

ABDUL MADJID¹, MILDA ISTIQOMAH²

Restorative Justice: A Suitable Response to Environmental Crime in Indonesia?³

Submitted: 9.01.2023. Accepted: 24.06.2023

Abstract

Restorative justice is a way of responding to criminal offences by balancing the needs of the community, the victims and the offenders. It aims to bring all these parties together to collectively resolve the consequences of crime, including the harm caused, with a view to future generations. In the Indonesian legal system, restorative processes have not yet been used to deal with environmental crimes, despite a growing interest in exploring their potential. Therefore, this paper seeks to demonstrate that restorative justice solutions addressing environmental crimes benefit the victims, the offenders, the community and the environment. Further, these solutions may prove to be useful as well as additional discretion to local authorities for redressing the damage to the environment.

Keywords: environmental crime, Indonesian legal system, restorative justice.

¹ Abdul Madjid, PhD – Faculty of Law, Universitas Brawijaya, Malang (Indonesia); e-mail: majid@ub.ac.id; ORCID: 0009-0009-9918-8405.

² Milda Istiqomah, PhD – Faculty of Law Universitas Brawijaya, Malang (Indonesia); e-mail: milda.istiqomah@ub.ac.id; ORCID: 0009-0002-4824-8614.

³ The research in this article has not been supported financially by any institution.

ABDUL MADJID, MILDA ISTIQOMAH

Sprawiedliwość naprawcza – właściwa odpowiedź na przestępczość środowiskową w Indonezji?⁴

Streszczenie

Sprawiedliwość naprawcza to sposób reagowania na przestępstwa poprzez zbilansowanie potrzeb społeczności, ofiar i przestępców. Jego celem jest zebranie wszystkich stron w jednym miejscu, by wspólnie rozwiązać problem skutków przestępstwa, w tym wyrządzonej szkody, mając na uwadze przyszłe pokolenia. W indonezyjskim systemie prawnym jeszcze nie stosowano procesów naprawczych w celu uporania się z przestępczością środowiskową, pomimo coraz większego zainteresowania odkrywaniem potencjału tychże procesów. Autorzy niniejszego artykułu dążą zatem do tego, by pokazać, że rozwiązania oparte na sprawiedliwości naprawczej, które są nakierowane na przestępczość środowiskową, stanowią korzyść dla ofiar, przestępców, społeczności i środowiska. W dodatku owe rozwiązania mogą się także przydać jako dodatkowa swoboda decyzji dla lokalnych władz przy naprawianiu szkody wyrządzonej środowisku.

Słowa kluczowe: przestępczość środowiskowa, indonezyjski system prawny, sprawiedliwość naprawcza.

⁴ Badania wykorzystane w artykule nie zostały sfinansowane przez żadną instytucję.

Introduction

'Punishment makes people bitter, whereas restorative solutions make people better.' (Trevor Chandler, a facilitator in Canada).⁵

The quotation is in line with the topics to be discussed in this study. As we know, in Indonesia, the use of a restorative justice mechanism in criminal cases was first regulated by Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (the SPPA Law). President Joko Widodo, while attending the Special Session of the 2021 Supreme Court (MA) Annual Report, also said that restorative justice efforts must be prioritised in criminal cases,⁶ to reduce the number of overcrowded prisoners in Correctional Institutions (Lapas) to save the state budget.⁷ Therefore, restorative justice, which was initially limited to child offenders was expanded to include adult offenders.

Law enforcement officials from the Supreme Court, the Prosecutor's Office, and the Police have established regulations related to restorative justice, namely:

- 1) Decree of the Directorate General of the General Judiciary of the Supreme Court of the Republic of Indonesia (SK Dirjen Badilum MA) No. 1691/DJU/SK/PS.00/12/2020 concerning the Enforcement of Guidelines for Implementing Restorative Justice;
- 2) Regulation of the Prosecutor of the Republic of Indonesia No. 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice (Perja 15/2020);
- 3) Regulation of the Indonesian National Police No. 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice (Perpol 8/2021). The existence of these regulations is intended to shift the focus of criminal case settlement

⁵ H. Al-Alosi, M. Hamilton, *Australia Should Give Victims a Voice in Tackling Environmental Crimes*, "The Conversation" 2019, <https://theconversation.com/australia-should-give-victims-a-voice-in-tackling-environmental-crimes-115711> (access: 27.12.2022).

