

Mapping Restorative Justice in Information and Electronic Transaction Criminal Regulation



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ABSTRACT

The government has issued various policies to overcome overcapacity in prisons, but the important question that needs to be asked is whether these policies have restored the rights of victims of criminal acts of Information and Electronic Transactions. The method used in this study is a normative legal research method that examines secondary data. Data collection is carried out in the form of laws and regulations, reference books, and previous studies. The results of the research show that there is a need for the urgency of the application of restorative justice in criminal acts of Information and Electronic Transactions in Indonesia and what are the obstacles to the application of restorative justice in handling cases of criminal acts of Information and Electronic Transactions.



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1. Introduction

Misuse of social networks, including violations of ethical standards, values, and moral norms, as well as violations of Information and Electronic Transactions, including the dissemination of fake news or fake news, has now become an integral component of the communication process in this digital era. These infractions are frequently the result of the rapid development of technology, which enables people to communicate in a shorter amount of time.¹ Furthermore, many technology users are careless when gathering information, thus they fall victim to fake news distributed by fake news spreaders. Recent examples that are

¹ Tiina Malin and Maiju Tanskanen, 'Regional Variation in Sentences for Child Sexual Abuse: An Empirical Study with Finnish Court Data', *International Journal of Law, Crime and Justice*, 71.November (2022), 100565 <https://doi.org/10.1016/j.ijlcrj.2022.100565>

prevalent on a global scale include news on social media that encourages hostility, particularly in religious life.²

The Law enforcement in Indonesia still faces a number of difficulties that must be resolved, most notably criminal charges involving Information and Electronic Transactions offences. Administrative nature, per Law No. 19 of 2016, which revised Law No. 11 of 2008 respecting Information and Electronic Transactions (UU ITE). However, people who conduct criminal crimes are typically punished with imprisonment. Correctional institutions, a part of the criminal justice system, are burdened by this circumstance.³

Data from the Directorate General of Corrections shows that as of 14 February 2021, 252,384 prisons consisted of detainees and convicts. Currently, state prisons and detention centers only have a capacity of 135,704. This suggests that almost all criminal justice systems have mechanisms to prevent all criminal cases from being brought to court because the number of cases is too small.⁴ There are many cases involving Law Number 19 of 2016 concerning Information and Electronic Transactions. That around January - November 2020 alone, there were 4,656 cases of cybercrime. Defamation is the most common case of Information and Electronic Transaction violations, totaling 1,743 cases. Furthermore, there were 1,295 cases of fraud; pornography in as many as 390 cases; illegal access in 292 cases; hate speech or SARA in 209 cases; fake/fake/hoax news in as many as 189 cases; data manipulation in 160 cases and threats in 131 cases.⁵

Currently, violations against Information and Electronic Transactions are increasing due to increasingly sophisticated technology and the increasing number of internet and social media users from year to year. Almost everyone in society has a personal mobile phone, which is always used in our daily life for communication, commerce, and business purposes. The more accessible access to the internet makes it easy for most of its users to express their opinions or even those that lead to hate speech with just a short text. This should make us more

² Susan Easton, 'Not Just Another Brick in the Wall? Protecting Prisoners' Right to Education', *International Journal of Law, Crime and Justice*, 69. February (2022), 100530 <https://doi.org/10.1016/j.ijlcrj.2022.100530>

³ Branislav Hock and Elizabeth Dávid-Barrett, 'The Compliance Game: Legal Endogeneity in Anti-Bribery Settlement Negotiations', *International Journal of Law, Crime and Justice*, 71. September (2022), 1-13 <https://doi.org/10.1016/j.ijlcrj.2022.100560>

⁴ Zhen Lin, 'The Protection of Sunken WWII Warships Located in Indonesian or Malaysian Territorial Waters', *Marine Policy*, 113. May 2019 (2020), 103804 <https://doi.org/10.1016/j.marpol.2019.103804>

⁵ Ian D. Marder, 'Mapping Restorative Justice and Restorative Practices in Criminal Justice in the Republic of Ireland', *International Journal of Law, Crime and Justice*, 70. March (2022), 100544 <https://doi.org/10.1016/j.ijlcrj.2022.100544>

vigilant so that cybercrime does not happen to us and our close family, friends, or co-workers.⁶

As an example of a case that can be seen from the PT DENPASAR Decision Number 72/PID.SUS/2020/PT.DPS on behalf of I Gede Aryastina Alias Jerinx, which was subject to Articles 27 and 28 of the ITE Law, namely the case of defamation of the Indonesian Doctors Association or IDI which was imposed a sentence of 14 months in prison and a fine of Rp. 10 million, a subsidiary of one month in prison. There is an irregularity where the contents of the article imposed on the suspect are articles with the theme of SARA. Meanwhile, after discovering what Jerinx meant in his statement, he was only annoyed and wanted to invite the IDI to discuss without inciting hatred. This article is also like a rubber article, and the handling of this case is unclear.⁷

Criminal law remains preoccupied with punishing criminals and disregards compensation for victims and victims' losses. This is observed, and Article 10 of the Criminal Code regulates the type of punishment. Article 10 of the Criminal Code has regulated a criminal system that adheres to a retributive paradigm that seeks to compensate criminals for the crimes they have committed.⁸ The retributive paradigm aims to create a deterrent effect to prevent criminals from committing additional offenses and to prevent (preventative effect) individuals from committing crimes. In practice, however, applying the retributive paradigm did not restore the victims' losses and suffering. The perpetrator was found guilty and sentenced, but it was impossible to restore the victim's health. The actual capacity of the prison or detention center is approximately 100,000 individuals.⁹

