

Restorative Justice: Finding Common Ground Between Justice and Recovery Shared Interests

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Abstract

The restorative justice approach has been applied through regulations at all stages of the criminal process and strengthened by Law Number 1 of 2023 in conjunction with Law Number 20 of 2025. It represents a shift from retribution-based punishment toward restoration, responding to the limitations of traditional retributive philosophy that prioritizes formal legality and legal certainty while often neglecting moral, humanitarian values and society's sense of justice. Therefore, the focus of this research is How are the fundamental principles of the restorative justice approach in resolving criminal offenses within the justice system? How should an appropriate concept be formulated as the foundational framework of restorative justice to achieve justice and restore legal interests within the criminal justice system? The approach employed in this study is a normative juridical approach. This juridical approach is also referred to as the statutory approach. The fundamental principles reflected in restorative justice emphasize efforts to repair harm, restore losses, promote reconciliation, and reintegrate both offenders and victims, as well as to build harmonious relationships within the community under the framework of the criminal justice system. To reinforce the principles of Restorative Justice, its foundational framework should be grounded in the values of Pancasila as the normative basis of the restorative justice approach. Justice is positioned as the ultimate objective, pursued through the integration of spiritual values that seek the deeper meaning of law in fostering a more just, humane, and meaningful social order.

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Introduction

The modern criminal justice system, when examined from a historical perspective, was fundamentally constructed upon the paradigm of retributive justice. Within this framework, criminal conduct is conceptualized as a violation against the state and the public order. Consequently, the primary institutional response to crime has traditionally been manifested through the imposition of punishment upon the offender.¹ The primary focus of retributive justice lies in the determination of guilt, the attribution of criminal responsibility, and the imposition of proportionate sanctions as a legally justified form of retribution. Within this framework, victims tend to be positioned as passive parties, functioning predominantly as instruments of evidence within judicial proceedings rather than as subjects possessing legitimate interests in recovery and restoration.

Although retributive justice ensures legal certainty through standardized and formalized procedures, this approach is confronted with a range of inherent limitations. Its orientation, which prioritizes the interests of the state and the offender, frequently results in the marginalization of victims' needs, whether in terms of material compensation, psychological recovery, or the restoration of social relations. Moreover, the rigid and legalistic character of the system constrains opportunities for meaningful dialogue among the parties involved. As a consequence, justice is reduced to normative certainty and the imposition of punishment, without adequate consideration of the broader social consequences arising from criminal conduct.

These limitations have stimulated the emergence of the restorative justice paradigm as an alternative approach. In contrast to retributive justice, restorative justice conceptualizes crime as a social conflict that generates tangible harm to victims and the community. Accordingly, the principal objective of case resolution is no longer confined to the infliction of punishment, but extends to the restoration of the victim's condition, the cultivation of offender accountability, and the repair of social relationships disrupted by criminal acts. Within the restorative justice framework, victims are placed at the center of the justice process, while offenders are encouraged to actively acknowledge their wrongdoing and to remedy the consequences of their actions.

The fundamental distinction between retributive justice and restorative justice lies in the orientation of the interests being protected. Retributive justice concentrates on the offender and the violation of legal norms against the state, whereas restorative justice is oriented toward victims, the harms suffered, and the restoration of social equilibrium. This divergence explains why retributive systems are often regarded as insufficiently responsive to victims' needs, while restorative justice is perceived as more adaptive to society's substantive sense of justice.²

The implementation of restorative justice is not without significant challenges. In practice, restorative justice is highly dependent upon the discretion of law enforcement

¹ Jesper Ryberg, "The Philosophy of Punishment," in *The Oxford Handbook of the Philosophy of Punishment*, 1st ed., ed. Jesper Ryberg (Oxford University Press, 2024), <https://doi.org/10.1093/oxfordhb/9780197750506.013.1>.

² John Braithwaite, "Restorative Justice and Reintegrative Shaming," in *Criminal Justice Theory, Volume 26* (Routledge, 2020), 141–42.

authorities, the willingness and capacity of victims to participate, and the balance of power relations between victims and offenders. The risks of social pressure, disparities in bargaining positions, and the tendency toward pragmatic case settlement in the interest of procedural efficiency constitute serious concerns. Moreover, the absence of uniform standards in determining case eligibility and the appropriate forms of restorative resolution has the potential to generate legal uncertainty and unequal treatment across substantively similar cases.

Conversely, the retributive justice system is also confronted with increasingly evident structural constraints. A punishment-oriented approach has contributed to chronic prison overcrowding, high recidivism rates, and limited opportunities for constructive conflict resolution. Lengthy and formalistic judicial processes frequently fail to provide meaningful restoration for victims, while offenders often experience social alienation following the completion of their sentences.

These conditions have prompted a paradigmatic shift in penal policy, from the dominance of retributive justice toward the adoption of restorative justice-based approaches. This shift is not intended to abolish the retributive system in its entirety, but rather to complement it through mechanisms that are more responsive to the needs of victims and the broader community. Within this context, restorative justice is regarded as both a corrective to the rigidity of the retributive system and an instrument for realizing a more substantive conception of justice.

Nevertheless, the transition from retributive justice to restorative justice does not always occur in a linear manner. When both paradigms are applied concurrently in the absence of an integrated normative framework, risks emerge in the form of overlapping authorities, divergent standards of application, and the fragmentation of justice. The criminal justice system may consequently operate in a hybrid condition, in which retributive and restorative approaches coexist but are not consistently coordinated at a systemic level.

In the Indonesian context, this paradigmatic shift has proceeded rapidly through the enactment of various sectoral regulations granting restorative justice authority to the police, the prosecution service, and the judiciary. Although these policies reflect a strong commitment to criminal law reform, regulatory fragmentation and institutional disparities in procedural mechanisms have instead generated new juridical problems, particularly with regard to legal certainty, uniformity of application, and the principle of equality before the law.