⁶ L. Egeham, *Jokowi Minta MA Utamakan Restorative Justice Dalam Perkara Pidana*, "Merdeka.com" 2022, <https://www.merdeka.com/peristiwa/jokowi-minta-ma-utamakan-restorative-justice-dalam-perkara-pidana.html> (access: 27.12.2022).

⁷ W. Yudho, *Sepanjang 2021, Polri Menyelesaikan 11.811 Perkara Melalui Restorative Justice*, Kontan.Co.Id 2022, <https://nasional.kontan.co.id/news/sepanjang-2021-polri-menyelesaikan-11811-perkara-melalui-restorative-justice> (access: 27.12.2022).

towards the restoration of victims' rights, the interests of the parties, and the attainment of justice and mutual benefit.

In the environmental sector, Indonesia also has a regulation that contains the concepts of restorative justice, namely Law No. 32 of 2009 concerning Environmental Protection and Management (The PPLH Law). The PPLH Law has better substance, but it also has deficiencies in criminal provisions that dispute settlement outside the court does not apply to environmental crimes.⁸ Furthermore, in the explanation provisions of the PPLH Law No. 6, the application of the *ultimum remedium* principle only applies to certain formal criminal acts, namely punishment for violating wastewater quality standards, emissions, and nuisance.⁹ If interpreted as *a contrario*, it can be said that other criminal acts regulated in the PPLH Law enforce the principle of *primum remidium*.

The preceding explanation shows that environmental regulations prioritise retributive justice over restorative justice. Even though the development of criminal law reform presently is more focused on a more balanced way of operating the criminal justice system and emphasises efforts to recover from the impact of criminal acts¹⁰ by involving victims, perpetrators, families of victims or perpetrators, and other related parties. As a result, an effective strategy for responding to and preventing environmental crimes is required.¹¹

Research Methods

In this legal study, the authors conduct normative juridical research, which entails legal research methods such as examining literature or secondary materials.¹² This normative legal research is more concerned with existing laws and regulations. Furthermore, the research approaches used are a statutory approach, specifically the PPLH Law, Perpol 8/2021, Perja 15/2020, and SK Dirjen Badilum MA No. 1691/DJU/SK/PS.00/12/2020, as well as a comparative approach, which is carried out by

⁸ Article 85 paragraph (2) of the PPLH Law.

⁹ Based on the elucidation in the PPLH Law, it is stated that: a) *wastewater quality standard* is a measure of the limit or level of pollutants that can be tolerated in the water medium; b) *emission quality standard* is a measure of the limit or level of pollutants that can be tolerated in the air medium; and c) *nuisance quality standard* is a measure of the limit of pollutant elements whose existence is tolerated, which includes elements of vibration, noise, and smell.

¹⁰ R. Yulia, *Viktimologi: Perlindungan Hukum Terhadap Korban Kejahatan*, Yogyakarta 2013.

¹¹ H. Al-Alosi, M. Hamilton, *The Potential of Restorative Justice in Promoting Environmental Offenders' Acceptance of Responsibility*, "University of New South Wales Law Journal" 2021, 44(2), pp. 487–512.

¹² S. Soejono, M. Sri, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Jakarta 2007.

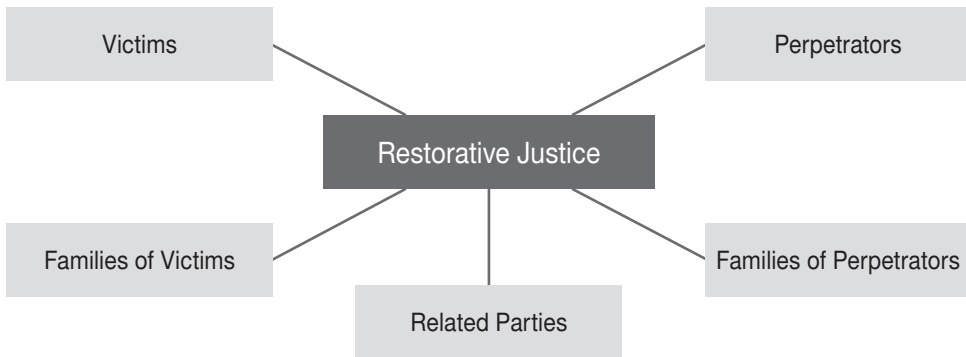
comparing one legal rule with another to provide a holistic picture that is useful for determining the proper legal rules to apply related to the implementation of restorative justice in environmental crimes. The data collection technique used is a literature study that analyses scientific and theoretical literature sources.

