

## THE APPLICATION OF RESTORATIVE JUSTICE IN MINOR HEALTH LAW OFFENCE CASES

**Shohib Muslim \***

Politeknik Negeri Malang

[shohibmuslim@polinema.ac.id](mailto:shohibmuslim@polinema.ac.id)

**Karman**

Insitut Agama Islam Sultan Muhammad Syafiuddin Sambas

### Abstract

The application of restorative justice in health law misdemeanour cases presents a more humanist and recovery-oriented alternative approach to the traditional justice system. It emphasises dialogue and conflict resolution through cooperation between perpetrators, victims and communities, in order to reach mutually beneficial solutions. Restorative justice in the context of health law aims to repair relationships, increase understanding, and promote improvements in the quality of health services. While offering many potential benefits, the application of this concept faces significant challenges such as a lack of understanding and awareness and the need for clear regulations. Therefore, the successful implementation of restorative justice relies heavily on synergistic support from the government, health institutions, professional organisations, and the community in creating a conducive environment and providing adequate education and training.

**Keywords:** Restorative Justice, Minor Offences, Health Law

### Introduction

In many parts of the world, including Indonesia, health law violations are common, both on a mild and severe scale. Minor health law violations may include unlicensed medical practices, administrative errors, or minor breaches of health protocols. Although these offences do not cause as severe an impact as serious offences, their resolution through conventional legal processes is often ineffective and creates a heavy burden on the justice system (Raranta, 2024).

Restorative justice is an approach that focuses on restoration and healing rather than punishment. It aims to bring together the perpetrator, victim and community to find a joint solution that restores the harm caused by the offence. In the context of minor health law offences, restorative justice offers an opportunity to repair the harm experienced by victims and communities without having to go through a lengthy and complex judicial process (Gultom, 2022).

In the context of modern legal systems, restorative justice is particularly relevant because it offers a more humane and effective way of dealing with offences, especially minor offences. This approach can reduce the burden on the justice system, which is often overburdened with minor cases, allowing legal resources to be utilised more

efficiently (Halim & Ismoyo, 2023). In addition, restorative justice can provide more satisfaction for victims by allowing them to directly address the impact of the criminal offence and participate in the formulation of solutions. It also increases offender awareness and responsibility, and has the potential to reduce recidivism rates through more constructive interventions. As such, restorative justice not only responds to offences more comprehensively, but also contributes to the maintenance of social harmony and balance (Costello & Mann, 2020).

However, the application of restorative justice in cases of minor health law offences is not yet fully understood and integrated in the Indonesian legal system. There is an urgent need to explore how this approach can be practically and effectively applied. This includes the identification of factors that support and hinder the application of restorative justice in the context of Health law (Marinari, 2020).

By examining the application of restorative justice in cases of minor health law offences, this research is expected to provide new insights and alternative solutions that are more humane and efficient in dealing with health law offences. This not only contributes to improving the quality of the justice system, but also supports more holistic recovery efforts for victims and offenders, as well as strengthening the role of the community in maintaining public health.

## **Research Methods**

The study in this research uses the literature method. The literature research method is a research approach that relies on the collection, analysis, and interpretation of pre-existing written sources to disseminate relevant and valid knowledge. This research usually involves a systematic review of books, journals, scientific articles, reports, theses, and other official documents related to the topic being researched (JUNAIDI, 2021); (Abdussamad, 2022). Through literature research methods, researchers can identify trends and gaps in previous research, build a strong theoretical foundation, and find important patterns and relationships in a particular field of study. This technique also makes it possible to make comparisons between other studies and gain inspiration for further research using tested and verified approaches (Wekke, 2020).

## **Results and Discussion**

### **Application of Restorative Justice in Cases of Minor Health Law Violations**

Restorative justice is an approach to the criminal justice system that seeks to resolve offences through greater participation of offenders, victims and affected communities. It focuses on repairing the harm caused by crime, with the aim of repairing fractured relationships and restoring social balance. Restorative justice shifts the focus from simply punishing the offender to emphasising the offender's responsibility to

acknowledge wrongdoing, learn from the consequences, and make efforts to repair the impact of their actions on victims and communities (Hobson & Payne, 2022).

Restorative justice is based on several fundamental principles that distinguish it from traditional justice systems. First, the principle of participation, which provides opportunities for victims, offenders, and community members to be actively involved in the process of dialogue and conflict resolution. Second, the principle of responsibility, which emphasises the importance of perpetrators acknowledging and taking responsibility for the consequences of their actions (Trimartini et al., 2020). Third, the principle of reconciliation and repair, which prioritises efforts to restore victims' losses and repair damaged social relations. Fourth, the principle of transformation, which aims to encourage positive changes in the perpetrator's behaviour and create prevention and wider awareness in society to reduce the occurrence of similar offences in the future. Through the application of these principles, restorative justice seeks to achieve justice in a comprehensive and sustainable manner (Pratama, 2022).