Problem Statement

This issue is directed toward developing a comprehensive understanding of the implementation of Restorative Justice within the Indonesian criminal justice system, with particular attention to the challenges and opportunities that emerge in its practical application. Accordingly, this study addresses two principal research questions how are the fundamental principles of the restorative justice approach applied in the resolution of criminal offences within the criminal justice system and how conceptual framework is most appropriate as a foundational basis for restorative justice in order to realize justice

and ensure the restoration of legally protected interests within the criminal justice system? These formulations emphasize the necessity of a holistic and balanced approach that does not merely consider the interests of offenders and victims, but also takes into account the interests of society and the state, in order to achieve the objectives of substantive justice.

Methods

The approach employed in this study is a normative juridical approach. The juridical approach, also referred to as the statutory approach, constitutes a legal research method aimed at examining various legal issues related to legal norms, both formal and informal in nature. This approach is carried out through a systematic analysis of primary legal materials and secondary legal materials.

The normative approach is conducted conceptually by emphasizing the examination of legal doctrines, statutory regulations, as well as the study of court decisions, legal norms, and legal concepts. According to Abdulkadir Muhammad, normative legal research constitutes a method of legal inquiry that focuses on written legal norms, such as statutes and other forms of legislation. Within this approach, law is understood as a set of rules or guiding principles that regulate social behavior while simultaneously serving as the standard for assessing the legality of an individual's actions.³

Normative legal research conceives law as a system of norms rather than as empirical behavior occurring within society. Accordingly, the primary focus of this study lies in the analysis of the substance, structure, and application of statutory regulations, as well as relevant legal doctrines, in order to elucidate and evaluate specific legal issues.

Nevertheless, this study acknowledges that the normative juridical approach entails inherent limitations, particularly due to its tendency to situate law at the level of doctrinal abstraction and its inability to fully capture the empirical dynamics of restorative justice implementation in practice. Aspects such as imbalances of power relations between offenders and victims, the potential for coercion within reconciliation processes, and the subjective experiences of the parties involved constitute social realities that cannot be comprehensively explained through normative analysis alone. Accordingly, this research is not intended to assess the empirical effectiveness of restorative justice practices, but rather to develop a conceptual understanding and a normative framework that may serve as a foundation for evaluating such practices.

In its implementation, this study does not involve direct examination of legal events in the field, such as through interviews or observational methods. Primary legal materials encompass statutory and regulatory instruments governing the implementation of restorative justice within the criminal justice system, including regulations at the levels of the police, the prosecution service, and the judiciary, as well as court decisions that explicitly employ a restorative justice approach as part of their legal reasoning. Secondary legal materials consist of scholarly works in the form of reputable national and international journal articles, textbooks on criminal law and sentencing, and prior

³ Abdulkadir Muhammad, *Hukum Dan Penelitian Hukum* (Citra Aditya Bakti, 2004).

research addressing restorative justice theory, penal policy, and the protection of legally recognized interests. Tertiary legal materials are utilized as supporting references to clarify specific legal terms and concepts.

The data employed in this study were derived from library research, which constitutes the primary source of data. All collected materials were subsequently analyzed using a qualitative juridical analysis method, namely by examining the content and normative meaning of legal norms and legal doctrines without the application of quantitative or numerical approaches. This analysis was intended to achieve normative clarity and to construct a comprehensive legal argument capable of addressing the predetermined research questions.

Basic Principles of the Restorative Approach in Resolving Criminal Acts

Restorative justice constitutes an approach within the criminal justice system that emphasizes the restoration of harm suffered by victims, the assumption of responsibility by offenders, and the active involvement of the community in the resolution of criminal cases. Restorative justice was developed by Howard Zehr, who posits that “restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible”.⁴ Tony Marshall likewise provides a widely cited definition, stating that restorative justice is “a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future”.⁵

In the context of criminal law, prior to the enactment of Law Number 1 of 2023 concerning the Criminal Code (KUHP) and Law Number 20 of 2025 concerning the Criminal Procedure Code (KUHAP), the concept of restorative justice had begun to be accommodated through various internal statutory regulations. These included, inter alia, Police Regulation Number 8 of 2021 concerning the Handling of Criminal Offenses Based on Restorative Justice (Perpol 8/2021); Attorney General’s Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice (Perja 15/2020); and Supreme Court Regulation Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice (Perma 1/2024). Nevertheless, each of these regulations remained partial in nature and contained differing approaches and parameters for case resolution.

The approach and settlement parameters under Perpol 8/2021 function as guidelines for the Indonesian National Police in resolving minor criminal cases through mediation and reconciliation between the parties. This process involves not only offenders and victims, but also families, community leaders, religious figures, customary leaders, and other relevant stakeholders. The types of offences eligible for restorative justice under this framework are generally those carrying a maximum penalty of less than five years’ imprisonment, excluding serious crimes, and are primarily focused on offences against

⁴ Howard Zehr, *The Little Book of Restorative Justice* (Good Books, 2002).

⁵ Tony F. Marshall, *Restorative Justice: An Overview* (Home Office, Research Development and Statistics Directorate, 1999).

property or personal dignity. Additional requirements must also be satisfied, including the absence of involvement in organized criminal networks and the existence of good faith on the part of the offender.⁶

Meanwhile, Perja 15/2020 serves as the legal basis for prosecutors in resolving criminal matters. Its orientation and parameters are directed toward the termination of prosecution, subject to the fulfillment of specific criteria, namely that the offence falls within the category of minor crimes, the offender is a first-time offender, and the statutory penalty does not exceed five years' imprisonment. The process sought under this mechanism is the attainment of a peace agreement between the victim and the offender.⁷

By contrast, Perma 1/2024 provides the normative foundation for judges to apply an approach emphasizing restoration and social utility rather than retribution during judicial proceedings. The categories of cases that may be adjudicated using a restorative justice approach are strictly limited to minor offences, with a material loss not exceeding IDR 2,500,000, and must be accompanied by a reconciliation agreement between the parties.⁸