Therefore, it is necessary to pursue initiatives outside of the current criminal procedural law so that society does not rely solely on the existing procedures. Nonetheless, it still brings the perpetrators to court in order to achieve justice and problem-solving, particularly for the victims who suffer the most (suffer).¹⁰ In the context of restorative justice, a settlement process is one of the proposed

⁶ Varsolo Sunio, 'Unpacking Justice Issues and Tensions in Transport System Transition Using Multi-Criteria Mapping Method', *Transportation Research Part D: Transport and Environment*, 96.May (2021), 102887 <https://doi.org/10.1016/j.trd.2021.102887>

⁷ Ward Berenschot and others, 'Anti-Corporate Activism and Collusion: The Contentious Politics of Palm Oil Expansion in Indonesia', *Geoforum*, 131.July 2021 (2022), 39–49 <https://doi.org/10.1016/j.geoforum.2022.03.002>

⁸ Ferry Fathurokhman, 'The Necessity of Restorative Justice on Juvenile Delinquency in Indonesia, Lessons Learned from the Raju and AAL Cases', *Procedia Environmental Sciences*, 17 (2013), 967–75 <https://doi.org/10.1016/j.proenv.2013.02.115>

⁹ Anushka Singh, 'Sanction for Prosecution in "Offences Against the State" in India: The Prerogative of the Political and the Withdrawal of the Judicial', *International Journal of Law, Crime and Justice*, 69.January (2022), 100531 <https://doi.org/10.1016/j.ijlcrj.2022.100531>

¹⁰ Malin and Tanskanen.

solutions.¹¹ Restorative justice is an approach that emphasizes conditions to ensure justice and harmony between criminals and their victims.¹² Criminal justice procedures and mechanisms designed to impose sentences are transformed into dialogue and mediation processes in order to reach a consensus on a more equitable and balanced resolution of criminal cases for victims and offenders.¹³ Restorative justice means restoring justice, but in this context it has a broader meaning than what is commonly known in the criminal justice system as reparations or compensation for victims.¹⁴

Research on the settlement of Information and Electronic Transaction crimes has been carried out for a long time. Most consider the settlement of Information and Electronic Transaction crimes from only one perspective, namely with a retributive punishment system, such as research by Hasan Abdul Gani and Andika Wahyudi Gani (2019) and S Saharudin (2018) Which is still based on the ITE Law No.11 of 2008 and Law No.19 of 2016. However, few studies comprehensively establish restorative justice in settlement of criminal information and electronic transactions. Therefore, this research will discuss how restorative justice can be used as an alternative way to overcome the overcapacity of correctional institutions. Looking at previous studies, not much has discussed restorative justice as a model or principle of settlement of criminal information and electronic transactions.¹⁵

Based on the context of the aforementioned issues, the problem of law enforcement against crimes utilizing Restorative Justice is intriguing and crucial to investigate in depth because the Restorative Justice approach is a current trend in the criminal justice system. In addition, the author wishes to investigate "The Urgency of Implementing Restorative Justice in Settlement of Information Crimes and Electronic Transactions." The formulation of the problem can be derived from the context of the aforementioned article, namely, what is the urgency of implementing restorative Justice in criminal information and electronic transactions, and what are the barriers to implementing restorative Justice in case handling in electronic information and transactions.

¹¹ Michael C. Gearhart, 'Social Cohesion, Mutual Efficacy and Informal Social Control: Collective Efficacy and Community-Based Crime Prevention', *International Journal of Law, Crime and Justice*, 71.July (2022), 100548 <https://doi.org/10.1016/j.ijlcrj.2022.100548>

¹² Khudzaifah Dimiyati and others, 'Indonesia as a Legal Welfare State: A Prophetic-Transcendental Basis', *Heliyon*, 7.8 (2021), e07865 <https://doi.org/10.1016/j.heliyon.2021.e07865>

¹³ Rini Astuti and others, 'Making Illegality Visible: The Governance Dilemmas Created by Visualising Illegal Palm Oil Plantations in Central Kalimantan, Indonesia', *Land Use Policy*, 114 (2022), 105942 <https://doi.org/10.1016/j.landusepol.2021.105942>

¹⁴ Phuong Ngoc Pham, Patrick Vinck, and Harvey M. Weinstein, 'Human Rights, Transitional Justice, Public Health and Social Reconstruction', *Social Science and Medicine*, 70.1 (2010), 98–105 <https://doi.org/10.1016/j.socscimed.2009.09.039>

¹⁵ Darren McCauley and Raphael Heffron, 'Just Transition: Integrating Climate, Energy and Environmental Justice', *Energy Policy*, 119.April (2018), 1–7 <https://doi.org/10.1016/j.enpol.2018.04.014>

2. Research Method

The research method used by researchers in this paper is the Normative Law research method. Normative Legal Research is legal research conducted by examining library materials or secondary data.¹⁶ The secondary data is from laws and regulations, reference books, and previous studies.¹⁷ The approach used is the statutory and case approach. The statutory approach examines all laws and regulations related to the legal issues being handled.¹⁸ A case approach studies cases related to the issues at hand that have become court decisions that have permanent force. This approach is used to look at cases of ITE crimes that are still happening today so that solutions can be found based on the National Police Circular Number: SE/2/11/2021 concerning Ethical Cultural Awareness by prioritizing the concept of Restorative justice.¹⁹

