

Restorative Justice as a Human Rights Protection Mechanism for Marginalized Groups in the Indonesian Legal System

Keadilan Restoratif sebagai Mekanisme Perlindungan Hak Asasi Manusia bagi Kelompok Marginal dalam Sistem Hukum Indonesia

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Abstract

Based on the mandate of the law, everyone has the same position in law or what we call it equality before the law. However, in reality this does not apply to the marginalized. Several legal cases of marginalized people do not receive protection of human rights (HAM) in completing the legal process. For this reason, the state has begun to change the pattern of legal settlement by using the concept of restorative justice with the hope that the marginalized will get justice. This paper employs a normative juridical approach and utilizes secondary data to analyze the potential of restorative justice to uphold human rights protections for marginalized groups throughout the legal process. To date, marginalized groups have not achieved optimal outcomes in legal cases, often receiving disproportionately harsh sentences and imprisonment for minor offenses. Such cases may be better addressed through restorative justice methods, which better align with the human rights of marginalized individuals. Accordingly, this article examines restorative justice as a potential solution for marginalized groups in resolving legal issues. Restorative justice prioritizes fairness for victims, offenders, and the broader community, irrespective of social status. Through this approach, marginalized groups are anticipated to be better able to safeguard their human rights during legal proceedings.

Keywords

Human Rights; Marginalized People; Restorative Justice.

Abstrak

Berdasarkan amanat hukum, setiap orang memiliki kedudukan yang sama di hadapan hukum atau yang kita sebut kesetaraan di hadapan hukum. Namun, pada kenyataannya hal ini tidak berlaku bagi kelompok yang terpinggirkan. Beberapa kasus hukum yang melibatkan kelompok terpinggirkan tidak mendapatkan perlindungan hak asasi manusia (HAM) dalam menyelesaikan proses hukum. Karena alasan ini, negara telah mulai mengubah pola penyelesaian hukum dengan menggunakan konsep keadilan restoratif dengan harapan kelompok terpinggirkan akan mendapatkan keadilan. Makalah ini menggunakan pendekatan yuridis normatif dan memanfaatkan data sekunder untuk menganalisis potensi keadilan restoratif dalam menegakkan perlindungan hak asasi manusia bagi kelompok terpinggirkan sepanjang proses hukum. Hingga saat ini, kelompok terpinggirkan belum mencapai hasil optimal dalam kasus-kasus hukum, seringkali menerima hukuman yang tidak proporsional dan penjara untuk pelanggaran ringan. Kasus-kasus seperti itu mungkin dapat ditangani dengan lebih baik melalui metode keadilan restoratif, yang lebih selaras dengan hak asasi manusia individu yang terpinggirkan. Oleh karena itu, artikel ini mengkaji keadilan restoratif sebagai solusi potensial bagi kelompok terpinggirkan dalam menyelesaikan masalah hukum. Keadilan restoratif memprioritaskan keadilan bagi korban, pelaku, dan masyarakat luas, tanpa memandang status sosial. Melalui pendekatan ini, kelompok-kelompok yang terpinggirkan diharapkan dapat lebih mampu melindungi hak asasi manusia mereka selama proses hukum.

Kata Kunci

Hak Asasi Manusia; Kelompok Marjinal; Keadilan Restoratif.

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1. Introduction

Indonesia is a constitutional state, meaning that everyone has the right to legal protection. This is stated in the provisions of Article 28 D paragraph (1) of the 1945 Constitution, namely that everyone has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law. Then this rule was emphasized with the issuance of Law No. 16 of 2011 concerning legal aid. Where the state regulates legal aid for everyone free of charge to recipients of legal aid in accordance with Article 1 number 1 of Law No. 16 of 2011.

As for the provision of legal assistance by the state to poor people who are in trouble with the law based on Article 2 of Law No. 16 of 2011 is the principle,

- a. justice, means placing the rights and obligations of each person in a proportional, proper, right, good, and orderly manner;
- b. equality before the law, meaning that everyone has the same rights and treatment before the law and the obligation to uphold the law;
- c. openness, meaning giving access to the public to obtain complete, correct, honest and impartial information in obtaining guarantees of justice on the basis of constitutional rights;
- d. efficiency, meaning maximizing the provision of legal aid through the use of existing budgetary resources;
- e. effectiveness, meaning determining the achievement of the objectives of providing legal aid appropriately and
- f. accountability for each activity and the final results of the activities of organizing legal aid must be accountable to the public (Article 2 of Law No. 16 of 2011 and its explanation).

