



Legal Position of Restorative Justice Enforcement in Indonesia

Amrizal¹, Rineke Sara²

Universitas Borobudur, Indonesia^{1,2}

amrizalsiagian@yahoo.com¹, rineke_sara@borobudur.ac.id²

ARTICLE INFO

Keywords: restorative justice, legal reform, criminal justice system, progressive law, victim-offender mediation

ABSTRACT

This study explores the legal position and implementation of restorative justice in Indonesia as a progressive approach to criminal law reform. Initially introduced through Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, restorative justice emphasizes the involvement of victims, offenders, and the community in resolving criminal cases with a focus on restoration rather than retribution. Although its application has gradually expanded to adult offenders, it remains partially regulated and lacks a comprehensive statutory foundation. This paper applies a qualitative method using a normative juridical and descriptive-analytic approach, based on legal materials, statutory provisions, and institutional regulations. The findings reveal that restorative justice in Indonesia has not yet been codified into a single unified law. Instead, its practice is fragmented across various institutional regulations, such as those issued by the Indonesian National Police, the Attorney General's Office, and the Supreme Court. The study highlights several issues, including the inconsistent application of restorative justice, the persistence of retributive legal culture among victims, and the urgent need to reduce prison overcrowding. It argues that restorative justice offers an effective alternative to imprisonment by promoting conflict resolution, victim-offender reconciliation, and community-based justice. The incorporation of restorative justice into Indonesia's Draft Criminal Code and institutional frameworks signifies a growing shift toward legal modernization, social justice, and the realization of Pancasila-based values in the national penal system.

This work is licensed under CC BY-SA 4.0 

INTRODUCTION

In Indonesia, restorative justice was first introduced with the enactment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (JCJS) (Aji et al., 2022; Hamdani et al., 2023; Purba & Rahadian, 2019; Sa'adah, 2018). Article 5 paragraph (1) of this law stipulates that the juvenile criminal justice system must prioritize a restorative justice approach. The term "restorative justice" is defined in Article 1 point 6 as the resolution of criminal cases by involving

the perpetrator, victim, the families of both parties, and other relevant stakeholders to jointly seek a fair settlement that emphasizes restoration to the original condition rather than retaliation.

In its development, restorative justice has also been applied to adult offenders even though it has not yet been regulated under Indonesia's criminal statutory laws. In legal practice, the application of restorative justice principles to adult offenders has been partly implemented through discretionary powers (Ispriyarso, 2019; Sa'adah, 2019; Sa'adah & Wibawa, 2023; Situmeang, 2022). However, from both theoretical and practical perspectives, the implementation of such discretion remains problematic as it does not fully uphold the three fundamental legal values: justice, legal certainty, and utility. Moreover, discretion may result in unequal treatment in legal enforcement, thus violating the principle of "equality before the law."

The practice of restorative justice emerged as a response to a criminal justice system that tends to neglect the role of victims and fails to address crime effectively or deliver a sense of justice to society (Marder, 2022; Tenriawaru et al., 2022; Van Ness et al., 2022; Wilson et al., 2018; Yunus, 2021). This is due to the fact that law enforcement in Indonesia has traditionally emphasized a retributive approach (focusing on punishment) and a restitutive approach (focusing on compensation) in resolving criminal cases. However, such enforcement practices have not always been perceived as beneficial by offenders, victims, or society at large.

The prevailing criminal justice system in Indonesia primarily focuses on punishment as a form of retribution. The criminal must be punished to restore order and security, which gives the impression that punishment serves as a form of revenge by the victim against the offender (Justice & Meares, 2014; Leksono et al., 2023; Pujiani et al., 2022). However, punishment does not necessarily lead to societal improvement, as it neither deters repeat offenses nor addresses the losses suffered by the victim.

In light of this, the use of imprisonment as the main instrument of punishment needs to be re-evaluated. The global trend has shifted toward alternative punishment models that avoid incarceration. This is driven by a changing orientation in the objectives of penal sanctions and the practical necessity of reducing prison overcrowding.