Results and Discussion

The Concept of Restorative Justice

In the 1990s, the concept of restorative justice gained international traction. Daly and Hayes stated that, ‘many argue that restorative justice differs from traditional courthouse justice because the aim is to repair the harm caused by crime, not punish the crime’.¹³ In essence, restorative justice is a collaborative process in which victims, perpetrators, families of victims or perpetrators, and other related parties gather to jointly work out how to deal with the consequences of a violation and its future implications.¹⁴

Chart 1. The Concept of Restorative Justice



Source: Secondary Data, processed in 2023.

Restorative justice can reduce the likelihood of re-offending, increase victim satisfaction, and make perpetrators feel more responsible for their actions when compared to traditional criminal justice processes. This is because victims can

¹³ K. Daly, H. Hayes, *Restorative Justice and Conferencing in Australia*, Canberra 2001.

¹⁴ M. Armour, *Restorative Justice: Some Facts and History*, “Charter for Compassion”, <https://charterforcompassion.org/restorative-justice/restorative-justice-some-facts-and-history> (access: 2.01.2022).

explain the impact they experienced as a result of a crime, while perpetrators can provide reasons why they committed the crime and apologise to the victims, during the restorative justice conference process. Furthermore, compensation can be agreed upon between the victims and the perpetrators.¹⁵ There are two types of models in restorative justice conferences, as explained below:

Front-End and Back-End Models in Restorative Justice Conferences

The front-end model is implemented as a form of diversion from prosecution.¹⁶ In this model, conferences are usually held by presenting perpetrators, victims, facilitators, police, and other relevant stakeholders. If the perpetrators fail to carry out the results of the conference that have been mutually agreed upon, then the problem will be resolved by the court again.¹⁷

The back-end model is the concept of a restorative justice conference, which is used after the indictment or accusation but before the conviction of the perpetrator. These conferences are closed to the public and under the guidance of trained and independent facilitators. Moreover, the back-end model of restorative justice conferences is ideally carried out early in the judicial process. In addition, the judicial process is adjourned to allow for the holding of a conference, and then the case will be returned to the court for a sentencing decision.¹⁸

Although several studies require a front-end model conference to deal with environmental violations,¹⁹ this model has some limitations. This is because there is no court oversight, so if the conference is successful and the results are followed by the parties, the matter is not brought to court. Procedural justice, consistent punishments and proportionate punishments also cannot be guaranteed. It is also feared that using this model will result in perpetrators agreeing to a heavier outcome than what a court might impose and cause disproportionate and inconsistent results. Therefore, the back-end model is considered appropriate because the problem is returned to the court following the conference, so the court can exercise oversight.

¹⁵ H. Al-Alosi, M. Hamilton, *Australia Should Give...*

¹⁶ J.J. Larsen, *Restorative Justice in the Australian Criminal Justice System*, "AIC Reports Research and Public Policy Series" 2014, 127, p. 25.

¹⁷ M. McLachlan, *Environmental Justice in Canterbury*, "Public Sector" 2014, 37(4), pp. 22–23.

¹⁸ H. Al-Alosi, M. Hamilton, *The Ingredients of Success for Effective Restorative Justice Conferencing in an Environmental Offending Context*, "University of New South Wales Law Journal" 2019, 42(4), pp. 1460–1488.

¹⁹ Ch. Parker, *Restorative Justice in Business Regulation? The Australian Competition and Consumer Commission's Use of Enforceable Undertakings*, "The Modern Law Review" 2004, 67(2), pp. 209–246.

