



The Integration of Restorative Justice in Indonesia's Criminal Justice System: Building a Comprehensive Legal Framework



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Received: 2025-05-10 | Accepted: 2025-11-12 | Published: 2026-01-26

Abstract

The implementation of restorative justice in Indonesia has so far been fragmented, as each subsystem of the criminal justice system has issued its own regulations without comprehensive integration. This study examines the position of restorative justice within the Indonesian legal and criminal justice systems, while also proposing recommendations for its broader and more systematic application. Using a normative legal research method with statute and conceptual approaches, this study analyses secondary data through document review and literature study. The findings indicate that although restorative justice should, in principle, be applicable to all criminal offenses within the Indonesian legal system, its current application in the criminal justice system remains limited to specific cases. The novelty of this study lies in its proposal for an integrated legal framework—either through amendments to the Criminal Procedure Code (KUHAP) and the Criminal Code (KUHP) or through the enactment of a dedicated law—to comprehensively regulate restorative justice mechanisms. This contributes to the ongoing scholarly debate and provides a practical roadmap for legal reform in Indonesia.

Keywords: Criminal Justice Integration; Legal reform; Restorative Justice

I. Introduction

The criminal justice system is a component of criminal law, specifically formal criminal law, which aims to eradicate crime through the operational mechanisms of the system. The system can be used publicly and privately. An open system is a system that interacts or has a relationship with its environment¹, while a closed system is a system that does not have a relationship with its environment.² Anatold Rapport defines a system as a whole that functions cohesively due to the interdependence of its components, while Ackoff describes a system as a conceptual or physical entity composed of separate parts.³

¹ Winardi, *Pengantar Tentang Teori Sistem Dan Analisis Sistem* (Bandung: Mandar Maju, 1989). Pg. 10.

² Rohman Baro, *Sebuah Idealisasi Teori Hukum* (Yogyakarta: Insan Cendikia, 2005). Pg. 169.

³ Philips DC, *Holistic Thought in Social Science* (California: Stanford University Press, 1988). Pg. 60. Compare this with Achmad Ali's opinion on systems, and also with Subekti's statement that a system is an organized arrangement

In the legal realm, Lawrence M. Friedman states that a legal system consists of the elements of legal structure, legal substance, and legal culture. The legal structure has rigid elements to ensure the process remains within its boundaries. Legal substance encompasses all substantive norms and provisions concerning the behavior of legal institutions. Legal culture encompasses customs, views, actions, and thoughts. Legal culture also encompasses attitudes towards the legitimacy of a law and views on the benefits or drawbacks of litigating in court.

Donald Black defines the legal system as law being the state's social control.⁴ Within this system of legal control, there are structures, institutions, and processes of social control. Therefore, the legal system is identical to the mechanisms within the criminal justice system. The criminal justice system is one component of the criminal legal system. The operation of the criminal justice system involves the utilization of all aspects of positive criminal law, including substantive criminal law, procedural criminal law, and the law of punishment execution, to combat crime. A country's criminal law system will influence the criminal justice system that is implemented.

The criminal justice system is essentially the process of enforcing criminal law,⁵ which includes the investigation stage by the Police, prosecution by the Public Prosecutor, examination in court, and finally, incarceration in a Correctional Institution. Because the criminal justice system is closely related to criminal law norms, which are the abstract enforcement of criminal law, this will be realized in the concrete enforcement of criminal law through the criminal justice system.

The conventional criminal justice system often leads to dissatisfaction because it does not provide adequate opportunities for victims and perpetrators to participate in resolving criminal cases.⁶ The restorative justice approach offers an opportunity for a more humanistic resolution of criminal cases; however, its implementation in Indonesia remains constrained by a legal culture and regulatory framework that have yet to provide full support.

Currently, criminal law is undergoing continuous change, particularly in the shifting paradigm of sentencing, which is influenced by developments in human rights, changing public perceptions of crime, and evolving views on criminals.⁷ Human rights issues have significantly changed the paradigm of punishment in developing countries, including the view on the death penalty. Many countries have replaced the death penalty with other types of punishment or even abolished it from their penal systems. This includes the statement that imprisonment has lost its relevance to the times in society.

As the number of criminal cases in Indonesia increases, it becomes increasingly important to implement solutions that are more focused on substantive justice. This approach will ensure the protection of the rights of all parties involved and restore social harmony within the community.⁸

consisting of interconnected parts, structured according to a plan or pattern. Look Abdul Jamal, *Pengantar Hukum Indonesia* (Jakarta: Raja Grafindo Persada, 2001).

⁴ Donald Black, *The Behavior of Law* (New York: Academic Press, 1976). Pg. 2.

⁵ Muladi dan Barda Nawawi Arief, *Teori-Teori Dan Kebijakan Pidana* (Bandung: Alumni, 2010). Pg. 197

⁶ Henny Saida Flora, "Pendekatan Restorative Justice Dalam Penyelesaian Perkara Pidana Dalam Sistem Peradilan Pidana Di Indonesia," *Jurnal Law Pro Justitia* II, no. 2 (2017): 41-60. Pg.44.

⁷ Eva Achjani Zulfa, "PERGESERAN PARADIGMA PEMIDANAAN DI INDONESIA," *Jurnal Hukum & Pembangunan* 36, no. 3 (2017): 389. Pg. 393.

⁸ Dwinanda Linchia Levi Heningdyah Nikolas Kusumawardhani, "Dinamika Implementasi Pendekatan Restorative Justice Dalam Penyelesaian Tindak Pidana," *UNES Law Review* 5, no. 4 (2023): 1908-1918. Pg.1909.

One approach to addressing these three issues is to implement a restorative justice system. The concept of restorative justice in criminal cases is a new idea and concept for addressing the various impacts caused by the criminal justice process. The concept of restorative justice is an approach that emphasizes creating justice and balance for both the offender and the victim. Restorative justice is an approach that prioritizes the rehabilitation of victims, the empowerment of offenders, and community involvement as important elements in resolving criminal disputes.⁹ The strengthening of restorative justice can be pursued through the enhancement of the community's legal culture, acknowledging that while significant challenges remain, there are also promising opportunities for its broader implementation. The criminal justice mechanism focused on punishment was transformed into a process of dialogue and mediation to achieve a more balanced agreement for the victim and the perpetrator¹⁰ in resolving criminal cases, known as *daad-dader-strafrecht* (the concept of balancing interests).

Restorative justice, as previously explained, is an alternative form of dispute resolution outside the courtroom that prioritizes the value of respect for everyone.¹¹ In this process, intensive dialogue between the parties involved can occur without pressure, creating an atmosphere of mutual listening. Restorative justice is understood as a punitive mediation process that involves a meeting between the offender and the victim.¹² Criminal mediation is a component of the restorative justice concept that places the criminal justice system as the mediator.

If analysed in depth, this concept of restorative justice is essentially similar to dispute resolution in the context of customary law, which prioritizes restoring the customary social environment. In the criminal context, restorative justice can be considered a tool for implementing customary justice. This is a tradition rooted in the customary law system, with results acceptable to both parties and the indigenous community.

The implementation of restorative justice in the criminal justice system has become an increasingly significant issue in the field of criminal law. Restorative justice is an alternative approach that emphasizes victim restoration, offender reintegration into society, and collaborative conflict resolution.¹³ Although more countries are adopting the principles of restorative justice, the challenges and opportunities in its implementation remain a key focus. The criminal justice system has made significant progress in recent decades, with more countries adopting alternative approaches such as restorative justice.¹⁴ Restorative justice offers an alternative approach to addressing crime, emphasizing the pursuit of equitable resolutions for all parties involved (a win-win solution).¹⁵

The concept of restorative justice is an innovation in the criminal justice system in Indonesia, characterized by the instability of this concept as a formative policy applicable to all

⁹ Adwi Mulyana Hadi, Anik Ifitah, and Syahrul Alamsyah, "Restorative Justice Through Strengthening Community Legal Culture in Indonesia: Challenges and Opportunity," *Mulawarman LawReview* 8, no. 1 (2023): 32-44. Pg. 33.

¹⁰ Sukardi, *Konsep Penyidikan Restorative Justice* (Depok: PT. Grafindo Persada, 2010). Pg. 73

¹¹ Asep Iwan Irawan, *Pendekatan Restorative Justice Dalam Sistem Peradilan Pidana Guna Terwujudnya Model Pemasyarakatan Yang Ideal, Makalah Pada Seminar Di Lembaga Ketahanan Nasional Republik Indonesia* (Jakarta, 2022). Pg.13.