3. Results and Discussion

The Urgency of Implementing Restorative Justice

Indonesia adheres to a retributive punishment system, namely a criminal justice system with a focus on sentencing as a form of retribution for the perpetrator's actions and as a means of preventing similar crimes. In Indonesia, however, the system of retributive punishment does not play a significant role in reducing crime. There may be as many as 35,044 repeat offenders by 2020, or approximately 12.96%.²⁰ The concept of restorative justice concerns the accountability of perpetrators to victims, their families, and their surroundings which are carried out in out-of-court proceedings. One form of case that Restorative Justice can resolve is the crime of ITE.²¹ Perpetrators and victims are brought together to express opinions and solve problems by prioritizing deliberation to reach a

¹⁶ Mohammad Jamin and Abdul Kadir Jaelani, 'Legal Protection of Indigenous Community in Protected Forest Areas Based Forest City', *Bestuur*, 10.2 (2022), 198–212 <https://doi.org/https://dx.doi.org/10.20961/bestuur.v10i2.66090>

¹⁷ Fitri Nur, Aini Prasetyo, and Abdul Kadir Jaelani, 'The Changing of Environmental Approval Administrative Law Perspective', *Journal of Human Rights, Culture and Legal System*, 2.3 (2022), 191–208 <https://doi.org/https://doi.org/10.53955/jhcls.v2i3.55>

¹⁸ Taufik Hidayat, Resti Dian, and Suviwat Jenvitchuwong, 'Disharmonization of Supreme Court Regulations in Material Judicial Rights', *Journal of Human Rights, Culture and Legal System*, 2.3 (2022), 149–66 <https://doi.org/https://doi.org/10.53955/jhcls.v2i3.34>

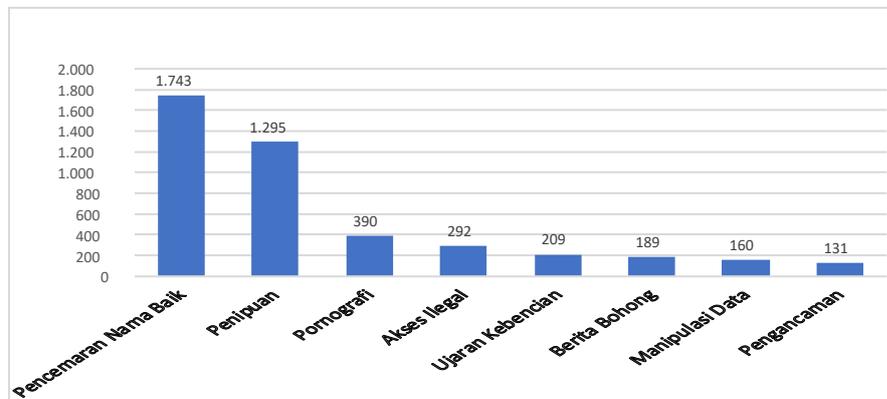
¹⁹ Rian Saputra, M Zaid, and Silaas Oghenemaro, 'The Court Online Content Moderation : A Constitutional Framework', *Journal of Human Rights, Culture and Legal System*, 2.3 (2022), 139–48 <https://doi.org/https://doi.org/10.53955/jhcls.v2i3.54>

²⁰ Theresia B. Sumarno, Parulian Sihotang, and Widhyawan Prawiraatmadja, 'Exploring Indonesia's Energy Policy Failures through the JUST Framework', *Energy Policy*, 164.March (2022), 112914 <https://doi.org/10.1016/j.enpol.2022.112914>

²¹ Ritesh Shah and Mieke Lopes Cardozo, 'Education and Social Change in Post-Conflict and Post-Disaster Aceh, Indonesia', *International Journal of Educational Development*, 38 (2014), 2–12 <https://doi.org/10.1016/j.ijedudev.2014.06.005>

consensus in the digital era like today.²² Many cases involving Law no. 19 of 2016 concerning Information and Electronic Transactions (UU ITE), such as defamation, SARA issues, and divisive issues.

Graph 1. Cyber Crime Cases January-November 2021



Source: Data from the Directorate of Cyber Crime

Based on this reality, law enforcers in Indonesia make discretion regarding Restorative justice where the regulation regulates deliberative policies for consensus in settlement of ITE crimes. The National Police issued a discretion in the form of a Police Circular Number: SE/2/11/2021 concerning Ethical Cultural Awareness to create a clean, healthy, and productive Indonesian digital space as explained in a circular letter, the National Police have the principle that criminal law settlement is the last solution in law enforcement and must prioritize restorative justice in every case regarding alleged violations of Information and Electronic Transactions.²³

In addition, the National Police also explained that the victim wanted the case to be brought to court. However, the suspect was aware and apologized, so the suspect could not be detained. Before the file was submitted to the public prosecutor, the victim and perpetrator were given room for discussion again.²⁴ The Attorney General also issued a discretion in the form of the Attorney General's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice which discusses the

²² Jatau T. Sharon, Emuze A. Fidelis, and Smallwood J. John, 'A Comparative Study of Management Safety Justice in Sub-Sahara Africa', *Safety Science*, 155, July (2022), 105891 <https://doi.org/10.1016/j.ssci.2022.105891>

²³ Elisabeth Kramer and Claudia Stoicescu, 'An Uphill Battle: A Case Example of Government Policy and Activist Dissent on the Death Penalty for Drug-Related Offences in Indonesia', *International Journal of Drug Policy*, 92 (2021), 103265 <https://doi.org/10.1016/j.drugpo.2021.103265>

