

INTEGRATION OF THE CODE OF ETHICS OF JUDGES IN THE IMPLEMENTATION OF PERMA NO. 1 OF 2024: THE INFLUENCE OF JUDICIAL INDEPENDENCE IN IMPLEMENTING RESTORATIVE JUSTICE

Milda Istiqomah,¹ Reni Ringgita Laia²

^{1,2} Magister Ilmu Hukum - Universitas Brawijaya Kampus Jakarta

Corresponding Email : renilaia95@student.ub.ac.id

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Abstract

Supreme Court Regulation of the Republic of Indonesia No. 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice provides guidelines for judges in implementing restorative justice in court. This regulation requires an active role for judges as peace facilitators, which raises questions regarding the independence of judges. This study aims to analyze how the independence of judges and the code of ethics of judges are integrated in the implementation of Perma No. 1 of 2024, especially in maintaining the independence of judges in the restorative justice process. This study uses a conceptual approach, a legislative approach and a case approach. The results of the study indicate that the independence of judges and the code of ethics of judges are important foundations in the implementation of Perma No. 1 of 2024. The independence of judges guarantees objectivity and justice in the peace process, while the code of ethics guides judges to act fairly, wisely and with integrity. Judges must always adhere to the principle of independence and ethical values, even though they are required to play an active role in the peace process. This study provides suggestions on the importance of socialization and training for judges regarding Perma No. 1 of 2024 and the code of ethics in the context of restorative justice, as well as strengthening internal and external supervision of judges in the implementation of restorative justice.

Keywords: *Restorative Justice, Judicial Independence, Judicial Code of Ethics*

A. Introduction

In principle, the settlement of criminal disputes can be carried out through two main mechanisms, namely litigation and non-litigation. Both approaches have the same fundamental goal, namely to realize justice for the wider community and provide legal certainty for various parties related to the dispute. The choice between the two mechanisms in resolving cases is highly dependent on the concept and legal objectives that the parties want to achieve. In addition, a crucial factor that also determines the effectiveness of dispute resolution is the good faith of all parties involved in order to achieve a fair and just solution. Indonesia currently tends to resolve problems through litigation in the hope that perpetrators of crimes will be punished according to the crimes they have committed.³ This is called retributive justice, where justice focuses on giving punishment or sanctions that are appropriate to the perpetrators of crimes as a form of retribution for the actions that have been done. According to data from the Directorate General of Corrections, Ministry of Law and Human Rights, hunger in Indonesia has a capacity of more than 200%,⁴

¹ Lecturers at Brawijaya University

² Students at Brawijaya University

³ Arief H & Ambarsari N, "Implementation of Restorative Justice Principles in the Indonesian Justice System: Al-Adl: Jurnal Hukum." (October 2018): 173-190

⁴ Ariany Kalangi, "The Problem of Prison Overcapacity: A Urgent National Challenge", (<https://www.rri.co.id/daerah/820484/persoalan-over-kapas-tantangan-nasional-yang-mendesak>), accessed January 2, 2025

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which has a negative impact on the conditions of correction for prisoners and the inefficiency of the criminal justice system. Therefore, restorative justice has developed as an approach that is more oriented towards humanity and has higher effectiveness in resolving criminal cases, namely the concept of restorative justice. This justice model involves the active participation of all parties involved in a crime to collectively seek solutions that focus on restoring the affected conditions and fulfilling a sense of justice for society as a whole, not only on punishment. Restorative justice is oriented towards victim recovery, perpetrator responsibility and social reconciliation. This approach emphasizes that punishment is not the only way to enforce the law, but there are other resolution mechanisms that provide more justice for all parties.⁵

In Indonesia, the concept of restorative justice is substantially accommodated in Article 6 paragraph (1) of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. This regulation emphasizes that the disputing parties have the option to pursue an alternative dispute resolution mechanism based on the principle of good faith, by setting aside the litigation path in the District Court (PN). In the context of resolving criminal cases, in principle, the criminal justice system in Indonesia prioritizes the litigation approach as the main path. However, in certain cases, there is the possibility of settlement outside the court by considering relevant legal aspects. Law No. 12 of 2011 concerning the Juvenile Criminal Justice System (UU SPPA) explicitly regulates that restorative justice is part of the diversion mechanism, namely a process that emphasizes the active involvement of all parties affected by the crime including victims, perpetrators who are still children, and the community together to formulate a constructive solution. The purpose of this process is not as a punishment based on retribution, but rather the creation of solutions that are oriented towards recovery, reconciliation, and social harmony. Furthermore, this regulation also emphasizes that law enforcement officers have an obligation to strive for diversion as an integral part of the criminal justice system. This process can be implemented at all stages of the integrated criminal justice system, covering the scope of authority of the Correctional Institution, Police, and Prosecutor's Office.

