

## **Restorative Justice as a Resolution Mechanism for Petty Theft: A Comparative Legal Review of New Zealand and Malaysia**

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### **Abstract**

Petty theft is one of the most common criminal offenses and contributes to prison overcrowding, even though the losses involved are minimal and often committed by economically vulnerable individuals. The retributive criminal justice system in Indonesia has proven less effective in resolving such cases fairly and efficiently. This study aims to analyze the optimization of restorative justice in handling petty theft cases in Indonesia, while comparing its application with Malaysia and New Zealand. The research employs a normative juridical method, using statutory and comparative legal approaches. The research shows that Indonesia has introduced restorative justice through the Attorney General's Regulation Number 15 of 2020. However, practical implementation faces challenges, including limited awareness among

law enforcement, insufficient institutional synergy, and a lack of supporting facilities. In Malaysia, restorative principles are reflected in local practices, although not formally adopted in national legal frameworks. In contrast, New Zealand has institutionalized restorative justice, especially in youth cases, with comprehensive procedures and strong community participation. The comparative analysis suggests that successful implementation depends on regulatory clarity, trained human resources, and active community involvement. Indonesia must therefore enhance its legal infrastructure and cross-sector collaboration to ensure that restorative justice becomes an effective tool in resolving petty theft cases.

## Keywords

*Criminal Law, Comparative, Petty Theft, Restorative Justice.*

## A. Introduction

The imposition of punishment, or penal sanction, is a logical consequence of a criminal act committed by an individual. The term *pidana* is closely associated with punishment, which entails the infliction of suffering. According to Adami Chazawi, punishment constitutes the suffering imposed by the state upon an individual who has violated the law.<sup>1</sup> Within the course of law enforcement in Indonesia, punishment has long been understood as a form of retribution for the offender's wrongdoing, as well as a means of protecting society from those who pose a threat. Imprisonment, in this regard, has become the ultimate recourse of the criminal justice system in Indonesia. However, imprisonment in essence does not necessarily provide the best solution to addressing crime.

In practice, law enforcement often deviates from the normative ideals enshrined in legislation. One of the major shortcomings lies in the lack of attention to the rights of crime victims. Consequently, even when offenders are apprehended and prosecuted, victims frequently feel that they have not received adequate protection. Such protection extends to immaterial aspects, such as psychological recovery, as well as

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<sup>1</sup> Adam Chazawi, *Pelajaran Hukum Pidana Bagian I* (Jakarta: Raja Grafindo Persada, 2001).

material aspects, such as compensation for losses suffered. This aligns with Geis's assertion that "too much attention has been paid to offenders and their rights, to the neglect of the victim." In reality, crime victims are too often relegated to the role of mere evidence. Their position is largely confined to serving as witnesses, thereby severely limiting their ability to claim their rights.<sup>2</sup>

At the same time, law enforcement officials are confronted with the dilemma of balancing two opposing interests. On the one hand, there is the interest of the victim, whose protection must include the restoration of psychological, physical, and material harm. On the other hand, there is the interest of the accused, who despite being proven guilty still retains fundamental human rights that must be respected.<sup>3</sup> Hence, law enforcement authorities are required to act with fairness and proportionality, ensuring that victims' rights are not marginalized while simultaneously upholding the rights of offenders. Failure to achieve this delicate balance risks diverting law enforcement from the noble values of the nation, particularly the principle of justice rooted in Pancasila as the foundation of the Indonesian state.<sup>4</sup>

Indonesian society today expresses dissatisfaction with the formal Criminal Justice System (CJS), which is perceived as inadequate in protecting fundamental human rights and lacking transparency in serving the public interest. This dissatisfaction arises from the view that developments and changes within the CJS have failed to sufficiently safeguard basic human rights and have not been sufficiently transparent in fulfilling broader public needs. In response to these deficiencies, new

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<sup>2</sup> Iryanto Irvan Jaya Rifka Alkhilyatul Ma'rifat, I Made Suraharta, "Reformasi Penegakan Hukum Kekerasan Seksual Terhadap Anak Sebagai Bentuk Perlindungan Anak Berkelanjutan," *Kanun Jurnal Ilmu Hukum* 19, no. 2 (2017): 306–26.

<sup>3</sup> Arfan Kaimuddin, "Perlindungan Hukum Korban Tindak Pidana Pencurian Ringan Pada Proses Diversi Tingkat Penyidikan," *Arena Hukum* 8, no. 2 (2015): 258–79, <https://doi.org/10.21776/ub.arenahukum.2015.00802.7>.

<sup>4</sup> Fajar Seto Nugroho et al., "The Concept of Law Enforcement of the Crime of Theft through a Restorative Justice Approach," *Scholars International Journal of Law, Crime and Justice* 6, no. 08 (2023): 408–23, <https://doi.org/10.36348/sijlcj.2023.v06i08.005>. See also Ridwan Arifin, et al. "Striking a balance: navigating peace, justice, and restorative justice in Indonesian prosecutorial process." *The Prosecutor Law Review* 1, no. 3 (2023): 73–96.

approaches have been proposed to address the shortcomings of the formal system. One such approach is the resolution of cases through non-formal mechanisms, most notably the restorative justice model. This model is presented as an alternative to the *just desert* framework and the retributive justice model, which have traditionally underpinned the handling of criminal cases.<sup>5</sup>

Restorative justice functions as a form of legal reform aimed at addressing public dissatisfaction with the performance of the current criminal justice system.<sup>6</sup> Conceptually, restorative justice is understood as a method of resolving criminal cases that involves offenders, victims, victims' families, and other relevant stakeholders in seeking a fair resolution.<sup>7</sup> This approach emphasizes the restoration of the original social order rather than focusing exclusively on retribution or punishment. In the Indonesian context, restorative justice is often integrated with local wisdom (*kearifan lokal*), thereby adding value to case resolution in a more inclusive and equitable manner.