In practice, the foregoing regulatory framework has generated considerable obstacles, one of which is the divergence in interpretation leading to inconsistent application. As demonstrated by the research findings of Sujono, Sudarto, and Hiskia Ady Putra, significant differences persist in perceptions regarding the eligibility of cases for resolution through restorative justice. Law enforcement authorities, particularly the police, often consider certain cases to meet the required criteria, whereas the prosecution service and the courts apply different considerations relating to legal consequences and the realization of justice for victims. Their study highlights that divergent interpretations and the absence of a uniform understanding among law enforcement officials may substantially impede the effective implementation of restorative justice.⁹

This condition constitutes a distinct challenge in its implementation, as also emphasized by Bazemore et al., who observe that obstacles in coordination between law enforcement authorities, community leaders, and relevant institutions represent a significant impediment to effective implementation at the local level. Such diversity has generated inconsistencies in case handling in practice. Divergent interpretations concerning the classification of offences, their legal qualifications, and applicable penal thresholds have resulted in situations where offenders in one jurisdiction may be granted access to restorative mechanisms, while perpetrators of substantively similar cases in other regions continue to be processed through retributive procedures. Conceptually,

⁶ Police Regulation Number 8 of 2021 Concerning the Handling of Criminal Offenses Based on Restorative Justice. (2021).

⁷ Attorney General's Regulation Number 15 of 2020 Concerning the Termination of Prosecution Based on Restorative Justice (2020).

⁸ Supreme Court Regulation Number 1 of 2024 Concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice (2024).

⁹ Sujono Sujono et al., "Analisis Penerapan Restorative Justice Oleh Kejaksaan Republik Indonesia Dalam Bingkai Arah Pembaharuan Politik Hukum Pidana Di Indonesia," *Jurnal Rectum* 6, no. 3 (2024): 551-64, <https://doi.org/10.46930/jurnalrectum.v6i3.4753>.

restorative justice is grounded in the restoration of victims' rights, the assumption of responsibility by offenders, and the preservation of community harmony, rather than merely the termination of criminal proceedings. Accordingly, when restorative approaches are integrated into the criminal justice system, regulatory harmonization across institutions, the establishment of integrated standard operating procedures, and the development of uniform interpretative guidelines become imperative. Such measures are essential to ensure that the overarching objective of balancing the interests of victims, offenders, and society can be genuinely realized without undermining legal certainty.

Although this approach continues to face significant challenges, particularly in its law enforcement implementation, restorative justice differs fundamentally from the retributive approach that places primary emphasis on the punishment of offenders. Within the restorative justice framework, case resolution is directed toward the restoration of social relationships and the rebalancing of the interests of all affected parties.

The core principle of restorative justice is conceived as an effort to replace punitive responses to wrongdoing. This approach emphasizes the attribution of responsibility to the offender and the active participation of all relevant stakeholders, including offenders, victims, and the community. Consequently, restorative justice focuses on repairing relationships among offenders, victims, and society. The philosophy underlying restorative justice is grounded in key elements such as apology, restitution, and the acknowledgment of wrongdoing.¹⁰

The concept of restorative justice does not merely emphasize the peaceful and equitable resolution of conflicts or criminal offences, but also reflects fundamental values inherent in the protection of human rights. This concept underscores the importance of mutual respect among all parties involved, including offenders, victims, and the wider community. Furthermore, restorative justice highlights the responsibility of the state and all elements of society to provide protection for fundamental human rights, as well as to ensure the fulfillment of those rights in a fair and balanced manner both for offenders, who retain their inherent human rights, and for victims, who are entitled to justice, recovery, and a sense of security. Accordingly, restorative justice represents a more humane and comprehensive approach to addressing legal and social problems.¹¹

This approach also focuses on efforts aimed at healing and reintegrating offenders into society without the imposition of additional punishment, thereby providing opportunities for personal rehabilitation. Ideally, restorative justice encompasses initiatives to repair harm, restore losses, facilitate reconciliation, and reintegrate both offenders and victims, while fostering harmonious relationships within the community.¹²

¹⁰ Mohammad Nurul Huda, "Restorative Justice dalam Hukum Acara Pidana di Indonesia," *Voice Justisia: Jurnal Hukum Dan Keadilan* 7, no. 1 (2023): 21–35.

¹¹ Muhammad Rif'an Baihaky and Muridah Isnawati, "Restorative Justice: Pemaknaan, Problematika, Dan Penerapan Yang Seyogianya," *Unes Journal of Swara Justisia* 8, no. 2 (2024): 276–89, <https://doi.org/10.31933/4mqgaj17>.

¹² Carrie Menkel-Meadow, "Restorative Justice: What Is It and Does It Work?," *Annual Review of Law and Social Science* 3, no. 1 (2007): 161–87, <https://doi.org/10.1146/annurev.lawsocsci.2.081805.110005>.

The central focus of restorative justice lies in the impacts experienced by victims, as well as in the efforts undertaken to repair disrupted relationships among offenders, victims, and the community. This approach seeks to involve all relevant parties in the resolution of conflict and to provide opportunities for meaningful participation in recovery and reconciliation processes, including the psychological restoration of victims. Reconciliation may also create space for both offenders and victims to develop mutual understanding of each other's perspectives and to collaboratively identify solutions. Through such processes, the restoration of trust and the reestablishment of social balance within the community are expected to be achieved. Accordingly, through the application of the above model, a fundamental shift has occurred in the meaning and objectives of punishment. Whereas the criminal justice system was previously oriented toward retributive theory, which emphasizes proportionate retaliation for the offender's wrongdoing in order to uphold the state's sense of justice, as well as utilitarian theory, which prioritizes deterrence, prevention, and social utility through the threat of punishment, the focus has now increasingly shifted toward restorative theory.¹³

Within the restorative framework, punishment is no longer perceived as an instrument of state retribution or merely as a mechanism for crime deterrence, but rather as a comprehensive process of restoration that provides space for dialogue among victims, offenders, and the community. This approach assesses the success of sentencing based on its capacity to repair the psychological and social harms experienced by victims, to restore fractured relationships, and to reestablish community harmony. Accordingly, the objectives of punishment are expanded to include:¹⁴ not only to deter offenders, but also to promote their moral accountability, to provide tangible compensation to victims, and to restore social trust a transformation that places substantive justice and the balance of interests at the very core of the criminal justice system.