²⁴ Dirham Dirhamsyah, Saiful Umam, and Zainal Arifin, 'Maritime Law Enforcement: Indonesia's Experience against Illegal Fishing', *Ocean and Coastal Management*, 229, July (2022), 106304 <https://doi.org/10.1016/j.ocecoaman.2022.106304>

renewal of the criminal justice system with a model of solving criminal cases that prioritizes restorative justice which emphasizes restoring the situation and balancing the protection and interests of the victim. For perpetrators of ITE crimes, law enforcement is carried out without being oriented toward revenge.²⁵

However, some of these policies required proper implementation. This is evident in the case of I Gede Ari Astina, also known as Jerinx SID and assigned the case number 796/Pid.Sus/2021/PN Jkt.Pst. Jerinx's accusations against Adam Deni initiated the Jerinx case. Jerinx apologized and admitted his actions during mediation, and Adam Deni forgave him. Jerinx, accompanied by his attorney Gde Manik Yogiarta, pleaded with the victim for peace, but the legal proceedings continue. Based on the Central Jakarta District Court's Case Tracing Information System (SIPP), Jerinx was sentenced to imprisonment for one fine of Rp. 25.000.000,- (Twenty-five million rupiah).²⁶

This is contrary to the National Police Circular Letter Number: SE/2/11/2021 and the Attorney General's Office of the Republic of Indonesia Number 15 of 2020, which state that the victim desires that his case be brought before a judge. However, the suspect is conscious and apologizes, so detention cannot be carried out.²⁷ The final solution in law enforcement is the principle of criminal law settlement, which prioritizes restorative justice, which focuses on restoring the situation and balancing the protection and interests of victims in criminal information and electronic transactions. Restorative justice has not been widely implemented in cases of ITE crimes in Indonesia, as evidenced by the large number of convictions for ITE crimes, such as the following.²⁸

Table 1
Cases of Criminal Offenses Against ITE

No	Decision Number	Name	District Court	Article charged	Type	Verdict
1	828/Pid.Sus/2020/PN Dps	Jerinx SID	Denpasar, Bali	Articles 27 and 28 of the ITE.	Defamation of the Indonesian Doctors Association	Imprisonment for 14 months and a fine of IDR 10 million, a

²⁵ Andrzej Geise and Nurul Bariyah, 'Impact of Institutional Determinants on Income Inequalities in Indonesia during the Era Reformasi', *Journal of Asian Economics*, 82.November 2021 (2022), 0–1 <https://doi.org/10.1016/j.asieco.2022.101526>

²⁶ Luca Tacconi, Rafael J. Rodrigues, and Ahmad Maryudi, 'Law Enforcement and Deforestation: Lessons for Indonesia from Brazil', *Forest Policy and Economics*, 108.June (2019), 101943 <https://doi.org/10.1016/j.forpol.2019.05.029>

²⁷ Jahyun Chun, 'Enforced Reconciliation without Justice: The Absence of Procedural, Retributive, and Restorative Justice in the "Comfort Women" Agreement of 2015', *Asian Journal of Social Science*, 49.2 (2021), 84–92 <https://doi.org/10.1016/j.ajss.2020.09.001>

²⁸ Mairon G. Bastos Lima, 'Just Transition towards a Bioeconomy: Four Dimensions in Brazil, India and Indonesia', *Forest Policy and Economics*, 136.January (2022), 102684 <https://doi.org/10.1016/j.forpol.2021.102684>

					or IDI.	subsidiary of one month in prison
2	46/Pid.Sus/2021/PN Plp	Muhammad Asrul(Jurnalis)	Palopo, South Sulawesi	Article 27 paragraph 3 of the ITE.	Defamation	imprisonment for 3 months
3	49/Pid.Sus/2020/PN Lbo	Farid Kiba Alias Farid	Limboto	Article 45 Paragraph (3) Jo Article 27 Paragraph (3) RI Law No. 19 of 2016 concerning changes to Law no. 11 of 2008 concerning ITE	Defamation	Imprisonment for 4 (four) months
4	1327/Pid.Sus/2019/PN Jkt.Sel	Pablo Putra Benua	South Jakarta	Article 27 paragraph (1), paragraph 3 Juncto Article 45 paragraph (1) of the ITE Law, Article 310, and Article 311 of the Criminal Code.	Defamation	Imprisonment for 1 year and 8 months
5	1327/Pid.Sus/2019/PN Jkt.Sel	Rayie Utami Alias Rey Utami	South Jakarta	Article 27 paragraph (1), paragraph 3 Juncto Article 45 paragraph (1) of the ITE Law, Article 310, and Article 311 of the Criminal Code.	Defamation	Imprisonment for 1 year 4 months
6	1327/Pid.Sus/2019/PN Jkt.Sel	Galih Ginanjar Saputra	South Jakarta	Article 27 paragraph (1), paragraph 3 Juncto Article 45 paragraph (1) of the ITE Law, Article 310, and Article 311 of the Criminal Code.	Defamation	Imprisonment for 2 years and 4 months

Source: Supreme Court Decision Directory Data

The data shows that there are still many cases of criminal prosecution of ITE crimes after the issuance of the National Police Circular Number: SE/2/11/2021 and the Prosecutor's Office Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. This shows

the urgency of revising the ITE Law to protect people's rights, not public order.²⁹ There are many cases of abuse of articles in the ITE Law, for example, in the treason article. As of December 2021, 26 people in Maluku and Papua have been detained on treason charges for peacefully expressing their opinions. Freedom of opinion can also be silenced under the ITE Law. For example, around seven students from Sebelas Maret University (UNS), Solo, were arrested by the police and taken to the Solo Police Headquarters after unfurling several posters when Jokowi passed in front of the UNS campus. The restorative justice approach already exists in the criminal justice system according to customary law in force in various countries, including Indonesia.³⁰