In the Supreme Court of the Republic of Indonesia itself, the concept of restorative justice has been known since the enactment of Perma No. 2 of 2012 regulating the limits of minor crimes and the amount of fines in the Criminal Code, while Perma No. 1 of 2022 stipulates the procedure for submitting applications and the mechanism for providing restitution or compensation for victims of crime. Meanwhile, Perma No. 1 of 2024 provides guidance for judges in trying criminal cases with a restorative justice approach, especially in minor cases, victimless crimes or cases with victims who agree to a restorative justice settlement. Judges are expected to act as facilitators in resolving cases that are oriented towards recovery, not just punishment.

However, the implementation of restorative justice in trials cannot be applied carelessly. In practice, the application of restorative justice is often faced with various pressures from victims, perpetrators, perpetrators' families and even the community. The application of restorative justice in court requires a more active role for judges as facilitators in the case resolution process. This has the potential to create tension between demands to maintain independence on the one hand and the need to be seen as more active in the mediation process on the other. The Code of Ethics for Judges, which explicitly regulates independence as one of the main principles, needs to be integrated harmoniously with the demands of the practice of implementing restorative justice. Based on the explanation, it is important to conduct a study on how the integration of the code of ethics of judges, especially regarding the independence of judges, in the implementation of Perma No. 1 of 2024. Through this study, the dynamics between the demands of judicial independence and the need to be actively involved in the restorative justice process will be analyzed and strategies will be identified to maintain judicial independence in the context of the implementation of restorative justice.

B. Research Methods

⁵Bakhriar, et al, "Towards Recovery and Reconciliation: Exploring the Principles and Benefits of Restorative Justice" : Technium Social Sciences Journal, Vol. 50 (Special issue) (November, 2023): 167-173

The categories in this research are normative law (normative legal research),⁶ which focuses on the study of norms, principles, and legal concepts relevant to the issues being studied. In order to gain a comprehensive understanding, researchers apply three main approaches. The conceptual approach is used to explore the nature and essence of restorative justice, including an understanding of the values and fundamental principles underlying the concept. Meanwhile, the legislative approach is applied to analyze the extent to which regulations in force in Indonesia have adopted the restorative justice paradigm. The case approach will be used to look at current issues in the implementation of restorative justice in court. Legal materials, including various laws and regulations, journals, and books that have been collected, will be analyzed using the prescriptive-analytical method.

C. Discussion

1. Independence of Judges in Indonesia

Historically, judicial independence was studied by Suzanna Sherry in her article entitled "Independent Judges and Independent Justice" published in the Journal of Law and Contemporary Problems. She explained that before 1701, judges in England did not have the authority to overturn regulations made by the legislature ("there was no practice of judicial review; judges did not strike down legislative enactments"). At that time, there was a classical doctrine that stated that "an act of parliament can do no wrong, although it may do several things that look pretty odd." Over time, the doctrine began to receive resistance from judges, who refused to be fully bound by the legal products issued by parliament. From here, the idea evolved until it finally gave birth to the concept of judicial review.⁷ Sir Edward Coke, known as the father of judicial review in the United States, emphasized that "when an Act of Parliament is against common right and reason, or repugnant, or impossible to perform, the common law will control it, and adjudge such an Act to be void."

Judicial independence is a fundamental concept in the judicial system developed by various legal experts. According to Shimon Shetreet in "Judicial Independence: New Conceptual Dimensions and Contemporary Challenges"⁸, judicial independence consists of two main dimensions, namely: individual independence and institutional independence. This theory emphasizes that judicial independence is not only related to the individual freedom of judges in deciding cases, but also includes institutional independence that protects the judicial institution from external intervention. Franken, as a legal expert from the Netherlands, stated that independence in judicial power is categorized into four types, including:⁹

1. Constitutional Independence

Referring to the freedom of judicial power in the context of the Trias Politica doctrine developed by Montesquieu. In this system of division of powers, the judicial institution must be independent, meaning that its position as an institution must not be influenced by public interests.

2. Functional Independence

Related to the freedom of judges in carrying out their duties when handling a case. A judge has the authority to interpret the law if the existing legal provisions do not provide a clear definition. However, this independence also has limitations, where judges are not allowed to make decisions without a legal basis. In addition, under certain conditions, the judicial institution can cancel a regulation regarding policies that are not in line with the principles of the constitution or justice.

3. Personal Independence of Judges

Refers to the freedom of an individual judge to decide a case without intervention or pressure from other parties.

⁶Rheina Aini Safa'at, "Position and Authority of the Supreme Court in Exercising Judicial Power in Indonesia", Citizenship Journal. Vol. 8 No. 1 (June 2024) : 303-309

⁷Kusnu Goesniadbie S, "Principles of Supervision of Judicial Independence," Journal of Law No. 3 Vol 14 (July 2007): 436 – 447.