A key feature of the restorative justice concept is its approach to viewing crimes and social conflicts not merely as legal violations but as social actions. In restorative justice, justice in response to crime, social conflict, and human rights violations is considered a social system that recognizes harm to individuals and relationships within society. When examining crime or conflict, it is evident that the most directly affected parties are the victims and the community; therefore, the most appropriate response is reparation or restitution to them. Community participation and engagement are essential to resolving crimes, social conflicts, and human rights violations. Non-formal mechanisms for resolving legal violations offer a viable alternative for repairing relationships among victims, offenders, and the community.

Hence, restorative justice represents a new penal paradigm that emphasizes out-of-court settlements and positions the victim as a central component in the penal process. Through this approach, both victim and offender are expected to achieve reconciliation, focusing on a win-win solution where the victim's losses are compensated and forgiveness is granted. The concept of

restorative justice thus holds potential as a permanent reform in the future development of Indonesia's national criminal law system.

Currently, restorative justice has been introduced in several provisions of the Draft Criminal Code (RKUHP), particularly through diversion in criminal case settlements aimed at balancing the interests of criminal justice stakeholders (offenders, victims, society, and the state) (Faisal et al., 2024; Harahap, 2010; Laia, 2022). This includes restoring victims' rights and providing legal protection to offenders. This approach is expected to become an integral part of future criminal law reform and should be given a clear and legitimate position within Indonesia's legal framework to achieve justice, legal certainty, and utility as the fundamental goals of law.

Some criminal justice institutions in Indonesia, such as the National Police, have begun applying restorative justice as stipulated in Indonesian National Police Regulation Number 8 of 2021 and the Attorney General's Regulation Number 15 of 2020. These regulations mark a progressive step forward, especially given that criminal law has traditionally emphasized the role of the state and its apparatus.

Nevertheless, a pressing issue remains: why has restorative justice not yet been codified into a formal law—like the ITE Law, for example? Moreover, why do its practices vary across institutions without a unified legal foundation, apart from scattered regulations and joint agreements such as the Memorandum of Understanding between the Chief Justice of the Supreme Court, the Minister of Law and Human Rights, the Attorney General, and the Chief of Police.

This study explores the legal position and implementation of restorative justice in Indonesia as a progressive approach to criminal law reform. Initially introduced through Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, restorative justice emphasizes the involvement of victims, offenders, and the community in resolving criminal cases with a focus on restoration rather than retribution. Although its application has gradually expanded to adult offenders, it remains partially regulated and lacks a comprehensive statutory foundation.

The study highlights several issues, including the inconsistent application of restorative justice, the persistence of retributive legal culture among victims, and the urgent need to reduce prison overcrowding. It argues that restorative justice offers an effective alternative to imprisonment by promoting conflict resolution, victim-offender reconciliation, and community-based justice. The incorporation of restorative justice into Indonesia's Draft Criminal Code and institutional frameworks signifies a growing shift toward legal modernization, social justice, and the realization of Pancasila-based values in the national penal system.

METHOD

A study is considered valid if the conclusions drawn from the collected data are truly accurate in accordance with established criteria and conform to the appropriate analytical tradition (paradigm). Furthermore, the research must demonstrate reliability, meaning that the same data should be obtained if the data collection process is repeated under the same conditions.

In this study, the methodology employed is, first, a qualitative research type using a normative juridical approach. This means that the research is conducted based on legal materials

related to restorative justice. It entails examining legal theories, concepts, legal principles, and the implementation requirements of restorative justice, as well as relevant legislation, including Criminal Code Law Number 1 of 2023, the Juvenile Criminal Justice System (JCJS), regulations issued by the Indonesian National Police, the Attorney General's Office, the Supreme Court of the Republic of Indonesia, and other related legal instruments.

Second, this research is also descriptive-analytic in nature, which aims to present a detailed, systematic, factual, and comprehensive description of the subject matter.