The customary law in Indonesia prioritizes solving problems by deliberation to reach a consensus. Even though this method is traditional and old-fashioned, it can solve the problem of punishment in Indonesia. Apart from that, the implementation of restorative justice in Indonesia can also reduce the problem of overcrowding in prisons which is a severe problem, by emphasizing the efficiency of Correctional Institutions (Lapas). According to data from the Directorate General of Corrections of the Ministry of Law and Human Rights of the Republic of Indonesia (Kemenkumham) as of 12 September 2021, the capacity of prisons in 33 Regional Offices (LKkanwil) is for 134,835 thousand people. However, the number of residents reaches 271,007 people.³¹

This means that there is an overcapacity of 136,173 prison inmates, or double the total (101%). (Kusnandar, 2021) Moreover, with the rise of ITE crime cases, especially in DKI Jakarta, even though the data obtained from the Ministry of Law and Human Rights, excess prisons also occur in DKI Jakarta prisons with an overcapacity of 198.71%. The capacity of prisons in the capital city is 5,992 people, but it has a population of 17,899 people.³²

In addition to alleviating the problem of overcrowding in Correctional Institutions, the urgency of implementing a Restorative justice approach in resolving ITE crimes is to expedite the accountability of perpetrators to victims using Indonesian customary law, namely deliberation for consensus.³³ In addition, National Police Circular Letter Number: SE/2/11/2021 on Ethical Cultural

²⁹ Hwian Christianto, 'Measuring Cyber Pornography Based on Indonesian Living Law: A Study of Current Law Finding Method', *International Journal of Law, Crime and Justice*, 60.October 2017 (2020), 100348 <https://doi.org/10.1016/j.ijlcrj.2019.100348>

³⁰ Leonid Lichman and others, 'Principle of Reasonableness in International Standards of Civil Proceedings', *International Journal of Law, Crime and Justice*, 69.January (2022), 100529 <https://doi.org/10.1016/j.ijlcrj.2022.100529>

³¹ Easton.

³² Garth den Heyer, 'Evidence-Based Policing: A Review of Its Adoption and Use by Police Agencies in the United States of America', *International Journal of Law, Crime and Justice*, 69.September 2021 (2022), 100532 <https://doi.org/10.1016/j.ijlcrj.2022.100532>

³³ Jonathan Hobson and Brian Payne, 'Building Restorative Justice Services: Considerations on Top-down and Bottom-up Approaches', *International Journal of Law, Crime and Justice*, 71.September (2022), 100555 <https://doi.org/10.1016/j.ijlcrj.2022.100555>

Awareness aims to create a clean, healthy, and productive Indonesian digital space, and the Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 on Termination of Prosecution Based on Restorative Justice has the principle that settlement criminal law is the final solution in law enforcement by prioritizing restorative justice, which emphasizes restorative justice.³⁴

The Mapping Restorative Justice in Information and Electronic Transaction Criminal Regulation

Implementing restorative justice in Information and Electronic Transaction (ITE) crimes in Indonesia still encounters many obstacles. Many factors can become obstacles in implementing restorative justice, including the following. First, there often needs to be an agreement. In restorative justice, an agreement between parties is the main thing that determines the success of this method. However, in practice, agreements are often only reached by some parties. This can be caused because the perpetrator feels innocent about his actions.³⁵

The admission of guilt from the perpetrators of crimes is a prerequisite for restorative justice. With a confession from the person who committed the crime, the desired method of solving the problem will be more straightforward. Accepting and acknowledging mistakes is part of an effort to accept responsibility for the actions committed. In restorative justice, the perpetrator must be fully responsive so that the perpetrator is expected to realize his mistake. It is expected that victims will receive appropriate compensation that has been mutually agreed upon with the perpetrators in order to compensate for losses and alleviate suffering.³⁶

It turns out that this problematic agreement can also be caused by the victim being challenging to consult. This happens because of a lack of understanding, and the victim only wants to defend his opinion. This case makes it difficult for investigators to find loopholes to apply restorative justice methods.³⁷ One of the essential concepts in restorative justice is deliberation. In resolving disputes, the restorative justice method is based on consensus deliberation in which the parties are asked to compromise to reach an agreement. In this case, the main elements of

³⁴ Jan Maarten Elbers and others, 'The Effects of Reward Systems in Prison: A Systematic Review', *International Journal of Law, Crime and Justice*, 71.July (2022), 100556 <https://doi.org/10.1016/j.ijlcrj.2022.100556>

³⁵ Tun Xu, Ling Tang, and Xifen Lin, 'The Predictors of Decisions to Grant Parole in China: Evidence from Four Prisons in Z Province', *International Journal of Law, Crime and Justice*, 71.1954 (2022), 100557 <https://doi.org/10.1016/j.ijlcrj.2022.100557>

³⁶ Tamara Walsh, Eashwar Alagappan, and Lucy Cornwell, 'Coroners' Perspectives on Deaths in Custody in Australia', *International Journal of Law, Crime and Justice*, 71.January (2022), 100558 <https://doi.org/10.1016/j.ijlcrj.2022.100558>

³⁷ Bencan Li and Junxia Liu, 'Research of Corporate Compliance in China: Review and Reflections', *International Journal of Law, Crime and Justice*, 71.August (2022), 100559 <https://doi.org/10.1016/j.ijlcrj.2022.100559>

restorative justice are the willingness and participation of victims, perpetrators, and society in improving crimes that have occurred.³⁸