⁸Matthew C. Stephenson, "When the Devil Turns . . . : The Political Foundations of Independent Judicial Review," The Journal Of Legal Studies Volume 32 (1), (January 2003) : 59-89

⁹H. Franken, "Onafhankelijkheid en Verantwoordelijke," Gouda Quhnt, 1997 : 9-10

4. Real Practical Independence

Demonstrating the principle of impartiality of a judge. Judges are required to follow social developments in society, including information disseminated through the media. However, judges should not be influenced by direct news without conducting careful analysis. Judges must also be able to filter public pressure and adjust it to applicable legal provisions, so that they can apply social norms proportionally in the lives of the community.

Based on the explanation above, the term "independent" can be interpreted as a state that is non-partial. This means that independence reflects freedom and independence, where a party may not be influenced by anyone and may not show partiality towards certain individuals, certain groups, political parties, or the government in carrying out their duties and authorities.¹⁰ Bagir Manan, Chief Justice of the Supreme Court of the Republic of Indonesia explained that the freedom of a judge must be interpreted as an attitude that is truly free from all forms of intervention and certain interests. The independence of the judge must be reflected in every decision rendered, where the judge needs to maintain impartiality or not show preference for one party in the judicial process. Thus, every party involved in the case has an equal opportunity to achieve victory, without any influence from the personal interests of the judge or various other parties who have certain interests or powers in the case.¹¹

In addition, there is another thing that needs to be considered in the principle of judicial independence, namely the importance of caution in maintaining a balance between judicial freedom and the potential for abuse of authority. The freedom that a judge has is actually intended to ensure that every decision taken is the result of objective and fair legal considerations, without any intervention or pressure from outside parties. However, on the other hand, this freedom can also potentially cause problems if it is not carried out responsibly. If the judge's freedom is used incorrectly, it can open up a gap for arbitrary actions. In conditions like this, the judge's freedom can actually be a tool to hide certain interests or forms of bias that are contrary to the principle of justice. Therefore, the principle of independence must always be maintained with full responsibility so that it is not used properly that does not violate the law and judicial ethics. It should be realized that freedom and independence in judicial power cannot be separated from the dimension of responsibility or accountability as parts that are mutually attached like two sides of one coin. Absolute freedom cannot stand alone without being balanced by responsibility. In other words, within the limits of judicial freedom ("independence of judiciary"), there must be a proportional balance with judicial accountability ("judicial accountability").

2. Legal Basis for Judicial Independence in Indonesia

In Indonesia, the legal basis of judicial independence in the positive legal system has a comprehensive hierarchical structure. Starting from the constitutional level to the technical regulations for its implementation. The Constitution as the highest legal norm in a country establishes the principle of judicial independence in Indonesia, as regulated in Article 24 paragraph (1) of the Constitution, which states that "Judicial power is an independent power to administer justice in order to uphold the law and prevent injustice." This constitutional provision is further strengthened by Article 24B paragraph (1) which regulates the existence of the Judicial Commission as an external supervisory institution that plays a role in upholding and maintaining the honor, integrity and behavior of judges. Further details regarding the independence of judges is stated in Law No. 48 of 2009 concerning Judicial Power. Article 4 paragraph (1) emphasizes the principle of judicial independence by regulating in detail aspects related to independence, including the prohibition of intervention in the judicial process as in Article 17 paragraph (1) and Article 55 paragraph (1) which regulates the threat of criminal sanctions for parties who intervene. In addition, the regulation also regulates the welfare and security guarantees of judges as an important component in maintaining

¹⁰Marbun BN, "Indonesian Legal Dictionary," Pusaka Sinar Harapan, (Jakarta 2005): 111

¹¹Bagir Manan, "Six Community Expectations for Judicial Institutions that Need to be Noted, remarks at the Inauguration of the Blambangan Umpu Religious Court Building and the Kotabumi Religious Court on April 9, 2007" (in Binsar Sitorus, Independence of Judges in the Tax Court System in Indonesia, Yuridika: Volume 28 No 1, (January-April 2013): 34-53

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independence. Supreme Court(MA) as the peak of judicial power in Indonesia is regulated comprehensively through a "trilogy of laws", namely Law No. 14 of 1985 concerning the MA which was amended in Law No. 5 of 2004 and Law No. 3 of 2009.¹²This regulation forms a solid legal basis for the existence and function of the Supreme Court in the judicial structure in Indonesia. Law No. 14 of 1985, especially Article 2, establishes the position of the Supreme Court as the highest judicial institution. The highest state, which based on Article 28 is given the authority to supervise the implementation of judicial duties in all judicial bodies below it. In addition, based on Article 32, the Supreme Court functions as a cassation court and through Article 38 the Supreme Court is given the task and authority to provide guidance and information to courts in all judicial environments. This comprehensive regulation is important to maintain the institutional independence of the Supreme Court and the various judicial bodies below it, so that it can realize a clean, fair and authoritative judiciary.