Restorative justice can be effectively applied in dealing with cases of minor offences in the field of health law, such as minor malpractice, administrative errors, or violations of health practice standards regulations. In this context, restorative justice helps shift the focus from solely punishing offenders to repairing harm and restoring relationships between the parties involved. For example, when a medical professional makes a non-fatal misdiagnosis that causes inconvenience to a patient, rather than immediately imposing disciplinary action, restorative justice methods can be used to bring the offender and victim together so that they can discuss the matter directly (Shodunke, 2024).

The active participation of both the victim and the offender is central to the application of restorative justice. In a discussion forum or mediation, the victim has the opportunity to convey the impact of the offence, whether physical, emotional or social. This allows the offender to better understand the consequences of his or her actions and encourages a sense of responsibility to make amends. On the other hand, victims can also feel a more humane sense of justice because their voices are heard and recognised in the conflict resolution process (Anatasia, 2021).

Restorative justice processes also focus on reconciliation and repair. In the case of minor health law violations, one form of remedy could be a formal apology from the perpetrator to the victim, an offer of compensation for the harm suffered, or the implementation of corrective measures in the workplace to prevent the recurrence of similar violations. These measures can help restore the harm suffered by the victim as well as improve the reputation and public trust in the health institution concerned (Maglione, 2024).

The application of restorative justice in cases of minor health law violations also has a positive long-term impact, namely changes in the behaviour of the perpetrator and increased awareness of the importance of compliance with health regulations.

Through the process of learning from mistakes that have been made, medical personnel can adopt more careful and responsible work practices. In addition, health institutions can develop better training programmes and internal regulations so that similar incidents can be avoided in the future (Minguet, 2021). Thus, restorative justice not only addresses the problem at hand, but also contributes to improving the overall quality of healthcare.

### **Supporting and inhibiting factors for the application of restorative justice in health law**

One of the key enablers for the implementation of restorative justice in health law is awareness and support from all relevant parties, including the government, health institutions, and the community. As an alternative approach to the traditional justice system, restorative justice requires supportive policies and legal frameworks that enable the practice to be implemented effectively. The presence of laws or regulations that support restorative justice is very important to ensure that all parties have clear guidelines in its implementation (Hamilton, 2021).

The commitment of medical personnel to professionalism and ethics is also a significant supporting factor. When health workers understand the importance of maintaining good relationships with patients and communities, they tend to be more open and willing to engage in restorative justice processes. This understanding can be reflected in a habit of prioritising dialogue and peaceful resolution when minor violations occur. Training that focuses on soft skills, such as effective communication and empathy, also plays an important role in supporting this concept (Aprilliandi, 2023).

Supportive infrastructure, such as mediation facilities or dispute resolution institutions, is an important requirement in the implementation of restorative justice. These facilities not only provide an appropriate and impartial space for the dialogue process, but also provide trained mediators to facilitate communication between the parties involved. With the right infrastructure, the restorative justice process can run more smoothly and effectively (Shapland et al., 2020).

On the other hand, there are still many challenges that hinder the implementation of restorative justice in health law. One of the most prominent is resistance to change from the existing justice system. Many may be comfortable with the more traditional retributive approach, which emphasises punishing offenders. Changing to a new, more collaborative way requires a paradigm shift that is often difficult for some to accept, particularly those who are used to the old system (Setiyawan et al., 2024).

Lack of awareness and education about the concept and benefits of restorative justice is also a major obstacle. Many medical personnel and the public are not familiar with this approach and therefore hesitate to adopt it in their daily practice. To overcome this obstacle, massive and continuous educational initiatives are needed to introduce

and convince all relevant parties of the potential benefits brought by restorative justice, both in improving the quality of health services and in resolving disputes in a more humane and sustainable manner (Cassell, 2021).

Despite these difficulties, specialised outreach and training programmes can help in overcoming the above barriers. Outreach aimed at raising awareness about restorative justice should be conducted on an ongoing basis and involve various stakeholders, including the government, professional organisations, and educational institutions. Through specially designed training, health workers and medical facility managers can be prepared with the knowledge and skills needed to implement this concept successfully. This training could include mediation techniques, effective communication, and collaborative problem solving (Wahyuningsih et al., 2023).