The six principles contained in Law Number 16 of 2011 are in accordance with the principles of universal legal aid, which are accessible, financed by the state (affordability), sustainable, impartial (credibility), and accountable (accountability).

In Perma No. 1 of 2014 concerning Guidelines for Provision of Legal Services for Poor People in Courts, the Supreme Court (MA) has regulated fee waivers for the poor. Poor here is defined as people who are unable. The provision of these services is based on Article 1 number 1 in conjunction with Article 4 Perma No. 1 of 2014 consisting of waiver of court fees, hearings outside the court building, Posbakum Courts within the General Courts, Religious Courts and State Administrative Courts. Components of the costs resulting from the waiver of court fees according to Article 11 paragraph (1) Perma No. 1 of 2014 consist of stamp duty, costs of summoning the parties, costs of notification of the contents of the decision, costs of confiscation of guarantees, costs of local examinations, costs of witnesses/experts, costs of execution, tools office writing, duplicating/photocopying of files and letters related to case files, duplicating copies of decisions, sending notifications of registration numbers to the court of appeals and the parties, copies of decisions, case files and other letters deemed necessary, filing and binding case files that have been minuted and duplication of clerk's work equipment that is used by the state.

However, the existence of rules that provide legal protection in the form of legal aid, the maximum benefit of the community has not been felt. The provision of legal aid is only given to some poor people who face legal problems, it has not touched women, children, laborers, farmers, victims of environmental pollution, marginalized communities (Huda et al., 2023). The definition of the marginalized is that people who are synonymous with the urban poor,

who work as scavengers, beggars, homeless people, or unskilled [Satrih \(2021\)](#) many have not received legal protection during the legal process.

The case of Minah's grandmother, for example, is an example of cases of marginalized people who do not receive maximum legal protection in the process and resolution. The reason is that for the sake of legal certainty, this mild case of theft of three cacao must be processed in a complicated way and it is detrimental to the suspect, in this case Minah's grandmother, who is a marginalized group, more than what she did. A number of other cases, the theft of Grandma Asyani's teak wood, the theft of cassava and so on, have yet to receive maximum legal protection. They must be punished and tried by carrying out all existing legal processes, starting from the filing at the Police, the Prosecutor's Office to the Court which spends more material and energy than what they did.

This seems unfair to marginalized people who, under their circumstances, are forced to commit minor acts of violating the law but must be processed as if they had committed a major crime. Existing legal aid has not been able to help these marginalized people in obtaining human rights in resolving their legal cases. Whereas the provision of legal aid for the poor is a manifestation of access to justice, namely equality before the law. This legal settlement with another concept is needed for the marginalized.

Minah's grandmother case initiated the birth of the Chief of Police Circular Number SE/8/VII/2018 concerning the Implementation of Restorative Justice. Completion of legal processes that prioritize the recovery of losses arising from criminal acts on the agreement of victims, perpetrators and the community in order to realize legal objectives, namely justice, certainty and legal benefits ([Suhardi, 2021](#)). Solution with concept restorative justice This is considered to be able to realize a sense of justice and uphold human rights for poor people who commit crimes due to socio-economic conditions.

Restorative justice emphasizing the resolution of crimes by involving all interested parties due to the occurrence of criminal acts that prioritize reconciliation between the parties involved, avoiding repressive actions that solely suffer the perpetrators with the aim of retaliation or prevention and the sole aim of rehabilitating the perpetrators. So restorative justice is a process that seeks to involve all parties in resolving problems and discussing their impact in order to arrive at an agreement on what should be done so that the rights that have been violated as a result of the suffering are restored.

This settlement is considered to be the answer for the marginalized in carrying out all the legal processes that are being undertaken in a more humane manner and in accordance with human rights. In his writings, Albert Eglash in the 1950s argued that restorative efforts are a form of a criminal justice system that focuses on efforts to restore or restore the detrimental effects of a person's actions and there are opportunities for perpetrators to find ways to repair the damage they have done to the interests of the victim. Restorative justice in the opinion of Howard Zehr is a justice to restore trust (justice as restoration of trust) in which the perpetrator's position obtains restoration of trust in both personal and social relationships.

The existing retributive-based criminal law has proven to be less pro-marginalized. By processing all legal actions, light or heavy, starting from the police, prosecutors to courts without any element of forgiveness and even tend to neglect human rights (HAM). So, it needs to be abandoned, and criminal law needs to return to traditional community values that promote peace (reconciliation). This is done to achieve justice in accordance with the mandate of the law and Pancasila. So far, the provisions of the old Criminal Code have not explicitly defined which should take precedence over legal certainty and justice, resulting in

suboptimal application of human rights for marginalized groups. Therefore, the author believes a restorative justice approach could be a bright spot for creating legal justice.