RESULT AND DISCUSSION

Restorative Justice as a Breakthrough in Indonesia's Legal System

As of mid-December 2024, the number of inmates housed in correctional facilities (Lapas), women's correctional facilities (LPP), and detention centers (Rutan) reached 273,597 individuals. Meanwhile, the total capacity of these facilities is only 145,333 people. This means the prison population exceeds capacity by 88.2%, with an overcapacity of approximately 128,264 cases. This raises a critical question: why is the prison population so high? The answer largely lies in the dominant positivist approach that underpins Indonesia's criminal justice system. In this approach, legal constructs are derived from formalistic positivism—rigid, state-made written laws that are inflexible and often disregard the principles of restorative justice, especially the rights of victims.

The original concept of restorative justice is rooted in the peacekeeping practices of the Māori people of New Zealand. In response to conflict, restorative practices engage offenders, victims, and other stakeholders in a collective resolution process. Restorative justice involves all concerned parties in addressing the consequences of an offense and its implications for the future. This paradigm emphasizes that crime or conflict entails legal responsibility to others.

Restorative justice has become a widely discussed concept among law enforcement officials and is interpreted in various dimensions. It raises essential questions: What exactly is restorative justice? Is it a principle, a value, a mechanism, or a program? These questions are crucial to understanding how legal policymakers and practitioners perceive and apply restorative justice within a justice framework. Recently, the global trend in criminal justice has witnessed a paradigm shift toward increasing support for restorative justice as an alternative approach to criminal punishment.

Restorative justice presents a new perspective in addressing crime and administering legal sanctions (such as incarceration). It recognizes that the primary actors in criminal offenses are not governments but offenders themselves, who bear the responsibility to repair the harm caused. Justice in this context is a problem-solving process that involves the active participation of victims, communities, and offenders to ensure restorative outcomes, particularly for the victims and their families.

Another important question is whether restorative justice as a case resolution approach in Indonesia can truly become part of a new paradigm in criminal law reform. Although Indonesia continues to face high crime rates, the implementation of restorative justice principles in its criminal justice system has yet to be effective. Several issues persist, including the inconsistency

among law enforcement officials in applying restorative justice, which leads to disparities in handling similar cases. Moreover, victims and their families often maintain a retributive mindset, favoring punishment over peaceful resolution.

This situation underscores the rationale for embracing restorative justice as an alternative penal approach, particularly considering Indonesia's prison conditions. According to the Correctional Database System (SDP) of the Directorate General of Corrections, the population in detention centers, correctional facilities, women's prisons, and juvenile correctional institutions (LPKA) exceeds capacity.

In other words, the penal system in Indonesia is not functioning effectively. Overcrowding in correctional facilities indicates structural problems within the criminal justice system. These institutions, which should serve rehabilitative purposes, are unable to provide adequate guidance to inmates due to overcrowding. This renders rehabilitation efforts ineffective and leads to recidivism, often with increased criminal sophistication. Alarmingly, it is not uncommon for inmates to continue engaging in illegal activities, such as drug trafficking, from within prison walls.

The chaotic state of correctional facilities highlights the broader dysfunction within Indonesia's penal system, particularly the final stage. More importantly, it reflects deeper issues upstream, beginning with flawed regulations and legislation, ineffective law enforcement agencies such as the police (as investigators), the prosecution service (as public prosecutors), and the judiciary (Supreme Court).

Given the condition of the penal system—especially following the revision of the Indonesian Criminal Code—it is essential to adopt new approaches to sentencing and seek alternative means of achieving justice, repair, and societal restoration, in accordance with the nation's philosophical foundation: Pancasila. These alternatives must begin with legal reforms (through the revised Criminal Code) and extend to relevant institutions (police, prosecution, judiciary), along with supporting mechanisms such as public participation, budgetary support, human resources, and institutional frameworks. One such alternative is the implementation of restorative justice as a penal innovation to achieve justice, reparation, and healing.