¹² Barda Nawawi Arief, *Mediasi Penal: Penyelesaian Perkara Di Luar Pengadilan* (Semarang: Pustaka Magister, 2012). Pg.1-2

¹³ Eka Fitri Andriyanti, "Urgensitas Implementasi Restorative Justice Dalam Hukum Pidana Indonesia," *Jurnal Education and Development* 8, no. 4 (2020): 326-331, <https://garuda.kemdikbud.go.id/documents/detail/2042447>. Pg.328

¹⁴ Irvan Maulana and Mario Agusta, "Konsep Dan Implementasi Restorative Justice Di Indonesia," *Datin Law Jurnal* 2, no. 2 (2021): 49, <https://ojs.umb-bungo.ac.id/index.php/DATIN/article/view/734>. Pg.59

¹⁵ M. Chaerul Risal, "Analisis Kritis Terhadap Implementasi Restorative Justice Dalam Sistem Peradilan Pidana: Tantangan Dan Peluang," *Jurnal Al Tasyri'iyah* 3, no. 1 (2023): 55-70. Pg.57.

types of crimes. The government needs to establish a comprehensive legal framework to regulate the restorative justice process for criminal cases in a more detailed and organized manner within the Indonesian Criminal Procedure Code (KUHAP). This can also be observed in previous research by Cahya Wulandari, published in the *Jurisprudence Journal* under the title "Dynamics of Restorative Justice in the Criminal Justice System in Indonesia." The research results analyze and elucidate the implementation of restorative justice in Indonesia, particularly in the resolution of criminal cases.¹⁶ Cahya asserts that the resolution of criminal cases through ADR (alternative dispute resolution) based on restorative justice is expected to be more comprehensively regulated and included in the Criminal Procedure Code as a legal source for criminal proceedings in Indonesia.¹⁷

What distinguishes this study from previous research is its recommendation that restorative justice be implemented more broadly and in an integrated manner, while still adhering to the existing criminal justice process in Indonesia as formally regulated under the Criminal Procedure Code (KUHAP). This research differs from previous studies because it recommends the wider and more integrated implementation of restorative justice, while still adhering to the criminal justice system processes formally regulated in the Indonesian Criminal Procedure Code (KUHAP). Therefore, in the future, the necessary legislative policies to be taken are to amend the Criminal Procedure Code (KUHAP), the Criminal Code, or to formulate a special law regarding criminal case resolution procedures through restorative justice. This research aims to describe the position of restorative justice within the Indonesian legal system and criminal justice system, and to provide recommendations for its wider and more integrated implementation, particularly through the establishment of institutions formally regulated in the Criminal Procedure Code (KUHAP).

Although previous studies have examined different dimensions of restorative justice in Indonesia, the novelty of this research lies in its effort to construct an integrated institutional framework encompassing all subsystems the police, prosecution, judiciary, and corrections. This article is significant not only because it maps the existing regulations, but also because it proposes legal reforms through amendments to the Criminal Procedure Code and the Criminal Code, or through the enactment of a dedicated law to ensure the comprehensive implementation of restorative justice. Accordingly, this study holds substantial value for both academic discourse and policy formulation.

II. Research Problems

Based on the background above, the problems in this study are:

1. How is the legal construction of Restorative Justice in the current Indonesian criminal justice system, and what are the obstacles hindering integration between the criminal justice sub-systems?
2. What is the urgency of reformulating the criminal procedure code (KUHAP) and establishing special institutions to support the integrated and just implementation of Restorative Justice in Indonesia?

¹⁶ Cahya Wulandari, "Dinamika Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia," *Jurnal Jurisprudence* 10, no. 2 (2021): 233-249. Pg.233.

¹⁷ *Ibid.*

III. Research Methods

This research is descriptive, illustrating doctrines related to restorative justice with a normative research approach. The data used is secondary data, including primary legal sources such as the Criminal Procedure Code, Supreme Court Circulars, Attorney General Regulations, National Police Chief Regulations, and other related regulations, as well as secondary and tertiary legal sources. The methodology applied in this research includes a legislative approach and a conceptual approach. Data collection techniques were conducted through document studies and literature reviews, followed by qualitative analysis of the gathered data to draw relevant conclusions.

This study employs a normative legal method with both a statutory (statute) approach and a conceptual approach, as the issue under examination focuses on the construction of restorative justice regulations within Indonesia's criminal justice system. The normative analysis is considered appropriate for identifying consistency, gaps, and the need for regulatory harmonization. Primary legal materials include statutory regulations, the Criminal Procedure Code, and other regulations related to restorative justice) as well as court decisions, while secondary legal materials consist of academic literature, journal articles, and expert opinions. The analysis is conducted systematically through the inventory of legal sources, problem identification, conceptual interpretation, and the formulation of normative recommendations to promote a more comprehensive and integrated legal framework.

IV. Result and Discussion

1. Legal Construction of Restorative Justice in The Current Indonesian Criminal Justice System

Restorative justice is, in fact, an alternative within the criminal justice system aimed at restoring harmonious relationships within society disrupted by criminal acts.¹⁸ Restorative justice can be applied to anyone who breaks the law, regardless of age. Restorative justice can be applied as a solution at every stage of the criminal justice process.¹⁹ It's interesting to note Marcus Priyo Gunarto's view that the primary goals of the criminal justice system are the reintegration or restoration of prisoners' social relationships into society and crime control.²⁰

According to John Braithwaite, the concept of restorative justice emphasizes an approach that repairs harm by directly involving the offender, victim, and community. This model is known as reintegrative shaming, where the offender is held accountable for their actions and is morally and socially restored to enable reintegration into society. John Braithwaite also clarifies that restorative justice is a new direction between the "justice" and "welfare" versions, as well as between "retribution" and "rehabilitation."²¹

¹⁸ Theo Gavrielides, "The Term Restorative Justice Was First Introduced in the Contemporary Criminal Justice Literature and Practice in the 1970s, Restorative Justice Theory and Practice: Addressing the Discrepancy" (Helsinki Finland: European Institute for Crime Prevention with the United Nations, n.d.).

¹⁹ *Ibid.* Pg.38-42. Stating that there are four misconceptions about restorative justice in relation to the criminal justice system, namely the first fault line concern *restorative justice* with the current *criminal justice* system, the second fault line concern the way *restorative justice* practices are integrated into the process of existing *criminal justice* system, the third fault line concern the approaches that have been adopted when attempting to define *restorative justice*, the fifth fault line relates to *restorative justice* measures and outcomes and their relationship with the concept of punishment, and the last fault line concern the content and level of flexibility afforded to some core *restorative justice* principles.

²⁰ Marcus Priyo Gunarto, "Sikap Memidana Yang Berorientasi Pada Tujuan Pemidanaan," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 21, no. 1 (2012): 93. Pg.93.

²¹ John Braithwaite, *Restorative Justice and Responsive Regulation* (Oxford: University Press, 2002). Pg.1.

John Braithwaite's concept of restorative justice can serve as a foundation for the construction of criminal law in Indonesia, as it aligns with local values such as deliberation and social harmony. The reform of the Criminal Code and current legal policies indicate a progressive step towards a more humane restoration of justice. Consistency in implementation and comprehensive education are needed for restorative justice to become an integral part of the criminal justice system in Indonesia.

The implementation of restorative justice within Indonesia's criminal justice system remains fragmented. The police, prosecution, and judiciary each operate under their own regulatory bases and mechanisms, resulting in a lack of consistency in application. For instance, the Indonesian National Police regulate discretionary case resolution based on restorative justice for certain offenses through Chief of Police Regulation No. 8 of 2021²²; the Prosecutor's Office has internal guidelines for terminating prosecution on the basis of restorative justice; while the courts, at certain levels, apply diversion mechanisms primarily in juvenile cases. These differences indicate that each subsystem develops its own interpretation, leading to the absence of a comprehensive legal framework. Moreover, recent academic studies emphasize that the internal regulations of various law enforcement institutions remain misaligned with the provisions of the 2023 Criminal Code (KUHAP), thereby creating gaps in practical implementation.²³

This fragmentation generates legal uncertainty, as the implementation of restorative justice largely depends on the discretion of law enforcement officials. For example, the study "*Restorative Justice as a New Breakthrough to Reduce Recidivism and Promote Reform in the Criminal Law System*" found that "its application in Indonesia is still limited by a lack of understanding among legal officers, social resistance, and limited resources."²⁴

Furthermore, the article "*Restorative Yet Incomplete: The Dilemma of Progressive Legal Reform in Indonesia*" notes that "the application of restorative justice remains fragmented... normative, institutional, and sociological barriers" hinder its integration within the national legal framework.²⁵ This fragmentation also obstructs the realization of the principle of equality before the law, as offenders in similar cases may be treated differently depending on which judicial subsystem handles the case. Therefore, a more comprehensive approach is required to ensure that restorative justice does not remain merely rhetorical but becomes institutionalized within the national legal system.

