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Restorative Yet Incomplete: The Dilemma of Progressive Legal Reform in Indonesia

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Original Article

Abstract

Restorative justice represents an alternative approach in the criminal justice system that prioritizes the restoration of relationships among offenders, victims, and the community. In Indonesia, its implementation remains limited and has yet to be fully integrated into the broader justice framework. This study aims to examine the application of restorative justice principles across various levels of law enforcement, identify normative, institutional, and sociological barriers, and propose strategic recommendations for national legal reform. Employing a juridical-normative and empirical methodology—through document analysis and semi-structured interviews—this research reveals that the application of restorative justice remains fragmented. Contributing factors include an underdeveloped legal foundation, inadequate institutional capacity, and cultural resistance within communities. The study concludes that comprehensive national regulations are essential to institutionalize restorative justice principles, thereby fostering a more humane, participatory, and restorative criminal justice system that moves beyond retributive paradigms.

Keywords: *Restorative Justice, Legal Fragmentation, Progressive Law, Criminal Justice Reform*

Abstrak

Keadilan restoratif menjadi pendekatan alternatif dalam sistem peradilan pidana yang menekankan pemulihan hubungan antara pelaku, korban, dan masyarakat. Di Indonesia, penerapannya masih terbatas dan belum terintegrasi secara menyeluruh dalam sistem hukum pidana. Penelitian ini bertujuan untuk menganalisis pelaksanaan prinsip keadilan restoratif di berbagai tingkat lembaga penegak hukum, mengidentifikasi kendala normatif, kelembagaan, dan sosiologis, serta merumuskan rekomendasi strategis pembaruan hukum nasional. Menggunakan pendekatan yuridis-normatif dan empiris dengan studi dokumen dan wawancara, penelitian ini menemukan bahwa implementasi keadilan restoratif masih bersifat parsial, dipengaruhi oleh lemahnya dasar hukum, keterbatasan kapasitas lembaga, dan resistensi budaya hukum masyarakat. Kesimpulannya, dibutuhkan regulasi nasional untuk menguatkan prinsip keadilan restoratif dalam sistem peradilan pidana, guna menciptakan keadilan yang lebih humanis, partisipatif, dan berorientasi pada pemulihan, bukan semata-mata pembalasan.

Kata kunci: *Keadilan Restoratif, Parsialitas, Hukum Progresif, Pidana*

1. INTRODUCTION

Indonesia, as a state governed by the rule of law (*rechtstaat*), as enshrined in Article 1(3) of the 1945 Constitution of the Republic of Indonesia, upholds the supremacy of law as a foundational principle in its governance. This principle not only binds all citizens but also requires consistency in the formulation, implementation, and enforcement of laws by all branches of state authority, particularly in the realm of criminal justice. Accordingly, the criminal justice system is expected to go beyond the mere enforcement of formal legal norms and strive to uphold substantive justice, protect human rights, and restore social harmony.

In practice, however, Indonesia's criminal justice system continues to exhibit a predominantly retributive orientation, wherein punishment is primarily aimed at exacting retribution for legal violations. This retributive model often fails to provide space for victims to heal, for offenders to take meaningful responsibility, or for communities to participate in resolving the harm caused. In many instances, criminal sanctions do not address the underlying social causes of crime; instead, they risk aggravating existing social issues by stigmatizing offenders, increasing recidivism, and prolonging the trauma experienced by victims.

In response to the limitations of retributive justice, a restorative justice approach has emerged, aiming to rebuild the relationships between offenders, victims, and the broader community. This approach emphasizes reparations, the moral accountability of offenders, and processes of reconciliation and social reintegration. Within this paradigm, the resolution of criminal cases is not assessed solely by the imposition of punishment but by the justice system's ability to promote peace, prevent future conflict, and restore societal balance.

Several legal instruments in Indonesia have begun to incorporate restorative justice principles. Notable examples include Law No. 11 of 2012 on the Juvenile Criminal Justice System, the Attorney General's Regulation No. 15 of 2020, and the Decree of the Director General of the General Judiciary (*Badilum*) No. 1691/DJU/SK/PS.00/12/2020. In addition, ongoing reforms in the Draft Criminal Code (*RKUHP*) and the Draft Criminal Procedure Code (*RKUHP*) reflect a growing inclination toward restorative frameworks, particularly in their provisions on sentencing and mechanisms of forgiveness. Nonetheless, the implementation of restorative justice remains inconsistent and faces a range of structural and normative challenges. The lack of a unified, binding national regulation applicable across all law enforcement bodies contributes to policy fragmentation, legal uncertainty, and procedural inefficiencies in handling criminal cases.

In contemporary criminal law and justice literature, restorative justice is increasingly recognized as a viable alternative for resolving criminal cases—one that prioritizes recovery, reconciliation, and reintegration over punitive measures. This

evolving paradigm resonates with the constitutional mandate of the rule of law (rechtstaat), as articulated in Article 1(3) of the 1945 Constitution, which calls for the supremacy of law not only in its formal aspects but also in practice, ensuring the realization of substantive justice for all citizens.