The second, the community has not received restorative justice. Some people in the community have not received restorative justice, hindering the application of this method to ITE crimes. Society considers this method a new thing. Actually the concept of restorative justice is a form of customary law that has long ago developed in Indonesian society.³⁹ In addition, because they are used to the retributive justice method, there is a view from the public that they are worried that this method could cause the victim's family to feel like retaliating for what the perpetrator had done. This is because the victim feels that restorative justice will only release the perpetrator from responsibility for his actions.⁴⁰ The government needs to hold further outreach to the public regarding restorative justice. This is done so that the opposing views of the community towards this method can be reduced. In addition, the community also needs to be invited to participate in settlement of ITE crimes that are being carried out using this method. Participation from the community will make it easier for them to understand the fundamental concepts contained in the restorative justice method.⁴¹

Thirdly, law enforcement officers continue to be accustomed to retributive justice. Each law enforcement officer, such as investigators, prosecutors, and judges, has frequently divergent opinions, which is one of the obstacles to implementing restorative justice in ITE crimes. This method of restorative justice requires further coordination from the law enforcement officers who will handle the case in order to be effective. To date, law enforcement officials have adhered to positivism, focusing solely on written rules. On the other hand, law enforcement officers are frequently stuck in their old way of thinking and continue to employ a retributive justice approach. This is another factor that inhibits the application of restorative justice to ITE crimes.⁴²

Fourth, the legal factor of restorative justice. The National Police Circular Letter Number: SE/2/11/2021 concerning Ethical Cultural Awareness to Create a Clean, Healthy, and Productive Indonesian Digital Space, mandates that in cases involving alleged violations of the ITE Law, settlement of criminal law is the final

³⁸ Hock and Dávid-Barrett.

³⁹ Marc Salat, 'Human Trafficking in Spain: A Quantitative Case-Law Analysis', *International Journal of Law, Crime and Justice*, 71, February (2022), 100561 <https://doi.org/10.1016/j.ijlcj.2022.100561>

⁴⁰ Jian Zhang, Ke Li, and Yang Feng, 'Criminal Sanctions on Identity Theft in Shanghai: An Empirical Case Law Analysis', *International Journal of Law, Crime and Justice*, 71, 51 (2022), 1–13 <https://doi.org/10.1016/j.ijlcj.2022.100562>

⁴¹ Sufyan Droubi, Raphael J. Heffron, and Darren McCauley, 'A Critical Review of Energy Democracy: A Failure to Deliver Justice?', *Energy Research and Social Science*, 86, December 2021 (2022), 102444 <https://doi.org/10.1016/j.erss.2021.102444>

⁴² Siti Nurbayani, Moh Dede, and Millary Agung Widiawaty, 'Utilizing Library Repository for Sexual Harassment Study in Indonesia: A Systematic Literature Review', *Heliyon*, 8, 8 (2022), e10194 <https://doi.org/10.1016/j.heliyon.2022.e10194>

solution in law enforcement and must prioritize restorative justice.⁴³ However, law enforcers who have yet to implement this have yet to receive sanctions or punishments. This resulted in the need to consider including the rules for implementing restorative justice into the law. Later it is hoped that this law will regulate restorative justice in more detail, clearly, and strictly.⁴⁴

4. Conclusion

Based on the preceding discussion, the following conclusion can be drawn: First, the urgency of implementing restorative justice in the ITE case stems from the overcrowding of correctional institutions and the need to streamline the accountability of perpetrators to victims using the deliberation method to reach a consensus. Second, it turns out that the application of restorative justice in ITE cases faces many obstacles, including the fact that there is frequently no agreement, the community has not received restorative justice, law enforcement officers are still accustomed to retributive justice, and the legal aspects of this method.

References

- Astuti, Rini, Michelle Ann Miller, Andrew McGregor, M. Dedy Pratama Sukmara, Wiko Saputra, Sulistyanto, and others, 'Making Illegality Visible: The Governance Dilemmas Created by Visualising Illegal Palm Oil Plantations in Central Kalimantan, Indonesia', *Land Use Policy*, 114 (2022), 105942 <https://doi.org/10.1016/j.landusepol.2021.105942>
- Bastos Lima, Mairon G., 'Just Transition towards a Bioeconomy: Four Dimensions in Brazil, India and Indonesia', *Forest Policy and Economics*, 136. January (2022), 102684 <https://doi.org/10.1016/j.forpol.2021.102684>
- Berenschot, Ward, Ahmad Dhiaulhaq, Afrizal, Otto Hospes, Rebekha Adriana, and Erysa Poetry, 'Anti-Corporate Activism and Collusion: The Contentious Politics of Palm Oil Expansion in Indonesia', *Geoforum*, 131. July 2021 (2022), 39–49 <https://doi.org/10.1016/j.geoforum.2022.03.002>
- Christianto, Hwian, 'Measuring Cyber Pornography Based on Indonesian Living Law: A Study of Current Law Finding Method', *International Journal of Law, Crime and Justice*, 60. October 2017 (2020), 100348 <https://doi.org/10.1016/j.ijlcrj.2019.100348>
- Chun, Jahyun, 'Enforced Reconciliation without Justice: The Absence of

⁴³ Ade Paranata, 'The Miracle of Anti-Corruption Efforts and Regional Fiscal Independence in Plugging Budget Leakage: Evidence from Western and Eastern Indonesia', *Heliyon*, 8.10 (2022), e11153 <https://doi.org/10.1016/j.heliyon.2022.e11153>

⁴⁴ Eny Kusdarini and others, 'Roles of Justice Courts: Settlement of General Election Administrative Disputes in Indonesia', *Heliyon*, 8.12 (2022), e11932 <https://doi.org/10.1016/j.heliyon.2022.e11932>