3. The Concept of Restorative Justice

Muladi, in his work, explains the essence of restorative justice as a mechanism for resolving criminal cases that involves the perpetrator, victim, their respective families, and related parties to collectively formulate a just solution. This approach focuses more on restoring conditions to their original state rather than simply imposing sanctions.¹³Unlike conventional criminal justice systems that focus on retribution, restorative justice seeks to repair harm, rebuild relationships, and create positive change.¹⁴The historical traces of restorative justice in Indonesia can be traced back to the past, where there was a Royal court institution called the Stinggil or Serambi Court. This institution shows that resolving cases by involving various parties and prioritizing recovery has long been known in Indonesia.¹⁵ Restorative justice is understood as a mechanism in which all parties involved in a crime jointly participate in formulating collective solutions to address the impacts caused and consider the consequences in the future.¹⁶This approach is oriented towards empowering victims, perpetrators, families and communities by emphasizing awareness and regret as the main foundation in restoring social harmony.¹⁷In restorative justice, practitioners work to ensure that offenders are held accountable for their actions, understand the impact of their actions, and participate in repairing the harm they have caused. Restorative justice also emphasizes the well-being of all parties involved in the crime. The aim of restorative justice is restoration, which includes restoring the relationship between the perpetrator and the victim based on mutual agreement.¹⁸Restorative justice not only benefits the perpetrator, but also takes into account the impact on the victim.¹⁹This approach is based on the fundamental principle that criminal acts are not just violations of

¹²Rheina Aini Safa'at, "Position and Authority of the Supreme Court in Exercising Judicial Power in Indonesia," *Citizenship Journal*. Vol. 8 No. 1 (June 2024) : 303-309

¹³Muladi, "Restorative Justice Approach in the Criminal Justice System and Its Implementation in the Juvenile Criminal Justice System," (Semarang: Master of Law Teaching Materials, Diponegoro University, 2015) : 1

¹⁴Henny Saida Flora, "Comparison of the Restorative Justice Approach and the Conventional Justice System in Handling Criminal Cases," *Al-Manhaj: Journal of Islamic Law and Social Institutions*, Volume 5 Number 2, (October, 2023): 1933-1948.

¹⁵Dra. Hj. Irma Fatmawati, SH, M.Hum, et al., "Customary and Restorative Justice in Law Enforcement in Indonesia," (Sukoharjo, Tahta Media Group Publisher, 2023) : 3

¹⁶Tony Marshall, "Restorative Justice: A Review in London, Home Office Research Development and Statistics Directorate," Jakarta: Home Office Research Development and Statistics Directorate, 1999: 5. See also in: Kristian, "Resolving Criminal Cases with the Concept or Approach of Restorative Justice, Especially Through Mediation (Penal Mediation) in the Indonesian Criminal Law System Reviewed from the Philosophy of Law", *Jurnal Hukum Mimbar Justitia* Vol. VI No. 02, (July-December 2014): 460.

¹⁷George Pavlich, "Towards an Ethics of Restorative Justice, in Restorative Justice and The Law", ed Algrave, L., WWillan Publishing, Oregon, 2002, p. 1. Quoted from Dewi DS and A. Syukur Fatahilah, "Penal Mediation: Implementation of Restorative Justice in Indonesian Children's Courts," Depok, Indie Publishing, 2011: 4.

¹⁸Article 9 of Perma No. 1 of 2024 concerning "Guidelines for Trying Criminal Cases Based on Restorative Justice"

¹⁹H. Dwiarsa Budi Santiarto, SH, M.Hum, "Understanding Restorative Justice Reform in Court," Article Thursday, October 17, 2024, (<https://www.mahkamahagung.go.id/id/artikel/6494/mengenal-pembaruan-keadilan-restoratif-di-pengadilan>) accessed on February 10, 2024

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the law, but also have detrimental impacts on victims and society. Therefore, a recovery mechanism is needed that aims to address and repair the impacts caused.²⁰

According to Muladi, the characteristics of restorative justice are:

1. Crime is constructed as a form of violation committed by individuals against other individuals and is perceived as a conflict. In the perspective of restorative justice, crime is not only considered as a violation of legal norms, but also as a conflict between humans that needs to be resolved peacefully;
2. The main emphasis is directed at resolving problems related to aspects of accountability and fulfilling future-oriented obligations. The main goal of restorative justice is not only to punish the perpetrator, but also to encourage the perpetrator to take responsibility for their actions and correct the mistakes they have made;
3. The normative dimension is constructed through the mechanism of dialogue and negotiation process. The restorative justice process prioritizes dialogue and negotiation between perpetrators, victims, and various stakeholders in order to reach a mutual agreement;
4. Restitution serves as an instrument of recovery for the parties, while reconciliation and restoration are the main orientations. Restorative justice prioritizes restitution or compensation as a means to repair the impact on the victim and restore the relationship between the victim and the perpetrator;
5. Justice is constructed as a relationship between rights that are evaluated based on the impacts produced. Restorative justice emphasizes the balance of rights and obligations between perpetrators and victims, and assesses justice based on the results achieved in the problem-solving process;
6. The main focus is directed at restoring the social impacts arising from crime. Restorative justice not only focuses on the recovery of victims and perpetrators, but also emphasizes the reconstruction of social relations that are distorted by crime;
7. The community plays a role as a mediator in the restorative justice mechanism. The community plays an active role in the restorative justice process, both as a mediator, supporter and supervisor;
8. Both victims and perpetrators have a major role in determining problems and formulating solutions, by placing the perpetrator in a responsible position. Restorative justice recognizes the roles and rights of victims and perpetrators in the dispute resolution mechanism, perpetrators are encouraged to take full responsibility for their actions;
9. The perpetrator's accountability is constructed as a consequence of awareness of his actions, and is directed to play a role in determining the most just solution. Restorative justice encourages the perpetrator to understand the impact of his actions and participate in determining the best solution for all parties;
10. Criminal acts are examined in a comprehensive perspective, encompassing moral, social and economic dimensions. Restorative justice views criminal acts not only as violations of the law, but also in a broader social, moral and economic context; as well as
11. Stigma can be reduced through a recovery approach that is oriented towards restorative justice. This seeks to remove the negative stigma attached to the perpetrator by providing the perpetrator with the opportunity to correct their mistakes or reintegrate into society;