A number of previous studies have explored both the conceptual and practical dimensions of restorative justice. For instance, Arsyad et al. highlight key principles underpinning this approach, including transparency, trust, the prospect of healing, and inclusiveness. Their research underscores the importance of restorative justice as a method of criminal resolution that not only holds offenders accountable but also facilitates the recovery of victims and affected communities. By encouraging acknowledgment of guilt by the offender and promoting a supportive healing process for the victim, restorative justice is viewed as a more humane and sustainable model for fostering long-term social order.¹

Akbar further identified that restorative justice aligns with the principle of “fast, simple, and low-cost” resolution embedded in Indonesia’s criminal procedure law. Key advantages include reduced recidivism, improved budgetary efficiency in case management, and enhanced public trust in law enforcement institutions. Nevertheless, Akbar also underscored that the implementation of restorative justice remains suboptimal due to the absence of a uniform national legal framework and the continued dominance of retributive paradigms within the conventional criminal justice system.²

Several studies have elaborated on the contextual application of restorative justice. Anwar et al., for instance, examined the imposition of restorative justice-based sanctions under the Juvenile Criminal Justice System (JCJS). Although Article 82 of the JCJS Law accommodates such an approach, their findings suggest that in practice, many juvenile offenders continue to receive custodial sentences. This indicates that the principle of “the best interests of the child” has not been fully embraced in national legal practice.³

Amdani investigated the use of restorative justice within Acehnese customary law, particularly in cases involving juvenile theft. His study found that village-level customary deliberations offer a culturally appropriate and effective mechanism for achieving mutually beneficial outcomes, illustrating a strong alignment between local

¹ Yusna Arsyad, Fence M. Wantu, and Dian Ekawaty Ismail, “Menata Kembali Prinsip Restorative Justice Dalam Sistem Peradilan Pidana Indonesia: Sebuah Gagasan Mencapai Idealitas,” *Ilmu Hukum Prima* 6, no. 2 (2023): 253–65, <https://doi.org/10.34012/jihp.v6i2.4438>.

² Muhammad Fatahillah Akbar, “Pembaharuan Keadilan Restoratif Dalam Sistem Peradilan Pidana Indonesia,” *Masalah-Masalah Hukum* 51, no. 2 (2022): 199–208, <https://doi.org/10.14710/mmh.51.2.2022.199-208>.

³ Iryana Anwar et al., “Restorative Approaches to Managing Children in Conflict with the Law,” *Jurnal Ilmu Hukum Kyadiren* 6, no. 1 (2024): 37–49, <https://doi.org/10.46924/jihk.v6i1.193>.

customary values and restorative justice principles. This highlights the potential for integrating restorative approaches within Indonesia's pluralistic legal framework.⁴

Meanwhile, Kristiyadi and Setyawan (2022) emphasized the role of penal mediation in minor offenses as a restorative mechanism capable of mitigating the negative consequences of criminal sanctions, restoring victims' well-being, and supporting procedural principles of simplicity, efficiency, and affordability.⁵ Conversely, Risal identified the rigidity of Indonesia's legal infrastructure as a major obstacle to adopting restorative justice, despite progressive provisions introduced in the Draft Criminal Code (RKUHP) that reflect restorative values.⁶ At the institutional level, Akbar and Arsyad et al. noted the lack of coordination among criminal justice agencies—police, prosecutors, and courts—in implementing restorative justice, primarily due to the absence of binding, harmonized national regulations. This regulatory gap has resulted in disparities in implementation, leading to legal uncertainty for victims, offenders, and law enforcement personnel.⁷

Case studies offer valuable insights into the practical challenges and successes of restorative justice in Indonesia. Irabiah et al., in their research at the Kotamobagu District Prosecutor's Office, observed that although Attorney General Regulation No. 15 of 2020 provides a legal basis for restorative justice, various administrative and procedural hurdles continue to obstruct the discontinuation of prosecution, even when reconciliation between parties has occurred.⁸ Similarly, Abimanyu and Mukarramah demonstrated that the establishment of "Restorative Justice Houses" at the village level—such as in Bedoyo Village—provides a concrete model of local restorative practice. However, their societal impact remains limited due to insufficient outreach, minimal community involvement, and a lack of shared understanding among institutions.⁹

Sihombing (2024), through a historical and conceptual analysis, argued that restorative justice has deep roots in Indonesia's traditional dispute resolution practices

⁴ Yusi Amdani, "Konsep Restorative Justice Dalam Penyelesaian Perkara Tindak Pidana Pencurian Oleh Anak Berbasis Hukum Islam Dan Adat Aceh," *Al-'Adalah* 13, no. 1 (2017): 81–76, <https://doi.org/10.24042/adalah.v13i1.1130>.