The Application of Restorative Justice in Environmental Crimes in New Zealand

New Zealand is a world leader in using restorative justice to handle environmental crime cases. The application of restorative justice in New Zealand is inseparable from the existence of two previous regulations from 2002. First, the Victim's Rights Act 2002 states that if possible, a court or other representative must arrange a restorative justice conference based on the victim's request (Article 9 of the Amendment to the Victim's Rights Act). Second, the Sentencing Act of 2002 requires judges to consider the results of restorative justice conferences when making decisions (Article 8(j) of the Sentencing Act of 2002).²⁰

The back-end model is the most common conference model in New Zealand. It is integrated into the criminal justice system, becomes part of the sentencing decision and is overseen by the court.²¹ Additionally, in 2004, New Zealand's Ministry of Justice published eight best practice principles for restorative justice proceedings in criminal cases, many of which are similar to those of UNODC. New Zealand courts have also issued guidelines on those principles, as well as an analysis of relevant environmental offences case law emphasizing the inclusive nature of restorative justice conferences.

The legal case in New Zealand, which was conducted through a restorative justice conference, showed various things that were reached between the parties, namely:

- 1) an apology;
- 2) donations to various organisations to fund projects aimed at better environmental protection;
- 3) publication of newspaper articles to raise public awareness regarding environmental damage and its consequences;
- 4) a commitment to tackling deviant behaviour (such as dialogue to justify wrong behaviour, plans to prevent events from recurring in the future, agreements to collaborate with certain local governments to find solutions in resolving problems that cause harm and carry out ongoing consultations);
- 5) carry out the payment of compensation for costs related to violations, such as board fees, facilitator fees and clean-up fees;
- 6) carry out work or make payments to repair environmental damage caused by violations and try to prevent similar damage in the future.²²

²⁰ H. Al-Alosi, M. Hamilton, *Australia Should Give...*

²¹ *Ibidem*, *The Ingredients of Success...*

²² *Ibidem*.

Based on the research conducted by Al-Alosi and Hamilton, it was stated that the results of restorative justice conferences were more effective in dealing with losses than the punishments regulated in related regulations. Furthermore, the results of restorative justice conferences have the additional benefit of mending differences in understanding between perpetrators and victims and preventing the recurrence of violations.²³

The Application of Restorative Justice in Environmental Crimes in Australia

In Australia, the restorative justice approach to tackling environmental crimes is underutilised.²⁴ Australia only used restorative justice conferences in two environmental crime cases, namely *Garret v. Williams*²⁵ in 2007 and *the Chief Executive, Office of Environment and Heritage v. Clarence Valley Council*²⁶ in 2018. Both cases involved violations of Aboriginal cultural heritage and violations of the New South Wales National Parks and Wildlife Act 1974. The results of these restorative justice conferences went far exceeded what the courts could sentence against the offenders.²⁷ The use of restorative justice conferences in Australia in dealing with environmental crimes was influenced by New Zealand courts, which used a back-end model as part of sentencing decisions.

Williams, as Chief Director and Secretary of Pinnacle Mines (a mining company), built exploration pits and private railroads through important indigenous areas. He was then prosecuted under Article 90(1) of the New South Wales National Parks and Wildlife Act 1974 (this rule has since been repealed), which states:

A person who, without first obtaining the consent of the Director-General, knowingly destroys, defaces or damages, or knowingly causes or permits the destruction or defacement of or damage to, an Aboriginal object or Aboriginal place is guilty of an offense against this Act.

The maximum penalty at that time was a fine of A\$5,500 and/or 6 months imprisonment. However, before sentencing, Justice Preston (the Chief Judge of the Land and Environment Court of New South Wales) advised the parties to get involved

²³ Ibidem.

²⁴ H. Al-Alosi, M. Hamilton, *Australia Should Give...*

²⁵ [2007] 151 LGERA 92 ('Williams').

²⁶ [2018] NSWLEC 205 ('Clarence Valley Council').