This fragmented condition indicates that the implementation of restorative justice in Indonesia remains at the stage of institutional experimentation rather than forming a normatively and operationally integrated system. Each law enforcement agency has attempted to adopt restorative justice values within the scope of its authority; however, in the absence of a national coordinating framework and standardized procedures, such practices struggle to achieve legal consistency and substantive justice. The effectiveness of restorative justice, in fact, depends heavily on the alignment between legal norms, institutional capacity, and cross-sectoral support. The successful implementation of restorative justice requires an *integrated institutional design* that connects the functions of investigation, prosecution, adjudication, and correction within a single

²² Rakhmi Izharti et al., "The Urgency of Codifying and Unifying Restorative Justice Regulations in Criminal Procedure Code Reform" 7, no. 2 (2025): 223-252.

²³ Andreas Nathaniel Marbun Aisyah Assyifa, Aditya Weriansyah, Matheus Nathanael Siagian, Gregorius Yoseph Laba, *Assessment of Internal Rules of Law Enforcement Agencies on Restorative Justice Compared to Law Number 1 of 2023 on Criminal Law Code*, ed. Fachrizal Afandi, vol. 17 (Jakarta: Indonesia Judicial Research Society (IJRS), 1385).

²⁴ L. Alfies Sihombing Alfies et al., "Restorative Justice as a New Breakthrough to Reduce Recidivism and Promote Reform in the Criminal Law System," *Jurnal Usm Law Review* 8, no. 1 (2025): 441-453.

²⁵ Michael Deo and Leorenzius Sihole, "Restorative Yet Incomplete: The Dilemma of Progressive Legal Reform in Indonesia" 7, no. 2 (2026): 654-670.

system oriented toward restoration rather than mere punishment.²⁶ Accordingly, the future agenda should not only focus on expanding the application of restorative justice but also on developing a comprehensive legal framework that ensures uniformity of principles, accountability in implementation, and the protection of the rights of all parties involved.

In this context, efforts to construct a comprehensive legal framework for restorative justice in Indonesia must be grounded in a strong theoretical foundation so that it does not merely become a technical policy, but one rooted in the philosophy of restoration and social reintegration. One relevant theory to explain this orientation is John Braithwaite's *Reintegrative Shaming Theory*, which emphasizes the importance of recovery mechanisms based on constructive shame and social reconciliation. This theory provides the perspective that the resolution of criminal acts should not end with formal punishment, but rather aim to restore social relationships among offenders, victims, and the community. By adopting this approach, Indonesia's criminal justice system has the potential to shift from a retributive paradigm toward a restorative one—more consistent with communal values such as mutual cooperation and deliberation and consensus.

The contextualization of John Braithwaite's *Reintegrative Shaming Theory* distinguishes between *stigmatizing shaming* the imposition of shame that leads to social stigmatization and *reintegrative shaming* the imposition of shame that enables offenders to reintegrate into society. This theory is particularly relevant in the Indonesian context, which is characterized by communal values such as mutual cooperation and deliberation, where the community plays a vital role in facilitating social reintegration.

However, in practice, Indonesia's legal system still tends to engage in *stigmatizing shaming*. For instance, the study "*Permasalahan Reintegrasi Sosial Mantan Narapidana Pembunuhan dalam Perspektif Labelling Theory dan Reintegrative Shaming*" found that "social labelling not only leads to exclusion but also contributes to the development of a negative self-image ... however ... community leaders who apply reintegrative shaming strategies ... provide a more constructive and inclusive space for social recovery."²⁷

To contextualize Braithwaite's theory, Indonesia requires a legal framework that ensures restorative justice-based case resolution functions not merely as a procedural alternative but as a genuine means of promoting social reintegration. Clear formal mechanisms, oversight of law enforcement discretion, and active community participation in case resolution are essential to prevent the persistence of stigmatizing practices.

While the *Reintegrative Shaming* approach provides an important foundation for the social reintegration of offenders, it does not fully address the complexity of restoring relationships among offenders, victims, and the community within the context of Indonesia's legal system. Effective social reintegration requires a balance between the offender's moral responsibility and the restoration of victims' rights—an aspect central to Howard Zehr's concept of *Restorative Justice*. Zehr expands upon Braithwaite's perspective by emphasizing the active participation of all parties affected by a crime in the resolution process. Thus, the analytical shift from Braithwaite's theory to Zehr's principles becomes particularly relevant for understanding how restorative justice values can be institutionalized more holistically in Indonesia—not only by

²⁶ L E X Renaissance, "Urgensi Integrasi Pengaturan Restorative Justice Dalam RUU KUHAP Sebagai Bentuk Reformasi Keadilan Nabila Ihza Nur Muttaqi * Fakultas Hukum Universitas Negeri Yogyakarta , Yogyakarta , Indonesia , Pendahuluan Hukum Dipandang Sebagai Suatu Aturan Yang Bers" 10, no. October 2024 (2025): 168–196.

²⁷ Odelia Talitakum Christabel and Triny Srihadiati, "R Eslaj : Religion Education Social Laa Roiba Journal R Eslaj : Religion Education Social Laa Roiba Journal" 7 (2025): 2820–2832.

focusing on offender reintegration, but also by ensuring victim recovery and the reconstruction of social harmony.

Howard Zehr emphasizes three fundamental principles in *restorative justice*: victim restoration, offender accountability, and community involvement. These principles closely align with the values of customary law in Indonesia, which prioritizes deliberation and consensus. Many traditional legal practices in Indonesia resolve disputes in ways that resonate with Zehr's ideas seeking to restore the social relationships disrupted by criminal acts.

Nevertheless, the integration of Zehr's principles into Indonesia's criminal justice system remains partial. For instance, the article "*Restorative Justice as an Alternative in the Indonesian Criminal Justice System*" notes that "the Indonesian legal system, which is based on a combination of civil and customary law traditions, creates a conducive foundation for the application of restorative justice principles ... but ... the application remains limited."²⁸

This condition arises because each law enforcement subsystem operates under different mechanisms, and there is no binding legal framework that unites them. As a result, the principles of victim restoration and community involvement are often neglected, while offender accountability is largely understood within a punitive framework. To contextualize Zehr's principles, it is necessary to establish an integrated institutional framework. Such a framework could be realized through amendments to the Criminal Procedure Code (KUHAP), revisions to the Criminal Code (KUHP), or even the enactment of a dedicated *Restorative Justice Law*. With such a framework in place, the police, prosecution, judiciary, and correctional institutions would be able to apply Zehr's principles consistently, thereby ensuring that restorative justice truly functions as a new paradigm within Indonesia's criminal justice system.

To contextualize Zehr's principles, it is necessary to establish an integrated institutional framework. This framework may be realized through amendments to the Criminal Procedure Code (KUHAP), revisions to the Criminal Code (KUHP), or even the enactment of a specific law on restorative justice. With such a framework in place, the police, prosecution, judiciary, and correctional institutions would be able to apply Zehr's principles consistently, ensuring that restorative justice truly operates as a new paradigm within Indonesia's criminal justice system.

Experiences from other countries demonstrate that the successful implementation of restorative justice largely depends on the consistency of institutional frameworks and the strength of regulatory support. For example, in New Zealand, the integration of Māori customary values through the *Family Group Conference* serves as an illustration of how local wisdom can be accommodated within a modern legal system without compromising universal principles of justice. Similarly, Canada has institutionalized *restorative justice programs* at various stages of the judicial process from investigation to post sentencing supported by robust national policies and specialized training for law enforcement officials. Lessons from these jurisdictions suggest that Indonesia requires a similar strategy namely, the establishment of an *integrated restorative justice framework* that encompasses not only normative aspects but also inter-institutional coordination and public accountability mechanisms. In doing so, the principles advanced by Braithwaite and Zehr can be effectively implemented within Indonesia's pluralistic socio legal context.