- Procedural, Retributive, and Restorative Justice in the “Comfort Women” Agreement of 2015’, *Asian Journal of Social Science*, 49.2 (2021), 84–92
<https://doi.org/10.1016/j.ajss.2020.09.001>
- Dimiyati, Khudzaifah, Haedar Nashir, Elviandri Elviandri, Absori Absori, Kelik Wardiono, and Arief Budiono, ‘Indonesia as a Legal Welfare State: A Prophetic-Transcendental Basis’, *Heliyon*, 7.8 (2021), e07865
<https://doi.org/10.1016/j.heliyon.2021.e07865>
- Dirhamsyah, Dirham, Saiful Umam, and Zainal Arifin, ‘Maritime Law Enforcement: Indonesia’s Experience against Illegal Fishing’, *Ocean and Coastal Management*, 229.July (2022), 106304
<https://doi.org/10.1016/j.ocecoaman.2022.106304>
- Droubi, Sufyan, Raphael J. Heffron, and Darren McCauley, ‘A Critical Review of Energy Democracy: A Failure to Deliver Justice?’, *Energy Research and Social Science*, 86.December 2021 (2022), 102444
<https://doi.org/10.1016/j.erss.2021.102444>
- Easton, Susan, ‘Not Just Another Brick in the Wall? Protecting Prisoners’ Right to Education’, *International Journal of Law, Crime and Justice*, 69.February (2022), 100530
<https://doi.org/10.1016/j.ijlcrj.2022.100530>
- Elbers, Jan Maarten, Esther F.J.C. van Ginneken, Paul Nieuwebeerta, Miranda Boone, and Hanneke Palmen, ‘The Effects of Reward Systems in Prison: A Systematic Review’, *International Journal of Law, Crime and Justice*, 71.July (2022), 100556
<https://doi.org/10.1016/j.ijlcrj.2022.100556>
- Fathurokhman, Ferry, ‘The Necessity of Restorative Justice on Juvenile Delinquency in Indonesia, Lessons Learned from the Raju and AAL Cases’, *Procedia Environmental Sciences*, 17 (2013), 967–75
<https://doi.org/10.1016/j.proenv.2013.02.115>
- Gearhart, Michael C., ‘Social Cohesion, Mutual Efficacy and Informal Social Control: Collective Efficacy and Community-Based Crime Prevention’, *International Journal of Law, Crime and Justice*, 71.July (2022), 100548
<https://doi.org/10.1016/j.ijlcrj.2022.100548>
- Geise, Andrzej, and Nurul Bariyah, ‘Impact of Institutional Determinants on Income Inequalities in Indonesia during the Era Reformasi’, *Journal of Asian Economics*, 82.November 2021 (2022), 0–1
<https://doi.org/10.1016/j.asieco.2022.101526>
- den Heyer, Garth, ‘Evidence-Based Policing: A Review of Its Adoption and Use by Police Agencies in the United States of America’, *International Journal of Law, Crime and Justice*, 69.September 2021 (2022), 100532
<https://doi.org/10.1016/j.ijlcrj.2022.100532>
- Hidayat, Taufik, Resti Dian, and Suviwat Jenvitchuwong, ‘Disharmonization of Supreme Court Regulations in Material Judicial Rights’, *Journal of Human Rights, Culture and Legal System*, 2.3 (2022), 149–66
<https://doi.org/https://doi.org/10.53955/jhcls.v2i3.34>

- Hobson, Jonathan, and Brian Payne, 'Building Restorative Justice Services: Considerations on Top-down and Bottom-up Approaches', *International Journal of Law, Crime and Justice*, 71.September (2022), 100555 <https://doi.org/10.1016/j.ijlcrj.2022.100555>
- Hock, Branislav, and Elizabeth Dávid-Barrett, 'The Compliance Game: Legal Endogeneity in Anti-Bribery Settlement Negotiations', *International Journal of Law, Crime and Justice*, 71.September (2022), 1–13 <https://doi.org/10.1016/j.ijlcrj.2022.100560>
- Jamin, Mohammad, and Abdul Kadir Jaelani, 'Legal Protection of Indigenous Community in Protected Forest Areas Based Forest City', *Bestuur*, 10.2 (2022), 198–212 <https://doi.org/https://dx.doi.org/10.20961/bestuur.v10i2.66090>
- Kramer, Elisabeth, and Claudia Stoicescu, 'An Uphill Battle: A Case Example of Government Policy and Activist Dissent on the Death Penalty for Drug-Related Offences in Indonesia', *International Journal of Drug Policy*, 92 (2021), 103265 <https://doi.org/10.1016/j.drugpo.2021.103265>
- Kusdarini, Eny, Anang Priyanto, Sri Hartini, and Suripno Suripno, 'Roles of Justice Courts: Settlement of General Election Administrative Disputes in Indonesia', *Heliyon*, 8.12 (2022), e11932 <https://doi.org/10.1016/j.heliyon.2022.e11932>
- Li, Bencan, and Junxia Liu, 'Research of Corporate Compliance in China: Review and Reflections', *International Journal of Law, Crime and Justice*, 71.August (2022), 100559 <https://doi.org/10.1016/j.ijlcrj.2022.100559>
- Lichman, Leonid, Andrii Dryshliuk, Maksym Murzenko, and Valeriia Boiko, 'Principle of Reasonableness in International Standards of Civil Proceedings', *International Journal of Law, Crime and Justice*, 69.January (2022), 100529 <https://doi.org/10.1016/j.ijlcrj.2022.100529>
- Lin, Zhen, 'The Protection of Sunken WWII Warships Located in Indonesian or Malaysian Territorial Waters', *Marine Policy*, 113.May 2019 (2020), 103804 <https://doi.org/10.1016/j.marpol.2019.103804>
- Malin, Tiina, and Maiju Tanskanen, 'Regional Variation in Sentences for Child Sexual Abuse: An Empirical Study with Finnish Court Data', *International Journal of Law, Crime and Justice*, 71.November (2022), 100565 <https://doi.org/10.1016/j.ijlcrj.2022.100565>
- Marder, Ian D., 'Mapping Restorative Justice and Restorative Practices in Criminal Justice in the Republic of Ireland', *International Journal of Law, Crime and Justice*, 70.March (2022), 100544 <https://doi.org/10.1016/j.ijlcrj.2022.100544>
- McCauley, Darren, and Raphael Heffron, 'Just Transition: Integrating Climate, Energy and Environmental Justice', *Energy Policy*, 119.April (2018), 1–7 <https://doi.org/10.1016/j.enpol.2018.04.014>
- Nur, Fitri, Aini Prasetyo, and Abdul Kadir Jaelani, 'The Changing of Environmental Approval Administrative Law Perspective', *Journal of Human Rights, Culture and Legal System*, 2.3 (2022), 191–208 <https://doi.org/https://doi.org/10.53955/jhcls.v2i3.55>