In addition to viewing restorative justice as a concept of restoration, other perspectives contend that restorative justice, in its essence, constitutes a method for resolving criminal cases through various forms, ranging from the achievement of reconciliation to the provision of compensation for losses suffered by victims. This approach is centered on victim recovery and places primary emphasis on the protection and fulfillment of victims' interests.¹⁵ The theory of criminal law enforcement constitutes a branch of legal theory that examines how criminal law norms established in statutory provisions are implemented in practice through the actions of law enforcement authorities. The primary objective of criminal law enforcement is to realize justice, public order, and legal protection within society through the mechanisms of punishment.

According to Barda Nawawi Arief, criminal law enforcement is not solely intended to produce a deterrent effect, but also aims to protect violated legal interests, to rehabilitate

¹³ Barda Nawawi Arief, *Masalah Penegakan Hukum Dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan*, Cet. 5 (Kencana, 2018).

¹⁴ Muladi, *Hak Asasi Manusia, Politik Dan Sistem Peradilan Pidana* (Badan Penerbit Universitas Diponegoro, 2002).

¹⁵ Mukti Arif Efendi and Linda Ikawati, "Upaya Restorative Justice Di Tingkat Penyidikan Melalui Konstruksi Diskresi Bhabinkamtibmas Studi Polres Wonosobo," *Transformasi Hukum* 2, no. 1 (2023): 53-66, <https://doi.org/10.59579/transformasihukum.v2i1.4664>.

offenders, and to establish a just public order.¹⁶ Meanwhile, Soerjono Soekanto defines law enforcement as a process of transforming the ideals of justice, legal certainty, and legal utility into social reality. He further asserts that the effectiveness of law enforcement is influenced by five essential factors:¹⁷

- 1) Substance of the law
- 2) Law enforcement
- 3) Supporting facilities
- 4) Public participation
- 5) Legal culture

Based on the various perspectives advanced by legal scholars and figures who have contributed to the development of restorative justice thought, it may be concluded that restorative justice constitutes far more than a mere alternative mechanism for resolving criminal cases. Rather, it reflects a holistic approach within the criminal justice system that embodies the values of humanity, justice, and restoration. Restorative justice may be understood simultaneously as an approach, a theory, an idea, a process, a philosophy, and a form of social intervention in addressing and resolving criminal offences. This approach emphasizes the active participation of all parties affected by crime, including victims, offenders, the families of both parties, the surrounding community, and social actors such as customary leaders, religious figures, and other relevant authorities. Its primary objective is not solely to impose punishment, but to create a constructive space for dialogue in which each party is able to openly express their experiences, needs, and expectations.¹⁸

In this context, the process undertaken seeks to restore conditions to their original state, or at least to approximate the circumstances that existed prior to the commission of the criminal offence, whether in material, emotional, or social terms. Restorative justice also aims to rebuild trust between offenders and victims, as well as between society and the legal system, by resolving conflicts through peaceful and equitable means. Accordingly, the form of justice pursued is not confined to legal-formal justice alone, but rather encompasses substantive justice that more profoundly engages humanitarian values. This approach has become increasingly relevant within pluralistic and diverse societies, where the demand for conflict resolution mechanisms that are more civilized, effective, and deeply rooted in social values has grown ever more pressing.¹⁹

The development of criminal law enforcement in Indonesia demonstrates a significant paradigmatic shift, which may be described as a metamorphosis in both perspective and approach. Initially, the system of criminal law enforcement was strongly dominated by the paradigm of retributive justice, an approach grounded in strict legalism and the

¹⁶ Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, Cet. 1 (Citra Aditya Bakti, 1996).

¹⁷ Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*, Ed. 1 (Rajawali Pers, 2004).

¹⁸ Deniro Fadjar Fachriza Purba Dasuha and Budiman Sinaga, "Rekonstruksi Kebijakan Penerapan Restorative Justice Dalam Penyelesaian Tindak Pidana Penganiayaan Ringan Untuk Mewujudkan Keadilan Restoratif Di Indonesia," *Jurnal ISO: Jurnal Ilmu Sosial, Politik Dan Humaniora* 6, no. 1 (2026): 10–10, <https://doi.org/10.53697/iso.v6i1.3216>.

¹⁹ Abdul Wahid, "Keadilan Restoratif: Upaya Menemukan Keadilan Substantif?," *Jurnal Ius Constituendum* 7, no. 2 (2022): 307–21, <https://doi.org/10.26623/jic.v7i2.5793>.

pursuit of legal certainty. Within this framework, law was positioned as an absolute norm that had to be enforced rigidly, with primary emphasis placed on the imposition of criminal sanctions upon offenders as a form of retaliation for unlawful conduct. The legalistic principles underlying this approach provided clarity regarding acts that are permitted and prohibited by law, thereby enabling society to clearly understand the boundaries between lawful and unlawful behavior. Consequently, law enforcement officials were required to operate in a formalistic and procedural manner, strictly adhering to statutory provisions without giving substantial consideration to the social, psychological, or moral contexts of either offenders or victims.

Nevertheless, criminal law enforcement grounded in the spirit of retributive justice also reveals several fundamental weaknesses. One of its principal shortcomings lies in its positivistic orientation, which confines legal reasoning to formal legal norms and tends to disregard humanitarian dimensions as well as the values of substantive justice. Within this paradigm, justice is often reduced to punishment alone, based on the assumption that criminal sanctions will produce deterrent effects and prevent the repetition of similar offences. In practice, however, this approach frequently fails to address the underlying social factors that contribute to criminal behavior and neglects victims' interests and the need for comprehensive restoration. This situation raises a critical question: is the objective of law merely to retaliate, or should it also prioritize recovery, rehabilitation, and reconciliation? From this reflection emerges the necessity to reassess the orientation of criminal law enforcement and to create space for alternative approaches, such as restorative justice, which are more humane and oriented toward holistic conflict resolution.

