



An analysis of the implementation and effectiveness of the role of restorative justice in handling criminal offenses related to Information and Electronic Transactions (ITE) in Indonesia

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Abstract

The handling of criminal offences related to Information and Electronic Transactions (ITE) in Indonesia has become a crucial issue with the rise in information technology usage. However, it is often addressed with criminal sanctions without considering alternative approaches such as restorative justice. Restorative justice, which prioritises the restoration of relationships and conflict resolution through dialogue between the offender and the victim, offers a more humane approach compared to the conventional criminal justice system. This study aims to analyse the implementation and effectiveness of restorative justice in addressing ITE offences in Indonesia. Employing a normative juridical approach and qualitative analysis, the research examines two key questions: first, how is restorative justice implemented in handling ITE offences in Indonesia? And second, how effective is restorative justice in achieving justice and restoration for both victims and offenders? The findings indicate that, although restorative justice is legally recognised, its implementation in ITE cases remains limited, with many cases still being processed through criminal channels. The effectiveness of this approach is also affected by the lack of understanding among law enforcement officers and the public. The study suggests enhancing awareness and training for law enforcement officers, as well as strengthening regulations that support the application of restorative justice in ITE cases. Further research is needed to explore more effective strategies for integrating restorative justice into the criminal justice system in Indonesia.

Keywords: Implementation and effectiveness, ITE criminal offences, restorative justice

Introduction

The rapid advancement of information technology has significantly transformed various aspects of life, including social interactions and business transactions. However, alongside these advancements, new challenges have emerged, particularly in relation to criminal activities involving the use of information technology and electronic transactions (ITE). In Indonesia, ITE-related offences have become a serious concern due to their widespread impact, ranging from defamation to online fraud that harms the public.

The Electronic Information and Transactions Law (UU ITE) in Indonesia is intended to serve as a legal foundation capable of addressing various cases arising in this digital era. However, the implementation of the UU ITE has often sparked controversy, particularly because it is seen as frequently being used as a tool for criminalising freedom of expression and dissent. This situation highlights the urgent need to evaluate the law enforcement approaches being used, including the consideration of alternatives such as restorative justice.

Restorative justice is an approach within the criminal justice system that focuses on restoring relationships between the offender, the victim, and the community affected by the crime. This approach aims to achieve a more holistic form of justice, not only by imposing sanctions on the offender but also by repairing the harm caused and restoring the rights of the victim. In the context of ITE criminal offences, restorative justice has the potential to offer a more humane solution compared to rigid criminal penalties.

However, the implementation of restorative justice in cases of ITE offences in Indonesia remains limited. Many cases that could potentially be resolved through restorative justice mechanisms are, in practice, still taken to court and result in criminal convictions. This situation raises questions about

the effectiveness of applying restorative justice within the Indonesian criminal justice system, particularly in handling ITE cases.

One of the factors influencing the implementation of restorative justice in ITE cases is the limited understanding among law enforcement officers and the general public. Many still believe that resolving cases through criminal prosecution is the only way to uphold the law and deliver justice. However, in many instances, criminal sanctions do not always provide the best solution for either the victim or the offender.

Additionally, legal and regulatory aspects pose significant challenges to the application of restorative justice. Although this concept is legally recognised in Indonesia, its implementation in ITE cases is often hindered by the lack of a clear framework and adequate operational guidelines. This highlights the need for strengthening regulations and policies that support the application of restorative justice, particularly in the context of ITE offences. The success of restorative justice in handling ITE cases also heavily depends on the community's readiness to accept and engage in the process. Without active participation from the public, the implementation of restorative justice struggles to achieve its goals of remedying the harm experienced by the victim and creating a deeper sense of justice.

Given the complexity of the issues involved, in-depth research is needed to analyse how restorative justice can be effectively implemented in handling ITE offences in Indonesia. This study aims to identify the factors influencing the implementation of restorative justice and evaluate to what extent this approach can provide better solutions compared to conventional criminal justice processes.

Thus, this research is expected to make a significant contribution to the development of legal policies in

Indonesia, particularly in the search for more just and humane alternative solutions for handling ITE offences. The findings of this study are also anticipated to serve as a reference for policymakers in designing regulations that better support the application of restorative justice in cases related to information technology and electronic transactions.

