

Reconstruction Discourse Justice Criminal Law as an Ideal Model for Implementing Restorative Justice**Satria Dwie Raharja¹, Ade Saptomo²**

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Keywords	Abstract
Restorative Justice, Criminal Justice System, Retributive Justice, Restoration, Regulation	The criminal justice system in Indonesia faces various challenges, including legal inefficiency, high recidivism rates, and inadequate victim protection. The punishment-oriented system often neglects the need for victim recovery and social recovery. This study aims to develop an ideal model for implementing restorative justice within the Indonesian legal framework by considering the principles of customary law that have long been practiced in society. This study uses a normative legal approach by analyzing legislation, literature studies, and comparative assessments of restorative justice practices in various countries. Primary and secondary legal materials are used to explore the application of restorative justice at the police, prosecution, and court levels. The findings reveal several barriers to implementing restorative justice in Indonesia, such as regulatory misalignment across law enforcement agencies, limited human resource training, and lack of public awareness. However, the study highlights significant potential for adopting the restorative justice model through integrating local values, law enforcement training, and a comprehensive regulatory framework. The implications of this study emphasize the need for more inclusive policy reforms, strengthening collaboration between legal institutions, and public education to increase the acceptance of restorative justice as an alternative method of resolving criminal cases. Proper implementation is expected to create a more just, more humane, and socially restorative legal system.

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**INTRODUCTION**

In a global context, the system justice criminal face challenge big For balancing justice and effectiveness in handle case criminal. System justice conventional , which emphasizes retribution and punishment, often considered fail accommodate the needs of victims, perpetrators, and the community. As alternative, concept justice restorative justice is increasingly get attention Because considered capable overcome lack system conventional (E. Wahid, 2009). Countries like New Zealand, Canada and South Africa have show results positive in apply justice restorative as an integral part of system justice criminal they (Sutiawati, 2018).

Justice restorative offer a more approach human with emphasize recovery connection social between perpetrators, victims, and society. However, its implementation in various countries faces different constraints, such as resistance culture law traditional and lack of understanding public about benefit approach This (Zulfa, 2009). With background behind this is important For explore potential reconstruction discourse justice criminal through justice restorative as a suitable ideal model with need local.

In Indonesia, the implementation justice restorative in system justice criminal Still in stage early , though has There is effort For integrate it to in law national . Law No. 1 of 2023 concerning the Criminal Code provides opportunity For adopt principle justice restorative , especially in handle cases criminal light and child (Direktorat Jenderal Peraturan Perundang-undangan, 2023). However, many challenges that must be faced, including lack of infrastructure law, lack of training for apparatus enforcer law, and social stigma to perpetrator act criminal (Nurhayati, 2023).

As example , concept diversion in system justice children in Indonesia have succeed applied , but its implementation Still limited to type case certain . Potential development draft This to in system justice general need change paradigm among enforcer law and society wide (Rukman, 2023). Reconstruction discourse justice criminal required For create framework more laws inclusive and based justice restorative .

Study of justice restorative show that approach This offer more solutions comprehensive compared to system retributive. Justice restorative No only aiming punish perpetrators , but also restore victim losses and repair connection broken society (Sunarso, 2014). According to Prakoso, (2013) justice restorative emphasizes the principles of dialogue and consensus, which allows all parties involved For reach fair solution.

In the Indonesian context ,Hamzah, (2015) take notes that system law criminal national still heavily influenced by the approach colonialism that tends to punish perpetrator without consider the impact towards the victims and the community. Therefore that, integration principles justice restorative to in system law national can become step progressive in legal reform criminal (Afifah, 2024).

According to Akbar's research (2022), judicial reform restorative in Indonesia requires support strong regulation and cooperation between institution enforcer law. This is in line with I. Susanto's view (2013), which highlights importance training and education For increase understanding apparatus enforcer law about justice restorative . In addition, Utari (2012) stated that theories modern criminology can give runway solid conceptual For implementation justice restorative .