Implementation of restorative justice on victims of crime has a significant impact, especially in terms of social and psychological recovery. Restorative justice provides an opportunity for victims to convey the impact of the crime and their desire for recovery to be conveyed directly to the perpetrator. This mechanism provides space for victims to play an active role in formulating a proportional form of reparation or compensation, so that a sense of justice can be realized more substantially and meaningfully.²¹ In addition, restorative justice can also accelerate psychological recovery. By participating in the restorative justice process, victims can release emotional burdens, such as anger, revenge, and trauma, which can hinder their

²⁰Mochamad Sukedi, "Restorative Justice as an Effort to Resolve Criminal Acts in the Legal System in Indonesia," *Jurnal Preferensi Hukum*, Volume 5, Issue 2 (September, 2024): 222-230

²¹Indi Nuroini, "The Effectiveness of Restorative Justice Implementation in Criminal Cases in Indonesia," *Cahaya Mandalika Journal*, Vol. 5, No. 1, (June, 2024): 818-828.

recovery process. Victims can also obtain compensation that allows victims to receive material compensation or restitution that can help them recover from economic losses affected by the crime. And the implementation of restorative justice can provide and increase a sense of security for victims of crime. By understanding the motives and reasons behind the perpetrator's actions, victims can reduce fear and anxiety, thereby increasing their sense of security.

In addition to victims, restorative justice also has a significant impact on perpetrators of criminal acts. Restorative justice can increase the sense of responsibility for perpetrators of criminal acts. The restorative justice approach allows perpetrators to know the impact of their actions and take responsibility for their actions. Through dialogue or mediation with victims, perpetrators can develop a deeper moral awareness, prevent repeated behavior, and erode the social stigma that is attached after legal sanctions. This mechanism also provides space for perpetrators to atone for their mistakes and return to playing a constructive role in social life.

4. Restorative Justice in Indonesian Positive Law

Regulations regarding restorative justice in Indonesian positive law are spread across various policies and regulations of the Law. Initially, the spirit of restorative justice was born from the principle of simple, fast and low-cost justice, which was then implemented into the juvenile criminal justice system through Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA). This SPPA Law introduced the concept of diversion, namely the transformation of the mechanism for resolving juvenile cases from the criminal justice system to alternative procedures outside the conventional justice system.

In its development, the principle of restorative justice has gained legitimacy in various regulations, such as Law No. 31 of 2014 concerning Protection of Witnesses and Victims. At the investigation stage, this principle is stated in the Regulation of the Republic of Indonesia Police No. 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice. Meanwhile, at the prosecution stage, this approach is accommodated through the Regulation of the Attorney General of the Republic of Indonesia No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. This regulation provides guidelines for the court in implementing restorative justice in trials with more limited requirements compared to Perpol 8/2021 and Perja 15/2020.

5. Code of Ethics and Guidelines for Judges' Behavior in Restorative Justice in Trials

The ethical guidelines and standards of conduct for judges serve as a moral compass that guides the integrity and professionalism of judges, both in their official capacity and in their personal lives. This regulation is stated in the Joint Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia and the Chief Justice of the Judicial Commission of the Republic of Indonesia No. 047/KMA/SKB/IV/2009 – 01/SKB/P.KY/IV/2009 issued on April 8, 2009. The aim is to maintain the independence, integrity and impartiality of judges in carrying out their duties. The principles in the code of ethics include:

- a. Behaving fairly; judges are required to provide fair treatment to all parties in the case without discrimination. Judges are required to be objective and not to take sides with any party;
- b. Behave honestly: judges must be honest in revealing the truth and enforcing the law. Honesty is the main foundation for a judge in carrying out his duties;
- c. Behaving wisely and judiciously: judges must consider various legal, religious and social values in making decisions. Judges must have wisdom in applying the law and adapting it to the various values that live in society;
- d. Be independent: judges must be free from investment and influence of any party. The independence of judges is one of the main pillars in upholding justice;
- e. High integrity: judges must have a complete personality and adhere to moral values. Integrity includes honesty, fairness, responsibility and high morals;