²⁷ H. Al-Alosi, M. Hamilton, *The Ingredients of Success...*

in a restorative justice conference. As a result of the conference, Craig Williams donated goods worth A\$32,200 to the local Aboriginal population.²⁸

Meanwhile, in the Clarence Valley Council case, the Council was found guilty of damaging an Aboriginal object (Scar Tree), which was carried out by the Council's employees. The Council recognised that the Scar Tree was protected by law and considered culturally important to the local Gumbaynggirr people.²⁹ Therefore, the Council was sued under Article 86(1) of the New South Wales National Parks and Wildlife Act 1974, which states, '[a] person must not harm [...] an object that the person knows is an Aboriginal object'. At the sentencing hearing, the Council agreed to participate in a restorative justice conference with representatives from Aboriginal communities whose cultural heritage had been damaged by the offender.³⁰

By the end of the restorative justice conference, it was agreed that the Council should make a donation of \$300,000 to Grafton Ngerrie Local Aboriginal Land Council. The donation was used to increase knowledge and awareness of local Aboriginal history and culture, both within the Council and throughout the Clarence Valley region.³¹ The result was deemed to be more beneficial to the victims than what the court would have imposed if the matter had not been brought up at a restorative justice conference. Even if the courts impose the maximum penalty on the Council for violations of Article 86(1) of the New South Wales National Parks and Wildlife Act 1974, the maximum fine for the corporation was \$1,100,000. However, the funds had to be transferred to the New South Wales government's consolidated revenue funds. After the funds were deposited, the government was not obligated to spend them on financing related to the violations that had occurred.³²

It is also worth noting that no legislative provision in New South Wales explicitly allows the Land and Environment Court of New South Wales to suspend proceedings in order to hold a restorative justice conference. However, courts have the legislative power to ensure the efficient management and execution of trials or sentencing, which allows for restorative justice conferences. In this regard, the Restorative Justice Unit of Corrective Services also stated that, 'a victim-offender conference will only take place if the "offender takes responsibility for the offense."³³

²⁸ *Idem*, *Australia Should Give...*

²⁹ [2018] NSWLEC 205 ('Clarence Valley Council').

³⁰ [2018] NSWLEC 205 ('Clarence Valley Council').

³¹ M. Hamilton, *Restorative Justice Intervention in an Aboriginal Cultural Heritage Protection Context: Chief Executive, Office of Environment and Heritage v. Clarence Valley Council*, "Environmental and Planning Law Journal" 2019, 36(3), p. 197, <https://search.informit.org/doi/abs/10.3316/agispt.20190608011803> (access: 27.12.2022).

³² H. Al-Alosi, M. Hamilton, *The Ingredients of Success...*

³³ *Idem*, *The Potential of Restorative Justice...*

The restorative justice mechanism has a lot to offer in helping to overcome the problem of environmental crime because this mechanism involves the victim in its resolution.³⁴ However, not all victims want to participate in the restorative justice conference process. In such cases, the conference may proceed only with the consent of the victim. However, it should also be noted that the conduct of restorative justice conferences may not be appropriate in all cases.

The Arrangement of Restorative Justice in Combatting Environmental Crimes in Indonesia

When discussing restorative justice in Indonesia, it will not be separated from several related regulations which will be discussed by the author, namely Perpol 8/2021, Perja 15/2020, and SK Dirjen Badilum MA No. 1691/DJU/SK/PS.00/12/2020.

Perpol 8/2021

The following activities are used to handle criminal acts in accordance with restorative justice: 1) carrying out the criminal detective function (general requirements); 2) preliminary investigation (general and special requirements); or 3) full investigation (general and special requirements). It must also meet several requirements, namely:

Table 1. The Requirements for the Implementation of Restorative Justice based on Perpol 8/2021

Special Requirements	General Requirements	
	Material	Formal
<ul style="list-style-type: none"> ■ Electronic Information and Transaction Crime (vide Article 8 of Perpol 8/2021); ■ Drug Crime (vide Article 9 of Perpol 8/2021); and ■ Traffic Crime (vide Article 10 of Perpol 8/2021). 	<ul style="list-style-type: none"> ■ Does not cause public unrest and/or community rejection; ■ Does not impact social conflict; ■ Does not have the potential to divide the nation; ■ Does not have a radical and separatist nature; ■ Not a repeat offender based on a court decision; and ■ Not a crime of terrorism, a crime against state security, a crime of corruption, and a crime against people's lives. 	<ul style="list-style-type: none"> ■ Reconciliation of both parties (except in the case of drug crime); ■ Fulfilment of victims' rights and perpetrators' responsibilities (except in the case of drug crime) through the return of goods, compensation for costs incurred as a result of the crime, and replacement of the crime's damage; ■ Peace agreement signed by the parties or victims.