Urgency reconstruction discourse justice criminal law in Indonesia is not can ignored. System existing justice moment This often present injustice for victims and perpetrators, especially in cases small or involving children (Purba, 2023). In addition, overcapacity institution socialization and its height level recidivism show that approach retributive No effective in prevent crime (Azhar, 2019).

Justice restorative offer a better alternative solution oriented with give chance for victims to to voice his needs, while perpetrator given chance For repair his mistake (Estirahayu et al., 2024). In the context of Indonesian culture , which places great emphasis on harmony social , implementation justice restorative can strengthen values local and support the resolution process conflict in a way peace (Tongat , 2013).

Study This aiming For identify and develop an ideal model of implementation justice restorative in system justice Indonesian criminal law. With analyze opportunities and challenges that exist , it is hoped results study This can give recommendation practical For maker policy and enforcement law (Akbar, 2022). In addition, research this also aims For increase understanding public about importance approach justice restorative as part from legal reform criminal (Sutiawati, 2018)

In the term long , reconstruction discourse justice criminal expected can create system more laws inclusive , fair and responsive to need society . This is in line with vision major legal reforms in Indonesia, namely realize system justice criminal offences that are not only punish, but also restore (Afifah, 2024).

RESEARCH METHOD

The normative legal research method is an approach that focuses on the study and analysis of legal norms as regulated in various laws and regulations. This approach aims to explore, interpret, and evaluate applicable legal provisions to address the legal problems being studied. In normative legal research, primary legal materials such as laws, government regulations, court decisions, and other related legal documents are the main sources of data.

In addition, this research also involves secondary legal materials, such as research results or academic studies related to certain legal topics, which are used to strengthen arguments or further examine the implementation and impact of existing legal norms.

The legislative approach in normative legal research emphasizes the analysis of applicable legal texts, especially in the context of the application or comparison between regulations related to the issues discussed. Researchers analyze how certain laws or regulations are applied, interpreted, and harmonized with other regulations. Meanwhile, the conceptual approach is used to understand and study legal concepts in depth, such as justice, legal certainty, or accountability. The conceptual approach allows researchers to explore the philosophical foundations of legal norms and examine how these concepts are applied within the framework of the existing legal system.

RESULTS AND DISCUSSION

Regulations on the Implementation of Restorative Justice in Indonesian Criminal Procedure Today's Justice System

The principles of restorative justice are the result of exploration and comparison between the welfare approach model and the justice shaming model. In its further development, this model shifts philosophical values in handling criminal cases, especially those involving children. This change in values includes several important aspects, such as a shift from a punitive (retributive) approach to reconciliation that prioritizes peace between victims and perpetrators. Furthermore, there is a transition from the principle of retaliation against the perpetrator to healing for the victim. This principle also emphasizes the importance of community involvement, shifting from the isolation and violence approach that usually dominates the conventional justice system. Ultimately, the negative-oriented destructive approach is transformed into a more constructive approach, focusing on repair, forgiveness, and deep values of love.

OC Kaligis formulated three important principles underlying the implementation of restorative justice, which are widely used in the criminal justice system in Canada and are relevant to Indonesia. The first principle is that crime must be viewed as a violation that occurs between the victim, the perpetrator, and the community, not just as a violation against the state. In this context, restorative justice views crime as a disruption of social relations, not just a violation of formal law. The second principle emphasizes the importance of direct involvement of all parties affected by the crime in the restoration process—namely the victim, the perpetrator, and the community. This is done through dialogue and mediation to reach a mutually beneficial agreement. The third principle is that justice must be achieved through a consensus approach, focusing on balance and agreement among all parties rather than a competitive or hostility.