The process of criminal law enforcement in Indonesia has evolved since the Dutch colonial era and continues to operate to the present day based on the legal foundations established in KUHP and KUHAP. Throughout this prolonged historical development, the structure and mechanisms of law enforcement have been systematically institutionalized, with the functions and authorities of law enforcement agencies (including the police, the prosecution service, the judiciary, and correctional institutions) clearly and normatively regulated. This enforcement process constitutes an essential component of the criminal justice system, as it serves to translate abstract criminal law norms into concrete actions that generate tangible consequences within society. In this context, the theory of criminal law enforcement becomes particularly significant, as it explains how law should not merely exist as written text but must also function in practice through the conduct of law enforcement officials who are credible, professional, and committed to the realization of substantive justice.

Criminal law enforcement theory emphasizes that the principal objective of enforcement is not limited to the imposition of sanctions upon offenders, but also encompasses the protection of victims' rights, the assurance of justice, the maintenance of community participation in legal processes, and the accountability of offenders for their actions. According to Barda Nawawi Arief, criminal law enforcement should not be understood solely as a repressive measure manifested through punishment, but must also incorporate preventive and corrective approaches. Its purpose is to protect and restore violated legal values while simultaneously fostering legal awareness within society. Meanwhile, Soerjono Soekanto emphasizes that law enforcement constitutes "an activity

aimed at harmonizing social relationships in accordance with the law.” This perspective affirms that law enforcement is a complex social process, profoundly influenced by several interrelated factors, including legal substance, the institutional structure of law enforcement authorities, and the prevailing legal culture within society. These three elements must operate synergistically so that law does not merely exist as normative text, but is genuinely experienced as just and meaningful in the lived reality of every citizen.²⁰

The criminal law enforcement system constitutes a series of mechanisms and institutions that operate in a structured and integrated manner to address criminal conduct from its initial occurrence through to its final resolution.²¹ Also referred to as the Criminal Justice System, it comprises the following components:²²

- 1) Police (Investigation and Inquiry)
- 2) Prosecutor (Prosecution)
- 3) Court (Examination and Sentencing)
- 4) Correctional Institution (Execution and rehabilitation of inmates)

The four principal components of the criminal justice system (namely the police, the public prosecution service, the courts, and correctional institutions) should not operate in a fragmented or sectoral manner. Instead, they are expected to function in a coordinated and integrated framework within a comprehensive system. The concept of an “integrated criminal justice system” essentially underscores the importance of coordination and synergy among law enforcement agencies in order to prevent overlapping authorities, procedural gaps, or even jurisdictional conflicts that may obstruct the effective and equitable enforcement of law.

Within the context of the implementation of restorative justice, such institutional integration becomes increasingly crucial, as restorative processes may commence from the earliest stages of case handling, including the investigation or inquiry conducted by the police. In certain circumstances (such as minor criminal offences or cases involving children in conflict with the law) case resolution may even be carried out outside the formal court process through diversion mechanisms, provided that the formal and substantive requirements stipulated under the applicable regulations are fulfilled.

Nevertheless, although both the retributive justice and restorative justice systems are, in principle, designed to operate comprehensively, substantial deficiencies remain evident in practice. One of the most critical shortcomings lies in the limited access afforded to crime victims to participate fully and meaningfully in the criminal justice process. Victims’ statements are not recognized as independent forms of evidence, but are instead equated with ordinary witness testimony. In fact, victims are the parties who directly

²⁰ Naufal Akbar Kusuma Hadi, “Penegakan Hukum Di Indonesia Dilihat Dari Perspektif Sosiologi Hukum,” *Jurnal Hukum Dan Pembangunan Ekonomi* 10, no. 2 (2022): 227–40, <https://doi.org/10.20961/hpe.v10i2.62834>.

²¹ Binsar Zaroha Ritonga and Eko Soponyono, “Pembentukan Lembaga Pelaksana Pidana Sebagai Wujud Sistem Peradilan Pidana Integral,” *Jurnal Pembangunan Hukum Indonesia* 5, no. 1 (2023): 136–53, <https://doi.org/10.14710/jphi.v5i1.136-153>.

²² Maidin Gultom, *Perlindungan Hukum Terhadap Anak Dalam Sistem Peradilan Pidana Anak Di Indonesia*, Cetakan keempat, revisi (Refika Aditama, 2014).

experience, suffer, and are affected by criminal acts, and therefore possess perspectives and lived experiences that are essential for uncovering the material truth.

Equating victims' testimony with that of witnesses who may have no direct connection to the criminal incident ultimately places victims in a vulnerable position and marginalizes them within a criminal justice system that should, in principle, provide protection. This occurs despite the fact that victims endure both physical and psychological harm as a direct consequence of criminal conduct. Such imbalance illustrates that the existing criminal justice system has not yet fully aligned itself with the objectives of victim protection and recovery. Consequently, efforts to implement either a retributive justice approach or a restorative justice approach, both of which seek to promote substantive justice and a balanced consideration of the interests of all parties, remain insufficiently effective.

Furthermore, the protracted nature of law enforcement procedures often results in prolonged case processing, which raises serious concerns regarding the risk of victimization of victims during the judicial process itself, commonly referred to as secondary victimization. A secondary victim, or indirect victim, is an individual who is not the direct target of a criminal offence but who nevertheless suffers psychological, social, or emotional harm as a consequence of the criminal event. Such individuals may include:²³

- 1) The victim family (parents, spouse, or children),
- 2) The perpetrator's family,
- 3) Eyewitnesses or members of the surrounding community,
- 4) Law enforcement officers who experience secondary trauma.