- f. Responsible: judges are responsible for the decisions they make. Judges must be able to account for every decision they make, both legally and morally;
- g. High self-esteem: judges are required to maintain the honor of their profession and their dignity and judges must maintain the image and authority of the judicial institution;
- h. High discipline: judges must obey existing norms and rules. Discipline is one of the many forms of judges' responsibilities in carrying out their duties;
- i. Behave humbly: judges must be aware of their limitations and be willing to learn from others. Humility will make judges wiser in making decisions;
- j. Behaving professionally: a judge is required to uphold moral integrity that is rooted in full commitment to carrying out his profession with high dedication, and supported by competence that includes depth of knowledge, skills, and broad perspectives.

6. Integration of the Judge's Code of Ethics in the Restorative Justice Process in Trials

The involvement of judges in the restorative justice process in Indonesia is regulated with clear limitations to ensure judicial independence. Perma No. 1 of 2024 provides guidelines for judges in implementing restorative justice, but with certain conditions.

In Article 6 paragraph (1) Perma no. 1 of 2024 is mentioned that

“The judge applies guidelines for trying criminal cases based on restorative justice if one of the following crimes is met: (a) The crime committed is a minor crime or the victim's loss is worth no more than Rp2,500,000.00 (two million five hundred thousand rupiah) or no more than the local provincial minimum wage; (b) The crime is a complaint offense; (c) A crime with a maximum sentence of 5 (five) years in prison in one of the charges, including a criminal offense according to the qanun; (d) A crime with a child perpetrator whose diversion is unsuccessful; or (e) A traffic crime in the form of a crime.”

In addition, based on Article 6 paragraph (2) it says that

“The judge is not authorized to apply restorative justice if: (a) the victim or defendant refuses to make peace; (b) there is a power relationship; or (c) the defendant repeats a similar crime within 3 (three) years since the defendant has completed serving a court decision that has permanent legal force.”

In the process, the judge acts as a facilitator who promotes peace and ensure a balance between the interests of the victim, the perpetrator and the community. Judges need to ensure that the willingness to reconcile comes from the parties themselves, not from coercion and that their rights are fulfilled. The judge is tasked with opening up a space for dialogue between the victim and the perpetrator, by ensuring that the intention to reconcile arises voluntarily from both parties without any element of coercion. Thus, the authenticity of the desire to repair the relationship is key, so that the restorative justice process can run smoothly and fairly.

Judges must also ensure that the rights of victims are fulfilled, for example through compensation or psychological recovery efforts, while providing an opportunity for perpetrators to admit their mistakes or improve themselves through humane and non-retributive mechanisms so that they do not feel neglected in the settlement process. By accommodating the interests of victims, perpetrators and the community in a balanced manner, judges help maintain public trust in the justice system and contribute to the creation of peace and social stability. Although encouraging peace, judges must still adhere to criminal procedure law and issue fair decisions. Peace agreements can be a consideration that reduces sentences, but judges must not ignore applicable laws. Based on Article 19 of Perma No. 1 of 2024 it is stated that the judge has the authority to consider and accommodate the peace agreement that has been reached by the parties through mediation in order to implement restorative justice. However, in order for the agreement to be used as a basis for a decision, the judge must ensure that the peace meets the principles of justice, voluntariness and does not conflict with the law and public interest as regulated in Article 18 of Perma No. 1 of 2024.

The criteria for a peace agreement that can be considered by the judge in implementing peace are:²²

a. Voluntary participation of the parties:

The judge must ensure that both the victim and the perpetrator reach an agreement voluntarily, without pressure from outside parties, including law enforcement officers, family or community leaders;

b. Justice for the victims

The peace agreement must provide adequate reparation for victims, either in the form of material compensation, an apology or other rehabilitative measures that can restore the victims' rights;

c. Responsibility of the perpetrator

The perpetrator must effectively admit his/her mistake and demonstrate good faith in taking responsibility for his/her actions, either through compensation, apology or participation in a rehabilitation program;

d. Public Interest

The peace agreement made must not be contrary to the public interest or harm the public sense of justice. In certain cases, even though the victim and perpetrator have reconciled if the case has a broad social impact, the judge must be able to consider this factor before accommodating the agreement.