The application of restorative justice in sentencing must also be examined through the perspectives of criminology and correctional studies, as its primary goal is to rehabilitate the offender while ensuring accountability for the harm caused by the criminal act.<sup>8</sup> As emphasized by Prof. Bagir Manan, the substance of restorative justice rests on several core principles. First, fostering active participation among offenders, victims, and the community in addressing the criminal incident. Second, positioning these parties to work collaboratively in finding a

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<sup>5</sup> Prayogo Kurnia, Rsti Dian Luthviati, and Restika Prahanela, "Penegakan Hukum Melalui Restorative Justice Yang Ideal Sebagai Upaya Perlindungan Saksi Dan Korban," *Gema* 27, no. 49 (2015): 1498, <https://media.neliti.com/media/publications/23105-ID-reformasi-kebijakan-sertifikasi-halal-majelis-ulama-indonesia-mui-sebagai-bentuk.pdf>.

<sup>6</sup> Ilyas Sarbini, Sukirman, and Aman Ma'arij, "Restorative Justice Sebagai Alternatif Penyelesaian Perkara Pidana," *Fundamental: Jurnal Ilmiah Hukum* 9, no. 1 (2020): 31–42, <https://doi.org/10.34304/fundamental.v1i1.19>.

<sup>7</sup> Gregorius Widiartana, "Paradigma Keadilan Restoratif Dalam Penanggulangan Kejahatan Dengan Menggunakan Hukum Pidana," *Justitia et Pax* 33, no. 1 (2017): 1–23, <https://doi.org/10.24002/jep.v33i1.1418>.

<sup>8</sup> M Alvi Syahrin, "Penentuan Forum Yang Berwenang Dan Model Penyelesaian Sengketa Transaksi Bisnis," *Jurnal Rechts Vinding Media Pembinaan Hukum Nasional* 7, no. 2 (2018): 207–28.

resolution that is perceived as fair by all stakeholders, thereby achieving a *win-win solution*.<sup>9</sup>

Among the various types of theft regulated under the Indonesian Penal Code (KUHP), this study focuses on petty theft, as its law enforcement differs from that of other forms of theft. Whereas other theft offenses follow the procedural track prescribed by the Criminal Procedure Code (KUHP), petty theft tends to be resolved through the principles of restorative justice. In practice, the enforcement of law in petty theft cases often employs the concept of Alternative Dispute Resolution (ADR). Restorative justice is understood as a criminal case settlement approach that involves the offender, the victim, the victim's family, and other relevant stakeholders in order to reach a fair resolution by emphasizing the restoration of the original condition rather than retribution. ADR, by definition, is a method of resolving disputes outside the court (non-litigation). In cases involving petty theft, especially those committed by minors, law enforcement tends to adopt restorative justice principles through ADR mechanisms.<sup>10</sup>

The legitimacy of restorative justice in Indonesia is relatively new but has been codified in several regulations, including the Chief of Police Circular No. SE/8/VII/2018 on the Implementation of Restorative Justice, Regulation of the Chief of Police No. 6 of 2019 on Criminal Investigation, Prosecutorial Regulation No. 15 of 2020 on Termination of Prosecution Based on Restorative Justice, and the Decree of the Director General of the General Courts of the Supreme Court No. 1691/DJU/SK/PS.00/12/2020. Under Prosecutorial Regulation No. 15 of 2020, termination of prosecution through restorative justice is permitted if certain conditions are met: the offender is a first-time suspect, the offense carries a penalty of fine or imprisonment not exceeding five years, and the value of the property or loss incurred does not exceed IDR 2,500,000 (two million five hundred thousand rupiah).

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<sup>9</sup> Bagir Manan, *Restorative Justice (Suatu Perkenalan): Refleksi Dinamika Hukum Rangkaian Dalam Dekade Terakhir* (Jakarta: Perum Percetakan Negara RI, 2015).

<sup>10</sup> Mohd Sukri Harriyus Syahputra, "Analisa Penyelesaian Tindak Pidana Pencurian Ringan Melalui Restorative Justice (Studi Kasus Polsek Senapelan Kota Pekanbaru)" (Universitas Islam Riau, 2020).

The application of restorative justice in minor criminal offenses, such as petty theft, is particularly relevant not only because it reconciles the parties involved but also because it helps to address the problem of prison overcrowding. Data show that in 2023, Indonesia had 526 correctional institutions (*Lapas* and *Rutan*) with a total capacity of 140,424 inmates, while the actual number of detainees reached 265,897, exceeding capacity by 89.35%. By 2025, the situation had worsened: detention centers (*Rutan*) housed 76,214 inmates despite a capacity of 37,912, and prisons (*Lapas*) contained 193,751 inmates, nearly double their official capacity of 100,588.<sup>11</sup> This overcapacity has created numerous problems, including shortages of correctional officers, insufficient provision of food and healthcare, and declining quality of rehabilitation and reintegration programs for inmates.<sup>12</sup>

As a point of comparison, this research examines the implementation of restorative justice in Malaysia, a neighboring Southeast Asian country with geographic and demographic similarities to Indonesia. Crime rates in Malaysia have shown persistently high prevalence, with consistent increases over the past two decades. In 2008, there were 211,645 recorded theft cases, predominantly motor vehicle theft, burglary, and general theft, cumulatively accounting for more than 75% of all crimes.<sup>13</sup> By 2009, the number of reported crimes rose to 314,675, of which 272,310 involved property theft, representing approximately 87% of the total reported cases.<sup>14</sup>

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<sup>11</sup> Direktorat Jendral Pemasyarakatan, "Jumlah Penghuni Lembaga Pemasyarakatan (*Lapas*), Rumah Tahanan Negara (*Rutan*), Lembaga Pembinaan Khusus Anak (*LPKA*), Lembaga Pemasyarakatan Perempuan (*LPP*)," SDP Publik, 2025, <https://sdppublik.ditjenpas.go.id/analisa/jumlah-penghuni>.