Research method

The research methodology employed in this study is a juridical-normative approach combined with qualitative analysis. The juridical-normative approach involves examining various regulations related to Information and Electronic Transactions (ITE) offences and the concept of restorative justice in Indonesia. Additionally, the study includes an analysis of court rulings and relevant legal policies to understand the implementation of restorative justice in handling ITE cases. Data is gathered through literature review, including journals, books, and legal documents. Data analysis is conducted qualitatively using content analysis techniques to identify patterns in the application of restorative justice in ITE cases and evaluate its effectiveness in achieving justice.

Result and discussion

Implementation of restorative justice in handling ITE offences in Indonesia

Information technology continues to advance rapidly, encompassing innovations such as social media, e-commerce, and mobile applications. While these developments bring convenience and benefits across various sectors, they also open up opportunities for different forms of crime, including online fraud, hacking, and the distribution of illegal content.

As technology evolves swiftly, the incidence of ITE offences has also risen. The greater the impact of information technology on human life, the higher the risk of it being misused. In reality, many negative consequences can arise through the misuse of information technology^[1].

Traditional judicial systems often face difficulties in handling ITE cases due to several factors: ITE cases frequently involve offenders and victims from various geographic locations, making court jurisdiction complex; investigating ITE cases requires technical skills and resources that are often not available in many judicial institutions; and technology advances faster than the legal system's ability to regulate it, leading to frequent gaps in the applicable laws.

British criminologist Tony F. Marshall, in his paper "Overview of Restorative Justice," states that restorative justice is a process where all parties involved in a specific offence come together to address the issue and determine how to resolve the offence while considering the common good and future interests. Strang, H., and Sherman, L. W. argue that the core principles of restorative justice include the participation of both victims and offenders, and the involvement of community members as facilitators in the resolution of cases^[2].

Restorative justice is an effort to combat injustice in the most restorative manner possible. Its aim is not only to reduce crime but also to provide practical guidance on how to live a good life as a democratic citizen by addressing injustice. Restorative justice emphasises the importance of rejecting hasty retributive punishments or stigmatising

responses in the form of segregation or other forms. Injustice and the rapid reactions to it with "retributive punishment" together explain many of the deepest issues in contemporary life, such as war, terrorism, unfair justice systems—including prison systems—poverty, racism, and sexism. The restorative justice movement is significant because it offers new practical programmes for combating injustice and stigmatisation, based on moral values that have been prominent throughout the history of the world's major religions^[3].

According to Muladi, the primary goal of restorative justice is to achieve the fairest possible justice for all parties involved, rather than merely focusing on punishment. The justice currently practised, which abolitionists refer to as retributive justice, is very different from restorative justice. Retributive justice views crime as a violation committed by one person against another. Additionally, financial constraints pose a significant barrier to implementing restorative justice. Restorative justice programmes and services often require substantial resources, including training for professionals, funding to run the programmes, and support for both victims and offenders. These financial challenges can limit access to and availability of restorative justice within the criminal justice system. Furthermore, the lack of institutional support also hinders the implementation of restorative justice. Successful restorative justice requires collaboration among various stakeholders, such as courts, police, prosecutors, and correctional institutions. However, a lack of coordination and cooperation among these entities can impede the effective implementation of restorative justice^[4].

In Indonesia, several regulations address restorative justice. For example, Law No. 11 of 2012 on the Juvenile Criminal Justice System, and more recently, Law No. 12 of 2022 on Sexual Crime (TPKS) which covers restitution and compensation for victims. Law No. 1 of 2023 on the Criminal Code (KUHP) also touches upon restorative justice, though not explicitly. For instance, Article 54 requires that sentencing guidelines consider forgiveness from the victim or the victim's family. The KUHP also allows judges to grant pardons or judicial forgiveness. Moreover, penalties such as supervision and community service regulated by the KUHP are considered part of restorative justice. Additionally, there are supplementary penalties like compensation or restitution.

However, the implementation of restorative justice is regulated by various law enforcement institutions, such as the Attorney General Regulation (Perja) No. 15 of 2020 on Termination of Prosecution Based on Restorative Justice, Police Regulation (Perpol) No. 8 of 2021 on Handling Crimes Based on Restorative Justice, and the Decision of the Director General of the Court of Justice No. 1691/DJU/SK/PS.00/12/2020 on Guidelines for the Implementation of Restorative Justice in General Courts. Despite these regulations, there is a need for refinement. The diverse regulatory frameworks may lead to differing interpretations and lack of a comprehensive definition and explanation of restorative justice, which could hinder its implementation by law enforcement officers^[5].