The restorative justice approach is considered a new method in resolving criminal cases, although the elements contained therein have long existed in the practice of customary conflict resolution. Many indigenous communities in Indonesia have long adopted conflict resolution patterns that prioritize peace, dialogue, and deliberation, in line with the principles of restorative justice. This shows that the application of restorative justice is not a foreign concept but can be enriched and strengthened with local values that are already rooted in Indonesian society. Basically, restorative justice is an approach that emphasizes the creation of balance and justice for all parties involved in a crime, including victims, perpetrators, and society in general. The mechanism of the criminal justice system, which traditionally focuses on criminal punishment, is transformed into a more participatory process, emphasizing dialogue and mediation between perpetrators and victims. The main goal is to achieve a resolution that is fairer, more balanced, and reflects the recovery of victims, the accountability of perpetrators, and the restoration of social relations within the community.

In the concept of retributive justice, the restoration of a sense of justice for victims is achieved through law enforcement that punishes perpetrators who have harmed them. This process is usually represented by the state, especially through law enforcement agencies such as the police and courts. However, even though such punishments may be imposed, victims

often do not feel the direct benefits. In contrast, the principles of restorative justice provide a more inclusive approach by directly involving victims in determining the perpetrator's responsibility. In this context, perpetrators are expected to understand and meet the needs of their victims, allowing for the restoration of justice through dialogue and reconciliation. The application of the principles of restorative justice must be based on the values of honesty, sincerity, and willingness, with all parties involved working to create a mutually beneficial solution.

As a concept that aims to restore balance between the parties involved, restorative justice is more oriented towards reconciliation and harmonization than simply punitive law enforcement. This is in contrast to retributive justice, which focuses on the offender, where efforts are more directed at correcting the perpetrator and imposing legal responsibility. This approach recognizes that justice is not only achieved through punishment but also through the restoration of harmonious conditions and mutual respect among all parties. In this context, a democratic state is expected to provide equal justice for all its citizens through principled law enforcement, thereby reducing disparities in legal treatment and creating overall societal welfare.

However, the challenges faced by law enforcement today include the increasing number of criminal cases, while their resources and authority are limited. This creates a dilemma in law enforcement, where investigative procedures are often considered to deviate from existing regulations and do not respect human rights. This situation has triggered public complaints about unfair law enforcement processes and has led to the emergence of pre-trial efforts in response to procedural violations. Meanwhile, restorative justice can be an alternative solution that allows the resolution of criminal cases, especially minor cases, without involving long and complicated court processes.

Normative handling of criminal cases involves a series of stages managed by authorized officials, starting with investigation, then investigation, prosecution, and finally trial in court. This process is very important because criminal law is closely related to individual rights, which are explained in the concept of the Criminal Justice System. During the investigation phase, investigators carry out a series of actions to collect evidence needed to clarify criminal cases and identify suspects. However, there are often obstacles that require investigators to stop their investigations, as regulated in the Criminal Procedure Code (KUHAP) in Article 109 paragraph (2). This article lists specific circumstances that can cause the termination of an investigation, including lack of sufficient evidence, the incident is not a criminal act, or when the case is closed by law.

Regarding the closing of a case based on the law, Yahya Harahap explained that this occurs in several situations, such as when the case falls into the *nebis in idem* category, when the suspect dies, or when the case has exceeded the statute of limitations. After the investigation is complete, the process continues to the prosecution stage according to Article 1 paragraph 7 of the Criminal Procedure Code, where the public prosecutor submits the criminal case to the district court to be examined and resolved by the judge. The prosecution status is determined by whether the case has been submitted to the competent court, both in terms of competence relatively and also absolute.

However, just like investigations, the prosecution process can also encounter obstacles that are regulated in limited terms in the Criminal Procedure Code. Article 140 paragraph (2) outlines several reasons for terminating a prosecution, including a lack of sufficient evidence, the charge is not a criminal act, or the case is closed by law. Considering the reasons for terminating the investigation and prosecution, it seems that there is no room for restorative justice as a basis for closing a case, either at the stage investigation and also prosecution.