⁵ Kristiyadi Kristiyadi and Vincentius Patria Setyawan, "Keadilan Restoratif Dan Mediasi Penal Dalam Tindak Pidana Ringan," *Jurnal Kepastian Hukum Dan Keadilan* 4, no. 1 (2022): 17–30, <https://doi.org/10.32502/khk.v4i1.4622>.

⁶ Muhammad 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, <https://doi.org/10.24252/jat.vi.41238>.

⁷ Akbar, "Pembaharuan Keadilan Restoratif Dalam Sistem Peradilan Pidana Indonesia"; Arsyad, Wantu, and Ismail, "Menata Kembali Prinsip Restorative Justice Dalam Sistem Peradilan Pidana Indonesia: Sebuah Gagasan Mencapai Idealitas."

⁸ Irabiah Irabiah, Beni Suswanto, and Muhammad Ali Alala Mafing, "Penerapan Restorative Justice Pada Tingkat Penuntutan: Studi Kasus Di Kejaksaan Negeri Kotamobagu," *Perspektif: Kajian Masalah Hukum Dan Pembangunan* 27, no. 2 (2022): 131–38, <https://doi.org/10.30742/perspektif.v27i2.828>.

⁹ Rizqullah Abimanyu and Fanny Rifkat Mukarramah, "Analisis Pelaksanaan Restorative Justice Di Kelurahan Bedoyo Gunung Kidul Dalam Rangka Pemenuhan Keadilan Bagi Masyarakat Desa," *Binamulia Hukum* 12, no. 1 (2023): 25–38, <https://doi.org/10.37893/jbh.v12i1.449>.

and has evolved alongside the development of modern criminal law. He emphasized the importance of historical inquiry in framing restorative justice as part of a broader transformation within the criminal justice system. Sulistyarini et al. revealed that the judicial branch currently lacks adequate normative tools to fully implement restorative justice. Courts continue to rely on the Director General of General Judiciary's Decree No. 1691/DJU/SK/PS.00/12/2020, which is administrative in nature and limited in scope.¹⁰

From a politico-legal perspective, studies by Akbar and Sulistyarini et al. revealed that regulatory fragmentation across law enforcement agencies results in inconsistent implementation and underscores the urgent need for comprehensive statutory reform to govern restorative justice nationwide.¹¹ Additionally, Satria offered a philosophical perspective, proposing that the restorative-rehabilitative model (*daad-dader-strafrecht*) is increasingly relevant in balancing the interests of justice—particularly within juvenile cases. He stressed the necessity of establishing participatory forums involving offenders, victims, and families as the core of a restorative process.¹²

Although numerous studies have explored restorative justice from theoretical, practical, and sector-specific perspectives—including juvenile justice, customary law, prosecutorial discretion, and judicial practice—there remains a significant gap in research that systematically examines the effectiveness of restorative justice implementation across all phases of the general criminal justice process in Indonesia, from investigation to sentencing, as an integrated whole. This study offers a novel contribution through a normative-integrative approach that interconnects constitutional mandates, substantive justice principles, and institutional frameworks, while simultaneously formulating comprehensive policy recommendations for national restorative justice legislation. Based on this premise, the objectives of this research are to:

- 1) Conduct a comprehensive analysis of the implementation of restorative justice principles within Indonesia's criminal justice system at various levels of law enforcement agencies;
- 2) Identify key obstacles to implementation from normative, institutional, and sociological perspectives;
- 3) Develop strategic recommendations in the form of legal reform directions and proposals for national legislation that can reinforce both the constitutional

¹⁰ Dyah Ayu Sulistyarini, Deni Setya Bagus Yuherawan, and Subaidah Ratna Juita, "Kebijakan Restorative Justice Dalam Penyelesaian Perkara Pidana Di Pengadilan," *Hukum Dan Masyarakat Madani* 13, no. 2 (2023): 413–22, <https://doi.org/10.26623/humani.v13i2.7991>.

¹¹ Akbar, "Pembaharuan Keadilan Restoratif Dalam Sistem Peradilan Pidana Indonesia"; Sulistyarini, Yuherawan, and Juita, "Kebijakan Restorative Justice Dalam Penyelesaian Perkara Pidana Di Pengadilan."

¹² Hariman Satria, "Restorative Justice: Paradigma Baru Peradilan Pidana," *Jurnal Media Hukum* 25, no. 1 (2018): 111–23, <https://doi.org/10.18196/jmh.2018.0107.111-123>.

foundation and practical application of restorative justice, with the ultimate aim of establishing a more just, participatory, and humane legal system in Indonesia.

2. RESEARCH METHODOLOGY

This study employs a normative legal approach (doctrinal legal research), complemented by conceptual and comparative approaches, to conduct a comprehensive analysis of the application of restorative justice within the Indonesian criminal justice system and to formulate directions for future legal reform. This multi-faceted approach was selected for its capacity to examine the relevant legal norms, explore the underlying principles, theories, and legal doctrines of restorative justice, and propose a more systemic and coherent national regulatory framework.