The implementation of restorative justice in handling Information and Electronic Transactions (ITE) offences in Indonesia still faces various challenges, despite the concept being recognised within the national legal system. At the operational level, the application of restorative justice is

often hindered by a lack of understanding among law enforcement officers and uncertainty regarding the procedures to follow. ITE cases involving offences such as defamation, hate speech, and online fraud frequently end up in court, focusing on punishing the offenders rather than addressing the harm experienced by the victims. In many situations, restorative justice could be more effective in resolving conflicts in a more peaceful and equitable manner, through dialogue and mediation between the parties involved.

On the other hand, the regulations governing restorative justice in the context of ITE offences remain unclear, leading to inconsistencies in its application across different regions. For instance, not all law enforcement officers have adequate guidelines or training to implement restorative justice, causing this option to be frequently overlooked. Although there are some cases where this approach has been successfully applied, its use remains very limited. To address these challenges, there is a need for stronger, more comprehensive regulations and broader outreach to both the public and law enforcement about the benefits and procedures of restorative justice, especially in ITE cases. A more widespread and consistent implementation of this approach would not only help reduce the judicial burden but also produce more positive outcomes for all parties involved in legal conflicts.

Defamation occurring on social media or in person can be resolved through restorative justice, thereby avoiding legal processes that lead to imprisonment and instead reaching a peaceful settlement between the parties involved. The ITE Law asserts that criminal sanctions can be applied as long as they adhere to administrative procedures, and the principles of restorative justice are highly appropriate for creating a legal system that fosters peace. The law should promote harmony within human society, rather than creating discord. Restorative justice is not merely a method for ending cases peacefully but focuses on fulfilling the sense of justice for all parties involved. Addressing defamation should consider the principle of utility by classifying actions not only based on existing legal aspects but also by evaluating conservative resolution efforts. Following the restorative justice concept, defamation cases in the realm of information and electronic transactions can be resolved through mediation at the police level, bringing together the offender and the victim to determine the best way to address the harm or consequences of the crime.

The restorative justice approach is crucial for handling defamation offences in the realm of information and electronic transactions. This is because victims can restore their reputation or seek compensation based on the perpetrator's classification or damages, and the relationship between the offender and the victim can be repaired and improved, compared to traditional punitive systems. When restorative justice is applied effectively and maximally in cases of defamation within information and electronic transactions, the principle of *ultimum remedium* (last resort) can also be optimally realised.

To enhance the implementation of restorative justice in handling ITE offences in Indonesia, the government and law enforcement agencies need to take several strategic steps. First, the development of comprehensive operational guidelines and clear standard procedures is essential to ensure consistency in applying restorative justice. These guidelines should include procedural steps, case eligibility

criteria, and mediation standards. With these guidelines in place, it is hoped that law enforcement officers will be able to apply restorative justice in a more structured and uniform manner.

In addition, routine training for law enforcement officers on the principles and practices of restorative justice is essential. This training should include mediation techniques and conflict resolution facilitation to enhance officers' understanding and skills in applying this approach. Public education campaigns are also important to raise awareness about the benefits and procedures of restorative justice through mass media, seminars, and workshops. Increasing public understanding will support broader acceptance of this approach.

Institutional support and funding are also crucial for the successful implementation of restorative justice. The government needs to allocate a specific budget for training, programme implementation, and other administrative support. Furthermore, establishing a coordination team or forum involving various stakeholders, such as the police, prosecutors, courts, and correctional institutions, can strengthen cooperation and synergy among agencies in the application of restorative justice.

Strengthening regulations and policies is necessary to address the deficiencies and ambiguities in the existing legal framework. Revising and refining regulations related to restorative justice, as well as developing specific policies for ITE cases, will help reduce perceptual differences and enhance consistency. Regular research and evaluation of the effectiveness of restorative justice implementation are also essential to assess impact and identify areas for improvement. Collecting data on ITE cases that utilise restorative justice will aid in identifying trends and areas needing enhancement.

Restorative justice in achieving justice and reparation for victims and offenders

The concept of restorative justice is an approach that emphasises achieving fairness and balance for both offenders and victims. Instead of a traditional punitive criminal justice system, it transforms the process into one of dialogue and mediation to reach a more equitable resolution for both parties ^[6].

Restorative justice involves a form of justice that aims to restore. Restoration includes the repair of relationships between victims and offenders. This restoration can be based on mutual agreements between the victim and the offender. The victim can express the harm suffered, and the offender is given an opportunity to make amends through mechanisms such as compensation, reconciliation, community service, or other agreed-upon terms ^[7].

Restorative Justice is a concept of justice that prioritises resolving disputes outside the court system (non-litigation), considering the balance of interests between offenders and victims. In the restorative justice framework, the process of addressing legal violations involves bringing the victim and the offender together in a meeting to discuss the matter collaboratively.