The rigid nature of the Criminal Code (text) can result in decisions that are formally correct but substantively unfair, thus continuing this debate. Law No. 1 of 2023 concerning the Criminal Code, which came into effect in 2026, requires judges to prioritize justice in cases of conflict, as law without justice is considered unworthy of being called law, even though justice without law can be "deficit." The application of restorative justice is an ideal solution for resolving cases involving marginalized groups. The restorative justice approach offers justice in accordance with human rights for both victims and suspects through mutual agreement.

The author believes this approach is more optimal and applicable for resolving cases among marginalized groups. Currently, legal aid has numerous bureaucratic requirements and provisions, making it less than optimal for assisting marginalized groups. The legal aid law also doesn't specify the elements of an agreement between the victim and the accused, preventing an agreement between the two parties, and ultimately depriving marginalized groups of their human rights in resolving their legal cases.

The fulfillment of human rights for vulnerable and marginalized groups in Indonesia is often a challenge because there are many complaints from the public that they receive discrimination from the government, including law enforcement officials, in carrying out the legal process. Some of the actions that were most frequently complained about were related to abuse and arrest, difficulties in obtaining education, disbandment of training, violence in the legal process, as well as expulsion and persecution (Manullang et al., 2025).

However, every citizen has the right to legal protection as part of the human rights that everyone has. Human Rights are rights that are inherent in every person which is a gift from God Almighty. As a gift, human rights are closely attached to every human being, whoever he is, including terrorists. No one or any party can arbitrarily deprive a person of human rights, including the government. By trying terrorists through a legal process by prioritizing the principle of proper legal process in the corridors of the criminal justice system.

Reasonable legal process According to the black law dictionary is a legal process that prioritizes human rights over all legal issues before the court in the most comprehensive sense, namely to be heard, with testimony or otherwise, and to have the right to refute, with evidence, any material facts related to the right to ask any questions. Thus, the model of the criminal justice system that applies such a process model is appropriate restorative justice is a model of criminal justice that emphasizes human rights as described in Article 9 paragraph (2) of Law No. 39 of 1999 concerning Human Rights.

Therefore, the completion of restorative justice is expected to be a solution for marginalized groups in obtaining justice and human rights when undergoing legal proceedings. By getting legal assistance both as victims and perpetrators of cases with an agreement that benefits all parties.

According to benefits of the solution restorative justice according to Prof. Harkristuti in the MA Focus Group Discussion entitled "Draft Government Regulation Concerning Settlement of Criminal Cases Outside Court Based on Restorative Justice" namely, allowing each case to be considered individually to achieve a sense of justice for society and all parties, respect and protect human rights and their sense of justice -each party, build understanding between the parties and encourage social harmony. That way, restorative justice can be the answer in upholding human rights for the legal settlement of marginal groups.

By using a normative juridical approach and qualitative data, this study will explain whether a settlement using restorative justice can be the answer for upholding human rights for marginalized people in the settlement of legal cases and how human rights are enforced for the settlement of marginal people. Because previous research only explained about upholding human rights to marginalized people with legal assistance without anything to do with restorative justice or legal settlement of the marginalized by using the concept restorative justice without discussing human rights. Therefore, this study is expected to be the answer for upholding human rights for marginalized people in the legal process with a settlement using restorative justice.

2. Methods

This article is descriptive using a normative juridical approach and secondary data. Secondary legal materials were obtained from literature studies such as laws, books, theses and other literature. Apart from that, data collection was carried out on tertiary legal materials from printed and online news, involving qualitative analysis with empirical normative aspects through descriptive analysis methods to produce inductive conclusions. This paper will analyze how restorative justice can uphold human rights protection for marginalized people in completing the legal process.

3. Results and Discussion

3.1. Completion of Restorative Justice in Cases of Marginalized People

A statement about the implementation and enforcement of law in Indonesia that is very popular in society is the adage "law is sharp downwards but blunt upward". The statement certainly has a strong reason by witnessing the phenomenon of the implementation of criminal law enforcement against cases that occur in Indonesia. There is an assumption that if a person is in trouble or facing the law but has a background such as economics, position, influence in the government or power then he will get privileges, on the other hand if the person is an ordinary person, the economy is weak and does not have power relations then law enforcement will be carried out which is firm and hard.