The normative legal analysis draws upon key statutes and regulations, including the Indonesian Code of Criminal Procedure (KUHP), Law No. 11 of 2012 on the Juvenile Criminal Justice System, the Attorney General's Regulation No. 15 of 2020, and the Decree of the Director General of the General Judiciary (Badilum) No. 1691/DJU/SK/PS.00/12/2020. These are further contextualized within the ongoing reform efforts reflected in the Draft Criminal Code (RKUHP) and the Draft Criminal Procedure Code (RKUHAP), which serve as indicators of the broader trajectory of Indonesia's national criminal law reform.

The conceptual approach is used to investigate the definitions, foundational principles, and normative values of restorative justice from the perspective of both national and international legal theories. Theoretical frameworks employed in this study include the Theory of Substantive Justice, the Theory of Restorative Punishment, and the Theory of the Integrated Criminal Justice System. These theories are evaluated for their compatibility with the principles of the rule of law and human rights as articulated in the 1945 Constitution of the Republic of Indonesia. The comparative approach involves examining and contrasting the legal frameworks and practices of restorative justice in Indonesia with those in jurisdictions such as Canada, New Zealand, and Norway. This analysis aims to identify best practices that may be adapted to enhance the effectiveness and cultural relevance of restorative justice within the Indonesian legal context.

Data collection was conducted through a comprehensive literature review, encompassing primary, secondary, and tertiary legal sources, and was further supported by open-ended interviews with key informants, including law enforcement officials, legal scholars, and practitioners. Data were analyzed qualitatively through the interpretation of legal norms, classification of regulatory inconsistencies, and development of normative legal arguments. The findings from this analysis inform a set of normative recommendations aimed at strengthening the regulatory foundation for restorative justice in Indonesia. These recommendations are grounded in the principles

of substantive, participatory, and effective justice, and are intended to support the transformation of Indonesia's criminal justice system into one that is more humane, inclusive, and equitable.

3. RESEARCH RESULT AND DISCUSSION

3.1. Implementation of Restorative Justice Principles in the Indonesian Criminal Justice System

This study seeks to analyze the implementation of restorative justice principles across various levels of Indonesia's criminal justice system, and to examine the normative and practical challenges that hinder its realization as an alternative paradigm for resolving criminal cases. Specifically, the study explores restorative justice practices in cases involving minor offenses, juvenile offenders, women in conflict with the law, and narcotics-related offenses. It does so by assessing the prevailing legal framework, the practices of law enforcement agencies, and the socio-cultural values that shape the system.

Findings reveal that restorative justice in Indonesia has a solid normative foundation, reflected in sectoral regulations such as Law No. 11 of 2012 on the Juvenile Criminal Justice System, Law No. 13 of 2006 as amended by Law No. 31 of 2014 on the Protection of Witnesses and Victims, as well as various Supreme Court Circular Letters and inter-agency joint regulations. However, its practical implementation remains highly dependent on the discretion and awareness of law enforcement officials at the police, prosecution, and judicial levels. At the police level, there has been a noticeable increase in the use of penal mediation for cases such as petty theft, minor assault, and domestic disputes. Nevertheless, field data indicate that many officers lack a comprehensive understanding of restorative justice principles, leading to formalistic practices that often exclude meaningful victim participation.

At the prosecutorial level, the Attorney General's Office has issued Regulation No. 15 of 2020 to provide guidelines for restorative justice implementation. Yet, enforcement at the regional level remains inconsistent due to constraints such as limited human resources, insufficient training, and institutional pressures that prioritize prosecution-oriented performance metrics. Within the judiciary, Decree No. 1691/DJU/SK/PS.00/12/2020 issued by the Director General of General Courts serves as a formal guide for judges to adopt restorative principles in adjudication. However, the scope for amicable settlements is often restricted by rigid procedural norms and a predominantly retributive legal culture.

In juvenile cases, research indicates that the use of diversion, as mandated by juvenile justice and child protection laws, is relatively consistent across regions. Nonetheless, its effectiveness relies heavily on the coordination among institutions such as the Correctional Counseling Center (Bapas), the National Police, prosecutors, and

child protection agencies. In cases involving women in conflict with the law, the application of restorative justice presents unique challenges. Although the Supreme Court's Regulation No. 3 of 2017 provides judicial guidelines that emphasize gender sensitivity and psychological vulnerability, in practice, many judges remain unaware of or insensitive to issues related to power imbalances and gender-based violence.

In narcotics-related cases, the normative framework allows for restorative mechanisms through rehabilitation, as outlined in Law No. 35 of 2009 and Supreme Court Circular Letter No. 4 of 2010. However, rehabilitation is often implemented in a procedural and administrative manner, rather than as a substantive form of restoration. In fact, individuals charged with drug use offenses are frequently prosecuted despite the absence of significant social harm—an element that should form the basis of restorative justice.