During this meeting, the mediator allows the offender to provide a clear explanation of the actions taken. The offender hopes that the victim will understand and appreciate the circumstances and reasons behind the criminal act that caused harm. The offender also outlines how they intend to take responsibility for their actions

towards the victim and the community. While the offender is explaining their actions and motivations, the victim is required to listen attentively. Subsequently, the victim can respond to the offender's explanation. Restorative Justice aims to empower victims, offenders, families, and the community to address unlawful actions using awareness and conviction as a foundation for social improvement. Essentially, restorative justice is a theory of justice focused on repairing the harm caused by criminal conduct^[8].

Restorative justice offers a distinct approach to achieving justice, focusing on the restoration for both victims and offenders rather than merely punishment. In traditional judicial systems, justice is often measured by the extent to which an offender receives a penalty commensurate with their actions. However, this approach does not always provide a sufficient solution for victims, who may require restoration and healing rather than simply witnessing the offender being punished.

Tony Marshall states that restorative justice is a process where all parties involved in a particular offence come together to collectively determine how to address the aftermath of the offence and its implications for the future^[9]. Restorative justice provides victims with an opportunity to be actively involved in the resolution process, allowing them to express the impact they have experienced and participate in determining a form of restitution that they deem fair. For offenders, restorative justice offers a chance to understand the effects of their actions, apologise, and take responsibility in a more constructive manner, which can aid in their rehabilitation and reintegration into society.

Thus, integrating penal mediation into Indonesia's criminal justice system can foster progressive law by ensuring that the resolution of offences is not solely dominated by the state, and by challenging the monopoly of dispute resolution held by the courts. The restorative justice approach in criminal law has the potential to restore relationships between offenders and victims. Mediation in criminal offences can enable offenders to take responsibility for rectifying the harm caused by their actions in a constructive way. Additionally, this approach can shift conventional views held by society and law enforcement that criminal cases must be resolved exclusively through judicial processes, leading towards a legal system that promotes social harmony and a welfare state^[10].

Regarding the concept of restorative justice, Nils Christine states that resolving disputes through informal processes can aid moral development because the parties, through mediation, work to make something right from something wrong. Similarly, Minor and Marisson argue that the concept or approach of restorative justice is highly beneficial when used as a foundation for moral development, emphasizing problem-solving through mutual communication, negotiation, compromise, and responsibility^[11].

This approach can also reduce hostility and resentment between victims and offenders, which often remains unresolved in conventional judicial processes. By providing both parties with the opportunity to engage in dialogue and reach mutual agreements, restorative justice can foster a more substantive sense of justice and restore social relationships damaged by crime. Additionally, this approach can alleviate the burden on the criminal justice system, which frequently suffers from overcrowding, and offer a faster and more efficient resolution alternative. Thus,

restorative justice not only contributes to the rehabilitation of individuals involved but also to the creation of a more just and harmonious society.

Moreover, the restorative process at every stage of the criminal justice system holds greater potential than standard judicial processes, particularly in effectively resolving conflicts, securing offender accountability, and addressing victims' needs^[12].

Some common findings from the implementation of restorative justice programmes generally include^[13]:^[1] Restorative justice has a positive effect in reducing the frequency and severity of reoffending^[2]. The restorative justice approach is particularly effective in promoting crime cessation and reducing recidivism when integrated into a broader rehabilitation framework^[3]. Restorative justice programmes can be highly effective when targeting higher-risk and more serious offenders^[4]. Successful resolutions and restorative outcomes in victim-offender mediation and conferences are achievable for both property-related and violent offences, involving adult and juvenile offenders, and for cases where the parties are familiar or unfamiliar with each other^[5]. There are no inherent limitations on the types of offences that can be referred to the restorative process, without other considerations^[6]. Many crime victims and offenders are willing to participate in the restorative process when informed about the option^[7]. The level of victim and offender participation in restorative justice processes varies according to the type of offence, the nature of the referral mechanism, the personal attributes of the offender and victim, and the nature of the relationship between them^[8]. There may be strong support among crime victims and the community for reparative measures and restorative justice approaches in general, demonstrating that effective restorative justice programmes can promote more constructive, effective, and responsive justice approaches^[9]. Many crime victims seek the opportunity to safely meet with their offenders, and restorative justice processes can reduce emotional impact and victimisation, as well as decrease post-traumatic stress disruptions among victims^[10]. Both victims and offenders find the restorative process fairer and more satisfying compared to conventional criminal justice systems, with several studies reporting higher satisfaction levels among participants in restorative justice processes^[11]. Restorative justice processes can enhance community involvement and facilitate community members' engagement in addressing and resolving crime and social disorder^[12]. When properly trained, community volunteers can be as effective in facilitating restorative processes as criminal justice professionals^[13]. The effectiveness of restorative justice processes increases when institutions and programmes collaborate within a collaborative framework^[14]. Restorative justice processes should aim to be completed in a timely manner^[15]. Restorative programmes have the potential to reduce criminal justice costs and court processing times, as well as enhance service delivery.