In simple terms, it can be understood that law has a coercive nature accompanied by threats and sanctions. But the law is not forced to justify wrong issues, or to force the common people and let arbitrary rulers commit violations with impunity. However, so that the law becomes a rule in the life of the nation and state. For this reason, criminal law experts say that the purpose of criminal law and punishment is to frighten people, so they don't commit crimes (preventive), as well as to educate or improve people who have committed crimes to become good people (repressive). Therefore, procedures for resolving criminal law issues in Indonesia have been regulated in such a way through the mechanism of the trial process in court to create legal certainty.

Since President Susilo Bambang Yudhoyono used the term Out of Court Settlement (Settlement outside the Court) for the case of the KPK leadership at that time, namely Bibit S. Rianto-Chandra M. Hamzah, the term also became popular. The people also learned a new lesson, namely that settlement of cases can also be done outside the court. When viewed from the perspective of legal sociology, the President's decision to stop the Bibit-Chandra case is not too extraordinary. There are many formats for carrying out the adjudication function. Marc Galanter named it justice in many rooms (trials can be held in many places), without the need for formal formats and procedures.

Settlement of criminal cases outside the court can also be found in Law No. 11 of 2012 concerning the Juvenile Justice System, but with a limited nature. This can be seen in Article 1 stating that restorative justice is the settlement of criminal cases by involving the perpetrator, victim, victim's family, perpetrator/victim's family and other related parties to jointly seek a fair solution by emphasizing restoration to its original state and not retribution. Hence, the concept of restorative justice can be said to carry the concept of deliberation in the settlement of criminal cases outside the court.

Draft Restorative Justice offers answers to important issues in the settlement of criminal cases, namely: first, criticism of the criminal justice system which does not provide opportunities especially for victims (criminal justice system that disempowers individual), second: eliminating conflicts, especially between perpetrators and victims and society (taking away the conflict from them), third: the fact that feelings of powerlessness experienced as a result of a crime must be overcome to achieve improvement (in order to achieve reparation).

In order to realize the settlement of criminal cases based on restorative justice which emphasizes restoration to its original state and balance of protection and interests of victims and perpetrators of crimes that are not only oriented towards punishment, law enforcement agencies such as the Indonesian National Police (Polri) have issued Police Regulations Republic of Indonesia No. 8 of 2021 concerning Handling of Crimes based on Restorative Justice. Where the Handling of Criminal Acts based on Restorative Justice must meet the material requirements, namely: not to cause unrest and/or rejection in society, not to impact social conflict, not to have the potential to divide the nation, not to be radicalism and separatism in nature, not to repeat criminal acts based on court decisions, not criminal acts of terrorism, criminal acts against state security, criminal acts of corruption and criminal acts against people's lives. As well as the formal requirements, namely peace from both parties, except for drug crimes, and fulfillment of victims' rights and perpetrators' responsibilities, except for drug crimes.

In addition, the Attorney General's Office of the Republic of Indonesia as one of the law enforcement agencies in Indonesia that exercises state power in the field of prosecution has also issued Prosecutor's Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, which in its considerations states that the Prosecutor's Office must be able to realize legal certainty, legal order, justice and truth based on law by paying heed to religious norms, decency and decency and must explore human values, law and justice that live in society. Settlement of criminal cases by prioritizing restorative justice is a legal requirement of society and a mechanism that must be built in the implementation of prosecution authority and reform of the criminal justice system.

As for the court, it uses policy guidelines issued by the Director General of Badilum of the Supreme Court, namely the Decree of the Director General of the General Court of the Supreme Court Number 1691/DJU/SK/PS.00/12/2020 concerning Enforcement of Guidelines for the Implementation of Restorative Justice (Restorative Justice) which is currently in suspension (applicability) due to the ongoing process of forming a Supreme Court Regulation concerning Guidelines for Trialing Criminal Cases Based on Restorative Justice. Types of criminal cases that can be resolved with the approach restorative justice according to the Decree of the Director General of Badilum, namely minor crimes, crimes by children (SPPA), crimes related to women who are in conflict with the law, cases of narcotics crimes with the qualifications of addicts, abusers, victims of narcotics abuse, narcotics dependence and narcotics one day use.

The existence of a case settlement instrument with restorative justice in law enforcement institutions in Indonesia is certainly a breeze of heaven for justice seekers from the marginalized. In general, crimes that are objects that meet the requirements for efforts to settle criminal cases based on restorative justice are crimes that generally occur and are committed among marginalized people.

As for examples of settlement of cases with a restorative justice approach to marginalized people, including:

- a. Motorcycle theft case by A who works as a garbage collector.