7. Challenges of the Restorative Justice Process in Trial

In its application, the implementation of restorative justice in court is inseparable from conceptual and implementation challenges. The challenges are as follows:

a. Diverse understandings of restorative justice

There are differences in interpretation and understanding of the concept of restorative justice among law enforcers, academics and the community. This can lead to non-uniformity in its application and cause confusion in the field. For example, some parties consider restorative justice only as mediation between victims and perpetrators, while others see it as a more holistic approach involving the community;²³

b. Limitations of the legal framework

Although it has been accommodated in several legal provisions such as UUSPPA and Perma No. 1 of 2024, the regulation on restorative justice is still partial and not comprehensive. This can cause legal uncertainty and make it difficult to implement restorative justice consistently. A clearer and more integrated legal framework is needed to regulate the principles, mechanisms and scope of restorative justice in the criminal justice system.

c. Suboptimal socialization

Most people do not yet understand the concept of restorative justice mechanisms of law enforcement officers. This can hinder its effective implementation.

d. Various implementations²⁴

The implementation of restorative justice in the field is still diverse and not standardized. This can cause uncertainty and injustice in its implementation. Differences in approaches and mechanisms between regions and law enforcement agencies can cause disparities in the implementation of restorative justice.

e. Resistance from the conventional justice system

²²Article 12-13 of Perma No. 1 of 2024 concerning "Guidelines for Trying Criminal Cases Based on Restorative Justice"

²³Maidina Rahmawati, et al., "Opportunities and Challenges of Implementing Restorative Justice in the Criminal Justice System in Indonesia," (Jakarta: Institute for Criminal Justice Reform, 2022): 324

²⁴Reda Manthovani, "The Challenge of Harmonizing Restorative Justice in Ius Constituendum Between Law Enforcers". July 3, 2024. (<https://www.hukumonline.com/berita/a/tantangan-mengharmonisasi-restorative-justice-dalam-ius-constituendum-antarpenegak-hukum-1t6684ef9454254/?page=all>) accessed February 21, 2025

The established conventional criminal justice system that focuses on punishment can be an obstacle to the implementation of restorative justice. The paradigm of retribution and punishment that has been rooted in the criminal justice system can create resistance to a more restorative approach.²⁵

f. Determination of "Responsive Regulation"

The concept of "Responsive Regulation" in restorative justice emphasizes the importance of flexibility and adaptation in its application. The challenge is to find a balance between the need for clear rules and guidelines with the flexibility to adapt to the context and characteristics of the case.²⁶

g. New paradigm

Restorative justice needs to be seen as a paradigm shift, not just a new regulation. It demands a fundamental change in mindset and legal culture in the criminal justice system.²⁷

8. Analysis of Judicial Independence and the Judicial Code of Ethics in Adjudicating Cases Based on Restorative Justice

a. Criminal Case No. 167/Pid.B/2024/PN Sng

Case Position: On July 25, 2022, Defendant Budi Heryana Bin Ardan came to the house of Witness Cahyati and Witness Feni Sri Mulyani in Subang Regency offering assistance for the acceptance of CPNS P3K in 2022. The Defendant convinced the victim that he had connections that could guarantee graduation on condition that he pay a sum of money. After negotiating, the victim finally handed over Rp. 25,000,000 as a down payment in the hope of being accepted as a CPNS. However, after receiving the money, the Defendant never followed up on the promise, and the money given by the victim was used for personal needs. As a result of his actions, the victim felt deceived and reported the incident to the authorities. Based on the ongoing legal process, the Defendant was found guilty of the crime of fraud as regulated in Article 378 of the Criminal Code and was sentenced to six months in prison taking into account mitigating and aggravating factors.

Legal Considerations: In handing down the verdict against Budi Heryana Bin Ardan, the Panel of Judges considered various aspects based on the trial facts, witness statements, and evidence presented. The judges considered that the elements of the crime of fraud as regulated in Article 378 of the Criminal Code had been fulfilled, especially because the Defendant used trickery and lies to obtain Rp. 25,000,000 from the victim with false promises regarding the acceptance of CPNS P3K. However, the Panel of Judges also considered the return of losses to the victim before the trial and the existence of a peace agreement between the Defendant and the victim, which was supported by a Joint Statement. This was considered a form of implementation of restorative justice in accordance with Perma 1 of 2024. In addition, mitigating circumstances for the Defendant were his cooperative attitude during the trial, his admission of guilt, and having never been convicted before. However, the judges also considered aspects that aggravated the verdict including the impact of the Defendant's actions which caused unrest in the community and caused financial losses for the victim. Taking this into consideration, the panel of judges imposed a criminal sanction in the form of six months imprisonment on the Defendant, while still taking into account the period of detention that has been served.

b. Criminal Case No. 240/Pid.B/2024/PN Sng

Case Position: on September 19, 2024, at around 01.00 WIB, on Jalan Jenderal Achmad Yani, Pasirkareumbi Village, Subang Regency, a criminal act of assault was committed by Rizal Muhammad Fadhlwan Albadi alias Kentung against the victim Fani Febriana alias Amo. The incident began when the Defendant, who was riding with his friend on a motorbike, cornered the victim and accused him of

²⁵Henny Saida Flora, Op.Cit.