This study concludes that the implementation of restorative justice in Indonesia faces multiple obstacles—structural, cultural, and normative. Structurally, weak cross-sectoral coordination and the overwhelming workload of law enforcement personnel inhibit the consistent application of restorative practices. Culturally, the persistent dominance of a retributive mindset—both within society and institutional actors—often results in restorative efforts being perceived as lenient or ineffective in addressing criminal behavior. Normatively, while several supporting regulations exist, there is no unified procedural law that systematically governs restorative justice from the pre-trial to the post-sentencing stages.

These findings highlight that restorative justice in Indonesia has yet to become a mainstream or integrated component of the criminal justice system. Instead, its application remains partial, incidental, and heavily dependent on the initiative of individual actors rather than a system-wide transformation.

The findings of this study are consistent with those of Rochaeti and Sutanti, who observed that restorative justice in Indonesia is deeply rooted in customary law and local wisdom, yet remains insufficiently institutionalized within the modern criminal justice system.¹³ Similarly, Sihombing highlighted the exclusion of victims from conventional justice processes as a major flaw of the retributive system, emphasizing the need for a restorative approach to restore victims' dignity and agency.¹⁴ However, unlike previous studies that primarily focused on normative or advocacy perspectives, this research presents empirical evidence of regional disparities in the implementation of restorative

¹³ Nur Rochaeti, "Implementasi Keadilan Restoratif Dan Pluralisme Hukum Dalam Sistem Peradilan Pidana Anak Di Indonesia," *Masalah-Masalah Hukum*, 2015; Nur Rochaeti and Rahmi Dwi Sutanti, "Kontribusi Peradilan Adat Dan Keadilan Restoratif Dalam Pembaruan Hukum Pidana Di Indonesia," *Masalah-Masalah Hukum* 47, no. 3 (2018): 198–214, <https://doi.org/10.14710/mmh.47.3.2018.198-214>.

¹⁴ Lasmin Alfies Sihombing, "Restorative Justice, Kejahatan, Hukuman, Dan Peradilan Pidana: Sebuah Analisis Kesejarahan, Peluang Dan Tantangan," *Unes Law Review* 6, no. 3 (2024): 8902–11, <https://doi.org/10.31933/unesrev.v6i3.1777>.

justice, as well as a pronounced reliance on individual discretion by law enforcement officials.

These findings indicate that the current application of restorative justice has not adequately addressed structural inequalities within Indonesia's criminal justice system. While restorative values have been normatively acknowledged as part of ongoing criminal law reform—reflected in several provisions of the Draft Criminal Code—the practical reality reveals that these principles have yet to become a dominant paradigm. A persistent gap exists between normative aspirations and actual institutional practices. This suggests that criminal law reform aimed at advancing restorative justice cannot rely solely on the enactment of new norms or complementary regulations. Broader reforms are needed, including changes to law enforcement institutions, legal education, and societal legal culture. The integration of restorative principles into legal education curricula, the training of law enforcement personnel, and widespread public education campaigns are essential to reshape public perceptions—emphasizing that peaceful resolution of criminal cases should not be viewed as a weakening of the law, but rather as a reinforcement of communal ethics and social cohesion. In addition, incorporating restorative frameworks into the case management systems of law enforcement agencies is crucial, enabling authorities to assess the appropriateness of restorative interventions from the earliest stages of the legal process, supported by clear mandates and technical guidelines.

In light of these findings, this study confirms that the institutionalization of restorative justice within Indonesia's criminal justice system remains in a transitional phase. Although the development of various policies and guidelines reflects a political commitment to establishing a more humane and restorative system of justice, without comprehensive structural and cultural transformation, there is a substantial risk that restorative justice will remain a rhetorical commitment rather than a functional reality.

This research contributes meaningfully to Indonesia's legal reform discourse, particularly in reimagining a criminal justice system that is inclusive, victim-centered, and oriented toward social restoration. Restorative justice should not be regarded merely as an alternative mechanism, but as a concrete embodiment of efforts to harmonize the legal interests of the state with the moral and social needs of society. Consequently, future criminal law reform strategies must prioritize the mainstreaming of restorative justice principles across all stages of the legal process—from law enforcement and prosecution to adjudication and corrections.

3.2. Barriers to the Implementation of Restorative Justice: A Normative, Institutional, and Sociological Analysis

This study seeks to identify and analyze the legal, institutional, and cultural barriers hindering the effective implementation of restorative justice in Indonesia. Specifically,

it aims to assess the extent to which normative frameworks, institutional configurations, and the prevailing legal culture among both the public and law enforcement officials influence the success of restorative justice initiatives. Additionally, the study offers a comparative perspective on restorative practices in various jurisdictions and provides recommendations for reforming Indonesia's criminal justice system to better accommodate the needs of victims, offenders, and communities.

Fieldwork findings and document analysis reveal that the obstacles to implementing restorative justice in Indonesia are multidimensional, encompassing three primary domains: legal, structural, and cultural.