Source: primary data, processed in 2023.

³⁴ *Iidem, The Ingredients of Success...*

Perja 15/2020

According to this provision, restorative justice can be applied at the prosecution stage. Criminal cases can be closed for law and the prosecution can be ceased with the following conditions: 1) the suspect is committing a crime for the first time; 2) criminal acts are only punishable by fines or imprisonment for a maximum of 5 (five) years; and 3) the crime was committed with the value of the evidence or losses incurred not exceeding Rp. 2,500,000.

In addition, there are also other conditions for the termination of prosecution based on restorative justice, namely: 1) there has been a restoration to its original state, so the suspect has returned goods obtained from the crime to the victim, compensated the victim for losses, reimbursed costs incurred as a result of a crime, and/or repaired the damage caused by a crime; 2) there has been a settlement agreement between the victim and the suspect; and 3) the community has responded positively.

It is necessary to note that the termination of prosecution based on restorative justice cannot be applied to: 1) crimes against state security, the dignity of the President and Vice President, Indonesian allies, the heads of Indonesian allies and their representatives, public order, and decency; 2) criminal acts that are punishable with a minimum penalty; 3) narcotics crimes; 4) environmental crimes; and 5) criminal acts committed by corporations.

The implementation of restorative justice is carried out by the Public Prosecutor (a facilitator) at the prosecution stage (handing over responsibility for the suspect and evidence (stage two)), by offering peace efforts to victims and suspects that are carried out without pressure, coercion, and intimidation. It can also involve their families, community leaders, and other related parties by informing them of the objectives, also the rights and obligations of victims and suspects in reconciliation, including the right to reject it. If the reconciliation is rejected, the Public Prosecutor shall transfer the files to the court.

SK Dirjen Badilum MA

The settlement of cases through restorative justice is carried out for: 1) minor offences; 2) cases of women in conflict with the law; 3) children's cases; and 4) narcotics cases. A minor offence is defined as a crime with a criminal penalty as defined in Articles 364, 373, 379, 384, 407, and 482 of the old Indonesian Criminal Code, with a maximum loss value of Rp. 2,500,000. Furthermore, women who are in conflict with the law may be victims, witnesses, or parties. In the case of children, there are three types, including children in conflict with the law who are 12 years old, but not yet 18 years old, and are suspected of committing a crime, children under the age of 18 who are victims of criminal acts and suffer physical, mental and/or

economic harm, and also children under the age of 18 who are witnesses and can provide information for the benefit of the legal process beginning with the investigation, prosecution, and court hearings of a criminal case they heard, saw and/or experienced. Finally, there are narcotics cases, specifically against narcotics addicts, abusers, and victims of narcotics abuse.

Minor criminal cases can be settled through restorative justice if peace has been established between perpetrators, victims, families of perpetrators/victims and related community leaders who are involved in a case with or without compensation. If the peace process is successful, the parties draft a peace agreement, which is then signed by the defendant, victim, and related parties, and the peace agreement is included in the judge's decision-making process. If the peace agreement fails, the single judge continues the examination process, and during the trial, the judge strives for peace and promotes restorative justice in the decision. Restorative justice does not apply to repeat offenders (recidivists).

Based on these three regulations, it can be concluded that the regulations related to restorative justice in Indonesia apply a front-end model (Perpol 8/2021 and Perja 15/2020) and a back-end model (SK Dirjen Badilum MA No. 1691/DJU/SK/PS.00/12/2020). In addition, there are regulations that explicitly state that environmental crimes cannot be resolved through restorative justice (Perja 15/2020). Similarly, in Perpol 8/2021 and SK Dirjen Badilum MA Number: 1691/DJU/SK/PS.00/12/2020, environmental crimes are not listed as crimes that can be resolved through restorative justice.

