspective is used as the main analysis knife in this study because progressive law views that moral and humanitarian dimensions must be upheld in law, especially morals and humanity must be a legal guide in resolving legal disputes. For this reason, progressive law has relevance related to efforts to optimize village government to help resolve RJ-based legal disputes.

## **2. METHODS**

Research that discusses RJ-based village orientation efforts from a progressive legal perspective is normative research that prioritizes conceptual and statutory approaches. The use of normative legal research in this study is intended that the idea of RJ-based village orientation can be formulated a legal prescription that can be optimally carried out. Primary legal materials are the 1945 Constitution and Law No. 6/2014 on Villages (Village Law). Secondary legal materials are journal articles, books, and research results that discuss the role of villages in resolving legal disputes. Non-legal material is a dictionary of languages.

### 3. DISCUSSION

#### A. The Urgency of Implementing Restorative Justice-Based Villages

The concept of RJ actually developed along with the orientation to formulate a conception of corrective justice in criminal law. The conception of corrective justice emphasizes that in criminal law the conviction or penalization is not the most important thing, but how to make efforts to make a convict to return in society is much more important and valuable (Butt, 2019). One manifestation of corrective justice is the concept of RJ. RJ is actually a general legal concept (which is not limited to aspects of criminal law) which in essence emphasizes efforts on victim recovery, coaching for perpetrators, and ensuring balance in society. The conception of RJ as stated by Umbreit is that RJ is oriented towards providing recovery and anti-loss for victims (Januarsyah, 2019). RJ in Umbreit's perspective focuses on the victim so that the victim becomes the core and center of the conception of RJ. Umbreit's view is actually relevant to Tony Marshall's view that RJ is a legal dispute resolution process whose main focus is the provision of restitution for victims (Gurusi et al., 2022). Restitution in this case is in the form of recovery or compensation for victims due to an action experienced and causing losses to victims. Another view of RJ's conception was put forward by Clifford Dorn that RJ emphasizes resolving a legal conflict based on the interrelated relationship between victims, perpetrators, and society (Fahik et al., 2022). This view confirms that the RJ concept views a legal conflict as a complex phenomenon because a conflict arises accompanied by various turmoil and problems where the turmoil and problems must be identified and solutions found. The Centre for Justice & Reconciliation (CJR) also sees that the conception of RJ is actually a form of counter penalization.

Counter penalization means that RJ does not merely see a crime as always being solved according to formal law. A crime can be resolved by appropriate means by which the parties can decide something fair on the existence of a particular crime (Hasbullah, 2022). Referring to the various expert opinions above, the RJ concept actually emphasizes three aspects, namely: first, the fulfillment of victims' rights. The fulfillment of the rights of victims due to a violation of the law is important to put forward (Silaswaty Faried et al., 2022). Considering that recovery and compensation for victims is the most important aspect in a legal dispute. Recovery and fulfillment of victims' rights is an important aspect and is the most emphasized thing in RJ's conception. Second, RJ's second focus is on community harmonization (Leonard, 2022). The existence of an act that violates the law actually not only harms the victim but also agitates the community in the form of not achieving harmonization in society. The disruption of community

harmonization then requires the efforts and role of the community in implementing RJ. This confirms that one of the orientations of RJ is community involvement and participation related to a legal dispute. Third, RJ also formulates so that there are certain steps and efforts for the perpetrator to regret his actions and be accepted again as a member of society (Kurniawan, 2022). This orientation emphasizes that the perpetrator cannot be categorized as a “criminal person” but a person who commits a “despicable act” who must be guided and educated to return to society as it is generally.

From the three aspects of RJ's conception above, it can be concluded that RJ is a conception that emphasizes three interconnected and related aspects which include victims, society, and perpetrators (Ginting, 2020). An important characteristic of RJ is the effort to bring together victims, communities, and perpetrators of a legal dispute. This equal meeting between victims, communities, and perpetrators aims to find solutions to problems together as well as formulate how to minimize perpetrators to repeat their actions. This practice of meeting together is what distinguishes RJ from the process of formal legal procedures. Dispute resolution resolved through formal legal channels, both criminal and civil, does not seat the parties together but the parties are seated to explore facts and phenomena that are true according to law by law enforcement officials. This formal legal procedure process does not actually involve the feelings of the parties so that the parties cannot meet to resolve together, but the parties have been compartmentalized between parties who are “potentially” right and parties who are “potentially” wrong (Dewi, 2021). RJ's approach is to invite the parties to gather and solve problems together. The parties here consider both perpetrators, victims, or representatives of their respective communities as a unit so that problems will be discussed specifically and to the point and based on solutions that are in accordance with what the parties want. Referring to the conception offered by RJ above, this actually has relevance when every legal problem in society can be resolved through RJ.