Hearing that his father had kept his rented house in arrears for 3 months, without thinking twice, A decided to steal a motorbike in the Babakan Tarogong Bojongloa Kaler area, Bandung City. A helps his father work as a garbage collector in the area where he lives. On Friday 17 February 2023 around 05.00 WIB, A set out to pick up trash while walking, remembering that his father had not paid for the rented house, so he had an intention to take a motorbike parked on the side of the road he was on. Without using any tools, A tried to pick up the motorcycle by pushing the motorcycle while the handlebar neck was locked. When he tried hard to push his actions, the witness, the victim, EI, and the residents found out that he was finally caught. Luckily the victim witness EI forgave A's actions so that the theft crime case was successfully terminated based on Restorative Justice by the Public Prosecutor at the Bandung City Public Prosecutor's Office with the approval of the Indonesian Prosecutor's Office Jampidum through the West Java High Prosecutor's Office Number: R-515/M.2.1/Eoh.2/04/2023 April 11, 2023. A finally returned to breathe free air after the Head of the Bandung City Public Prosecutor's Office submitted a Letter of Decision on Settlement of Cases Based on Restorative Justice Number: B-852/M.2.10/Eoh.2/04/2023 dated 12 April 2023.

- b. The theft of cooking oil at the supermarket to buy baby milk.

A father's love is so great for his child that everything is done to meet his needs. In order to provide milk for her baby, DT was determined to steal cooking oil from a minimarket in the Cinambo area of Bandung City. The plan is to resell the stolen cooking oil to buy formula milk for their children. However, before he could sell the proceeds of his crime, DT was arrested by the police and then handed over to the Public Prosecutor's Office in Bandung City to obtain legal certainty. Due to the kindness of the victim (Indomaret) forgiving the actions of the suspect DT, the theft case was successfully terminated based on Restorative Justice by the Public Prosecutor at the Bandung City Public Prosecutor's Office with the approval of the Indonesian Prosecutor's Office Jampidum through the West Java High Court Number: R-517/M.2.1/Eoh.2/04/2023 April 11, 2023. DT finally returned to breathing free air after the Head of the Bandung City Public Prosecutor's Office submitted a Letter of Decision on Case Settlement Based on Restorative Justice Number: B-851/M.2.10/Eoh.2/04/2023 April 12, 2023. With this incident, it is hoped that DT will be able to take lessons and not commit crimes again even though he is crushed by a very urgent need.

- c. Cellphone theft to meet her daughter's online learning needs in Pangkalpinang.

A father with the initials RC stole a cellphone (HP) belonging to an NT victim to fulfill his daughter's online learning needs in Pangkalpinang, Bangka Belitung (Babel) and the prosecutor finally released him. The Pangkal Pinang District Prosecutor's Office carried out the Termination of Prosecution because there had been peace between the suspect and the victim, also after observing the situation of the suspect whose economic life was

lacking, as well as the motive of the suspect who stole his cellphone to meet his child's online learning needs. After pursuing a restorative justice approach, the Pangkal Pinang District Attorney's Office finally issued a Decree to Terminate Prosecution (SKP2). The case was terminated because it met the requirements for restorative justice, including: the perpetrator was a first-time offender, the victim's losses were relatively small (around Rp2 million), the potential sentence was less than 5 years, and an unconditional peace agreement was reached between the perpetrator (RC) and the victim (NT) facilitated by the prosecutor.

- d. The case of theft of a mobile phone (HP) and a wallet containing Rp92,000 by UB for your mother's treatment.

In the process, the Public Prosecutor at the Gresik District Attorney visited the defendant's house to confirm the condition of UB's family, the condition of his mother was paralyzed, unable to walk and unable to hear. Every day his mother could only lie weakly while asking where UB was. UB itself is unemployed people who don't have a job. On March 31, 2022, the request for restorative justice for the UB Defendant was approved by the Deputy Attorney General for General Crimes and the prosecution process will be stopped immediately. The Decree on Termination of Prosecution was given to UB by the Head of the Gresik State Attorney accompanied by the Regent of Gresik.

- e. The ice seller received restorative justice at the Cirebon District Attorney.

The suspect AAG, who works as an ice seller, stole a cellphone belonging to the victim EE. When the theft occurred, AAG was unable to sell ice due to the Covid-19 pandemic. The suspect committed the theft due to economic pressure because the suspect's child was hospitalized. The Research Prosecutor as well as the Police Investigator conducted mediation between the suspect and the victim. The victim forgave and wanted to make peace with the suspect. Termination of Prosecution Based on Restorative Justice was granted after the Head of the Cirebon District Public Prosecutor's Office conducted mediation and conciliation was made between the witness victim EE (represented by his mother) and the suspect, where the victim's mother had forgiven the actions of the suspect AAG and there was support and attention from the people of Cirebon, the District Government Cirebon and local community leaders.