<sup>12</sup> Nurul Hani Pratiwi, "Kondisi Lembaga Pemasyarakatan Di Indonesia Pasca Ditetapkannya UU Nomor 22 Tahun 2022 Tentang Pemasyarakatan, 8 Agustus 2024," 2025, <https://setkab.go.id/kondisi-lembaga-pemasyarakatan-di-indonesia-pasca-ditetapkannya-uu-nomor-22-tahun-2022-tentang-pemasyarakatan/>.

<sup>13</sup> Mazlan Bin Che Soh, "Crime and Urbanization: Revisited Malaysian Case," *Procedia - Social and Behavioral Sciences* 42, no. July 2010 (2012): 291–99, <https://doi.org/10.1016/j.sbspro.2012.04.193>.

<sup>14</sup> Zubairu Abubakar Ghani, "A Comparative Study of Urban Crime between Malaysia and Nigeria," *Journal of Urban Management* 6, no. 1 (2017): 19–29, <https://doi.org/10.1016/j.jum.2017.03.001>.

From a legal perspective, theft offenses in Malaysia are regulated under the Penal Code (Act 574), Articles 378–381, which define *theft* in general terms without distinguishing between “petty” or “serious” theft. Such differentiation arises only through judicial discretion, taking into account the value of the property, the offender’s background, and social circumstances. Within this context, the discourse on restorative justice becomes relevant as an alternative for resolving cases involving low-value theft or first-time offenders, prioritizing mediation, compensation, and rehabilitation over custodial sentences. In Malaysia, the concept of restorative justice was initially introduced within the juvenile justice system, given its proven effectiveness in reducing recidivism. Community service programs were launched in 2007 for offenders aged 18–21 and were subsequently expanded through amendments to the Child Act 2001 to include juvenile offenders.<sup>15</sup> These developments demonstrate that Malaysia has begun to open space for recovery-based models of justice, offering potential inspiration for the application of restorative justice in Indonesia.

By contrast, New Zealand, despite its reputation as one of the world’s safest countries, continues to record significant levels of crime. According to the New Zealand Ministry of Justice, there were 1.88 million crime incidents in the past twelve months, including a 47% increase in vehicle theft cases, from 41,000 households in 2022 to approximately 60,000 in 2023.<sup>16</sup> Fraud and cybercrime remain among the least reported offenses. Through the *Children, Young Persons, and Their Families Act 1989*, New Zealand introduced the Family Group Conference (FGC), which has since become an international model for resolving juvenile cases. The application of restorative justice was further expanded under the *Sentencing Act 2002* and the *Parole Act 2002*, enabling minor cases such as petty theft, property damage, and certain traffic violations to be addressed through mediation between victim and

<sup>15</sup> Taufik Mohammad, Azlinda Azman, and Ben Anderstone, “The Global Three: A Malaysian Lens on the Challenges and Opportunities Facing Restorative Justice Planning and Implementation,” *Evaluation and Program Planning* 72, no. April 2018 (2019): 1–7, <https://doi.org/10.1016/j.evalprogplan.2018.09.007>.

<sup>16</sup> Ministry of Justice, “New Zealand Crime and Victims Survey Published,” Ministry of Justice New Zealand, 2025, <https://www.justice.govt.nz/about/news-and-media/news/new-zealand-crime-and-victims-survey-published-june-2024/>.

offender. Ministry of Justice data indicate that more than 60% of restorative justice cases involve minor offenses, and the mechanism has reduced recidivism by approximately 11% within the first twelve months compared to formal litigation. Moreover, restorative justice enjoys broad public support, with victim satisfaction levels exceeding 75% following participation in the process.<sup>17</sup>

Based on the foregoing, this study aims to analyze the regulation and practice of restorative justice in Indonesia, conduct a comparative study with Malaysia and New Zealand as sources of applicable models, and evaluate their effectiveness, challenges, and policy implications. The purpose is to formulate recommendations for the implementation of restorative justice in Indonesia. Specifically, this research seeks to identify optimal strategies for restorative justice that align with Indonesia's legal and social context, thereby providing a fair, inclusive, and sustainable alternative for resolving minor criminal cases. Methodologically, this study employs a normative juridical approach to examine how positive law regulates a given issue, while also engaging with underlying legal principles, legal theories, and systemic structures.<sup>18</sup> A comparative approach is applied to assess the legal frameworks of Indonesia, Malaysia, and New Zealand concerning restorative justice. The findings from this comparative analysis will inform and recommend a model of restorative justice implementation suited to Indonesia's socio-cultural and legal realities. Legal materials were collected primarily through library research, including books, journals, scholarly articles, and relevant online resources, with particular attention to the role of public prosecutors in applying restorative justice to cases of petty theft.

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<sup>17</sup> Ministry of Justice, "Victims Satisfied with Restorative Justice," Ministry of Justice New Zealand, 2021, <https://www.justice.govt.nz/about/news-and-media/news/victims-satisfied-with-restorative-justice/>.

<sup>18</sup> Sunaryati Hartono, *Penelitian Hukum Di Indonesia Pada Akhir Abad Ke-20* (Bandung: Alumni, 1994).