Marian Liebmann simplifies restorative justice as a legal system that “aims to restore the well-being of victims, offenders, and the wider community affected by crime, and to prevent future offenses or misconduct.” In other words, restorative justice is essentially a criminal law approach rooted in traditional values, supported by two key indicators: the values it embodies and the mechanisms it employs. This foundational rationale underpins the growing consideration of restorative justice. It may be as old as criminal law itself.

Therefore, restorative justice is necessary. In general terms, it aims to achieve legal resolution by establishing agreements between parties in criminal cases and ensuring fair and balanced outcomes for both victims and offenders. Although some may view the interest in restorative justice as a return to simplistic or traditional (primitive) methods of resolving criminal cases, it is in fact a new approach. The principles and methods it employ are deeply rooted in the traditional wisdom of Indonesia's multicultural society.

The Position of Restorative Justice Practice in Indonesia

Restorative justice thinking is one of the legal approaches aimed at addressing the weaknesses inherent in the conventional criminal case resolution system, which remains largely based on a repressive legal model as implemented within the current criminal justice framework. Repressive law refers to the use of law as a tool of authoritarian power, typically employed by ruling regimes to maintain the status quo. This model of law tends to operate harshly and in detail when dealing with the public, but is lenient toward lawmakers and those in power, as it places law under the influence of political authority. The aim of repressive law is to enforce absolute obedience and submission of the populace to the state. Criticism directed at those in power is often construed as disobedience or a legal violation.

One major weakness of the repressive approach to criminal case resolution lies in its punitive orientation, which focuses solely on penalizing and imprisoning the offender. However, despite the offender serving their sentence, the victim often remains dissatisfied.

Fundamentally, restorative justice is a criminal law approach grounded in traditional values. This is based on two key indicators: the underlying values it upholds and the mechanisms it offers. These elements form the basis for reconsidering the importance of restorative justice. This approach, in fact, may be as old as criminal law itself.

Consequently, restorative justice is necessary. Its general purpose is to resolve criminal cases through consensus while achieving fair and balanced legal outcomes for both victims and offenders.

In addition to the impact of imprisonment on the inmate's family, the current justice system is widely seen as failing to comfort or restore the victim. Legal proceedings are also often drawn out and time-consuming. In contrast, the restorative model emphasizes conflict resolution. This idea has already been incorporated into the Draft Criminal Code (RKUHP) through the introduction of alternative sanctions such as community service and supervision. In the long term, restorative justice seeks to address the interests of victims, offenders, and society simultaneously.

Such public demands for a shift away from rigid legal formalism appear to have been acknowledged by law enforcement, particularly judges. This is reflected in several landmark decisions that boldly challenge statutory norms deemed unjust—especially for marginalized communities seeking justice. These judicial decisions are now widely referred to as manifestations of progressive law.

The idea of progressive law has garnered attention and has been translated into concrete steps for legal reform in Indonesia. It appears to have influenced key actors in the criminal justice system, including the Indonesian National Police (Polri), the Attorney General's Office, and the Supreme Court of the Republic of Indonesia.

Within the Indonesian National Police, the commitment to restorative justice is reflected in the issuance of Regulation of the National Police of the Republic of Indonesia Number 8 of 2021. This regulation, concerning the handling of criminal offenses based on restorative justice, strengthens the implementation of restorative approaches within police case management. It is also supported by Circular Letter of the Chief of Police Number SE/8/VII/2018 on the Application of

Restorative Justice in Criminal Case Resolution. This circular serves as a legal foundation and guideline for police investigators and detectives, ensuring legal protection and regulatory oversight in the application of restorative justice during investigation and prosecution. It also aims to promote a uniform understanding and application of restorative justice within the police force. The regulation sets both general and specific requirements. For cases handled under the criminal investigation division, the general requirements must be fulfilled, while the specific requirements apply only to certain cases under investigation or inquiry.