- f. Case of attempted theft of LPG cylinders by grandfather in Talun Blitar District.

From the examples of cases mentioned above, which were handled by the Attorney General of the Republic of Indonesia by applying restorative justice in the case settlement process, it is known that with restorative justice can be the answer in upholding human rights for legal settlements for marginalized groups.

Republic of Indonesia Attorney released data on the number of terminations of prosecutions based on restorative justice on December 27, 2022, since the issuance of RI Attorney Regulation Number 15 of 2020, as follows: In 2020 there were 192 cases, in 2021 there were 388 cases, and in 2022 there were 1442 cases. The Indonesian National Police stated the number of cases that were carried out restorative justice increased. In 2022 there were 15,809 cases that were successfully carried out restorative justice, where the figure increased by 1,672 items or 11.8%, compared to 2021 by 14,137 items (Purwanti, 2022) on these figures every year the settlement of cases through restorative justice has increased very significantly, so that small cases involving perpetrators and victims from marginalized groups

such as the poor, women, children, people with disabilities, migrant workers and people living in remote areas can be completed quickly, simply, and low cost.

3.2. Enforcement of Human Rights (HAM) for Marginalized People

Vulnerable groups of people who often experience marginalization include the poor, women, children, people with disabilities, migrant workers and people who live in remote areas, often have difficulties in obtaining legal protection. In fact, many of them experienced legal cases and had to undergo a series of convoluted legal processes. This is very detrimental, considering the condition of those who have deficiencies both in terms of manpower, time and economy.

Even though the 1945 Constitution has emphasized in Articles 28a to 28j concerning the protection of human rights, it states that minority or marginalized groups must receive equal treatment and protection before the law. protection of human rights is one of the four elements in the rule of law, namely: a) protection of human rights; b) Separation or division of powers to guarantee rights; c) Government based on regulations; d) Administrative justice in disputes.

Human rights are rights that are inherent in every person which is a gift from God Almighty which is emphasized in Article 5 paragraph (2) of Law No. 39 of 1999 concerning Human Rights which affirms "Every person has the right to receive assistance and protection justice from an objective and impartial court". Protection of vulnerable groups, including in this case poor people who are in conflict with the law, Article 5 paragraph 3 of Law No. 39 of 1999 contains the following points, among others, (a). stipulates that everyone who belongs to a vulnerable group of people has the right to receive more treatment and protection with regard to their specificity, and that what is meant by "vulnerable groups of people" include, among others, the elderly, children, the poor, pregnant women, and disabled.

After the entry into force of the Criminal Procedure Code, human rights were also adopted and became part of the international legal system, including it Universal Declaration of Human Rights or UDHR (Universal Declaration of Human Right), the 1966 International Covenant on Civil and Political Rights (The Internasional Covenant on Civil and Political Right) has been ratified through Law 12 of 2005, the International Covenant on Economic, Social and Cultural Rights (The Internasional Covenant on Economic, Social, and Cultural Right) has been ratified through Law Number 11 of 2005, the Covenant on the Elimination of All Forms of Discrimination against Women (The Internasional Convention on The Elimination of All Forms of Discrimination Against Women) has been ratified through Law No. 7 of 1984 and other covenants (Natsif, 2024). In the current criminal justice process, the paradigm to be developed is that citizens who become suspects or defendants can no longer be seen as "objects" but as "subjects" who have rights and obligations under the law.

Strengthening the character of the people is an important factor in upholding and protecting human rights in Indonesia, especially the marginalized, because human rights are related to human dignity and worth as a whole human being contained in the values of Pancasila and laws. As well as in accordance with the rights contained in human rights according to Roy Gregory and Philips Giddings, namely substantive rights (substantive rights) and procedural rights (procedural rights) which can be divided into two parts. First, citizens' rights to good administration (rights to good administration), namely the right to receive fair, proper, fair and considerate treatment from public officials in relation to

substantive rights. Second, the right to submit complaints/objections (the right to complain), heard (the right to be heard), and receive corrective action when someone suffers a loss due to the actions of a public official (the right to have corrective action). In this way, the application of human rights to every human being becomes important and natural because it is embedded in every individual from birth which can be used in all activities including law enforcement.