This is, of course, inseparable from the specific provisions, namely the PPLH Law. It can be seen in Article 85(2), which states that dispute resolution outside of the court does not apply to environmental crimes. Furthermore, the explanation of PPLH Law No. 6 states that, 'the application of the *ultimum remedium* principle [...] only applies to certain formal criminal acts, namely punishment for violating wastewater quality standards, emissions, and disturbances.' This becomes problematic when the provisions of Article 78 of the PPLH Law state that, 'the administrative sanctions referred to in Article 76 do not absolve those in charge of a business and/or activity from the responsibility in recovery and the criminal responsibility.'³⁵ This provision, of course, precludes any environmental crimes from being resolved

³⁵ Article 76 of the PPLH Law

- (1) The minister, governor, or regent/mayor applies administrative sanctions to those in charge of businesses and/or activities if violations of environmental permits are found under supervision.
- (2) Administrative sanctions consist of:
 - a. written warning;
 - b. government coercion;
 - c. suspension of environmental permits; or
 - d. revocation of environmental permits.

outside of court. In fact, punishment should only be used as a last resort if all other efforts fail.

Therefore, the authors believe that the current regulations need to be reformulated by prioritizing the use of restorative justice, as implemented in Australia (New South Wales) and New Zealand. This is because criminal punishment for perpetrators (individuals and corporations) tends to be ineffective and unfair to victims and the community.

Table 2. Several Verdicts against Perpetrators of Environmental Crimes

Decision Number	Legal Subject	Verdict
17/Pid.Sus/2015/PN Plw	Individual	Guilty; 1 year 4 months in Prison; Fine of one billion rupiahs
388/Pid.B/LH/2020/PN Rhl	Individual	Guilty; 1 year 6 months in Prison; Fine of one billion rupiahs
2/Pid.Sus-LH/2016/PN Rta	Individual	Guilty; 1 year 4 months in Prison; Fine of one and a half billion rupiahs
3/Pid.B/LH/2021/PN Pps	Individual	Guilty; 1 year in Prison; Fine of one billion rupiahs
18/Pid.Sus-LH/2016/PN Kik	Corporation	Guilty; Fine of five billion rupiahs
44/Pid.B/LH/2020/PN Rhl	Individual	Guilty; 1 year 6 months in Prison; Fine of one billion rupiahs

Source: primary data, processed in 2023.

The authors believe that the restorative justice conferences held by Australia (New South Wales) and New Zealand can be applied by Indonesia to improve future policies, such as: (1) the application of criminal sanctions must be placed as a last resort (*ultimatum remedium*) if the victim or perpetrator refuses to participate in a restorative justice conference; (2) regulations related to the implementation of restorative justice conferences for environmental crimes in Indonesia need to be unified and adjusted to a minimum of imprisonment and fines; (3) the restorative justice conference is held at the request of the victim, and the perpetrator is also willing to take responsibility for the actions committed; (4) even though this conference is held at the request of the victim, the judge is allowed to offer the conference to be held at each stage of the trial; (5) this conference employs a back-end model with the aim of being integrated with the criminal justice system so that the courts can be involved in supervision, and the results of this conference can be used by the judge as material for consideration in imposing a proportional and consistent verdict; (6) the result to be achieved is the agreement of the parties with the goal of environmental sustainability.

This is, obviously, an appropriate response that is consistent with the goals of reforming Indonesian criminal law, one of which is the purpose of sentencing and how cases are resolved (including environmental cases).³⁶ The current retributive atmosphere in criminal law will place victims in a passive position, resulting in the goal of protecting society through criminal instruments not being maximised.³⁷

As a result, the authors hope that the results of restorative justice conferences in environmental crimes will be more beneficial to victims than what the court will sentence. In addition, the authors hope that the results of the restorative justice conference will have additional benefits, such as improving the relationship between perpetrators and victims, and preventing the recurrence of violations.

Conclusion

When discussing the restorative justice approach, it cannot be separated from the two countries that are world leaders in using this approach, namely New Zealand and Australia (New South Wales). Restorative justice conferences are used in both New Zealand and Australia (New South Wales) to combat environmental crimes, though in Australia (New South Wales) these conferences are underutilised. In conducting restorative justice conferences, these two countries employ a back-end model. This model is considered appropriate because the problem is returned to the court following the conference (with stakeholders). Thus, the courts can exercise oversight over the results of restorative justice conferences and ensure that the objectives of sentencing are met in a proportionate and consistent manner.