## B. The Application of Restorative Justice as a Solution to Petty Theft in Indonesia

The concept of restorative justice in Indonesia is explicitly defined in Law No. 11 of 2012 on the Juvenile Criminal Justice System. Article 1 provides that “Restorative Justice is the settlement of criminal cases involving the offender, the victim, the families of the offender/victim, and other relevant parties, who collectively seek a fair resolution by emphasizing restoration to the original condition rather than retribution.” Restorative settlement is understood as one of the most beneficial approaches to addressing the phenomenon of prison overcrowding and other related social problems. Without such alternatives, correctional facilities risk becoming “academies of crime,” where inmates may instead acquire enhanced criminal skills.<sup>19</sup>

Resolving cases through restorative justice also addresses one of the principal challenges of the conventional criminal justice system, its tendency to be lengthy and time-consuming. Yahya Harahap emphasizes that justice seekers require informal procedures that can be mobilized quickly.<sup>20</sup> Through restorative justice mechanisms, relatively minor criminal cases can be resolved efficiently without the need for prolonged criminal trials. Similarly, Satjipto Rahardjo highlights that case resolution through the formal justice system is often delayed due to lengthy procedures spanning multiple stages, from the police, prosecutors, district courts, appellate courts, to the Supreme Court.<sup>21</sup> Such processes contribute to case backlogs and hinder timely access to justice.

As an illustration, when a theft case is brought before the court, the process may take weeks or even months to conclude. Procedural complexities affect all parties involved, including judges who schedule and adjudicate the case, public prosecutors who present the accused and witnesses, defense attorneys, and court clerks responsible for filing and

<sup>19</sup> Henny Saida Flora, “Keadilan Restoratif Sebagai Alternatif Dalam Penyelesaian Tindak Pidana Dan Pengaruhnya Dalam Sistem Peradilan Pidana di Indonesia,” *Jurnal Universitas Bengkulu* 8, no. 1 (2018): 141–58.

<sup>20</sup> M Yahya Harahap, *Beberapa Tinjauan Mengenai Sistem Peradilan Dan Penyelesaian Sengketa* (Jakarta: Sinar Grafika, 1997).

<sup>21</sup> Satjipto Rahardjo, *Sisi-Sisi Lain dari Hukum di Indonesia* (Jakarta: Kompas, 2003).

administrative duties. This overall process contributes to systemic inefficiency within the criminal justice system. By contrast, restorative justice offers a faster and more efficient approach to handling cases involving offenders, emphasizing mediation, restoration, and consensus among the parties concerned, thereby enabling case resolution without the lengthy procedures of formal judicial processes.

The community's perspective also constitutes an important element in the application of restorative justice. Indonesia, with its deeply embedded Eastern values, adheres to a collectivist culture in which individuals coexist within their communities, meaning that interpersonal conflicts may broadly affect social harmony. The consequences of a crime are not only experienced by the direct parties involved but may also extend to the surrounding community. Restorative justice seeks to minimize the emergence of new social problems resulting from criminal incidents. Hence, the involvement of community leaders and other stakeholders becomes essential in mediating and fostering reconciliation between victims and offenders.

The philosophy of restorative justice is centered on restoration, placing the victim as the primary party harmed. Unlike the conventional justice system, which primarily emphasizes punishment of the offender, restorative justice endeavors to redress the harm suffered by victims through mechanisms such as compensation, restitution, reparation, or rehabilitation, which may be mediated and mutually agreed upon.<sup>22</sup> This approach also considers the well-being of offenders and the broader community, in line with Marian Liebman's view that restorative justice aims to restore the well-being of victims, offenders, and society while simultaneously preventing the recurrence of criminal acts.<sup>23</sup>

Restorative justice can be understood as an approach that emphasizes kinship values and reconciliation. This concept aligns with John Griffith's *Family Model* theory, which stresses that offenders should not be regarded as enemies of society, but rather as members of

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<sup>22</sup> Eriyantouw Wahid, *Keadilan Restoratif Dan Peradilan Konvensional Dalam Hukum Pidana* (Jakarta: Universitas Trisakti, 2009).

<sup>23</sup> Sukardi, "Legitimacy of the Restorative Justice Principle in the Context of Criminal Law Enforcement," *Indonesia Law Review* 4, no. 2 (2014): 196, <https://doi.org/10.15742/ilrev.v4n2.111>.

a larger family who require correction and behavioral guidance without rejection or social exclusion.<sup>24</sup> Through this approach, if victims and offenders reengage within the community, hostilities between them can be reduced, thereby fostering social harmony and sustainable relationship restoration.

Restorative justice is rooted in the philosophy of restoration, placing the victim as the primary party harmed in theft cases. Unlike the conventional justice system, which often focuses on punishing the offender, restorative justice seeks to redress the victim's losses through various means such as compensation, restitution, reparation, and rehabilitation, mediated and mutually agreed upon.<sup>25</sup> The process of victim recovery typically involves identifying the harm, negotiating, reaching an agreement, carrying out payments, and monitoring compliance. Through these mechanisms, victims may experience justice by having their stolen property or money restored, receiving compensation for non-material losses, and gaining support in overcoming trauma. For offenders, this process provides an opportunity to take responsibility and become motivated to reintegrate into society.

This concept becomes particularly significant when viewed against the weaknesses of Indonesia's conventional penal system, which often runs contrary to the restorative justice objective of recovery. The criminal justice process generally results in decisions that impose penal sanctions. The forms of punishment are regulated under Article 10 of the Indonesian Penal Code (*KUHP*), with the primary sanction being imprisonment or detention.<sup>26</sup> Historically, prior to independence, such punishments were referred to as the deprivation of liberty. One of the adverse consequences of imprisonment is stigmatization of the convicted person. According to Hoefnagels, stigma arises when an

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<sup>24</sup> John Griffiths, "Ideology in Criminal Procedure or A Third 'Model' of the Criminal Process," *Yale Law Journal* 79, no. 3 (1970): 359-417, <https://openyls.law.yale.edu/server/api/core/bitstreams/e30f652e-4450-4121-b9cc-032ddd77b328/content>.

<sup>25</sup> Wahid, *Keadilan Restoratif dan Peradilan Konvensional dalam Hukum Pidana*. See also Budi Utomo, "The Implementation of Restorative Justice by Indonesian National Police Investigators in Traffic Accidents Resulting in Death." *Indonesian Journal of Criminal Law Studies* 3, no. 2 (2018): 81-98.