At the prosecutorial level, the application of restorative justice is regulated under Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 on the Termination of Prosecution Based on Restorative Justice. Under Article 3 paragraph (2) point (e), public prosecutors are authorized to terminate cases in the public interest if they have been resolved outside the court (*afdoening buiten process*). Paragraph (3) point (b) further clarifies that such out-of-court settlements must either involve voluntary payment of fines or restoration of the victim's condition, in accordance with restorative justice principles.

A case may be lawfully dismissed, and prosecution terminated under restorative justice if it meets the criteria set out in Article 5 paragraph (1) of the regulation:

1. The suspect is a first-time offender.
2. The offense is punishable only by a fine or a prison sentence of no more than five years.
3. The crime involves losses or evidence valued at no more than IDR 2,500,000 (two million five hundred thousand rupiah).

Within the Supreme Court, the implementation of restorative justice is addressed through Decree of the Director General of the General Judiciary Body (*Dirjen Badilum*) Number 1691/DJU/SK/PS.00/12/2020, concerning the Application Guidelines of Restorative Justice. This decree was issued with two objectives. First, to support the optimal implementation of existing Supreme Court Regulations (*PERMA*), Supreme Court Circulars (*SEMA*), and Supreme Court Chairperson Decrees (*SK KMA*) related to restorative justice practices in court. Second, to reflect the evolving nature of the penal system, which has shifted from a perpetrator-centered model to one that prioritizes the restoration of victims' rights and the offender's accountability.

The decree also outlines the procedural mechanisms by which cases may be resolved through restorative justice. Nonetheless, the balance of interests must be carefully considered. To date, the application of restorative justice has tended to prioritize the interests of defendants. A justice-oriented approach must also consider the recovery and rights of the victim and their family.

CONCLUSION

The concept of progressive law has gained considerable attention and has become a pivotal step in the advancement of legal reform in Indonesia. It has also likely influenced key actors within the criminal justice system, including the Indonesian National Police (*Polri*), the Attorney General's Office, and the Supreme Court. The practice of restorative justice offers a new perspective in which the state is no longer positioned as the primary actor in resolving criminal

cases. Instead, it emphasizes the active involvement of relevant parties—such as the victim, the offender, and a third-party mediator—to seek solutions for the conflict at hand.

The integration of restorative justice within the reform of Indonesia's criminal law has already been facilitated and accommodated in the Criminal Code (KUHP), particularly in Articles 51(c) and 52. In addition, within criminal justice institutions, several key regulations have been issued to formalize restorative justice practices: a). At the Indonesian National Police, through Regulation Number 8 of 2021 on the Handling of Criminal Offenses Based on Restorative Justice; b). At the Attorney General's Office, through Regulation Number 15 of 2020 on the Termination of Prosecution Based on Restorative Justice; c). At the Supreme Court, through the Decree of the Director General of the General Judiciary Body (Dirjen Badilum) Number 1691/DJU/SK/PS.00/12/2020 on the Implementation Guidelines for Restorative Justice.

These developments demonstrate a concrete commitment toward legal reform that prioritizes the principles of justice, legal certainty, and societal benefit. Restorative justice, therefore, is not only a practical legal innovation but also a significant paradigm shifts in constructing a fairer and more inclusive criminal justice system in Indonesia.