In Indonesia, even though there are regulations governing the implementation of restorative justice, namely Perpol 8/2021, Perja 15/2020, and SK Dirjen Badilum MA No. 1691/DJU/SK/PS.00/12/2020, environmental crimes are not explicitly or implicitly included as crimes that can be resolved through restorative justice conferences. Therefore, Indonesia can learn from restorative justice conferences conducted by New Zealand and Australia (New South Wales), such as the use of criminal law as a last resort, the conference is held at the request of the victim and the responsibility of the perpetrator, the judge is allowed to offer a conference at each stage of the trial, and the use of the back-end model of restorative justice conference.

³⁶ A.F. Triwijaya, Y.A. Fajrin, Ch. Meilany Nurrahma, *Dual Mediation: Penyelesaian Perkara Lingkungan Hidup Yang Melibatkan Korporasi Sebagai Pelaku Melalui Pendekatan Restorative Justice*, "Jurnal Magister Hukum Udayana" 2020, 9(2).

³⁷ R. Yulia, *op. cit.*

Bibliography

- Al-Alosi H., Hamilton M., *Australia Should Give Victims a Voice in Tackling Environmental Crimes*, "The Conversation" 2019, <https://theconversation.com/australia-should-give-victims-a-voice-in-tackling-environmental-crimes-115711> (access: 27.12.2022).
- Al-Alosi H., Hamilton M., *The Ingredients of Success for Effective Restorative Justice Conferencing in an Environmental Offending Context*, "University of New South Wales Law Journal" 2019, 42(4), pp. 1460–1488.
- Al-Alosi H., Hamilton M., *The Potential of Restorative Justice in Promoting Environmental Offenders' Acceptance of Responsibility*, "University of New South Wales Law Journal" 2021, 44(2), pp. 487–512.
- Armour M., *Restorative Justice: Some Facts and History*, "Charter for Compassion", <https://charterforcompassion.org/restorative-justice/restorative-justice-some-facts-and-history> (access: 2.01.2022).
- Daly K., Hayes H., *Restorative Justice and Conferencing in Australia*, Canberra 2001.
- Egeham L., *Jokowi Minta MA Utamakan Restorative Justice Dalam Perkara Pidana*, "Merdeka.com" 2022, <https://www.merdeka.com/peristiwa/jokowi-minta-ma-utamakan-restorative-justice-dalam-perkara-pidana.html> (access: 27.12.2022).
- Hamilton M., *Restorative Justice Intervention in an Aboriginal Cultural Heritage Protection Context: Chief Executive, Office of Environment and Heritage v. Clarence Valley Council*, "Environmental and Planning Law Journal" 2019, 36(3), pp. 197–211, <https://search.informit.org/doi/abs/10.3316/agispt.20190608011803> (access: 27.12.2022).
- Larsen J., *Restorative Justice in the Australian Criminal Justice System*, "AIC Reports Research and Public Policy Series" 2014, 127, p. 25.
- McLachlan M., *Environmental Justice in Canterbury*, "Public Sector" 2014, 37(4).
- Parker Ch., *Restorative Justice in Business Regulation? The Australian Competition and Consumer Commission's Use of Enforceable Undertakings*. "The Modern Law Review" 2004, 67(2), pp. 209–246.
- Soejono S., Sri M., *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Jakarta 2007.
- Triwijaya A.F., Fajrin Y.A., Meilany Nurrahma Ch., *Dual Mediation: Penyelesaian Perkara Lingkungan Hidup Yang Melibatkan Korporasi Sebagai Pelaku Melalui Pendekatan Restorative Justice*, "Jurnal Magister Hukum Udayana" 2020, 9(2).
- Yudho W., *Sepanjang 2021, Polri Menyelesaikan 11.811 Perkara Melalui Restorative Justice*, Kontan.Co.Id 2022, <https://nasional.kontan.co.id/news/sepanjang-2021-polri-menylesaikan-11811-perkara-melalui-restorative-justice> (access: 27.12.2022).
- Yulia R., *Viktimologi: Perlindungan Hukum Terhadap Korban Kejahatan*, Yogyakarta 2013.