The lack of clear regulatory provisions regarding restorative justice has led to the emergence of internal policies with different indicators. In practice, there is often a mismatch between the decisions of investigators and public prosecutors. For example, a case that has been submitted by the investigator to the public prosecutor through the Notice of Commencement of Investigation (SPDP) can suddenly end with an Investigation Termination Order (SP3) because the investigator believes the case can be resolved through a restorative

justice approach. Conversely, the public prosecutor may argue that the case is not suitable for resolution restoratively.

A similar situation may arise in cases that have been referred to the public prosecutor but then receive a decision to stop prosecution (SKPP) because of the belief that it can be resolved through restorative justice. This condition creates the impression that the researcher's work is being neglected. From the author's perspective, if the goal is to resolve a case through restorative justice, it would be better for the settlement process to be carried out before entering the investigation or prosecution stage. Once a case enters the legal process, all provisions stipulated in the Criminal Procedure Code, including the mechanism for stopping investigation or prosecution, must be respected and followed.

This scenario is further complicated by the existence of various subsystems within the criminal justice system, each of which develops regulations or rules governing the implementation of restorative justice at each stage. At the police level, for example, there is the Regulation of the Republic of Indonesia National Police Number 8 of 2021 which regulates the Handling of Criminal Acts Based on Restorative Justice. This regulation provides guidelines for law enforcers to apply restorative principles in handling criminal acts so that the law enforcement process does not only focus on punishment for the perpetrator but also considers recovery for the victim.

At the prosecutorial level, the Indonesian Attorney General's Office has its own regulation in Regulation Number 15 of 2020, which discusses Termination of Prosecution Based on Restorative Justice. This regulation allows prosecutors to stop prosecution if the restorative justice process can be implemented and agreed upon by all parties involved, including victims, perpetrators, and the community. Thus, public prosecutors have the flexibility to choose a peaceful and harmonious settlement without having to bring the case to court if it is considered more beneficial for all parties. At the court level, the Supreme Court also has an instrument to implement restorative justice. One of its latest policies is the Decision of the Director General of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020, which outlines guidelines for implementing restorative justice. This decision offers a framework for judges and court personnel to consider restorative justice during the court process, which aims to ease the burden of cases in court and provide more satisfactory solutions for victims.

The implementation of restorative justice in Indonesia shows gaps and inconsistencies among various law enforcement agencies, namely the police, prosecutors, and courts. Each of these institutions has its own regulations and policies governing the implementation of restorative justice, often leading to different interpretations and implementations. For example, the police have the Republic of Indonesia National Police Regulation Number 8 of 2021, which focuses more on handling criminal acts with a restorative approach. In contrast, prosecutors have the Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 which emphasizes the termination of prosecution by considering restorative justice. Meanwhile, the courts, through the Supreme Court policy, also have their own guidelines that have the potential to conflict with the approach taken by the police and prosecutors.

Factors contributing to these differences include a lack of uniform understanding of the concept of restorative justice among law enforcement personnel and gaps in training and experience across institutions. In addition, differences in regulations and policies issued by each institution create an inconsistent framework. The impact of this inconsistency is the difficulty of achieving uniformity in the application of restorative justice, which is designed to restore relationships between offenders, victims, and the community. This can lead to confusion among the community, especially victims, about their rights and the legal process they face, as well as reduced public trust in the justice system.

The implementation of restorative justice in Indonesia faces significant challenges and obstacles, ranging from regulatory aspects to human resource allocation and outreach. From the regulatory side, although support for the implementation of restorative justice is provided through various regulations, there are still legal gaps that can raise doubts about practical implementation. For example, the absence of clear rules regarding the criteria for cases that can be resolved through restorative justice creates uncertainty for law enforcement officers. In

addition, human resources involved in the implementation of restorative justice, such as investigators, prosecutors, and judges, often do not receive adequate training to understand and apply restorative principles effectively.