1) Legal Barriers

Legal obstacles stem from the absence of coherent, explicit, and systematic normative frameworks governing restorative justice. While Law No. 11 of 2012 on the Juvenile Criminal Justice System introduced the concept of restorative justice, its application remains confined to juvenile cases. The extension of restorative principles to adult criminal cases has yet to be formally acknowledged in either the Criminal Procedure Code (KUHP) or the new Criminal Code (KUHP), resulting in legal ambiguity for practitioners seeking to apply restorative approaches beyond juvenile contexts. Moreover, the lack of regulatory harmonization among various law enforcement agencies poses a significant challenge. Institutional rules such as Police Regulation No. 8 of 2021, Prosecutor's Regulation No. 15 of 2020, and the Decree of the Director General of the General Judiciary (Badilum) No. 1691/DJU/SK/PS.00/12/2020 impose divergent requirements and limitations, leading to fragmented and inconsistent implementation practices. The absence of an overarching legal framework contributes to conflicting interpretations and regional disparities in enforcement.

2) Structural Barriers

Structurally, the implementation of restorative justice is impeded by inadequate coordination and integration among the components of the criminal justice system, including the police, prosecutors, courts, correctional institutions, and the Correctional Center (Bapas). Each institution operates under its own technical guidelines, without a unified case management mechanism or a collaborative inter-agency platform. The discretionary authority granted to police officers and prosecutors is often exercised with a focus on administrative efficiency rather than restorative outcomes. This issue is compounded by the limited availability of personnel adequately trained in restorative justice principles and practices. Many officials lack a substantive understanding of restorative methodologies or the skills necessary to facilitate dialogue and reconciliation among victims, offenders, and the broader community. As a result, penal mediation, which should serve as a

vehicle for healing and accountability, is frequently reduced to a procedural formality—or worse, becomes susceptible to transactional or coercive practices.

3) Cultural Barriers

Culturally, restorative justice continues to face substantial resistance from both the public and legal practitioners. Indonesia's prevailing legal culture remains strongly anchored in a retributive paradigm, which emphasizes incarceration as the primary mode of delivering justice. Public awareness and acceptance of restorative values—particularly the importance of repairing social relationships and achieving moral restitution—remain limited. Moreover, there is a widespread perception that non-punitive resolutions, such as mediation or deliberation, represent a compromise that weakens the authority of the law. Restorative justice is often misconstrued as a means of allowing offenders, especially those with social or economic privilege, to escape accountability. Such power asymmetries threaten to delegitimize restorative processes, especially when transparency and inclusivity are lacking. Without addressing these normative and cultural concerns, efforts to mainstream restorative justice risk being perceived as unjust or ineffective.

Based on empirical field data and a comprehensive review of existing legal frameworks, this study concludes that the principal barriers to implementing restorative justice in Indonesia stem from the absence of an integrated legal architecture, weak inter-agency coordination among law enforcement institutions, and limited restorative legal literacy among both officials and the public. The lack of a unified legal regime that fully embodies restorative justice principles has led to a fragmented and inconsistent implementation, often reliant on local discretion and initiative, with no assurance of legal certainty or adequate protection of victims' rights.

These findings reinforce the conclusions of Faisal et al., who identified the limited understanding of restorative justice among the public and law enforcement as a critical impediment.¹⁵ Similarly, Arsyad et al. highlighted the urgent need for regulatory harmonization to ensure that restorative justice is applied in a consistent and equitable manner.¹⁶ Unlike previous studies that focused primarily on normative aspects, this research demonstrates that the challenges are multidimensional, encompassing structural constraints and deeply rooted legal-cultural dynamics that resist rapid transformation. Furthermore, this study builds upon Sulistyarini et al., who emphasized the importance of grounding restorative justice in the Indonesian sociocultural context,

¹⁵ Rizki Faisal, Pristika Handayani, and Indra Sakti, "Analisis Implementasi Restorative Justice Dalam Penyelesaian Kasus Pencurian Ringan Di Kota Bandung," *Jurnal Petita* 6, no. 2 (2024): 70–74, <https://doi.org/10.33373/pta.v6i2.7527>.

¹⁶ Arsyad, Wantu, and Ismail, "Menata Kembali Prinsip Restorative Justice Dalam Sistem Peradilan Pidana Indonesia: Sebuah Gagasan Mencapai Idealitas."

where deliberation and consensus are integral to community life.¹⁷ However, our findings suggest that these local values remain inadequately reflected in formal legal proceedings, which are often dominated by rigid proceduralism and legal formalism that marginalize the moral and social dimensions of crime.

The results of this study underscore that the successful implementation of restorative justice in Indonesia requires not only legal reform, but a fundamental paradigm shift within the criminal justice system itself. The current legal structure does not explicitly prioritize the interests of victims in case resolution, while offenders are predominantly viewed as subjects of retributive punishment rather than individuals needing rehabilitation and reintegration.