In this context, the village can be reconstructed as an institution that facilitates and implements the conception of RJ. Referring to the Village Law, one of the goals of the village is to realize security, order, and peace of the community. This will be achieved if in the face of legal problems in the community can be resolved through RJ. The village has an important orientation as a facilitator of RJ implementation (Rinda Philona, I Made Suradana, 2021). There are three important orientations why villages are relevant in running RJ for the community, namely: first, as the smallest community institution, the role of the village is important in implementing RJ for every legal

problem that exists in the community. The village in this case acts as a “means of peace” that mediates legal problems in the community to be resolved through RJ. The role here is very important in order to avoid the legal problems of rural communities into open conflicts that sometimes cause casualties both property and lives (Supaat, 2020). Second, historically, in the Dutch colonial era and in the New Order era, factually there was an orientation of the village to become a “justice of peace” for the community (Rinda Philona, I Made Suradana, 2021). In the past, these villages played a role in solving the legal problems of the village community as much as possible by mediating based on the values and aspects of locality that developed in the village. The village at that time emphasized that indeed according to legal procedures, community legal problems can be resolved if they are based on legal procedures and provisions, but even if legal problems are resolved they cannot guarantee harmonization in the community. The role of the village is to try to solve legal problems in the community while maintaining existing social harmonization.

Third, one of the main orientations of the RJ concept is the involvement of community participation in solving a legal problem. The village in this case is considered relevant and suitable as a representative of the community to help solve existing legal problems by sitting the problem fairly. As a representative of the community, the village is positioned as an intermediary party that facilitates parties in realizing efforts to achieve justice. Referring to the three aspects of the relevance of RJ implementation to the village community above, villages actually have an orientation and an important role so that RJ practices can be applied optimally. Therefore, the urgency of implementing RJ facilitated by the village in realizing an RJ-based village is intended so that the village can become a peacemaker as well as an institution that can mediate every problem that exists in the community. The village sits in the middle to proportionally jointly offer a solution to a problem that exists in the community.

## **B. Village Orientation Based on Restorative Justice in a Progressive Legal Perspective**

The practice of applying the RJ conception through the village is actually an interesting idea. This is because the involvement of villages in realizing RJ practices in the community has relevance to progressive legal ideas. Progressive law is an idea put forward by Satjipto Rahardjo who emphasizes that law has a relationship with morality and social reality that exists in society. The relation of law and morality is described as one in which law takes on the “essence” and essence of morality (Rahardjo, 2008). Morality is considered a “spring” where the water flowing from the spring is law. This reinforces that law must refer to and base its substance on morality. The relationship of

law with social reality is also important considering that law should be applied in line with the development of social reality. By looking at the social reality of society, law is “more grounded” and thus law can provide alternative solutions to problems that exist in society. Progressive law as initiated by Satjipto Rahardjo was initially a form of criticism of the phenomenon of law enforcement and implementation, but on the one hand justice as a legal goal was not achieved (Suteki, 2018). Progressive legal ideas criticize the implementation of law with its various procedures, but on the one hand, the justice coveted by law does not materialize in society. The implementation and enforcement of laws that fail to realize justice are described by Suteki due to several factors, such as (Suteki, 2013): First, the factor of legal restriction or narrowing of the meaning of law is only limited to positive laws and laws and regulations. Law is actually a rule or norm that is a reflection of morality. The development of positive law and the era of legal modernization make law only interpreted as positive law in the form of laws and regulations. With this understanding, the value and substance of justice will be far from the purpose of the law because there is a stigma that if the laws and regulations have been implemented, they are considered to have implemented the law (Samekto, 2019).

Second, the decadence of morality of law enforcement officials. Law enforcement is the party that is the “heart” of law implementation in the community. No matter how good the law is, if the law enforcement officers do not have integrity and are not professional, the law still cannot be carried out properly. The decadence of morality of law enforcement officials can be seen from the involvement of “unscrupulous” law enforcement officials in the bribery process to corruption within the court (judicial corruption) (Alkostar, 2015). In addition, the decadence of morality of law enforcement officials is also evident from the mentality of law enforcement officers who want to be seen as glamorous and act contrary to the professional code of ethics. Third, there is a gap between the substance of the law and the reality of society. In this aspect, it is marked by the lack of responsiveness of the law in following up on every development in society (Asa et al., 2021). The unresponsive law makes the law an “outdated rule” and outdated. This has implications for laws that will not be optimal when implemented. Referring to the three factors that influence the non-optimal implementation and enforcement of the law above, progressive law comes with an orientation to “humanely punish”. The context of “humane law” as the main credo of progressive law is understood as an attempt to present law in harmony with moral values and in accordance with social reality. This progressive legal idea is actually relevant to the practice of

implementing RJ in villages with its main orientation being to present a legal orientation to be in line with the values of justice.