Outreach on restorative justice is also an important aspect that is often overlooked. Without adequate understanding of restorative justice among the public and law enforcement, these initiatives have the potential to be hampered. In addition, the traditional criminal justice system often continues to be primarily concerned with handling cases, with a greater focus on punitive law enforcement. While restorative approaches provide a more humane and restorative solution, they are often viewed as less effective or urgent than traditional approaches.

Reconstruction of Criminal Justice Discourse to Formulate an Ideal Model for Implementation of Restorative Justice in Indonesia

Restorative justice is an approach to the criminal justice system that focuses on restoring relationships between offenders, victims and the community, rather than simply punishing the offender. It seeks to address the harm caused by criminal activity through dialogue and reconciliation, allowing all parties involved to participate in the problem-solving process. In restorative justice, the primary goal is to restore conditions that existed before the offense by providing space for offenders to take responsibility for their actions, listening to victims' experiences and needs, and involving the community in the resolution process. This differs from traditional approaches that prioritize punitive sanctions against offenders, concentrating on the violation of the law itself and imprisoning offenders as a form of retribution for the crime.

The fundamental difference between restorative and retributive justice lies in the objectives and methods of handling them. Retributive justice emphasizes punishment as a consequence of criminal acts, which often ignores the needs of victims and fails to consider the social impact of the crime. In contrast, restorative justice prioritizes constructive dialogue and conflict resolution, where basic principles such as accountability, participation, and restoration are prioritized. In the context of the Indonesian criminal justice system, integrating the principles of restorative justice can be pursued through policies and regulations that support collaboration between law enforcement agencies, victims, and the community. For example, training law enforcement personnel on restorative approaches can increase their awareness and ability to manage cases in an inclusive and recovery-oriented manner.

Traditional criminal justice systems, primarily based on a retributive approach, have significant weaknesses in achieving holistic justice. First, they often fail to consider the needs and rights of victims, which can lead to dissatisfaction and feelings of betrayal regarding the legal process. Retributive approaches tend to focus on the violation of the law and the punishment of the perpetrator, without addressing the psychological and emotional effects experienced by the victim. As a result, victims often feel isolated from the justice process and have no say in the outcomes that affect their lives. Furthermore, prisons are often filled with individuals who should be rehabilitated rather than simply punished, thus neglecting the potential for recovery for the perpetrators themselves.

The consequences of a retributive approach are felt not only by victims and offenders but also by society as a whole. For example, when offenders are incarcerated, they lose the opportunity to contribute back to their communities and often face social stigma while serving their sentences. This can complicate their social reintegration and potentially lead to increased crime as released offenders often feel isolated and unsupported. In addition, a retributive approach can fuel public distrust of the justice system, especially if they feel that justice is not being served. Communities may feel that the law is unfair and favors certain parties, leading to increased social tensions.

Prominent cases that illustrate the failure of the traditional criminal justice system include cases of "Environmental Crimes" where offenders responsible for severe environmental degradation receive light sentences or even indifference from law enforcement. In many cases, offenders are judged based on existing legal provisions, failing to take into

account the long-term impacts on society and the environment. When the law fails to adequately address social and environmental justice, society suffers greater harm, and offenders avoid proper accountability for the harm they have caused. Such cases reflect how a punishment-focused justice system can fail to strike the anticipated balance in providing justice to all entities involved. Hence, there is an urgent need to explore and adopt a more restorative and inclusive approach in the criminal justice system.

The development of an ideal model for the implementation of restorative justice is urgently needed to address the shortcomings of the existing criminal justice system, which is largely centered on a retributive approach. Traditional systems often fail to meet the needs of all parties involved in the legal process, including victims, offenders, and the community. In this context, restorative justice offers a more holistic approach by providing opportunities for victims to be directly involved in the conflict resolution process while encouraging offenders to take responsibility for their actions. By creating a dialogue between victims and offenders, this model facilitates the restoration of relationships, the absorption of the social impact of the crime, and more effective rehabilitation efforts for offenders. This not only increases victim satisfaction with the justice process but also contributes to lower recidivism rates by equipping offenders with the tools needed for social reintegration.