When the justice system fails to facilitate dialogue among offenders, victims, and the community, justice becomes procedural and superficial. Restorative justice thus emerges as a critical mechanism to address this gap. However, for its successful realization, the state must construct a comprehensive restorative legal ecosystem—including national legislation, institutional frameworks, capacity building for legal practitioners, and widespread public education. This study confirms that the effectiveness of restorative justice implementation in Indonesia is contingent upon three primary factors:

- 1) Legal: The urgent need to enact a dedicated Restorative Justice Law that provides cross-sectoral guidance, establishes minimum procedural standards, delineates the rights and responsibilities of parties, and ensures robust oversight mechanisms.
- 2) Structural: The integration of restorative justice principles into all stages of the criminal process—from investigation through post-verdict—necessitating the involvement of district courts, customary institutions, and civil society actors in conflict resolution.
- 3) Cultural: A national public awareness campaign and legal education initiative are essential to foster a culture of restorative justice. Continuous training is also required to equip law enforcement officials with the capacity to serve as *judex mediators*—not merely as enforcers of formal legal norms, but as facilitators of healing and restoration.

Ultimately, restorative justice should not be seen as a peripheral alternative, but as a pathway to reforming the criminal justice system into one that is more inclusive, contextually grounded, and humane. As enshrined in Article 5(1) of Law No. 48 of 2009, judges and law enforcement officials are mandated to “explore, follow, and understand the legal values and sense of justice that live within society.” Today, those values call for a paradigmatic shift from retributive punishment to restorative justice.

¹⁷ Sulistyarini, Yuherawan, and Juita, “Kebijakan Restorative Justice Dalam Penyelesaian Perkara Pidana Di Pengadilan.”

3.3. Strategic Recommendations for Legal Reform and the Development of National Regulations to Strengthen the Constitutional and Operational Foundations of Restorative Justice in Indonesia

The primary aim of this research is to formulate a roadmap for legal reform and propose strategic recommendations for the development of national regulations that can reinforce the constitutional and operational foundations of restorative justice in Indonesia. This study addresses the pressing need for a legal framework that ensures legal certainty while simultaneously embracing the values of participatory and humanistic justice, as mandated by Article 1(3) and Article 28D(1) of the 1945 Constitution of the Republic of Indonesia.

In addition, this research seeks to evaluate best practices in the implementation of restorative justice, both within the formal criminal justice system and through alternative dispute resolution mechanisms. The ultimate goal is to support the evolution of a more inclusive national criminal justice system that aligns with Indonesia's socio-cultural context. This study adopts a juridical-sociological approach, collecting data through document analysis, case observations, and interviews with law enforcement officials and community leaders. Two primary case studies form the basis of this analysis: (1) District Court Decision Number 28/Pid.B/2022/PN.Lbb, and (2) the implementation of restorative justice by the Kotamobagu District Attorney's Office based on Prosecutorial Regulation No. 15 of 2020.

In the first case, restorative justice was applied following a peace agreement between the perpetrator of a theft and the victim, PT. AMP. This agreement, formalized in writing on January 7, 2022, served as the basis for the judge's ruling. During the trial, witness Mulyono confirmed that reconciliation had been achieved and that the perpetrator had expressed sincere remorse. Notably, restorative justice was applied despite the serious nature of the offense, indicating judicial willingness to prioritize restoration over retribution—even in the absence of explicit legal provisions within the Criminal Code or Criminal Procedure Code governing such cases.

Empirical findings also reveal that the Kotamobagu District Attorney's Office has implemented restorative justice to terminate prosecution in five assault cases (Article 351(1) of the Criminal Code). Of these, three cases concluded with a Decree on Termination of Prosecution (SKP2), while two were referred to court due to leadership dissent or unresolved mediation. The process in Kotamobagu follows five structured stages: (1) initiation of peace efforts, (2) facilitation of the peacemaking process, (3) implementation of agreements, (4) submission of a termination request, and (5) issuance of SKP2. These findings illustrate that, under the internal framework of Perja No. 15 of 2020, the Prosecutor's Office can implement restorative justice in a structured and accountable manner, albeit within the scope of specific offenses and contingent upon leadership approval.

Analysis of these cases highlights the core finding that restorative justice in Indonesia has achieved practical implementation across multiple levels of the criminal justice system. However, its application remains fragmented due to the absence of a coherent and comprehensive national legal foundation. In practice, the implementation of restorative approaches often relies on discretionary judgments and sectoral regulations. This study also identifies disparities in how cases are resolved peacefully; while some peace agreements are honored by legal authorities, others are disregarded due to the lack of binding legal obligations to consider them.

This study contributes to the existing literature by expanding on prior research by Farhan and Rich & Djaja, which examined Decision 28/Pid.B/2022/PN.Lbb as a precedent for restorative justice as a legal consideration.¹⁸ Unlike those studies, which primarily adopted a normative lens, this research introduces a strategic framework focusing on regulatory and institutional development to enhance the future legitimacy of restorative justice in Indonesia. The findings also align with Irabiah et al., who emphasized the importance of procedural hierarchy in the prosecutorial application of restorative justice.¹⁹ However, this study goes further by comparing institutional roles—judicial and executive—and underscoring the critical role of community participation and non-state actors in legitimizing and enhancing the effectiveness of restorative justice mechanisms.