There are three arguments that show the relevance between progressive legal ideas and RJ-based village practices, namely: first, the main orientation of RJ-based villages is to provide alternatives to legal dispute resolution more effectively and humanely. This is because the parties are seated equally and invited to solve problems together by prioritizing a morality-based approach. Morality which is the key to implementing RJ in the village is based on the values and morality that develop in the village. This makes every dispute resolution expected to be based on moral values in order to realize a value of justice. Second, one of the progressive legal orientations is an attempt to position law as a rule and behavior at the same time. Progressive law seeks to shape the humane and moral behavior of society. With the practice of implementing RJ-based villages, progressive law seeks to educate the community to prioritize family values in resolving a legal dispute. Third, progressive law always seeks to find solutions to legal problems that are not only based on formal legal provisions. This means that progressive law always seeks legal solutions in every legal problem that exists, even by means of non-formal legal solutions. This non-formal legal settlement is actually relevant to the application of RJ-based villages because it seeks to offer alternative dispute resolution outside the legal procedures as in general.

Referring to the three relevance of progressive legal ideas to the application of RJ-based villages, it can be concluded that RJ-based villages have an orientation to strengthen progressive legal principles by emphasizing aspects of morality and social reality so that laws can be effectively enforced in society. In addition, progressive legal orientation in RJ-based village practice is intended so that the law can optimize non-formal aspects in solving a legal problem that exists in the village community.

#### **4. CONCLUSION**

The urgency of implementing RJ facilitated by the village in realizing an RJ-based village is intended so that the village can be a peacemaker as well as an institution that can mediate every problem that exists in the community. The village sits in the middle to proportionally jointly offer a solution to a problem that exists in the community. RJ-based villages have an orientation to strengthen progressive legal principles by emphasizing aspects of morality and social reality so that laws can be enforced effectively in the community. In addition, progressive legal orientation in RJ-based village practice is intended so that the law can optimize non-formal aspects in solving a legal problem that exists in the village community.

## REFERENCES

- Alkostar, A. (2015). *Korupsi Politik di Negara Modern* (2 ed.). FH UII Press.
- Amal, B. (2022). Nolle Prosequi Sebagai Inovasi Baru Di Bidang Hukum Acara Pidana. *al-Jinâyah*, 8(2), 106.
- Arofah, F. (2020). Kesadaran Kolektif dan Upaya Menuntut Pengakuan Desa Adat: Kasus Masyarakat Adat Sendi di Mojokerto, Jawa Timur. *JISPO Jurnal Ilmu Sosial dan Ilmu Politik*, 10(1), 75–86. <https://doi.org/10.15575/jispo.v10i1.6665>
- Asa, A. I., Munir, M., & Ningsih, R. S. M. (2021). Nonet and Selznick'S Responsive Law Concept in a Historical Philosophy Perspective. *Crepido*, 3(2), 96–109. <https://doi.org/10.14710/crepido.3.2.96-109>
- Budi Bahreisy, Ferdy Saputra, H. (2022). Penerapan Restorative Justice Melalui Lembaga Adat Terhadap Anak Yang Berkonflik Dengan Hukum Di Kota Lhokseumawe. *Eksekusi*, 4(1), 92.
- Butt, D. (2019). Restitution Post Bellum: Property, Inheritance, and Corrective Justice. *Journal of Applied Philosophy*, 36(3), 360.
- Dewi, I. M. W. C. S. M. L. (2021). Non Litigation Dispute Resolution in Settlement of Civil Disputes. *LEGAL BRIEF*, 10(2), 215.
- Fahik, A. D. A., Anak Agung Sagung Laksmi Dewi, & I Made Minggu Widyantara. (2022). Implementasi Peraturan Kejaksaan Republik Indonesia Nomor 15 Tahun 2020 (Studi Kasus Di Kejaksaan Negeri Jember). *Jurnal Konstruksi Hukum*, 3(2), 240–245. <https://doi.org/10.55637/jkh.3.2.4805.240-245>
- Ginting, J. (2020). Sanksi Kerja Sosial Sebagai Alternatif Bentuk Pemidanaan Dalam Sistem Hukum Di Indonesia. *Law Review*, 19(3), 246. <https://doi.org/10.19166/lr.v19i3.2098>
- Gunawan Hasibuan, & Rodiyah Nurrahmah. (2022). Restorative Justice Sebagai Penegakan Hukum Pidana Modern Dan Berkeadilan. *Collegium Studiosum Journal*, 5(1), 25–30. <https://doi.org/10.56301/csj.v5i1.495>
- Gurusi, L., Ode, L., & Karim, M. (2022). Future Implementation of Ius Constituendum and Restorative Justice in the Criminal Justice System. *Volkgeist*, 7(1), 77–80.
- Hasbullah, M. A. (2022). Implementation of Restorative Justice in Handling Cases of Bullying in Schools. *Journal of Positive School Psychology*, 6(3), 9970–9978.
- Ilham, M. H. (2019). Kajian Atas Asas Peradilan Cepat, Sederhana, Dan Biaya Ringan Terhadap Pemenuhan Hak Pencari Keadilan. *Verstek*, 7(3), 215.
- Januarsyah, M. P. Z. et al. (2019). Corrective Justice: An Economic Approach for Law. *Journal of Advanced Research in Law and Economics*, 10(1), 211.
- Karmilia, R. (2022). Penerapan Prinsip Restorative Justice Di Tinjau Dari Perspektif Asas Kepastian Hukum. *Journal Of Juridische Analyse*, 1(2), 1–9.
- Kurniawan, D. (2022). Pendekatan Restorative justice Melalui Mediasi Penal dalam Menangani Tindak Pidana Penganiayaan. *Idea Hukum*, 8(1), 4.