According to the discipline of Victimology, a secondary victim is defined as "a person who is indirectly victimized by a crime, such as relatives or friends of the primary victim, or even members of the community." Beyond this, concerns also arise regarding dissatisfaction with the procedural processes within the judicial system and the rulings issued by judges, affecting both offenders and victims. A case in point is the Kanjuruhan Stadium tragedy in Surabaya, where the Surabaya District Court ordered restitution of IDR 1.02 billion to 71 victims. Significantly lower than the initial claim of IDR 17.2 billion. The victims expressed their intention to appeal, claiming that the compensation amount was "unfair" and did not reflect the actual losses incurred. This demonstrates a clear imbalance between procedural justice (the mere payment) and substantive justice (compensation that reflects the victims' actual harm). Within the framework of restorative justice, such instances underscore the necessity for approaches that are more sensitive to victims' needs and that prioritize genuine recovery rather than mere legal formalities. Currently, the paradigm of criminal law enforcement is undergoing a significant shift: from a traditional mindset almost exclusively oriented toward imposing sanctions (retributive justice) toward a novel approach that prioritizes human values, peace, and restoration (restorative justice). This shift does not entail the abandonment of legal certainty; on the contrary, legal certainty remains upheld, grounded firmly in the

²³ Sandra Walklate, ed., *Handbook of Victims and Victimology*, 2nd ed. (Routledge, 2017), <https://doi.org/10.4324/9781315712871>.

principle of legality. According to Eva Achjani Zulfa, restorative justice represents a conceptual framework that reflects developments in the criminal justice system, focusing on the needs of society and victims, needs that have often been neglected under existing judicial mechanisms.²⁴

Fundamentally, restorative justice constitutes a highly compelling approach to addressing criminal conduct. It transforms the perception of criminal law, which has historically been viewed as a system that primarily imposes suffering on the offender, into a system that facilitates peace and recovery. This approach reorients criminal law to consider the interests of victims alongside those of offenders, as victims are directly involved in the resolution of their cases. In contrast, under a retributive justice framework, victims remain only partially represented, as their interests are mediated through state institutions such as the police, the public prosecutor's office, and the courts, an approach clearly codified in KUHAP.²⁵

The Concept of Restorative Justice to Achieve Justice in Criminal Justice

Restorative justice has emerged as a novel model for resolving criminal cases, particularly those that do not require complex evidentiary procedures, do not constitute serious or extraordinary crimes, and whose offenses do not produce extraordinary impacts. As stipulated in Article 80 of the Criminal Procedure Code, criminal offenses that may be resolved through a restorative justice approach are limited to those punishable by imprisonment of no more than five years, first-time offenses, or offenses that do not constitute a repetition of a prior crime. The resolution of criminal cases has become increasingly solution-oriented, as the criminal justice system now operates not only through a retributive justice approach but also through a restorative justice framework. Restorative justice provides a platform for offenders, victims, and the community to engage collaboratively in addressing legal issues without the looming fear of severe punitive sanctions. This approach enables all parties involved to gain mutual understanding of the circumstances, the issues at hand, and the benefits derived from the process. The most critical and essential aspect of the restorative justice approach lies in the awareness of each party regarding the problem confronted, the responsibilities assumed, and the outcomes achieved. Such awareness is expected to foster solutions that are optimal and equitable for the offender, the victim, and the wider community. This approach aligns with the perspective of Satjipto Rahardjo in his theory of progressive law, which posits that law exists for humans, not the other way around.²⁶ Rahardjo advanced the concept of progressive law based on several foundational premises: (a) progressive law begins with the basic assumption that law serves human beings rather than subordinating humans to the law; (b) progressive law does not regard law as an absolute or final institution, but rather assesses it according to its capacity to serve humanity; and (c) progressive law aims to protect the populace while striving toward the ideal of law,

²⁴ Eriyantouw Wahid, *Keadilan Restoratif Dan Peradilan Konvensional Dalam Hukum Pidana* (Penerbit Universitas Trisakti, 2009).

²⁵ Law Number 8 of 1981 Concerning the Criminal Procedure Code (1981).

²⁶ Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum Indonesia* (Genta Pub., 2009).

challenging the status quo, and rejecting the notion of law as a morally neutral technology, instead advocating for law as a morally conscious institution.

Similarly, according to Jonkers, criminal law must adopt an integrative legal theory approach, which seeks to harmonize normative aspects (legal rules), philosophical considerations (values of justice), and sociological realities (social context) in law enforcement. This perspective implies that law should not be perceived merely as text or a tool of power, but as a living value system that evolves within society, as Satjipto Rahardjo emphasized: “Law must not only be formally just (legal justice) but also substantively just (social justice) and functionally effective within society”.²⁷

Barda Nawawi Arief further asserts that criminal law approaches should not be purely retributive; they must also consider policies for public protection, victim safeguarding, and offender reintegration. This forms the foundation for an integrative penal policy approach. Muladi explains that the Indonesian criminal justice system should be based on an integral and multidisciplinary framework, encompassing legal, social, political, and moral dimensions. Restorative justice, as an approach centered on restoration and deliberation, aligns with this integrative framework. Zehr posits that restorative justice operates based on the following principles:²⁸

- 1) There must be active participation from both the victim and the offender,
- 2) Focus on repairing the harm, not on punishment,
- 3) Prioritize relation justice, not just procedural justice.

Essentially, the principles outlined above prioritize spiritual values, emphasizing the continual search for and discovery of the deepest meaning of law for the betterment and meaningfulness of life. This spiritual perspective in the legal field has been developed and institutionalized into pluralistic spiritual law, or spiritual legal theory, as advanced by Esmi Wirasih. She promotes the idea of pluralistic spiritual law through a contemplative approach, asserting that law must evolve and remain adaptive to changes occurring within a dynamic society. Law must not be rigid; rather, it should be capable of adjusting to societal transformations. Esmi Wirasih’s contemplative legal concept, grounded in pluralistic spiritual values, underscores the importance of harmony and wisdom in the application of law.