The findings of this study reveal a significant disjunction between the practice of restorative justice and the existing legal framework in Indonesia. In practice, restorative justice has emerged as a responsive approach to community needs, particularly in cases involving minor to moderate harm. However, in the absence of comprehensive national legislation, its implementation remains constitutionally and operationally non-binding.

Without a formal legal foundation, perpetrators, victims, and communities are left without adequate legal certainty that their rights and interests will be equitably addressed. Law enforcement officials are consequently granted broad discretionary authority, which heightens the risk of inconsistency, misuse of power, and even re-criminalization of offenders who have already reconciled. Nevertheless, the restorative approach demonstrates substantial potential to reinforce participatory principles within Indonesian criminal law. The inclusive engagement of victims, offenders, families, community leaders, and legal authorities in dialogue-driven processes has been shown

¹⁸ Ahmad Farhan, “Penerapan Restorative Justice Dalam Tindak Pidana Pencurian Pada Tahap Pemeriksaan Di Persidangan: Studi Kasus Putusan Nomor 28/Pid.B/2022/Pn.Lbb,” *Hukum Responsif* 14, no. 1 (2023): 38–51, <https://doi.org/10.33603/responsif.v14i1.8383>; Johannes Immanuel Rich and Benny Djaja, “Penerapan Prinsip Restoratif Justice Terhadap Pertimbangan Hakim Dalam Putusan Lepas Dari Segala Tuntutan Hukum: Studi Kasus Putusan Nomor. 28/Pid.B/2022/PN.LBB,” *Unes Law Review* 6, no. 4 (2024): 9803–13, <https://doi.org/10.31933/unesrev.v6i4.1927>.

¹⁹ Irabiah, Suswanto, and Mafing, “Penerapan Restorative Justice Pada Tingkat Penuntutan: Studi Kasus Di Kejaksaan Negeri Kotamobagu.”

to yield more constructive outcomes, alleviate pressure on correctional institutions, and reduce recidivism.

These findings underscore the urgent need for a National Law on Restorative Justice that transcends sectoral limitations and applies uniformly across all areas of law enforcement, beyond juvenile or minor offenses. Such legislation should encompass the following elements:

- 1) **Constitutional Foundation:** Explicitly recognize restorative justice as a constitutional right under Article 28D (1) of the 1945 Constitution, ensuring fair and socially just treatment for all citizens.
- 2) **Integrated Operational Design:** Establish standardized procedures and criteria for restorative case resolution from investigation to enforcement, involving communities, facilitators, and customary institutions.
- 3) **Institutional Infrastructure:** Promote the development of Restorative Justice Centers at the municipal and district levels to coordinate efforts among police, prosecutors, courts, and civil society.
- 4) **Capacity Building:** Mandate specialized training for law enforcement personnel in penal mediation, reconciliation, and community-based conflict resolution.
- 5) **Rights Protection Mechanisms:** Codify the legal rights and protections of both victims and offenders throughout the restorative process, including access to assistance, procedural transparency, and information.

Accordingly, the legal reforms proposed in this study are not merely normative but aim to construct a criminal justice system that is more humane, participatory, and contextually grounded in local values. Restorative justice should no longer be perceived merely as an alternative mechanism, but as a transformative paradigm for achieving substantive justice.

4. CONCLUSION

This study aims to examine the implementation of restorative justice principles within Indonesia's criminal justice system across various levels of law enforcement, identify implementation challenges from normative, institutional, and sociological perspectives, and propose strategic recommendations for legal reform and the development of national regulations to reinforce the constitutional and operational foundations of restorative justice. The findings reveal that while restorative justice has begun to be adopted by institutions such as the police, prosecutors, and courts, its application remains partial, experimental, and lacks comprehensive regulatory support.

Normatively, the absence of a dedicated legal framework has resulted in reliance on sector-specific regulations, such as the Attorney General's Regulation No. 15 of 2020, and internal institutional policies. Institutionally, the lack of training, weak inter-

agency coordination, and limited human resources continue to hinder effective implementation. From a sociological standpoint, public skepticism toward non-punitive resolutions and a limited understanding of restorative justice philosophy present significant barriers.

This study underscores the urgency of reconstructing Indonesia's criminal justice system toward a more humane, equitable, and participatory model. It offers a foundation for evidence-based policy formulation and contributes to academic discourse on enhancing the legal legitimacy of restorative justice. The study's limitations include its broad jurisdictional focus and the limited incorporation of victims' perspectives. Accordingly, it is recommended that the government promptly enact national legislation on restorative justice applicable to all law enforcement institutions. Future research should investigate community-based and local wisdom-informed restorative practices and evaluate their effectiveness in promoting offender reintegration and victim recovery.

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