Restorative justice is now regarded in many countries as a successful alternative within the criminal justice system. In brief, restorative justice is an approach that involves both the offender and the victim in a dialogic procedure. Its aim is to reach an agreement that is seen as a fair, moral, and practical compensation for the victim, and a result of the offender's repentance^[14].

To enhance the implementation of restorative justice in handling cybercrime (ITE) cases in Indonesia, the government and law enforcement agencies must undertake comprehensive strategic measures. First, detailed operational guidelines and procedural standards for applying restorative justice need to be established. These guidelines should include mediation procedures, case eligibility criteria, and evaluation mechanisms to ensure consistency and effectiveness across all regions.

Next, regular and intensive training for law enforcement officers on the principles and practices of restorative justice is essential. This training should cover mediation techniques, facilitation of dialogue, and the recovery of the impact of crimes to improve their understanding and skills in applying this approach.

To support the implementation of restorative justice, the government should launch a broad educational campaign to raise public awareness through various media, seminars, and workshops. This campaign should aim to increase awareness of the benefits and mechanisms of restorative justice while reducing existing stigma.

Institutional support is also crucial, including allocating specific budgets for training, program implementation, and administrative support. Additionally, forming a coordination team involving various stakeholders such as the police, prosecutors, courts, and correctional institutions is necessary.

Furthermore, regulations governing restorative justice must be strengthened and refined to address existing gaps and ambiguities, especially in the context of cybercrime (ITE). Policies should be more specific regarding the application of restorative justice, with clear and consistent rules. Ongoing research and evaluations are needed to assess the effectiveness of restorative justice and identify areas for improvement.

Finally, ensuring access to and availability of restorative justice across various regions, including those with limited resources, is important. This could involve developing specialized mediation centres for cybercrime cases and providing support for victims and offenders. These measures are expected to enhance the effectiveness of restorative justice, offer fairer and more peaceful solutions for all parties involved, and alleviate the burden on the criminal justice system.

Conclusion

1. The implementation of restorative justice in handling cybercrime (ITE) cases in Indonesia continues to face various challenges, primarily related to inadequate understanding and procedures among law enforcement officials. Although restorative justice is recognised within the national legal system, its application in ITE cases is often impeded, with many cases still processed through conventional criminal channels. This underscores the need for increased efforts to integrate this approach into judicial practices, with a focus on improving outreach and regulations to support the effective implementation of restorative justice in ITE cases.
2. Restorative justice offers a more holistic approach within the judicial system by emphasising victim recovery and offender rehabilitation through dialogue and mediation, rather than merely punishing the offender. This approach can reduce hostility between

victims and offenders, lessen the burden on the criminal justice system, and create a more substantive sense of justice, while also supporting the more effective social reintegration of offenders.

Recommendation

To enhance the effectiveness of implementing restorative justice in the handling of Information and Electronic Transactions (ITE) crimes in Indonesia, several key steps need to be taken. Firstly, it is essential to develop clear and comprehensive regulations regarding the application of restorative justice in ITE cases. This should include detailed operational guidelines and standard procedures for law enforcement and related institutions. Additionally, intensive training and outreach on the concepts and procedures of restorative justice must be carried out to improve the understanding and skills of law enforcement officers, lawyers, and the public. Adequate resources should also be allocated to support the implementation of restorative justice, including funding for mediation and necessary infrastructure development. Furthermore, the public should be informed and educated about restorative justice to increase their acceptance and participation in the process. Regular monitoring and evaluation of the implementation of restorative justice in ITE cases are also necessary to identify strengths and weaknesses and to make any required adjustments to policies and procedures. Further research and case studies are crucial to gaining deeper insights into the implementation and effectiveness of restorative justice, helping to identify and apply best practices. These measures are expected to enable restorative justice to be implemented more effectively, offering fairer and more holistic solutions for both victims and offenders, and supporting a more efficient judicial system in Indonesia.

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