Experiences from other countries indicate that the successful implementation of restorative justice depends greatly on the existence of a clear legal framework and strong institutional support. In New Zealand, restorative justice has been institutionalized through the *Sentencing Act 2002*, which provides a formal mechanism for *Family Group Conferences*. The New Zealand

²⁸ L Handayani, "Restorative Justice as an Alternative Approach in Indonesian Criminal Justice," *Jurnal Kriminologi* 10, no. 3 (2022): 78-95.

experience demonstrates that the institutionalization of restorative justice particularly the *Family Group Conferences* within the Youth Justice system requires a well defined legal foundation and institutional mechanisms to ensure accountability and the active participation of families and communities.²⁹

Meanwhile, in Canada, restorative justice is integrated through diversion programs within the juvenile justice system. Lessons from this jurisdiction are particularly valuable for Indonesia, as they demonstrate that restorative justice is not merely a partial policy practice but a system protected and reinforced by statutory law.

This comparison underscores that the successful nationwide implementation of restorative justice requires: (a) explicit legal regulation, (b) training and procedural guidelines for law enforcement officers, and (c) mechanisms for evaluation and accountability all of which remain underdeveloped in Indonesia at present. Therefore, Indonesia needs to strengthen its regulatory framework through amendments to the *Criminal Procedure Code (KUHAP)* and the *Criminal Code (KUHAP)*, or through the enactment of a dedicated law, to ensure that restorative justice functions not merely as a technical policy but as an integral component of the criminal justice system.

The fragmentation of restorative justice in Indonesia will only undermine its restorative objectives if not promptly addressed. The theories of Braithwaite and Zehr can serve as normative and philosophical foundations for the development of restorative justice; however, they must be contextualized within Indonesia's socio-legal realities through a comprehensive regulatory framework. Experiences from other countries demonstrate that the institutionalization of restorative justice within the national legal system is essential to prevent its application from remaining merely descriptive and partial. Therefore, Indonesia must urgently establish an integrated institutional framework formally regulated by law, ensuring that restorative justice operates effectively, consistently, and in accordance with the principles of justice.

In Indonesia, the concept of restorative justice is beginning to be implemented within the criminal justice framework as an alternative to the retributive justice system that dominates conventional criminal law. Restorative justice is relevant considering the characteristics of Indonesian society, which encourage deliberation, familial bonds, and the restoration of social harmony.

The intersection between restorative justice and criminal law in Indonesia can be observed through local wisdom and deliberation, where the concept of restorative justice aligns with the culture of deliberation in Indonesian society, such as the customary approach often applied in resolving criminal conflicts. Additionally, Supreme Court Regulation (Peraturan Mahkamah Agung No. 2 of 2012) and police policies also support the implementation of restorative justice, particularly in resolving minor criminal cases through a peaceful approach.

The ultimate objective of the criminal justice system can only be achieved if each subsystem, starting with the police, followed by the prosecution, the judiciary, and the correctional system, demonstrates sensitivity to the nature of the defendant's actions. Each subsystem should not act based on the sectoral ego of its respective institution, but rather should consider the fate of the offenders in preparing for their reintegration into society. Therefore, integration between these criminal justice subsystems must be realized. It is referred to as an integrated criminal justice system.

The main question is where the restorative justice process can be implemented, considering that based on the doctrine and goals of restorative justice, there is no provision in the existing

²⁹ Sarah B. Roth Shank, "Institutionalizing Restorative Justice In New Zealand's Criminal Justice System: Gains, Losses And Challenges For The Future" (Victoria University of Wellington, 2021).

substance of the law. Each criminal justice sub-system implements restorative justice in its own version, leading to internal regulations ranging from the Chief of Police Regulations, Attorney General Regulations, to Supreme Court Regulations. This not only causes system incoherence but also differences in perspective, which hinders the resolution of cases through restorative justice.

2. Urgency of Formulating The Criminal Procedure Code (KUHAP) and Establishing Special Institutions to Support The Integrated and Just Implementation of Restorative Justice in Indonesia

a. Restorative Justice in the Police

The police are a law enforcement institution that plays a role in upholding the law through preventive, preemptive, and repressive actions. The police function as law enforcers in a broad sense. The function of the police is to uncover a criminal case through methods regulated by law, namely investigation and inquiry. Next, the case will be handed over to the Prosecutor's Office for prosecution in court.

Law Number 2 of 2002 concerning the Indonesian National Police explains the duties, functions, and authority of the police, and is regulated in National Police Regulation Number 8 of 2021. The Indonesian National Police is a state institution that functions to maintain public security and order, enforce the law, and provide protection, guidance, and service to the community for the sake of national security. Based on this, the police are given the authority to investigate and investigate criminal cases. In law enforcement practice, the police emphasize law enforcement in the narrow sense, which is applying the law by holding perpetrators accountable.³⁰ However, the police have the authority to halt the criminal case process, both at the investigation and inquiry stages, for the sake of justice, legal certainty, and expediency, through the mechanism of a Letter of Termination of Investigation and Inquiry (SP3). The termination of investigation can be explained through the provisions of Article 109 paragraph (2) of the Criminal Procedure Code, which states, "if the investigator terminates the investigation because there is insufficient evidence, or the event does not constitute a criminal act, or the investigation is terminated by law," then the investigator is obliged to notify the public prosecutor, the suspect, or their family of this.

In the criminal justice process at the police level, it is evident that the police tend to prioritize resolving criminal cases through court or litigation, which means the case must proceed to the prosecution stage and ultimately reach the trial stage in court. Law enforcement is almost never applied through restorative justice processes, even though the police have discretionary authority³¹ that includes resolving criminal cases using restorative justice methods.

The use of restorative justice in criminal cases within the police force is not a new idea, as law enforcement often resolves criminal matters through alternative dispute resolution or penal mediation. The role of the police in the concept of restorative justice is to facilitate the resolution of community disputes resulting from criminal offenses through a "family" approach (in sociological terminology), although this is limited to minor offenses.

³⁰ Indonesia, *Peraturan Kapolri Nomor 8 Tahun 2021 Tentang Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif*, n.d. Article 1 angka 1.

³¹ Among other things, discretion is the freedom and/or power to interpret current laws, make judgments, and pursue legal action that is judged most suitable. In this instance, the interpretation has the power to do so, and it is used responsibly and sensibly. look Erlyn Indarti, *Diskresi Dan Paradigma: Suatu Telaah Filsafat Hukum, Pidato Pengukuhan Guru Besar Universitas Diponegoro* (Semarang: Badan Penerbit Universitas Diponegoro, 2010). Pg.39-41.

Referring to the Criminal Procedure Code and public criminal law doctrine, there is no mechanism for private resolution of criminal acts, except in cases of complaints; the resolution of criminal cases is the domain of the state, so only the state is authorized to resolve various criminal cases. The concept of restorative justice does not automatically transform criminal law into private law, but is influenced by abolitionist ideas which hold that punishment is not an effective method for addressing crime.

In practice, the application of restorative justice is entirely the authority of the investigator or the subjective right of the investigator, so there is no standard in its application. This condition has the potential to lead to abuse of power or even obstruction of justice by investigators in handling criminal cases resolved through restorative justice. The implementation of law enforcement based on discretionary authority invariably breeds skepticism throughout society. Thus, the Indonesian National Police issued the Regulation of the Chief of the Indonesian National Police (Peraturan Kapolri) Number 7 of 2008 concerning the Basic Guidelines for Community Policing Strategies and Implementation in the Performance of Police Duties. Regulation of the Indonesian National Police (Peraturan Kapolri) Number 8 of 2021 concerning the Handling of Criminal Acts based on the principle of restorative justice.

Referring to Perkap Number 7 of 2008, its content indicates that resolving cases through Alternative Dispute Resolution (ADR) in civil law cannot be applied to criminal cases. Resolution through ADR focuses on peace, which is only relevant in the context of public law, making it impossible to apply peaceful mechanisms in criminal cases.