This approach is strongly rooted in the foundational principles of Pancasila, particularly the first, second, and fifth principles. The Pancasila paradigm in legal development is intended to foster social order, tranquility, and communal harmony, achievable only through adherence to laws and regulations that uphold justice. It aims to ensure fair, non-discriminatory legal enforcement. The first principle emphasizes belief in and devotion to God Almighty, indicating that human interactions cannot be separated from spiritual consciousness. The second principle, emphasizing just and civilized humanity, affirms that all humans should be recognized and treated according to their inherent dignity as beings created by God, with equal status, rights, and fundamental obligations. This

²⁷ Satjipto Rahardjo, *Ilmu Hukum*, Cet. 8 (Citra Aditya Bakti, 2014).

²⁸ Iwan Rasiwan et al., “The Implementation of Restorative Justice Principles in Handling Cases of Children in Conflict With the Law,” *Fox Justu : Jurnal Ilmu Hukum* 15, no. 02 (2025): 327–37.

principle encourages mutual love, empathy, consideration, and restraint in interactions with others. Upholding just and civilized human values entails respecting human dignity, courageously defending truth and justice, and acknowledging human equality. The fifth principle emphasizes that every individual must recognize equal rights and obligations to establish social justice within society. It promotes noble actions that reflect familial spirit and communal cooperation, fostering fairness toward others, balancing rights and duties, and respecting the rights of others.

Against this philosophical and spiritual foundation, restorative justice, as an approach to criminal case resolution, does not position punishment as the primary objective, nor does it treat the offender merely as an object of law, or disregard the victim's role. Instead, restorative justice seeks to address the root causes of criminal behavior. By actively involving offenders, victims, and the community in a dialogical process, this approach facilitates a more comprehensive restoration. It integrates offender accountability, recognition of the victim's experiences, and the community's active role in seeking paths toward reconciliation.

The efforts undertaken to strengthen the aforementioned concept of restorative justice include the efforts have involved the formulation of new norms in Article 51 of KUHP and the establishment of restorative justice mechanisms regulated from Articles 79 to 88 of KUHP. It is anticipated that by enacting these norms on restorative justice, legal certainty is ensured both formally (*lex cripta*) and definitively (*lex certa*), as the provisions are codified in statutory law. From a substantive perspective, restorative justice is expected not only to serve as a mechanism for resolving criminal cases but also as an instrument of social reconciliation, aimed at rebuilding networks of trust within the community.

This formulation represents an effort to integrate existing norms into both the KUHP and KUHP, thereby fostering a shared understanding of the concept, foundational principles, and approaches underpinning restorative justice. It provides a common framework for law enforcement institutions, ensuring that the resolution of criminal matters through restorative justice is conducted with clarity and direction. This is necessary because the approach embedded within restorative justice is fundamentally a conflict-resolution framework. As articulated by Jonkers, law cannot be divorced from moral values and social realities; it must be a living institution within society, adapting continuously to evolving social conditions.

In practice, restorative justice has been adopted and implemented in various countries worldwide, each employing distinctive and context-specific approaches, such as in Pakistan, the United States, and New Zealand.

The Juvenile Justice System Act 2018 in Pakistan constitutes a significant legal reform, replacing earlier regulatory frameworks that were considered inadequate in addressing the protection needs of children in conflict with the law. A key feature of this legislation is the incorporation of restorative justice principles into the juvenile justice system,

thereby reorienting the focus toward resolution in cases involving minors.²⁹

Through this restorative approach, punitive measures are no longer prioritized as the sole response; instead, space is provided for peaceful conflict resolution, dialogue among offenders, victims, and the community, as well as the rehabilitation of juvenile offenders. The primary objectives are to restore prior conditions, repair disrupted relationships, and facilitate the social reintegration of young offenders, while simultaneously safeguarding the rights of victims.³⁰

This approach reflects the recognition that children engaged in criminal conduct remain in critical stages of growth and development and, therefore, should be addressed through educational and constructive interventions rather than purely punitive sanctions. Accordingly, the 2018 Act demonstrates the commitment of the Pakistani government to establishing a juvenile justice system that is more humane, inclusive, and oriented toward the best interests of the child.

In practice, restorative justice has been adopted and implemented in the United States through a variety of localized programs designed to address conflicts and criminal behavior in a more humane and participatory manner. These programs emphasize the active involvement of the community, including offenders, victims, their families, and other relevant stakeholders. The approach is intended not only to resolve legal disputes but also to restore social relationships disrupted by criminal conduct.³¹

A distinctive characteristic of restorative justice programs in the United States lies in their emphasis on ethical and consensus-based decision-making, whereby all parties are afforded the opportunity to articulate their perspectives and needs. Such processes are typically facilitated through mediation, group conferencing, or community meetings conducted by neutral third-party facilitators.³²

The impact of this approach has been demonstrably positive, contributing to reductions in recidivism while simultaneously strengthening social cohesion and enhancing perceptions of justice within communities. Furthermore, restorative justice programs have been shown to improve the psychological well-being of both victims and offenders, mitigate trauma, and promote emotional and social recovery. Consequently, restorative justice in the United States functions not merely as an alternative to the formal justice system but also as an instrument for fostering more inclusive, empathetic, and equitable communities.³³

²⁹ Juvenile Justice System Act (2018).

³⁰ Rao Qasim Idrees and Naveed Hussain, *Juvenile Justice System in Pakistan: An Analysis of the Juvenile Justice System Act, 2018*, 4, no. 1 (2026).

³¹ Dragana Derlic et al., "Exploring Restorative Justice Programs for Emerging Adults in the United States: A Content Analysis of Available Services," *Criminal Justice Studies* 38, no. 2 (2025): 115–32, <https://doi.org/10.1080/1478601X.2025.2508054>.