<sup>26</sup> Wahid, *Keadilan Restoratif dan Peradilan Konvensional dalam Hukum Pidana*.

individual's identity is disrupted or damaged due to societal perceptions of them.<sup>27</sup> Psychologically, stigmatization inflicts the greatest harm upon the offender, as it brands them as a criminal, with all the associated consequences. When former inmates complete their sentences and attempt to reintegrate into society, they are often labeled as criminals likely to reoffend. This hinders their reintegration, undermines public trust, and creates potential social conflicts arising from the entrenched "*criminal*" label.

Beyond the stigma imposed on offenders, restorative justice also serves to counter negative public perceptions of law enforcement, which is often criticized for being lenient toward the powerful yet harsh toward the underprivileged, thereby undermining public trust in justice.<sup>28</sup> Cases addressed through restorative justice are not heinous crimes or white-collar crimes such as corruption, which are intended to enrich individuals or groups. Many theft cases in society involve individuals stealing merely to meet their families' basic needs. The author employs a systematic approach to align relevant provisions. This systematic harmonization encompasses Articles 364, 373, 379, 384, 407, and 482 of the Penal Code, which regulate minor criminal acts, in connection with Article 205(1) of the Penal Code, which governs the procedure for handling petty offenses. By prioritizing restorative justice, law enforcement officials are able to exercise justice guided by conscience, enabling prosecutors, in their capacity as *dominus litis*, to exercise discretion in resolving relatively minor criminal cases involving minimal losses

One category of minor offenses is petty theft. The phenomenon of petty theft cases in Indonesia demonstrates noticeable fluctuations over time. The following statistical data provide an empirical illustration of the urgency of implementing restorative justice in addressing minor criminal offenses, particularly theft.

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<sup>27</sup> Wahid.

<sup>28</sup> Munir Fuady, *Sosiologi Hukum Kontemporer "Interaksi Hukum, Kekuasaan, Dan Masyarakat"* (Bandung: Citra Aditya Bakti, 2007).

TABLE 1. Theft rates in Indonesia

Year	Ordinary theft	Theft by Aggravation	Petty theft
2023	47.491	63.109	1.738
2024	44.720	52.028	781 (Attempted theft)
2025	27.680	35.315	4.073

Sources: *Pusiknas Bareskrim Polri*<sup>29</sup>

Data from Pusiknas Bareskrim Polri indicate fluctuating trends in theft cases across Indonesia. Ordinary theft and aggravated theft declined significantly between 2023 and 2025 (from 47,491 to 27,680 cases and from 63,109 to 35,315 cases, respectively). In contrast, petty theft sharply increased from 1,738 cases in 2023 to 4,073 in 2025. This phenomenon highlights two important points. First, theft remains one of the dominant forms of crime faced by law enforcement in Indonesia. Second, the rising trend of petty theft in recent years reflects complex socio-economic problems, where violations of law are often committed to meet basic needs. This condition underscores the importance of adopting restorative justice as an alternative mechanism of resolution, given that formal criminal proceedings in minor cases risk overburdening the judicial system, worsening the already overcrowded correctional institutions, and failing to fully restore relationships between offenders, victims, and the community.

Efforts to implement restorative justice are already visible in the performance of law enforcement agencies. In 2023, the Indonesian National Police recorded 18,175 cases resolved through restorative justice at the investigation stage, while the Attorney General’s Office approved the settlement of 2,407 cases through similar mechanisms. Meanwhile, the Supreme Court reported only 464 cases of child diversion.<sup>30</sup> With the enactment of Article 21 of Supreme Court Regulation (Perma) No. 1 of 2024, it is expected that the Court will

<sup>29</sup> Pusiknas Bareskrim Polri, “Statistik Kriminal,” Pusiknas Bareskrim Polri., 2025, [https://pusiknas.polri.go.id/data\\_kejahatan](https://pusiknas.polri.go.id/data_kejahatan).

<sup>30</sup> Ady Thea DA, “Penyebab RUU Masyarakat Hukum Adat Mangkrak Di DPR,” 2021, <https://www.hukumonline.com/berita/a/penyebab-ruu-masyarakat-hukum-adat-mangkrak-di-dpr-lt6111532e89914/>.

expand the mapping and reporting of restorative justice implementation, not only within general courts but also in religious courts (*Mahkamah Syar'iyah*) and military courts, as stipulated in Article 4(2) of the regulation.<sup>31</sup>

A case study from PTPN IV Air Batu illustrates the practical application of restorative justice. Between 2016 and 2018, numerous cases of theft were committed by minors. To address this issue, PTPN IV Air Batu Estate adopted a restorative justice mechanism to resolve cases amicably by drafting agreements between the perpetrators, accompanied by their parents, and the company. The use of restorative justice was deemed appropriate given that these cases involved minors and relatively minor evidence, 100 kilograms of palm fruit. As a result, theft incidents declined over the three-year period, with 23 cases in 2016, 17 cases in 2017, and 16 cases in 2018. This case study demonstrates two significant points.<sup>32</sup> First, restorative justice provides an effective solution for addressing petty theft while alleviating prison overcrowding in Indonesia. Second, community values such as *gotong royong* (mutual cooperation), along with the involvement of families, local leaders, and community figures, play a crucial role in shaping perspectives and deterring repeat offenses, as individuals often experience a sense of shame and reluctance to reoffend after undergoing such a communal process.