The concept of restorative justice in resolving criminal cases emerged with the issuance of the Chief of Police Circular Letter number SE/8/VII/2018, which regulates the application of restorative justice with certain limitations. This shows that not all criminal cases can be resolved through restorative justice mechanisms, which contradicts the main doctrine that allows all criminal offenses to use this approach. This Circular from the National Police Chief outlines the requirements for criminal cases that can be resolved through restorative justice mechanisms. Among the material requirements that must be met are: (a) the criminal act does not cause unrest in society and there is no rejection from society, (b) it does not cause social conflict, (c) there is a statement from all parties involved that they do not object and waive their right to sue in court, (d) the principle of limited restrictions applies only to the perpetrator and to the investigation and prosecution process, (e) the perpetrator is not a recidivist. The formal requirements that must be met are: (a) a letter of request for peace from both parties involved in the case, and (b) a statement from both parties involved in the case, witnessed by community leaders. (C) minutes of additional examination of the parties involved after the case is resolved through restorative justice, (d) a recommendation from a special case hearing approving the restorative justice resolution, (e) the perpetrator does not object to responsibility, compensation, or is doing so voluntarily, (f) all criminal acts can be subject to restorative justice for common crimes that do not result in human casualties.

Looking at these two regulations from the National Police Chief, it appears that resolving criminal cases through restorative justice mechanisms is still partial, as it does not cover all criminal offenses for application in restorative justice. Additionally, the resolution mechanism still follows the procedures outlined in the Criminal Procedure Code (KUHP), even though the resolution should be done quickly to meet the community's recovery from the impact of the criminal offense that occurred, and the legal products are unclear when restorative justice is applied. The parties, especially the respondent or perpetrator, may still be hesitant due to

uncertainty if no legal product is produced from resolving the criminal case through this restorative justice mechanism.

Unlike the resolution of criminal cases that are stopped at the investigation stage, the legal product produced is a Letter of Investigation Termination Order (SP3). The Criminal Procedure Code (KUHAP) has introduced the SP3 Institution, which essentially aims to provide legal certainty for all parties, especially suspects, so that their human rights are not violated. The issuance of an Order to Stop Investigation is based on the fulfilments of the following conditions: first, there is insufficient evidence; second, the actions taken by the suspect do not constitute a criminal offense; and third, the investigation is stopped by law.

The legal product of the termination of an investigation is an SP3, and after an SP3 is issued, the suspect's status is lost. This is in accordance with the Criminal Procedure Code (KUHAP) Article 109 paragraph (2), which states that the police have a legal obligation to notify the public prosecutor, family, and the suspect or their family, so that the suspect or their family can be assured of legal certainty that the case is closed by law.

The implementation of restorative justice in the Police does not reflect legal uncertainty, but is still in the process of synchronization, learning, and unifying perspectives among Police members.³² Therefore, the implementation of restorative justice methods at the police level must refer to the aforementioned points, considering its very noble goal. What needs to be regulated is the "legal products issued by the Police" so that the public feels protected, not oppressed.

b. Restorative justice at the Prosecutor's Office

The next criminal justice subsystem is the Public Prosecutor's Office subsystem. The existence of the Attorney General's Office is stipulated in Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, which states that the Attorney General's Office of the Republic of Indonesia is a government institution that exercises state power in the field of prosecution and other authorities in accordance with the Attorney General's Office Law.³³ This institution serves as the controller of the case process (*dominus litis*) and plays a central role in law enforcement, as through the Attorney General's Office, a case can be brought to court or dismissed based on evidence that is valid according to the Criminal Procedure Code.

Referring to the law, the exercise of state power must be carried out independently without pressure, intimidation, or direction. The Prosecutor's Office is a government institution that independently exercises state power in the field of prosecution. This provision ensures that the Attorney General's Office is free from government influence and other powers. Therefore, there is protection for the profession of prosecutor in carrying out their professional duties.³⁴

The guarantee of freedom in the execution of its duties and functions is reflected in the decision that the Prosecutor's Office has discretionary authority to resolve cases through restorative justice mechanisms. This is evidenced by the issuance of Indonesian Attorney General Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. The issuance of this policy is predicated on the necessity of resolving criminal cases

³² Indonesia, *Peraturan Kapolri Nomor 8 Tahun 2021 Tentang Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif*. The police must develop a new concept in criminal law enforcement that accommodates the norms and values prevailing in society as a solution, while also providing legal certainty, particularly for the benefit and sense of justice of the community. This is the focus of letter b of Perkap Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice, which is the "considering" point.

³³ Indonesia, *Law No. 16 of 2004 Concerning Prosecutors*, n.d. Article 2 paragraph (1)

³⁴ *Ibid.* Article 2 Paragraph (2)

through restorative justice, which emphasizes the restoration of the original state and the equilibrium of protection and interests for both victims and offenders, rather than focusing on retribution. This approach is considered a legal necessity for society and a mechanism that must be established in the exercise of prosecutorial authority and the reform of the criminal justice system.

The policy outlined in Service Regulation Number 15 of 2020 is the Termination of Prosecution Based on Restorative Justice. Article 2 states that the termination of prosecution based on restorative justice is carried out based on: a, justice; b, public interest; c, proportionality; d, punishment as a last resort; e, speed, simplicity, and low cost.

Out-of-court settlement of cases can be done under the provisions of (a) for certain criminal offenses, where the maximum fine is paid voluntarily in accordance with the law, or (b) the situation has been restored to its original state through a restorative justice approach.

The implementation of restorative justice with the termination of prosecution is carried out through a mechanism of reconciliation. Reconciliation efforts are provided for victims and defendants, carried out without pressure, coercion, or intimidation.³⁵ This peace effort is carried out at the prosecution stage, which is when responsibility for the suspect and evidence is transferred, through the official summons of the victim by the prosecutor, including the reason for the summons. When deemed necessary, peace can involve victims or their families, community leaders, and relevant parties. Next, the prosecutor will inform the victim and the suspect about their rights and obligations, including the right to refuse this peace mechanism.³⁶

If peace is achieved, the prosecutor will report it to the District Attorney's Office through the chain of command, which will ultimately be submitted to the Attorney General's Office, which will then issue a Letter of Termination of Prosecution because restorative justice has been achieved. Regarding restorative justice, Attorney General Burhanudin explained that it has emerged as an alternative for resolving criminal cases. Through the concept of restorative justice, harmonious life in society can be restored. The concept of restorative justice is a logical consequence of the principle of *ultimum remedium*, which states that punishment is the last resort, and it also reflects the principles of justice, proportionality, and efficiency with low cost. Therefore, the termination of prosecution based on restorative justice is carried out to protect the interests of the victim and other legal interests.³⁷

c. *Restorative Justice in Court*

Restorative justice is one of the principles of law enforcement in resolving cases that can be used as an instrument for recovery, with an emphasis on dialogue and mediation involving the perpetrator, victim, perpetrator's/victim's family, and other relevant parties, to jointly reach an agreement on a criminal case resolution that is fair and balanced for both the victim and the perpetrator, with a focus on restoring the original state and good relations within the community.

The Supreme Court, through the Decree of the Director General of the General Judiciary Body Number 1691/DJU/SK/PS.00/12/2020, has issued Guidelines for the Implementation of Restorative Justice within the General Judiciary environment. This guideline provides

³⁵ Indonesia, *Peraturan Kejaksaan Republik Indonesia Nomor 15 Tahun 2020 Tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif*, n.d. Article 7 Paragraph (1) dan (2).

³⁶ *Ibid.* Article 8.

³⁷ Jean Calvin Simanjuntak, *Restoratif Justice, Metamorfosa Kearifan Lokal Indonesia* (Jakarta: Rajawali Press, 2023). Pg.150.

instructions on resolving cases through a restorative approach in minor offenses, cases involving women facing the law, child cases, and narcotics cases.

Next, the Supreme Court issued Supreme Court Regulation of the Republic of Indonesia Number 1 of 2024 concerning Guidelines for Criminal Case Adjudication Based on Restorative Justice. Its content is more comprehensive and thorough. This regulation covers principles, objectives, and scope, as well as court procedures based on restorative justice.

Article 2 of this Perma states that judges adjudicate criminal cases with restorative justice based on the principles of restoring the situation, strengthening the rights, needs, and interests of the victim, the defendant's responsibility, punishment as a last resort, consensus, transparency, and accountability. Furthermore, Article 3 states that the purpose of criminal case adjudication based on restorative justice is to restore the victim of the crime, improve relationships between the defendant, victim, and/or community, encourage the defendant's accountability, and prevent any individual, especially children, from being deprived of their freedom, while still affirming that the application of the principle of restorative justice is not intended to eliminate criminal responsibility.

Considering the three regulations issued by these elements of the criminal justice system, it appears that each has a unique perception of the mechanisms of restorative justice, and there is no uniformity of views and frameworks among them. Everyone only considers how restorative justice can be implemented within their respective institutional environments.