³² Shannon M. Sliva and Carolyn G. Lambert, "Restorative Justice Legislation in the American States: A Statutory Analysis of Emerging Legal Doctrine," *Journal of Policy Practice* 14, no. 2 (2015): 77–95, <https://doi.org/10.1080/15588742.2015.1017687>.

³³ Sliva and Lambert, "Restorative Justice Legislation in the American States."

New Zealand is widely recognized as a pioneering jurisdiction in the formal integration of restorative justice within its judicial system. The effectiveness of restorative justice programs in this context is supported by a strong legal framework, particularly through the Sentencing Act 2002 and the Victims' Rights Act 2002.³⁴

These legislative instruments provide a clear legal foundation for restorative justice practices, especially in relation to sentencing procedures and the protection of victims' rights. The Sentencing Act 2002 explicitly encourages judicial authorities to take into account the outcomes of restorative processes prior to the imposition of sentences, while the Victims' Rights Act 2002 ensures that victims are granted the right to participate in such processes and to receive relevant information and fair treatment.³⁵

This legislative framework enables restorative justice to operate as an integral component of New Zealand's criminal justice system, functioning not only as an alternative mechanism but also as a complementary element to formal legal procedures. With a well-established legal basis, restorative processes can be implemented in a structured and supervised manner, thereby ensuring legal certainty for all parties involved.

Notwithstanding this robust framework, challenges persist, particularly in reconciling restorative approaches with retributive justice principles that remain embedded in contemporary judicial practice. These challenges include ensuring procedural fairness, preventing misuse, and maintaining the capacity of restorative justice to deliver both deterrence and justice for victims and society at large.

Moreover, practical implementation continues to encounter constraints, particularly in terms of resource availability, including specialized personnel, institutional infrastructure, and effective inter-agency coordination. Adequate training for law enforcement officials and judicial actors is essential to ensure a substantive understanding and proper application of restorative justice principles, rather than their reduction to mere procedural formalities. In addition, public education concerning restorative justice values is necessary to facilitate meaningful community participation in processes of reconciliation and healing.

Accordingly, achieving comprehensive and sustainable justice requires reinforcement across multiple dimensions, ensuring that the implementation of restorative justice in New Zealand is not only normatively robust but also effective in practice, particularly at the community level.

Based on the implementation of restorative justice in the three countries discussed above, restorative justice can be conceptualized as an approach embedded within the

³⁴ William R. Wood et al., "Roadblocks and Diverging Paths for Restorative Justice in Australia and Aotearoa/New Zealand," in *Comparative Restorative Justice*, ed. Theo Gavrielides (Springer International Publishing, 2021), https://doi.org/10.1007/978-3-030-74874-6_10.

³⁵ Sentencing Act (2002); Victims' Rights Act (2002).

objectives of criminal law and sentencing, as well as within the broader enforcement of criminal law, with both approaches applied concurrently to resolve criminal cases.

The approaches employed in these countries have also been formulated into Indonesian criminal law, adapted to the specific conditions and policy directions of Indonesia's criminal justice system, which is founded on the values enshrined in the principles of Pancasila. Within Indonesian criminal law, restorative justice has become a central and fundamental component.

First, restorative justice functions as an approach for resolving legal issues, serving as an alternative mechanism tailored to the specific needs of each case, taking into account the qualification of the offense, the characteristics of the offender, the legal consequences arising from the conduct, and the legal objectives to be achieved. Consequently, the justice sought is not only the resolution of individual cases but also the selection of the most appropriate systemic approach.

Second, restorative justice emphasizes the ultimate objectives of the law, namely balancing the interests of all parties, offenders, victims, and the broader community. This aligns with the principle of equilibrium within criminal law, which stresses the necessity of maintaining balance among three primary elements: the offender, the victim, and society. This perspective holds that the objectives of criminal law extend beyond merely punishing offenders as a form of retribution; they also encompass efforts to repair harm suffered by victims and to preserve public order and a sense of justice within society.

Within this framework, criminal law is expected to function as an instrument for regulating social relations equitably, ensuring that the rights and interests of all parties involved are duly considered. This theoretical perspective also underpins the development of the Restorative Justice approach, which seeks to balance the needs of victim recovery, offender accountability, and community integrity. Consequently, justice is measured not solely by the severity of imposed sanctions, but also by the extent to which social relationships disrupted by criminal conduct can be effectively restored.

Ideally, a criminal justice system should not focus solely on the prosecution of offenders but must also consider two critical aspects in a balanced manner: the protection of society and the safeguarding of individual rights, including those of both offenders and victims. On one hand, criminal law must maintain public order, protect the community from criminal threats, and ensure a sense of security. On the other hand, it must not disregard fundamental human rights, including the principles of justice, humane treatment, and the right to defense.

Therefore, a balanced legal policy approach is required, one that can reconcile the interests of the public with the protection of individual rights. This approach encourages policymakers not to focus solely on punitive measures but also to provide space for more humane alternatives to dispute resolution, such as Restorative Justice. Through such balance, the criminal justice system can effectively and equitably fulfill both its retributive and preventive functions.

Conclusion

Restorative Justice constitutes an emerging paradigm in criminal law, functioning both as a legal concept and as a systemic approach within the administration of criminal justice. The fundamental principles underlying restorative justice encompass efforts to repair harm, restore conditions, promote reconciliation, and facilitate the reintegration of both offenders and victims, while simultaneously fostering harmonious social relationships within the broader framework of the criminal justice system.

In order to strengthen the principles of restorative justice, its foundational framework should be constructed upon the values embodied in Pancasila as its philosophical basis. This framework positions justice as the primary objective, emphasizing spiritual values reflected in a continuous endeavor to discover deeper meanings of law for the advancement and welfare of society. Grounded in the values of Pancasila, restorative processes are directed toward achieving recovery that embodies responsibility, forgiveness, and acknowledgment of wrongdoing (magnanimity) on the part of both offenders and victims. Through this process, a point of convergence is established, enabling the harmonization of the legal interests of victims, offenders, and society as a whole.

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