Local cultural values play a crucial role in the process of restoring relationships between offenders and victims within restorative justice mechanisms. Deliberation (*musyawarah*) serves as a central element for reaching agreements between the parties. This process facilitates open dialogue and negotiation, enabling all participants to arrive at mutually satisfactory outcomes. Over time, these cultural values have proven effective in providing victims with a sense of satisfaction, as they feel

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<sup>31</sup> Azizah, "Mengenal Pembaharuan Keadilan Restoratif di Pengadilan," Mahkamah Agung RI, 2024, <https://www.mahkamahagung.go.id/id/artikel/6494/mengenal-pembaruan-keadilan-restoratif-di-pengadilan?>

<sup>32</sup> Agung Nusa Pratidina, Marsella Marsella, and Wessy Trisna, "Penerapan Restorative Justice Terhadap Pencurian Buah Kelapa Sawit Oleh Anak Di Bawah Umur (Studi Kasus Di PTPN IV Unit Air Batu)," *JUNCTO: Jurnal Ilmiah Hukum* 2, no. 2 (2020): 172–80, <https://doi.org/10.31289/juncto.v2i2.326>.

heard and respected.<sup>33</sup> Offenders, in turn, tend to feel more accountable in restorative justice processes, as they are confronted with social and customary norms that emphasize the importance of repairing harm and undergoing rehabilitation. In fact, many indigenous communities in Indonesia have long practiced restorative forms of dispute resolution. These processes typically involve not only the offender and victim but also their families, respected community leaders, and individuals with recognized expertise in resolving criminal cases.<sup>34</sup>

In cases of theft, the application of restorative justice can be explained through three key dimensions: first, enhancing the quality of law enforcement and judicial institutions; second, restoring relationships between victims, offenders, and the broader community; and third, eliminating social stigma. While restorative justice holds significant potential as an alternative to the conventional criminal justice system, its implementation in Indonesia continues to face various challenges. One of the primary obstacles lies in the limited capacity and understanding among law enforcement officials, which often results in inconsistent application and outcomes that may undermine justice for both victims and offenders, thereby reducing public trust. Formally, law enforcement officials, including investigators, prosecutors, and judges are required to prioritize restorative approaches over retributive ones in resolving legal cases. In practice, however, they often struggle to fully grasp and consistently apply restorative justice principles, which in turn affects the overall effectiveness and coherence of its implementation in Indonesia.<sup>35</sup>

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<sup>33</sup> Nasaruddin, Aly Rizky, and Abdul Jabal Rahim, "Pengaruh Budaya Lokal Terhadap Pelaksanaan Restorative Justice Di Indonesia," *Journal Publicuho* 7, no. 3 (2024): 1443–50, <https://doi.org/10.35817/publicuho.v7i3.500>.

<sup>34</sup> Melva Noya, Elsa Rina Maya Toule, and Carolina Tuhumury, "Penerapan Proses Restorative Justice Melalui Pendekatan Restorative Conferencing Initiatives di Indonesia," *TATOHI: Jurnal Ilmu Hukum* 1, no. 4 (2021): 312–318, <https://fhukum.unpatti.ac.id/jurnal/tatohi/article/view/608%0Ahttps://fhukum.unpatti.ac.id/jurnal/tatohi/article/download/608/351>.

<sup>35</sup> Sudarto Sudarto Sujono and Hiskia Ady Putra, "Analisis Penerapan Restorative Justice Oleh Kejaksaan Republik Indonesia Dalam Bingkai Arah Pembaharuan Politik Hukum Pidana Di Indonesia," *JURNAL RECTUM: Tinjauan Yuridis Penanganan Tindak Pidana* 6, no. 3 (2024): 551–64.



From the societal perspective, restorative mechanisms are also sometimes perceived as ineffective, particularly due to the belief that they fail to deter offenders. In some cases, offenders even prefer imprisonment over enduring the hardships of restitution or community-based obligations.<sup>36</sup> Furthermore, another weakness lies in the inconsistent judicial interpretations, as observed in narcotics cases, where restorative justice in the form of rehabilitation is often applied unevenly. This inconsistency has led to disparities in treatment between public figures, such as celebrities, and ordinary citizens, despite the fact that they may be facing essentially the same legal issues.<sup>37</sup>

### C. Application of Restorative Justice in New Zealand

In every country, the existence and implementation of legal principles evolve in line with societal development. Legal progress extends beyond the boundaries of private law and permeates into the realm of public law, including criminal law. What distinguishes criminal law from other legal domains, such as public and private law, is the use of punitive measures or sanctions.<sup>38</sup> The application of restorative justice has been adopted by various countries worldwide with approaches tailored to their respective cultural and legal contexts, and it has demonstrated significant benefits.

New Zealand stands out as one of the most prominent nations in implementing restorative justice. Since the 1970s, the country has accommodated the concept of restorative justice through Family Group Conferencing (FGC), a mechanism for resolving criminal cases via deliberation between the victim and offender with the involvement of their families. Positive societal responses led to the continued

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<sup>36</sup> R Rahaditya Cora et al., "Analisis Pro dan Kontra Restorative Justice dalam Penyelenggaraan Sistem Keadilan Di Indonesia," *Jurnal Kewarganegaraan* 7, no. 2 (2023): 2157-2168. See also Sukardi Sukardi, and Hadi Rahmat Purnama. "Restorative Justice Principles in Law Enforcement and Democracy in Indonesia." *Journal of Indonesian Legal Studies* 7, no. 1 (2022): 155-190.

<sup>37</sup> Cora et al.

<sup>38</sup> Yuni Priskila Ginting, "Settlement of Criminal Cases Outside of Court Based on the Principle of Ultimum Remedium Penyelesaian Perkara Pidana Di Luar Pengadilan Berdasarkan Asas Ultimum Remedium," *The Prosecutor Law Review* 2, no. 1 (2024): 73-94.



development of this system.<sup>39</sup> In 2001, the New Zealand Ministry of Justice began funding and evaluating restorative justice practices through a four-year pilot program in four district courts.<sup>40</sup>

Shortly thereafter, Parliament enacted three major pieces of criminal justice legislation incorporating restorative justice principles: the Sentencing Act 2002, the Victims' Rights Act 2002, and the Parole Act 2002. This reform was further reinforced by the enactment of the Corrections Act 2004. The policy shift was largely driven by public pressure, particularly following the 1999 Referendum in which 92% of New Zealanders supported mandatory minimum sentences and tougher enforcement for serious crimes.<sup>41</sup> Restorative justice thus emerged as a middle ground: imposing sanctions on offenders while simultaneously safeguarding victims' rights and interests.