Therefore, it appears that the implementation of restorative justice is done partially, without resolving the substance of the case resolution mechanism through restorative justice, which ultimately obscures the meaning of the very purpose of law enforcement.

d. The Substance and Institutions of Restorative Justice

Before discussing the regulation and institutionalization of restorative justice, it is first necessary to explain the meaning and concept of restorative justice. Numerous experts and institutions offer definitions or interpretations of restorative justice. Substantially and philosophically, there is a similarity of understanding between the two. Terminologically, restorative justice was first introduced by psychologist Albert Eglash in 1977 in his work on reparations. Restorative justice is highly focused on rebuilding relationships after a crime has occurred, not just repairing the relationship between the offender, victim, and community.³⁸

Restorative justice, as defined by the United Nations in the Handbook on Restorative Justice, is a problem-solving method that involves the victim, the offender, their social networks, justice institutions, and the community.³⁹

The Restorative Justice Consortium clarifies that "restorative justice aims to resolve conflicts and repair harm by encouraging perpetrators to understand the consequences of their actions and offering them an opportunity to make amends. It also gives victims the chance to have their suffering acknowledged and to receive reparations."⁴⁰

Restorative justice, as defined by Tony F. Marshall, is "a process whereby stakeholders in a specific offense collaboratively determine how to address the consequences of the offense and

³⁸ Muladi & Diah, *Catatan Empat Dekade Perjuangan Turut Mengawal Terwujudnya KUHP Nasional* (Semarang: Universitas Semarang Press, 2020). Pg.77.

³⁹ *United Nation Office on Drug and Crime (UNODC)*, 2006. Pg. 6. Furthermore, it was explained that *restorative justice* is a way of responding to criminal behavior by balancing the needs of the community, the victim and the offenders.

⁴⁰ Marian Liebman, *Restorative Justice: How It Work* (London: Jessica Kingsley Publisher, 2007). Pg.25.

its implications for the future."⁴¹ Howard Zehr, in *The Little Book of Restorative Justice*,⁴² states that there are three main types that support restorative justice: first, the understanding that victims and the surrounding community are affected by the offender's actions; second, the offender's obligation to make amends to the victim and the community involved; and third, the healing of the victim's trauma.

Muladi stated that in restorative justice, the dignity of the victim is considered. The perpetrators must be held accountable for their actions and reintegrated into the community. The perpetrator and the victim are in an equal and interdependent position; therefore, they must be harmonious with each other. Eva Achjani Zulpa asserts that restorative justice is a conceptual framework that responds to the evolution of the criminal justice system by emphasizing the necessity of involving victims and communities who feel marginalized by the current mechanisms operating within the criminal justice system.⁴³

From various definitions of restorative justice, it can be concluded that the criminal justice process does not always have to end with punishment; there are still alternatives that can satisfy both parties, namely the perpetrator and the victim, without neglecting the role and interests of the state as a form of protection for society. The concept of restorative justice can continue to be developed to further involve the community in combating crime and resolving conflicts among them, with the state acting as a facilitator.

History shows that the concept of restorative justice is implied by a long-standing philosophy, namely abolitionism. Abolitionists firmly reject punitive measures as a form of correction and seek to develop criminal case resolution through restorative or reparative means.

Abolitionist supporters argue that the criminal justice system has negative characteristics, causing suffering, failing to function as intended, and demonstrating powerlessness and fundamental flaws in its approach.⁴⁴

Early abolitionists championed the values that criminal cases should be resolved through a humane and rational approach, seeking more humane, viable, and effective alternatives to the prison system. Every citizen has a sense of mutual ownership, and in situations of public disorder, tolerance is paramount. In conclusion, the abolitionist perspective emphasizes the humanistic aspect of resolving criminal cases by avoiding punishment, especially imprisonment. In the current context, the idea of abolitionism is similar to modern criminal law doctrines that place greater emphasis on the concept of balancing interests, although these doctrines still acknowledge imprisonment.

In the context of sentencing, there are several well-known and continuously evolving doctrinal theories. First, the absolute or retributive theory, which originates from the classical school. The concept of this theory emphasizes that sentencing should consider the actions committed, with the aim of ensuring that the sentence imposed is proportionate to those actions.⁴⁵ Plato asserts that criminal law serves to restore the harmony disrupted by crime.⁴⁶ He argues that individuals are punished not for committing a wrong, but to prevent its recurrence.

⁴¹ Tony F. Marshall, *Restorative Justice on Overview* (London: Home Office Information and Publications Group, 1999). Pg.5.

⁴² Howard Zehr, *The Little Book of Restorative Justice* (USA: Good Books Intercourse, 2002). Pg.37.

⁴³ Eva Achjani Zulpa, *Pergeseran Paradigma Pemidananan* (Bandung: Lubuk Agung, 2010). Pg.65.

⁴⁴ M. Sholehudin, *Restorative Justice Model Sebagai Lembaga Desentralization of Sentencing Dalam Hukum Pidana Kontemporer, Dalam Pemikiran Kontemporer Pembaruan Hukum Pidana Indonesia*, ed. Pujiono (Rajawali Press, 2023). Pg.307.

⁴⁵ Eddy Hiaariej, *Prinsip-Prinsip Hukum Pidana* (Yogyakarta: Cahaya Atma Pustaka, 2014). Pg.31.

⁴⁶ Jan Remmelink, *Hukum Pidana: Komentar Atas Article-Article Terpenting Dalam Kitab Undang-Undang Hukum Pidana Belanda Dan Padananya Dalam Kitab Undang-Undang Hukum Pidana Indonesia* (Jakarta: Gramedia Pustaka Utama, 2003). Pg.61. Compare this with the opinion of Immanuel Kant, as quoted by Arief, *Teori-Teori Dan Kebijakan Pidana*. Pg.11.

Both theories, namely the relative theory and the purpose theory, state that the sentence imposed must consider the characteristics and circumstances of the offender.⁴⁷ According to these theories, crime is the result of the offender's innate nature and social conditions; the punishment imposed on criminals should be based on classifying them into different groups.⁴⁸

Third, the comprehensive theory. According to Herbert Packer, this theory is a synthesis of two previous theories. According to this theory, retribution is more beneficial as a starting point for analyzing crime and punishment rationally and more comprehensively.⁴⁹ The main ideas of this combined theory are: (a) free will is an illusion, as human behavior is determined by forces within the individual that are beyond their control; (b) moral responsibility is also an illusion, as individuals cannot be held accountable for their formed behavior; (c) human behavior should be scientifically studied and controlled, with (d) the function of criminal law being simply and purely to guide individuals who have committed crimes to prevent them from repeating them in the future.

Law Number 1 of 2023 concerning the Criminal Code stipulates that the purposes of punishment are: (a) preventing the occurrence of criminal acts through the enforcement of legal norms for the protection and care of society, (b) rehabilitating convicts through guidance and mentoring to become good and useful individuals, (c) resolving conflicts arising from criminal acts, restoring balance, and creating a sense of security and peace in society, and (d) instilling a sense of remorse and freeing convicts from guilt.⁵⁰ The provisions in the Criminal Code are in line with Muladi's view⁵¹, which states that there are three dimensions to the purpose of punishment: resolving conflict, restoring balance, and creating a sense of peace.

Next, utilitarian theory emerged, stating that the purpose of punishment is more focused on the offender. According to this theory, punishment does not aim to fulfill the absolute demands of justice. Punishment not only serves as retribution against the perpetrator of a criminal act but also has certain beneficial purposes. Punishment is only acceptable if it offers the hope of preventing greater crimes.

Based on the theoretical explanation of punishment, it is clear that a proportional punishment is needed to ensure that the sanction is at least proportionate to the harm caused by the criminal act. A proportional sanction must align with the severity of the act and the harm caused by the perpetrator.

Abolitionist views in their subsequent development gave rise to various concepts, including restorative justice systems and criminal mediation. In 2000, the United Nations Congress issued the Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, which contains a number of fundamental principles related to the application of the restorative justice approach. This recommendation states that restorative justice can be applied within a rational criminal justice system, considering there is still dissatisfaction with the performance of the current criminal justice system.

Restorative justice has emerged as a more humane concept due to the involvement of several elements in resolving conflicts arising from criminal acts. The concept of restorative justice

Immanuel Kant believed that punishment is a moral imperative; a person is punished because they have committed a crime. Criminal law is not a means to an end, but rather reflects justice.