The implementation of restorative justice in health law also requires solid cross-sectoral cooperation. Synergies between various health institutions, courts, police, and civil society organisations will support more efficient and effective implementation. This collaboration helps ensure that all parties are involved in the restorative justice process and get the maximum benefit from this approach. Regular inter-agency meetings and communication forums are crucial to overcome challenges and obstacles that may arise (Giacomini, 2024).

Another important factor is the strengthening of clear policies and regulations that support the implementation of restorative justice. Transparent regulations will provide legal certainty for all parties involved. The government plays an important role in creating a legal framework that accommodates and facilitates restorative justice practices in line with the existing justice system. With the right policies in place, barriers such as confusion in procedures and possible rights violations can be minimised (Pally, 2024).

Continuous monitoring and evaluation are also important to ensure the effectiveness of restorative justice implementation. A good monitoring mechanism will help identify issues or problems that may occur during the implementation process and provide constructive feedback for future improvements. Data and findings from the monitoring process can be used as a basis for refining existing practices and policies, so that restorative justice approaches can be continuously improved and adapted to specific needs in the field of Health law (Rahiminejad, 2022).

Thus, the application of restorative justice in health law has great potential to improve the way conflicts and offences are resolved in the health system. Enabling factors such as awareness from all parties, commitment to professionalism and ethics, and adequate infrastructure are crucial to the success of this approach. However, barriers such as resistance to change and lack of education on restorative justice must be overcome through counselling, education, cross-sectoral cooperation, and strengthening regulations. With commitment and concerted efforts from all

stakeholders, the application of restorative justice can provide a more humane and efficient solution to dispute resolution in the health sector.

## Conclusion

The application of restorative justice in health law misdemeanour cases offers a more humane and proactive means of resolution compared to the traditional justice system. This approach allows the parties involved to work together to resolve conflicts and find mutually beneficial solutions. By focusing on dialogue and restoration, restorative justice allows for settlements that promote understanding, improved relationships, and overall improved quality of healthcare. Offenders are not only faced with punishment, but also given the opportunity to learn from their mistakes and reconcile with the victim.

Despite its many potential benefits, the application of restorative justice in these cases also faces challenges, such as a lack of understanding and awareness of the concept among health workers and the general public. In addition, a clear regulatory framework is needed to ensure that restorative justice processes are effective and fair. Therefore, the successful implementation of this approach largely depends on the support of all relevant parties, including the government, health institutions, and professional organisations, who must work together to create a conducive environment and provide adequate education and training.

## References

Abdussamad, Z. (2022). *Buku Metode Penelitian Kualitatif*. Query date: 2024-05-25 20:59:55. <https://doi.org/10.31219/osf.io/juwxn>

Anastasia, Z. (2021). Diversion Against Crime by Children Confronting the Law to Achieve Restorative Justice. *Pancasila and Law Review*, 1(2), 149–149. <https://doi.org/10.25041/plr.v1i2.2120>

Aprilliandi, M. (2023). Formulating Restorative Justice Regulation in the Criminal Justice System in Indonesia. *Advances in Social Science, Education and Humanities Research*, Query date: 2024-12-19 08:52:48, 190–197. [https://doi.org/10.2991/978-2-38476-024-4\\_22](https://doi.org/10.2991/978-2-38476-024-4_22)

Cassell, J. (2021). Impacts of restorative justice on youth in conflict with the law: A narrative approach. Query date: 2024-12-19 08:52:48. <https://doi.org/10.32920/ryerson.14668365.v1>

Costello, C., & Mann, I. (2020). Border Justice: Migration and Accountability for Human Rights Violations. *German Law Journal*, 21(3), 311–334. <https://doi.org/10.1017/glj.2020.27>

Giacomini, G. (2024). Indigenous Peacebuilding and Environmental Restorative Justice. *Ecological Integrity and International Law*, Query date: 2024-12-19 08:52:48, 257–267. <https://doi.org/10.4324/9781003440871-24>

Gultom, P. (2022). Analisis Sosiologi Hukum Terhadap Kemungkinan Dapat Diterapkannya Restorative Justice Dalam Perkara Tindak Pidana Korupsi Di

Indonesia (Sociological Analysis of Law on the Possibility of Implementing Restorative Justice in Corruption Crime Cases in Indonesia). *SSRN Electronic Journal*, Query date: 2024-12-19 08:52:48. <https://doi.org/10.2139/ssrn.4065348>

Halim, A., & Ismoyo, S. (2023). Analysis of Restorative Justice in the Criminal Justice System. *Enigma in Law*, 1(1), 12–16. <https://doi.org/10.61996/law.v1i1.13>