The Sentencing Act 2002, along with its 2014 amendment, further strengthened the position of restorative justice. Initially, judges were merely granted the discretion to determine whether a case could be referred to restorative justice services. However, since the 2014 amendment, judges are required to adjourn proceedings and ensure that restorative justice is considered for all eligible cases before trial. This reflects strong governmental support for the institutionalization of restorative justice.

In terms of offender rehabilitation, New Zealand has adopted several community-based sentencing policies rather than relying predominantly on imprisonment. Approximately 26,847 offenders serve community-based sentences, while only 7,605 are placed in

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<sup>39</sup> Yutirsa Yunus, "Analisis Konsep Restorative Justice Melalui Sistem Diversi Dalam Sistem Peradilan Pidana Anak Di Indonesia," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 2, no. 2 (2013): 231, <https://doi.org/10.33331/rechtsvinding.v2i2.74>.

<sup>40</sup> Douglas Bruce Mansill, "Community Empowerment or Institutional Capture and Control? The Development of Restorative Justice in New Zealand?? S Adult Systems of Social Regulation, Control and Punishment" (Auckland University of Technology, 2013).

<sup>41</sup> Sarah Mikva Pfander, "Evaluating New Zealand's Restorative Promise: The Impact of Legislative Design on the Practice of Restorative Justice," *Kotuitui* 15, no. 1 (2020): 170–85, <https://doi.org/10.1080/1177083X.2019.1678492>.

correctional facilities under the Department of Corrections.<sup>42</sup> These community-based sentences require strong community involvement, enabling offenders to make amends while maintaining a degree of normalcy in their daily lives. Offenders are also obliged to participate in tailored rehabilitation programs addressing the nature of their offenses, including violence, alcohol or drug abuse, and traffic violations. The overarching goal of these sanctions is to help offenders transform their lives, reduce recidivism, and prevent their return to prison.

Several forms of community-based sentences in New Zealand include community work, supervision, home detention, release from prison under conditions, and extended supervision. Community work may be carried out in groups under the supervision of a Community Probation Service centre or individually through placement with a mandated agency, or both. Supervision is another community-based sanction, generally imposed for a duration ranging from six months to two years. Home detention is a sentence that requires the offender to remain at an approved residence at all times under electronic monitoring and close supervision by probation officers. Placement on home detention enables offenders to maintain family connections, remain employed or actively seek employment, and participate in training or rehabilitation programs. The duration of this sentence ranges from 14 days to 12 months. The Community Probation Service also manages conditional release for offenders who have met the requirements, including employment, preparation of housing arrangements, and participation in rehabilitation programs. Extended supervision is specifically designed to manage the risks posed by child sex offenders in the community. This sanction is imposed by the Court and authorizes the Department of Corrections to monitor such offenders for up to ten years following their release.

One of the primary forms of restorative justice developed and applied in New Zealand is Family Group Conferencing (FGC), a policy tool designed for the protection of children in conflict with the law.

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<sup>42</sup> Fitria, "Praktik Restorative Justice Pada Lembaga Pemasyarakatan (LP) Di Perancis, New Zealand Dan Arab Saudi: Sebuah Perbandingan," *SALAM: Jurnal Sosial Dan Budaya Syar-I* 2, no. 2 (2015): 355–82, [https://doi.org/10.1007/978-3-319-33228-4\\_689](https://doi.org/10.1007/978-3-319-33228-4_689).

These conferences involve the primary victim, the offender, and secondary victims such as family members, relatives, or friends of the victim.<sup>43</sup> The process begins with the offender's acknowledgment of responsibility and recognition of the harm caused to the victim and the wider community. During the deliberations, all parties are expected to discuss and agree on steps the offender should take, which may include offering an apology, providing compensation, or performing community service.<sup>44</sup>

FGCs in New Zealand have proven effective as a mechanism that integrates families, children, and relevant agencies within both child protection and youth justice systems. This effectiveness is reflected in the rising proportion of *rangatahi* (youth) who disengaged from the youth justice system after their first FGC from 32% in 2019 to 40% in 2022, with a slight decline to 37% in 2023/24. Meanwhile, referrals of *rangatahi* Māori have remained stable at around 62–63%, underscoring the role of FGCs as an essential instrument in reducing reoffending among youth when interventions are early, participatory, and community-based.<sup>45</sup>

The *Restorative Justice Review* published by the New Zealand Ministry of Justice in 2023 further confirms the effectiveness of restorative justice mechanisms. The report indicates that 80% of judges considered restorative justice services to work well for the courts, and 64% regarded them as beneficial for participants. Moreover, conference reports were deemed to be of high quality and useful in assisting judicial decision-making. Police and service providers also emphasized the effectiveness of restorative justice, particularly in minor offenses, where it significantly reduces the likelihood of reoffending, especially when

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<sup>43</sup> Febby Nevy Novilia, "Kebijakan Formulatif Konsep Restorative Justice Dalam Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak" (Universitas Brawijaya, 2014).

<sup>44</sup> Arpandi Karjono and Parningotan Malau, "Penerapan Keadilan Restoratif Justice Dalam Hukum Pidana Berbasis Kearifan Lokal [Application of Restorative Justice in Local Wisdom-Based Criminal Law]," *Jurnal USM Law Review* 7, no. 2 (2024): 1035.