- Leonard, L. J. (2022). Can Restorative Justice Provide a Better Outcome for Participants and Society than the Courts? *Laws*, 11(1), 3. <https://doi.org/10.3390/laws11010014>
- Masna Nuros Safitri, E. W. (2022). Pendekatan Restorative Justice Dalam Tindak Pidana Pencemaran Nama Baik Melalui Media Sosial Sebagai Implementasi Asas Ultimum Remedium. *Esensi Hukum*, 4(1), 12–23.
- Mustanir, A., S, F., Adri, K., Nurnawati, A. A., & Goso, G. (2020). Sinergitas Peran Pemerintah Desa dan Partisipasi Masyarakat Terhadap Perencanaan Pembangunan di Kabupaten Sidenreng Rappang. *Journal of Government Science (GovSci) : Jurnal Ilmu Pemerintahan*, 1(2), 84–108. <https://doi.org/10.54144/govsci.v1i2.8>
- Rahardjo, S. (2008). *Membedah Hukum Progresif* (3 ed.). Kompas.
- Rinda Philona, I Made Suradana, N. L. (2021). Penyusunan Peraturan Desa Tentang Bale Mediasi Melalui Penyuluhan dan Monitoring Pada Desa Rumak, Kecamatan Kediri, Kabupaten Lombok Barat. *Jurnal Gema Ngabdi*, 3(1), 68–74.
- Rinda Philona , I Made Suradana, N. L. (2021). Penyusunan Peraturan Desa Tentang Bale Mediasi Melalui Penyuluhan dan Monitoring Pada Desa Rumak, Kecamatan Kediri, Kabupaten Lombok Barat. *Gema Ngabdi*, 3(1), 70.
- Rochaeti, N., Hafidh, M., Rozah, U., & Park, J. (2023). A Restorative Justice System in Indonesia : A Close View from the Indigenous Peoples ' Practices. *Sriwijaya Law Review*, 7(1), 87–104. <https://doi.org/10.28946/slrev.Vol7.Iss1.1919.pp87-104>
- Samekto, F. A. (2019). Menelusuri Akar Pemikiran Hans Kelsen Tentang Stufenbeuthetheorie Dalam Pendekatan Normatif-Filosofis. *Jurnal Hukum Progresif*, 7(1), 1. <https://doi.org/10.14710/hp.7.1.1-19>
- Silaswaty Faried, F., Mahmud, H., & Suparwi, S. (2022). Mainstreaming Restorative Justice in Termination of Prosecution in Indonesia. *Journal of Human Rights, Culture and Legal System*, 2(1), 66–77. <https://doi.org/10.53955/jhcls.v2i1.31>
- Supaat, R. (2020). Penyelesaian Sengketa Secara Mediasi oleh Kepala Desa atas Peralihan Hak Atas Tanah yang Dilaksanakan di Bawah Tangan di Desa Pleret Kecamatan Pohjentrek Kabupaten Pasuruan. *Dinamika:Jurnal Ilmiah Ilmu Hukum*, 26(13), 5–24.
- Suteki. (2013). *Desain Hukum di Ruang Sosial* (1 ed.). Thafa Media.
- Suteki. (2018). *Hukum Progresif: Hukum Berdimensi Transendental dalam Konteks Keindonesiaan* (hal. 3–5). publikasiilmiah.ums.ac.id.