Hamilton, M. (2021). Restorative Justice. *Environmental Crime and Restorative Justice*, Query date: 2024-12-19 08:52:48, 77–98. [https://doi.org/10.1007/978-3-030-69052-6\\_4](https://doi.org/10.1007/978-3-030-69052-6_4)

Hobson, J., & Payne, B. (2022). Building restorative justice services: Considerations on top-down and bottom-up approaches. *International Journal of Law, Crime and Justice*, 71(Query date: 2024-12-19 08:52:48), 100555–100555. <https://doi.org/10.1016/j.ijlcj.2022.100555>

JUNAIDI, J. (2021). ANOTASI METODELOGI PENELITIAN KUALITATIF JOHN W. CRESWELL. Query date: 2024-05-25 20:59:55. <https://doi.org/10.31237/osf.io/6kt5q>

Maglione, G. (2024). Encountering Restorative Justice. *Restorative Justice and Contemporary Political Theory*, Query date: 2024-12-19 08:52:48, 1–8. <https://doi.org/10.4324/9781003298359-1>

Marinari, A. (2020). Restorative justice and survivors' justice needs. *Restorative Justice for Survivors of Sexual Abuse*, Query date: 2024-12-19 08:52:48, 13–46. <https://doi.org/10.1332/policypress/9781447357933.003.0002>

Minguet, A. (2021). Environmental justice movements and restorative justice. *The International Journal of Restorative Justice*, 4(1), 60–80. <https://doi.org/10.5553/tijrj.000067>

Pally, H. (2024). Integrasi Restorative Justice dalam Sistem Peradilan Pidana. *Tumou Tou Law Review*, Query date: 2024-12-19 08:52:48, 31–40. <https://doi.org/10.35801/tourev.v3i1.48170>

Pratama, G. (2022). Constructing of Restorative Justice Law Enforcement by the Prosecutor: Development Law Theory Perspective. *Pancasila and Law Review*, 3(2), 89–98. <https://doi.org/10.25041/plr.v3i2.2718>

Rahiminejad, E. (2022). Iranian Criminal Justice System from the Perspective of Restorative Justice Models. *Scholars International Journal of Law, Crime and Justice*, 5(10), 468–476. <https://doi.org/10.36348/sijlcj.2022.v05i10.010>

Raranta, E. I. (2024). A Systematic Literature Review: Restorative Justice Approaches Resolving Violations of Electronic Information and Transaction Laws in Indonesia. *Jurnal Syntax Admiration*, 5(7), 2760–2770. <https://doi.org/10.46799/jsa.v5i7.1344>

Setiawan, D., Hidaya, W. A., Tuasikal, H., & Afiyah, S. (2024). Green Restorative Justice: Environmental Enforcement and Justice. *Journal of Law and Sustainable Development*, 12(1). <https://doi.org/10.55908/sdgs.v12i1.2545>

Shapland, J., Burn, D., Crawford, A., & Gray, E. (2020). From victimisation to restorative justice: Developing the offer of restorative justice. *The International Journal of Restorative Justice*, 3(2), 194–214. <https://doi.org/10.5553/ijrj.000034>

Shodunke, A. O. (2024). Corrigendum to 'Establishing the nexus among mob justice, human rights violations and the state: Evidence from Nigeria' [Int. J. Crime Crim. Justice Law volume (2023) Start page–End page/100573]. *International Journal of*

*Law, Crime and Justice*, 79(Query date: 2024-12-19 08:52:48), 100696–100696.  
<https://doi.org/10.1016/j.ijlcj.2024.100696>

Trimartini, E., Hartiwiningsih, & Novianto, W. T. (2020). Child Diversion Application Policy that has a Conflict with Law to Make a Restorative Justice in Indonesia. *Proceedings of the International Conference on Law, Economics and Health (ICLEH 2020)*, Query date: 2024-12-19 08:52:48.  
<https://doi.org/10.2991/aebmr.k.200513.063>

Wahyuningsih, S. E., Setiyowati, S., Mahmuhtarom, HR., & Iksan, M. (2023). Implementation of Restorative Justice on Elderly Actors in Criminal Law Enforcement Based on Justice Value in Indonesia. *International Journal of Social Science and Human Research*, 6(2). <https://doi.org/10.47191/ijsshr/v6-i2-41>

Wekke, I. S. (2020). *Desain Penelitian Kualitatif*. Query date: 2024-05-25 20:59:55.  
<https://doi.org/10.31219/osf.io/4q8pz>