⁴⁷ M. Sholehudin, *Sistem Sanksi Dalam Hukum Pidana: Ide Dasar Double Track System Dan Implementasinya* (Jakarta: Raja Grafindo, 2003). Pg.48.

⁴⁸ Lamintang dan Theo Lamintang, *Hukum Penitensier Indonesia* (Jakarta: Rieneka Cipta, 2012). Pg.17.

⁴⁹ Marlina, *Hukum Penitensier Indonesia* (Bandung: Refika Aditama, 2011). Pg.68.

⁵⁰ Indonesia, *KUHP Undang-Undang Republik Indonesia Nomor 1 Tahun 2023* (Indonesia, 2023). Article 51

⁵¹ Muladi, *Implementasi Pendekatan Restorative Justice Dalam Sistem Peradilan Pidana Anak* (Semarang: Faculty of Law UNDIP, n.d.). Pg.61.

focuses on the offender restoring the harm to the victim, thus demonstrating the offender's obligation to repair the damage or loss resulting from the crime. Here, the participation of victims and perpetrators is crucial for achieving reconciliation, redress, and ensuring the sustainability of these improvement efforts. Restorative justice serves as a crucial foundation for criminal mediation and the double-track system. Restorative justice is an alternative form of resolution outside of court (out-of-court settlement) or penal mediation.⁵²

The concept of restorative justice has been institutionally implied in various laws and regulations, ranging from the 1945 Constitution to lower-level laws.

For example, Article 18B Paragraph (2) of the 1945 Constitution states that the state recognizes and respects the unity of indigenous legal communities and their traditional rights, as long as they still exist and are in accordance with societal development and the principles of the unitary state of the Republic of Indonesia as regulated by law. Furthermore, Law Number 48 of 2009 concerning Judicial Power stipulates that courts are obliged to consider legal values and the sense of justice in society when making decisions. Judges and constitutional judges must explore, follow, and understand the legal values and sense of justice that are developing in society.⁵³

The implicit inclusion of the concept of restorative justice in several legislations is considered insufficient within Indonesia's legal system, which predominantly adheres to positivism. There is only an explanation of restorative justice in the context of the juvenile criminal justice system, as regulated by Law Number 11 of 2012 concerning Juvenile Criminal Justice. In Article 1 Paragraph 6, restorative justice is defined as the resolution of criminal cases involving the perpetrator, victim, the perpetrator's/victim's family, and other relevant parties, working together to find a just solution, with an emphasis on restoring the original state rather than on retribution.

The resolution of cases can be achieved through dialogue to reach a balanced harmony and justice for both victims and perpetrators of criminal acts. The criminal justice process is carried out dialogically and mediatively, focusing on restoring justice for victims and creating a more balanced agreement in resolving criminal cases. This concept of restorative justice is seen as a non-litigation method or dispute resolution outside the criminal justice system. Although we are aware that the criminal justice system in Indonesia still applies retributive justice, which focuses more on punishing the perpetrator.

In the Indonesian context, this concept of restorative justice can function well considering its legal system is influenced by traditional and religious law. In the traditional legal system, restoring customary balance is very important after a customary law violation, and its resolution is carried out through customary kinship mechanisms. Similarly, the influence of religious law, particularly the Islamic legal system, will affect peaceful resolution or a balance of interests, considering that dispute resolution, both civil and criminal, is based on the principle of brotherhood. The concept of forgiveness is highly encouraged in Islam compared to retribution.

The concept of restorative justice in Islamic criminal law is mentioned in Al Quran Surah *Asy Syura* verse 40, which states, "And the recompense for an evil deed is an evil deed the like thereof. But whoever forgives and makes amends, his reward is with Allah." "Indeed, He does not love the wrongdoers." Furthermore, in Surah *Al-Baqarah* verse 178, Allah says, "O you who believe, retaliation is prescribed for you in the matter of the killed, a free man for a free man, a slave for a slave, and a woman for a woman." Whoever receives forgiveness from their brother should reciprocate in a good manner, and whoever receives forgiveness is obligated to pay blood

⁵² Arief, *Mediasi Penal: Penyelesaian Perkara Di Luar Pengadilan*. Pg.4.

⁵³ Indonesia, *Law Number 48 of 2009 concerning Judicial Power*, n.d. Article 5 Paragraph (1)

money to the one who forgave them in a good manner as well. It is a concession from your Lord and a mercy. Whoever transgresses the limits will receive painful punishment.

Therefore, there are no difficulties or objections to the concept of restorative justice if it is permanently institutionalized and included in a single unification and codification of law, to serve as a clear reference for law enforcement in resolving criminal acts. Every individual who commits a criminal act is obliged to restore the consequences caused by that act and is obligated to provide compensation for the losses suffered by the victim, within the framework of the state's authority to revoke the perpetrator's rights until that obligation is fulfilled.

Restorative justice in the context of Indonesian criminal law enforcement is based on the principles of justice and legitimacy as its foundation, with the aim of achieving balance, harmony, and reconciliation within society and preventing miscarriages of justice.⁵⁴ In the Indonesian legal system, resolving criminal cases through a restorative justice approach without clear mechanisms and partial regulations can lead to legal uncertainty. Therefore, to achieve legal certainty, decisions regarding restorative justice must be judge's rulings pronounced in public, similar to regular cases, and the rulings must be final and definitive, serving as a basis for *ne bis in idem* if a party were to appeal it again in the future.

V. Conclusion

The concept of restorative justice that is now emerging is not an original idea in the modern context, but has existed since the Middle Ages. The concept of restorative justice aims to resolve disputes within society through the involvement of all stakeholders, especially between the perpetrator and the victim, with the state acting as a mediator. The concept of restorative justice asserts that prison is not the optimal method for punishing criminals. There are still other methods for restoring harmony in society after a crime has been committed. In Indonesia, the concept of restorative justice has begun to be utilized by law enforcement, however, each entity has its own regulations and mechanisms governing offenses that can be resolved through restorative justice. Therefore, in the future, the necessary legislative policies to be taken are to amend the Criminal Procedure Code (KUHAP), the Criminal Code (KUHP), or to formulate a special law regarding criminal case resolution procedures through restorative justice.

This study asserts that the implementation of restorative justice within Indonesia's criminal justice system remains fragmented, as each subsystem—the police, prosecution, judiciary, and correctional institutions—applies the regulations in a partial and uncoordinated manner. The novelty of this research lies in its proposal for establishing an integrated legal framework that harmonizes all subsystems through either amendments to the Criminal Procedure Code (KUHAP) and the Criminal Code (KUHP) or the formulation of a specific law on restorative justice. Beyond its academic contribution through the construction of this legal framework, the study also carries significant policy implications by encouraging the government and legislators to adopt a uniform, comprehensive, and binding regulatory approach. As a practical recommendation, the study suggests: (1) drafting model provisions within the KUHAP amendment that explicitly regulate the procedures and requirements for implementing restorative justice across all stages of the criminal justice process; (2) establishing institutional mechanisms, such as dedicated restorative justice units within the police, prosecution, and judiciary, to ensure consistency of practice; and (3) formulating an integrated technical guideline

⁵⁴ Sukardi, *Restorative Justice Dalam Penegakan Hukum Pidana Indonesia*, Cetakan 1. (Jakarta: Raja Grafindo Persada, 2020). Pg.3.

to serve as a common reference among law enforcement agencies, thereby preventing divergent interpretations across institutions.