REFERENCES

- Aji, W. K., Khosafiah, R. K., Jusikusuma, T. D., & Irawan, F. (2022). Penyelesaian Sengketa Pajak Atas Gugatan Dan Sanggahan: Suatu Perspektif Keadilan. *JURNAL PAJAK INDONESIA (Indonesian Tax Review)*, 6(1). <https://doi.org/10.31092/jpi.v6i1.1601>
- Faisal, Yanto, A., Rahayu, D. P., Haryadi, D., Darmawan, A., & Manik, J. D. N. (2024). Genuine paradigm of criminal justice: rethinking penal reform within Indonesia New Criminal Code. *Cogent Social Sciences*, 10(1), 2301634. <https://doi.org/10.1080/23311886.2023.2301634>
- Hamdani, A., Haskar, E., & Farda, N. F. (2023). Upaya Penyelesaian Sengketa Pajak melalui Keberatan Pajak. *Amnesti: Jurnal Hukum*, 5(2). <https://doi.org/10.37729/amnesti.v5i2.3024>
- Harahap, M. Y. (2010). *Discussion of problems and application of the Criminal Code investigation and prosecution*. Sinar Grafika.
- Isipriyarso, B. (2019). Penyatuan Pembinaan Pengadilan Pajak. *Administrative Law and Governance Journal*, 2(4). <https://doi.org/10.14710/alj.v2i4.650-660>
- Justice, B., & Meares, T. L. (2014). How the criminal justice system educates citizens. *The ANNALS of the American Academy of Political and Social Science*, 651(1), 159–177.
- Laia, L. (2022). Political Study Of Law Law Number 8 Of 1981 Concerning The Criminal Procedure Code In Terms Of Pretrial Legal Aspects. *Pena Law: International Journal of Law*, 1(2). <https://doi.org/10.56107/penalaw.v1i2.43>
- Leksono, S. C., Purnomo, H., & Hernawati, R. A. S. (2023). Criminal Justice System In The Perspective Of Integration. *International Journal of Asia Pasific Collaboration*, 1(3), 82–90.
- Marder, I. D. (2022). Mapping restorative justice and restorative practices in criminal justice in the Republic of Ireland. *International Journal of Law, Crime and Justice*, 70. <https://doi.org/10.1016/j.ijlcj.2022.100544>
- Pujiani, R. S., Aksan, M. A., & Sinta, M. (2022). Seeking Justice for Indonesian Children: The Juvenile Criminal Justice System in Indonesia in the Context of Criminal Justice Reform. *Indonesian Journal of Advocacy and Legal Services*, 4(2). <https://doi.org/10.15294/ijals.v4i2.60033>

- Purba, T. L. D., & Rahadian, D. (2019). Penyelesaian Sengketa Pajak Pada Kantor Pelayanan Pajak Kota Jayapura. *Jurnal Ekologi Birokrasi*, 6(3). <https://doi.org/10.31957/jeb.v6i3.780>
- Sa'adah, N. (2018). Tinjauan Terhadap Penyelesaian Sengketa Pajak Melalui Lembaga Keberatan. *Administrative Law and Governance Journal*, 1(3). <https://doi.org/10.14710/alj.v1i3.268-279>
- Sa'adah, N. (2019). Mekanisme Penyelesaian Sengketa Pajak dalam Sistem Peradilan di Indonesia. *Administrative Law and Governance Journal*, 2(1). <https://doi.org/10.14710/alj.v2i1.19-33>
- Sa'adah, N., & Wibawa, K. C. S. (2023). Batasan Kewenangan Mengadili Sengketa Pajak Antara Pengadilan Pajak Dan Pengadilan Tata Usaha Negara. *Masalah-Masalah Hukum*, 52(1). <https://doi.org/10.14710/mmh.52.1.2023.21-29>
- Situmeang, T. (2022). Reposisi Pengadilan Pajak Menurut Sistem Kekuasaan Kehakiman Di Indonesia. *Honeste Vivere*, 32(2). <https://doi.org/10.55809/hv.v32i2.138>
- Tenriawaru, S. H., MH, W. M. N. M., SH, M. H., Efan Apturedi, S. H., MH, B. M. S., SH, M. H., & Dimas Pranowo, S. H. (2022). *Perbandingan Penerapan Sistem Hukum Progresif (Plea Bargain VS Restorative Justice)*. Penerbit Adab.
- Van Ness, D. W., Strong, K. H., Derby, J., & Parker, L. L. (2022). *Restoring justice: An introduction to restorative justice*. Routledge.
- Wilson, D. B., Olaghere, A., & Kimbrell, C. S. (2018). *Effectiveness of restorative justice principles in juvenile justice: A meta-analysis*. Inter-university Consortium for Political and Social Research.
- Yunus, A. S. (2021). *Restorative Justice Di Indonesia*. Guepedia.