²⁶Braithwaite, John, "Restorative Justice and Responsive Regulation," (New York, : Oxford University Press, 2002) : 69. (In Muladi, Op. Cit)

²⁷Zulkarnein Koto, "Implementation of Restorative Justice in Handling Criminal Acts to Realize Just Law Enforcement," Journal of Police Science. Volume 17 Number 1 (April, 2023): 34-50

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saying insulting words. After an argument, the Defendant brandished a samurai sword and slashed the victim on the forehead and upper and lower left hands several times. As a result of this incident, the victim suffered serious injuries as evidenced by the *visum et repertum*. After the incident, the Defendant fled with his friend, while the victim was rushed to the hospital for treatment.

Legal Considerations: In handing down the verdict against Rizal Muhammad Fadhlwan Albadi alias Kentung, the Panel of Judges considered various aspects based on the trial facts, witness statements, and evidence. The Judges considered that the elements of the crime of assault as stated in Article 351 paragraph (1) of the Criminal Code had been fulfilled, especially because the Defendant intentionally slashed the victim using a sharp weapon, which caused serious injuries to the victim's forehead and hand. Although the Defendant admitted to committing the assault because he was emotional after hearing insults, the Judges considered that the action was still against the law. Evidence of a *visum et repertum* from the hospital strengthened the fact that the victim suffered lacerations to his face and left hand. In addition, the Defendant was known to have consumed alcohol and drugs before the incident, which also influenced his actions. The Panel of Judges also examined the elements that aggravated and mitigated the verdict. The aggravating aspects were that the Defendant's actions disturbed the community, were carried out with a sharp weapon in a public place, and the Defendant had previously been convicted in a case of assault. Meanwhile, the mitigating factors are that the Defendant regretted or admitted his actions and has given some compensation to the victim. The judge rejected the application of restorative justice because the Defendant had repeated the same crime within a period of less than (3) years after serving his previous sentence. Based on all these considerations, the Panel of Judges sentenced the Defendant to (2) years in prison, while still considering the period of detention that has been served.

Case Number	Type of Case	Amount of Loss	Forms of Restorative Justice	Implementation of Restorative Justice in Court
167/Pid.B/2024/PN Sng	Fraud/ Common Criminal Procedure	Rp. 25,000,000,-	Refund to Victims of Rp. 25,000,000,-	Yes
240/Pid.B/2024/PN Sng	Persecution/ Common Criminal Procedure	Rp. 30,000,000,-	Restorative Justice Cannot Be Carried Out However, the Defendant Pays Compensation to the Victim in the Amount of Rp. 25,000,000	No

In the above cases, judges play an important role in ensuring justice for the accused. Judges in each case facilitate the implementation of restorative justice and consider restorative justice as an effort to reconcile between the accused and the victim. As in the consideration of case No. 240/Pid.B/2024/PN Sng, where the accused has reconciled with the victim by providing compensation to the victim, but because the accused is a recidivist, the panel of judges cannot apply restorative justice in court. This shows that the panel of judges as facilitators of the implementation of restorative justice, however, adheres to the guidelines of procedural law where a recidivist cannot be tried for restorative justice as in Article 6 of Perma No. 1 of 2024.

3. Conclusion

a. Conclusion

Judicial independence and the integration of the code of ethics are important foundations in the implementation of restorative justice based on Perma No. 1 of 2024. Judicial independence guarantees objectivity and justice in the peace process, while the code of ethics guides judges to act fairly, wisely and with integrity. The application of restorative justice according to the active role in facilitating the peace process and seeking solutions that fulfill the sense of justice for all parties. In the process of carrying out this role, judges must always adhere to the principles of independence and ethical values. Perma No. 1 of 2024 provides a strong legal basis for the implementation of restorative justice in Indonesia. This Perma has the potential to reduce the number of prisoners in correctional institutions, increase victim satisfaction and improve public trust in the judicial institution. The success of the implementation of this Perma depends on the commitment and integrity of law enforcers, especially judges, in upholding the principles of restorative justice.

The integration of the code of ethics for judges in the implementation of Perma No. 1 of 2024 is crucial to ensure the independence of judges and prevent abuse of authority. The code of ethics for judges, as stated in the Joint Decree, emphasizes principles such as: Behaving Fairly, Behaving Honestly and Being Independent. These principles are important in the application of restorative justice because judges have great authority in determining whether a case can be resolved through the restorative justice mechanism or not. Judges must ensure that the application of restorative justice does not violate the principles of justice and judicial independence.

b. Suggestions

To optimize the implementation of the code of ethics for judges in Perma No. 1 of 2024, comprehensive socialization and training is needed for judges regarding Perma No. 1 of 2024 and the code of ethics for judges in the context of restorative justice. This socialization is important to increase understanding and common perception among judges. In addition, supervision needs to be carried out on internal and external judges in the application of restorative justice. This supervision aims to ensure that restorative justice is implemented in accordance with the regulations and code of ethics for judges and to prevent deviations. It can also involve the public in supervising the application of restorative justice by implementing a mechanism for complaining to the public, monitoring trials and public discussion of court decisions. Finally, improvements to regulations related to restorative justice need to be made to ensure legal certainty and prevent multiple interpretations.

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