References

- Aisyah Assyifa, Aditya Weriansyah, Matheus Nathanael Siagian, Gregorius Yoseph Laba, Andreas Nathaniel Marbun. *Assessment of Internal Rules of Law Enforcement Agencies on Restorative Justice Compared to Law Number 1 of 2023 on Criminal Law Code*. Edited by fachrizal Afandi. Vol. 17. Jakarta: Indonesia Judicial Research Society (IJRS), 1385.
- Alfies, L. Alfies Sihombing, Yeni Nuraeni, Komarudin Komarudin, and Karunia Karunia. "Restorative Justice as a New Breakthrough to Reduce Recidivism and Promote Reform in the Criminal Law System." *Jurnal Usm Law Review* 8, no. 1 (2025): 441–453. DOI: 10.26623/julr.v8i1.11807
- Andriyanti, Eka Fitri. "Urgensitas Implementasi Restorative Justice Dalam Hukum Pidana Indonesia." *Jurnal Education and Development* 8, no. 4 (2020): 326–331. <https://garuda.kemdikbud.go.id/documents/detail/2042447>.
- Arief, Barda Nawawi. *Mediasi Penal: Penyelesaian Perkara Di Luar Pengadilan*. Semarang: Pustaka Magister, 2012.
- Arief, Muladi dan Barda Nawawi. *Teori-Teori Dan Kebijakan Pidana*. Bandung: Alumni, 2010.
- Baro, Rohman. *Sebuah Idealisasi Teori Hukum*. Yogyakarta: Insan Cendikia, 2005.
- Black, Donald. *The Behavior of Law*. New York: Academic Press, 1976.
- Braithwaite, John. *Restorative Justice and Responsive Regulation*. Oxford: University Press, 2002.
- Cahya Wulandari. "Dinamika Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia." *Jurnal Jurisprudence* 10, no. 2 (2021): 233–249. DOI: 10.23917/jurisprudence.v10i2.12233
- Christabel, Odelia Talitakum, and Triny Srihadiati. "R Eslaj : Religion Education Social Laa Roiba Journal R Eslaj : Religion Education Social Laa Roiba Journal" 7 (2025): 2820–2832.
- Deo, Michael, and Leorenzius Sihole. "Restorative Yet Incomplete : The Dilemma of Progressive Legal Reform in Indonesia" 7, no. 2 (2026): 654–670. DOI: 10.46924/jihk.v7i2.328.
- Diah, Muladi dan. *Catatan Empat Dekade Perjuangan Turut Mengawal Terwujudnya KUHP Nasional*. Semarang: Universitas Semarang Press, 2020.
- Flora, Henny Saida. "Pendekatan Restorative Justice Dalam Penyelesaian Perkara Pidana Dalam Sistem Peradilan Pidana Di Indonesia." *Jurnal Law Pro Justitia* II, no. 2 (2017): 41–60.
- Gavrielides, Theo. "The Term Restorataive Justsice Was First Introduced in the Contemporary Criminal Justice Literature and Practice in the 1970s, Restorative Justice Theory and Practice: Addressing the Discrepancy." Helsinki Finland: European Institute for Crime Prevention with the United Nations, n.d.
- Gunarto, Marcus Priyo. "Sikap Memidana Yang Berorientasi Pada Tujuan Pemidanaan." *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 21, no. 1 (2012): 93. doi:10.22146/jmh.16248.
- Hadi, Adwi Mulyana, Anik Iftitah, and Syahrul Alamsyah. "Restorative Justice Through Strengthening Community Legal Culture in Indonesia: Challenges and Opportunity." *Mulawarman LawReview* 8, no. 1 (2023): 32–44. <https://doi.org/10.30872/mulrev.v8i1.1140>
- Handayani, L. "Restorative Justice as an Alternative Approach in Indonesian Criminal Justice." *Jurnal Kriminologi* 10, no. 3 (2022): 78–95.

- Hiaariej, Eddy. *Prinsip-Prinsip Hukum Pidana*. Yogyakarta: Cahaya Atma Pustaka, 2014.
- Indarti, Erllyn. *Diskresi Dan Paradigma: Suatu Telaah Filsafat Hukum, Pidato Pengukuhan Guru Besar Universitas Diponegoro*. Semarang: Badan Penerbit Universitas Diponegoro, 2010.
- Irawan, Asep Iwan. *Pendekatan Restorative Justice Dalam Sistem Peradilan Pidana Guna Terwujudnya Model Pemasyarakatan Yang Ideal. Makalah Pada Seminar Di Lembaga Ketahanan Nasional Republik Indonesia*. Jakarta, 2022.
- Izharti, Rakhmi, Erika Magdalena, Rully Herdita Ramadhani, Fakultas Hukum, and Universitas Padjadjaran. "The Urgency of Codifying and Unifying Restorative Justice Regulations in Criminal Procedure Code Reform" 7, no. 2 (2025): 223–252. DOI: 10.21107/tlr.v7i2.30601
- Jamal, Abdul. *Pengantar Hukum Indonesia*. Jakarta: Raja Grafindo Persada, 2001.
- Kusumawardhani, Dwinanda Linchia Levi Heningdyah Nikolas. "Dinamika Implementasi Pendekatan Restorative Justice Dalam Penyelesaian Tindak Pidana." *UNES Law Review* 5, no. 4 (2023): 1908–1918. <https://doi.org/10.31933/unesrev.v5i4>
- Lamintang, Lamintang dan Theo. *Hukum Penitensier Indonesia*. Jakarta: Rieneka Cipta, 2012.
- Liebman, Marian. *Restorative Justice: How It Work*. London: Jessica Kingsley Publisher, 2007.
- Marlina. *Hukum Penitensier Indoensia*. Bandung: Refika Aditama, 2011.
- Maulana, Irvan, and Mario Agusta. "Konsep Dan Implementasi Restorative Justice Di Indonesia." *Datin Law Jurnal* 2, no. 2 (2021): 49. <https://ojs.umb-bungo.ac.id/index.php/DATIN/article/view/734>. DOI: 10.36355/dlj.v2i2.734
- Muladi. *Implementasi Pendekatan Restorative Justice Dalam Sistem Peradilan Pidana Anak*. Semarang: Fakultas Hukum UNDIP, n.d.
- Philips DC. *Holistic Thought in Social Science*. California: Stanford University Press, 1988.
- Remmelink, Jan. *Hukum Pidana: Komentar Atas Pasal-Pasal Terpenting Dalam Kitab Undang-Undang Hukum Pidana Belanda Dan Padananya Dalam Kitab Undang-Undang Hukum Pidana Indonesia*. Jakarta: Gramedia Pustaka Utama, 2003.
- Renaissance, L E X. "Urgensi Integrasi Pengaturan Restorative Justice Dalam RUU KUHAP Sebagai Bentuk Reformasi Keadilan Nabila Ihza Nur Muttaqi * Fakultas Hukum Universitas Negeri Yogyakarta , Yogyakarta , Indonesia , PENDAHULUAN Hukum Dipandang Sebagai Suatu Aturan Yang Bers" 10, no. October 2024 (2025): 168–196.
- Risal, M. Chaerul. "ANALISIS KRITIS TERHADAP IMPLEMENTASI RESTORATIVE JUSTICE DALAM SISTEM PERADILAN PIDANA: Tantangan Dan Peluang." *Jurnal Al Tasyri'iyah* 3, no. 1 (2023): 55–70. doi:10.24252/jat.vi.41238.
- SARAH B. ROTH SHANK. "INSTITUTIONALIZING RESTORATIVE JUSTICE IN NEW ZEALAND'S CRIMINAL JUSTICE SYSTEM: GAINS, LOSSES AND CHALLENGES FOR THE FUTURE." Victoria University of Wellington, 2021.
- Sholehudin, M. *Restorative Justice Model Sebagai Lembaga Desentralization of Sentencing Dalam Hukum Pidana Kontemporer, Dalam Pemikiran Kontemporer Pembaruan Hukum Pidana Indonesia*. Edited by Pujiono. Rajawali Press, 2023.
- — —. *Sistem Sanksi Dalam Hukum Pidana: Ide Dasar Double Track System Dan Implementasinya*. Jakarta: Raja Grafindo, 2003.
- Simanjuntak, Jean Calvin. *Restoratif Justice, Metamorfosa Kearifan Lokal Indonesia*. Jakarta: Rajawali Press, 2023.
- Sukardi. *Konsep Penyidikan Restorative Justice*. Depok: PT. Grafindo Persada, 2010.
- — —. *Restorative Justice Dalam Penegakan Hukum Pidana Indonesia*. Cetakan 1. Jakarta: Raja

Grafindo Persada, 2020.

Tony F. Marshall. *Restorative Justice on Overview*. London: Home Office Information and Publications Group, 1999.

Winardi. *Pengantar Tentang Teori Sistem Dan Analisis Sistem*. Bandung: Mandar Maju, 1989.

Zehr, Howard. *The Little Book of Restorative Justice*. USA: Good Books Intercourse, 2002.

Zulfa, Eva Achjani. "PERGESERAN PARADIGMA PEMIDANAAN DI INDONESIA." *Jurnal Hukum & Pembangunan* 36, no. 3 (2017): 389.

— — —. *Pergeseran Paradigma Pidananan*. Bandung: Lubuk Agung, 2010.

United Nation Office on Drugg and Crime (UNODC), 2006.