However, the relationship between law enforcement and the formation of human rights law is a picture of the interrelationship between the process of law formation (law making process), the process of legal socialization (law illumination process), and law enforcement processes (law enforcement process) which is indicated by the academic dimension (formulation of law), the administrative dimension (implementation/enforcement of the law), and the socio-political dimension (law outreach). Law enforcement plays a strategic role in determining the successful implementation of various human rights protection policies in the fields of civil, political and economic and socio-cultural rights. Without law enforcement, it will be difficult to achieve conditions where people's human rights are respected and protected in the right direction.

The implementation of human rights, especially those related to procedural rights, demands the right to be served by a good and responsible government (good governance). For this reason, efforts are made to protect and uphold human rights so that human rights violations can be kept to a minimum, if possible, even eliminated altogether. Efforts to minimize human rights violations are the duty and responsibility of all parties. The involvement of all parties in this matter will contribute to efforts to protect and uphold human rights. It is not possible if one party protects and upholds human rights but on the other hand there are certain parties who commit human rights violations. If that happens, efforts to protect and uphold human rights will be in vain and will not find satisfactory results.

Even so, it does not make unlawful acts committed by marginalized groups receive legal relief and are not dealt with according to their actions. But they are still being tried according to law, but they must be fair and in accordance with human rights in handling the law. Because so far, the illegal acts of the marginalized have little value, namely, stealing sandals, cocoa, wood and other things that should have been done in a family way without having to go through a series of legal processes in the criminal justice system.

The protection of human rights for marginalized communities cannot be immediately implemented, but requires specific and focused actions on the problems faced by marginalized communities. Here are some ways that can be done to protect human rights for marginal and vulnerable communities, such as:

- a. Raise awareness and education. Marginalized and vulnerable communities must be given access to the information they need to understand human rights and how to protect them. Education should be provided to increase their awareness and ability to defend their rights.
- b. Develop pro-community policies and regulations. The government and civil society organizations must work together to develop policies and regulations that are pro-marginalized and vulnerable. This could include regulations to protect their rights in terms of health, education, employment, and access to information and public services.
- c. Encourage community participation in the decision-making process. Marginalized and vulnerable communities must be given the opportunity to participate in decision-making

processes that affect their lives. This can be done through community meetings, public forums, or participation in general elections.

- d. Encouraging local governments to be responsible in protecting the human rights of marginal and vulnerable communities. Local government should not ignore the real conditions that occur in society.

In the context of law enforcement against these vulnerable groups, it is necessary affirmative action/policy. This is necessary so that the differences they experience do not continue to occur. And indeed, with the nature and character of poverty, moreover, minor criminal acts that were committed were not based on criminal motives and enriched themselves, in this case minor theft, their actions were more due to compulsion of necessity (criminal by need) (Wahid et al., 2025). Because it is considered unfair if the legal process that is passed is the same as a large-scale criminal case, which goes through a long, convoluted process and has to spend a lot of money as a result, the goal of sentencing is not achieved.

The purpose of punishment is to prevent perpetrators from repeating their actions, preventing conflicts from arising, restoring balance and bringing a sense of peace in people's lives. In determining the type and form of sanctions, it is actually part of a criminal policy that demands rational use or methods (Sholehuddin, 2003). If the punishment in the form of imprisonment or the payment of large fines is imposed on marginalized people, then the purpose of the punishment will not be optimally achieved. Punishment in the form of imprisonment will only give suffering, the concept of punishment in Indonesia today is not merely retaliation but also a penitentiary which seeks to restore and provide guidance to perpetrators of crimes so that they can recover and become better individuals.

Marginal cases have also met the formal and material requirements for resolution using a restorative justice approach in accordance with Perja No. 15 of 2020 and Perpol No. 8 of 2021. For example, in the case of cooking oil, the value of the loss meets the elements of the Perja and Perpol, namely, it cannot exceed Rp2,500,000. It is a first-time crime, not a recidivist, and does not cause widespread public unrest. Then, the settlement also involves the victim and with the victim's consent, an agreement is reached between the two. The perpetrator is willing to compensate the loss or the victim has voluntarily forgiven without further material demands. Therefore, the restorative justice settlement fulfills the elements of justice needed by marginalized groups.

Laws that are formed in order to accommodate the needs of marginalized communities are not only based on social justice values but are also based on human rights. This must be fulfilled first in a statutory regulation before going to the implementation stage (Suhardin, 2009). This is one way of enforcing the law based on Pancasila for the common good. Therefore, the government and law enforcers may not determine the severity of the sentence to be imposed arbitrarily, but according to an adequate reaction to the crime committed by the accused. For that, legal settlement by using the concept restorative justice is considered the ideal solution for the marginalized.