- Nurbayani, Siti, Moh Dede, and Millary Agung Widiawaty, 'Utilizing Library Repository for Sexual Harassment Study in Indonesia: A Systematic Literature Review', *Heliyon*, 8.8 (2022), e10194 <https://doi.org/10.1016/j.heliyon.2022.e10194>
- Paranata, Ade, 'The Miracle of Anti-Corruption Efforts and Regional Fiscal Independence in Plugging Budget Leakage: Evidence from Western and Eastern Indonesia', *Heliyon*, 8.10 (2022), e11153 <https://doi.org/10.1016/j.heliyon.2022.e11153>
- Pham, Phuong Ngoc, Patrick Vinck, and Harvey M. Weinstein, 'Human Rights, Transitional Justice, Public Health and Social Reconstruction', *Social Science and Medicine*, 70.1 (2010), 98–105 <https://doi.org/10.1016/j.socscimed.2009.09.039>
- Salat, Marc, 'Human Trafficking in Spain: A Quantitative Case-Law Analysis', *International Journal of Law, Crime and Justice*, 71.February (2022), 100561 <https://doi.org/10.1016/j.ijlcrj.2022.100561>
- Saputra, Rian, M Zaid, and Silaas Oghenemaro, 'The Court Online Content Moderation: A Constitutional Framework', *Journal of Human Rights, Culture and Legal System*, 2.3 (2022), 139–48 <https://doi.org/https://doi.org/10.53955/jhcls.v2i3.54>
- Shah, Ritesh, and Mieke Lopes Cardozo, 'Education and Social Change in Post-Conflict and Post-Disaster Aceh, Indonesia', *International Journal of Educational Development*, 38 (2014), 2–12 <https://doi.org/10.1016/j.ijedudev.2014.06.005>
- Sharon, Jatau T., Emuze A. Fidelis, and Smallwood J. John, 'A Comparative Study of Management Safety Justice in Sub-Sahara Africa', *Safety Science*, 155.July (2022), 105891 <https://doi.org/10.1016/j.ssci.2022.105891>
- Singh, Anushka, 'Sanction for Prosecution in "Offences Against the State" in India: The Prerogative of the Political and the Withdrawal of the Judicial', *International Journal of Law, Crime and Justice*, 69.January (2022), 100531 <https://doi.org/10.1016/j.ijlcrj.2022.100531>
- Sumarno, Theresia B., Parulian Sihotang, and Widhyawan Prawiraatmadja, 'Exploring Indonesia's Energy Policy Failures through the JUST Framework', *Energy Policy*, 164.March (2022), 112914 <https://doi.org/10.1016/j.enpol.2022.112914>
- Sunio, Varsolo, 'Unpacking Justice Issues and Tensions in Transport System Transition Using Multi-Criteria Mapping Method', *Transportation Research Part D: Transport and Environment*, 96.May (2021), 102887 <https://doi.org/10.1016/j.trd.2021.102887>
- Tacconi, Luca, Rafael J. Rodrigues, and Ahmad Maryudi, 'Law Enforcement and Deforestation: Lessons for Indonesia from Brazil', *Forest Policy and Economics*, 108.June (2019), 101943 <https://doi.org/10.1016/j.forpol.2019.05.029>
- Walsh, Tamara, Eashwar Alagappan, and Lucy Cornwell, 'Coroners' Perspectives on Deaths in Custody in Australia', *International Journal of Law, Crime and*

-
- Justice*, 71.January (2022), 100558 <https://doi.org/10.1016/j.ijlcj.2022.100558>
- Xu, Tun, Ling Tang, and Xifen Lin, 'The Predictors of Decisions to Grant Parole in China: Evidence from Four Prisons in Z Province', *International Journal of Law, Crime and Justice*, 71.1954 (2022), 100557 <https://doi.org/10.1016/j.ijlcj.2022.100557>
- Zhang, Jian, Ke Li, and Yang Feng, 'Criminal Sanctions on Identity Theft in Shanghai: An Empirical Case Law Analysis', *International Journal of Law, Crime and Justice*, 71.51 (2022), 1–13 <https://doi.org/10.1016/j.ijlcj.2022.100562>