The development of a restorative justice model is also important to rebuild public trust in the justice system. Dissatisfaction with current law enforcement often leads to public skepticism and distrust of law enforcement agencies. By integrating restorative justice principles into the system, it is hoped that the public will perceive the legal process as more fair, transparent, and focused on recovery. This can also help reduce social conflict and improve community safety because justice is not only measured by the punishment imposed but by how well society can recover and function after the violation has occurred. Therefore, creating an ideal restorative justice model is a strategic step to achieve a more comprehensive and sustainable form of justice in Indonesia.

The design of an ideal restorative justice implementation model in Indonesia must take into account the country's unique social, cultural, and legal context. First and foremost, the model must adopt an inclusive and participatory approach, involving all stakeholders in the justice process. One key component of this model is integrating local and traditional values that prioritize deliberation, mutual assistance, and community togetherness in resolving conflicts. This can involve creating a mediation forum at the community level involving community leaders, law enforcement agencies, and representatives of victims and perpetrators. In this forum, they can dialogue to find mutually beneficial solutions and adequate reparation mechanisms for all parties. In addition, it is important to design educational and outreach programs that spread understanding about restorative justice, so that communities can better understand and accept this approach as an effective alternative for conflict resolution.

The division of roles in the restorative justice model must be clear and structured. Law enforcement agencies, such as the police and prosecutors, must serve as facilitators who encourage active participation from the community and victims in the justice process. Victims must be given space to voice their experiences and needs, while perpetrators are expected to take responsibility for their actions and seek to repair the harm caused. Methodologies that can be utilized include training for mediators, developing guidelines on how to conduct restorative processes effectively, and using technology to facilitate communication and documentation. In addition, ongoing research and evaluation should be conducted to ensure that the model is working well and can be adapted to meet emerging needs in the field.

In supporting the implementation of restorative justice, a review of existing regulations is essential. Several related regulations, such as Police Regulation Number 8 of 2021 and Prosecutor's Regulation Number 15 of 2020, have provided a foundation for restorative justice practices at the institutional level. However, there are still gaps in the integration between institutions and the widespread application of restorative justice principles. Government policies need to be directed towards creating a conducive environment for the implementation of restorative justice, emphasizing the importance of collaboration between institutions and civil society.

Suggestions for regulatory improvement include expanding the definition of restorative justice in existing laws to include various forms of conflict resolution outside the judicial process. In addition, more detailed regulations regarding the roles and responsibilities of each party in the restorative justice process should be established to avoid overlap or confusion in implementation. Regulations regarding funding for restorative justice programs should also be considered to ensure sufficient resources for training, mediation, and rehabilitation programs. Thus, policies and regulations that support restorative justice will provide a strong foundation for creating a more just and humane justice system in Indonesia.

CONCLUSION

The implementation of restorative justice in Indonesia shows great potential in creating a fairer justice system that focuses on restoration rather than mere punishment. Although challenges such as differences in regulations among law enforcement agencies and a dominant focus on the traditional justice system remain, the presence of the restorative justice model can be optimized through the integration of local values, community participation, and active roles for victims and perpetrators. Strengthening collaboration between law enforcement and the community, in addition to educating the community about the principles of restorative justice, is expected to increase public acceptance of this approach as an alternative solution for conflict resolution.

In addition, the development of regulations and policies supporting restorative justice is essential to provide a clear and systematic basis for its implementation. Through reviewing and refining existing regulations—including clearer definitions and responsibilities for all parties, along with adequate resource allocation—the implementation of restorative justice can become more effective and sustainable. Thus, restorative justice will not only act as a complement to the criminal justice system but will also contribute to achieving a more holistic and sustainable form of justice that is in line with the needs of Indonesian society.

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