Restorative justice emphasizes family settlements where both the perpetrators, victims and the community are brought together and discussed together for a settlement so that the violations are not minor and they can obtain a joint legal agreement, so that the marginalized do not need to go through a series of convoluted and lengthy legal processes. Approach restorative justice is one of the answers to melt the "freeze" of law enforcement legalistic-positivistic. Approach concept restorative justice is an approach that focuses more on the condition of creating justice and balance for the perpetrators of criminal acts and the victims

themselves. Procedural and criminal justice mechanisms that focus on punishment are changed to dialogue and mediation processes to create an agreement on a more just and balanced settlement of criminal cases for victims and perpetrators (Suhardin, 2009).

Victims can convey the losses they have suffered, and the perpetrators are also given the opportunity to atone for them, through mechanisms of compensation, peace, social work, and other agreements. Conventional sentencing processes do not provide space for the parties involved, in this case victims and perpetrators to participate actively in resolving their problems.

To overcome these problems, the formation of policies and enforcement of regulations requires the participation of marginal communities. The regulations formed are inclusive, namely policies that adhere to the principles of justice and social welfare, namely, by completing using concepts restorative justice. Inclusive legal development works within a framework to ensure the accessibility, participation and freedom of society. Thus, it is hoped that a proper social life order will be created for all people, including marginalized communities and minorities through policy reforms by the government and relevant law enforcers (Sitepu, 2022). By working together in complying with the agreements produced between victims, perpetrators and society with the aim of providing justice for all, especially the marginalized.

As stated by Artidjo Alkostar in his writing "Restorative Justice", that alternative criminal measures must be sought by the State in the midst of the phenomenon of legal injustice practices that befall the poor. Draft restorative justice will become an institution that can become a means of distributing justice, especially for victims and those who are socio-politically vulnerable and economically weak, such as groups of children, the elderly, and the poor. Therefore, the positive law of the State must be able to adopt the existence of this restorative justice (Wahid et al., 2025).

Besides that, compared to retributive justice, restorative justice offers more optimal restitution for both perpetrators and victims. It restores the victim's right to restitution and protects the perpetrator's right to survival, as the perpetrator avoids imprisonment but can still be held accountable for their actions, as agreed by the victim. Thus, neither victim nor perpetrator suffers any harm and even has a better chance of recovery than a retributive settlement.

This concept initiates the settlement of legal cases that are more humane and is in the nature of family deliberations like the principle of kinship which has been adhered to by the community, without having to go through a lengthy legal process in order to create a peaceful and peaceful life. As explained in Article 9 of Law No. 39 of 1999 concerning Human Rights (HAM), in paragraph (2) it is stated that everyone has the right to live in peace, security, happiness both physically and mentally. Everyone here means that people or individuals who are Indonesian citizens are entitled to equal treatment to live in peace and peace, including marginalized people.

The previous resolution mechanism, namely through the courts, has not been able to have a major impact on marginal communities so that a non-court mechanism is possible (Natsif, 2024). Therefore, the issue of human rights through a restorative justice approach is an interesting formulation in upholding human rights in Indonesia. Hence, the concept of justice restorative justice according to the author can uphold human rights (HAM) for the people of Indonesia, especially the marginalized in undergoing the legal process that applies.

Thus, law enforcement can be fair and equitable for all Indonesian people in accordance with the law.

4. Conclusion

Law enforcement must be fair and equitable for all people according to what is mandated in the 1945 Constitution. Justice cannot be obtained in certain cases if it is carried out according to the value of law enforcement in the criminal retribution system including marginalized people. Cases of marginalized communities have been prosecuted by going through a long and convoluted legal process even though the crime rate is light, which should have been resolved amicably.

Restorative justice Restorative is the right answer to resolve cases of marginalized groups by taking into account human rights in order to achieve fair and optimal law enforcement. It offers more optimal restitution for both perpetrators and victims. It restores the victim's right to restitution and protects the perpetrator's right to survival, as the perpetrator avoids imprisonment but can still be held accountable for their actions, as agreed by the victim. Thus, neither victim nor perpetrator suffers any harm and even has a better chance of recovery than a retributive settlement.

Therefore, the author recommends that the government create law enforcement guidelines using a restorative justice approach that can be used by all law enforcement agencies. Until now, guidelines have been developed separately by law enforcement agencies. This aligns with the implementation of Law No. 1 of 2023 concerning the Criminal Code, which will come into effect in 2026. The discussion includes a restorative justice approach as one of the approaches to legal resolution.

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