<sup>45</sup> Independent Children's Monitor, "Outcomes for Tamariki and Rangatahi Māori and Their Whānau" (New Zealand, 2024), <https://aroturuki.govt.nz/reports/outcomes-23-24>.

combined with the Diversion scheme as an alternative to formal sentencing.<sup>46</sup> Research further demonstrates that young offenders who participate in FGCs are less likely to reoffend, especially first-time offenders, compared to those processed through formal judicial procedures.<sup>47</sup>

Nevertheless, the effectiveness of Family Group Conferences (FGCs) is not uniform across all cases. FGCs tend to be more effective for low- to medium-risk offenders, whereas outcomes are less significant for high-risk or repeat offenders. Another challenge lies in victim participation, as many victims are reluctant to attend due to emotional factors, logistical barriers, or a lack of adequate support.<sup>48</sup> However, when victims do choose to participate, they generally report high levels of satisfaction. This indicates that the restorative justice model in New Zealand holds substantial potential for reducing recidivism and enhancing victim satisfaction, although further improvements are required in terms of fostering victim participation and managing high-risk offenders.<sup>49</sup>

The success of restorative justice in New Zealand is supported not only by formal regulations but also by the country's legal culture and local social norms. For instance, in Auckland, a young Māori offender involved in a minor robbery was diverted into a restorative approach rather than imprisonment, facilitated by the intervention of a Presbyterian pastor who personally knew the youth. The victim, a

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<sup>46</sup> Ministry of Justice, "Restorative Justice Review: Finding Report" (New Zealand, 2023), [https://www.justice.govt.nz/assets/Documents/Publications/Ministry-of-Justice-Restorative-Justice-review-report\\_FINAL.pdf](https://www.justice.govt.nz/assets/Documents/Publications/Ministry-of-Justice-Restorative-Justice-review-report_FINAL.pdf).

<sup>47</sup> Gabrielle Maxwell and Venezia Kingi, "Differences in How Girls and Boys Respond to Family Group Conference: Preliminary Research Results," *Social Policy Journal of New Zealand Te Puna Whakaaro*, no. 17 (2001).

<sup>48</sup> Christine Slater and Ian Lambie, "Youth Justice Co-Ordinators' Perspectives on New Zealand's Youth Justice Family Group Conference Process," *Journal of Social Work* 15, no. 6 (2014), <https://journals.sagepub.com/doi/abs/10.1177/1468017314552159?>

<sup>49</sup> Ministry for Children Oranga Tamariki, "Maximising Victim Participation and Engagement" (New Zealand, 2020), <https://www.ot.govt.nz/assets/Uploads/About-us/Research/Latest-research/Maximising-victim-participation-and-engagement/Maximising-victim-participation-and-engagement.pdf>.

member of the Quaker community, also participated in the process, while the local community assumed responsibility for monitoring and supporting the offender to prevent reoffending.<sup>50</sup> This case underscores that values of reconciliation and social accountability, deeply rooted in Māori traditions and community networks strengthen the practice of restorative justice in New Zealand. Importantly, its development is shaped not only by the formal legal framework but also by social practices emphasizing healing, reconciliation, and community participation.<sup>51</sup>

#### **D. Application of Restorative Justice in Malaysia**

Alongside countries that have advanced and well-structured restorative justice systems such as New Zealand, Indonesia may also draw comparative insights from its neighboring country, Malaysia, which shares geographical and cultural similarities. Malaysia's approach to restorative justice reflects a deeper understanding of the importance of rehabilitation and social reintegration, particularly in addressing cases involving children in conflict with the law. The Malaysian government has integrated restorative justice principles into its penal policies, focusing not merely on punishment but also on the restoration of social relations and the personal development of those involved.

Initially, Malaysia did not take significant steps to adopt restorative justice as extensively as other countries. Thus, its application can be considered relatively new in comparison. Nonetheless, restorative justice has gradually been embedded into Malaysia's criminal justice process, with increasing recognition of its benefits. For instance, when the Child Act 2001 was amended in 2016, new provisions on community service orders were introduced. These can be regarded as restorative measures because they involve the community in legal processes. At the same time, caning as a sanction for juvenile offenders was abolished. In

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<sup>50</sup> Donald W. Shriver Jr. and Peggy L. Shriver, "Law, Religion, and Restorative Justice in New Zealand," *Journal of Law and Religion* 28, no. 1 (2013): 143–77, <https://doi.org/https://doi.org/10.1017/S0748081400000266>.

<sup>51</sup> Jr. and Shriver.

Malaysia, the term used is “order” rather than “punishment,” underscoring the rehabilitative orientation of the system.<sup>52</sup>

A concrete example of this approach is seen in rehabilitation programs for children in conflict with the law. These programs not only provide physical rehabilitation but also ensure access to formal education in line with the national curriculum, vocational skills training to prepare for post-detention life, and intensive psychosocial counseling. The objectives are to correct behavior, rebuild self-confidence, and foster social awareness. Equally important, Malaysia emphasizes the active involvement of families, victims, and communities in the recovery process. This inclusive approach not only strengthens the restorative dimension of such programs but also significantly enhances their effectiveness in preventing recidivism and ensuring successful reintegration of children into society. Malaysia’s ability to balance penal sanctions with rehabilitative measures thus offers valuable lessons for Indonesia in developing a more just and human-centered criminal justice system.

Restorative justice in Malaysia is also reinforced by local wisdom, particularly Malay customs, which stress the importance of peace and the restoration of interpersonal relationships. This is evident in the negotiation processes during plea bargaining, where families and communities play a significant role in reaching outcomes perceived as fair by all parties. Hence, Malaysia’s model demonstrates how modern legal practices can be combined with local values to establish a more inclusive justice system aligned with cultural contexts.

One prominent form of restorative justice in Malaysia is the Community Service Order (CSO), introduced through the 2016 amendment to the Child Act 2001. CSOs are not positioned merely as punitive measures, but as rehabilitative instruments that directly involve the community in the recovery process. Through this approach, offenders particularly children and youth are given the opportunity to take responsibility for their actions while also benefiting from developmental support. Official data from the Ministry of Women,

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<sup>52</sup> Mohammad, Azman, and Anderstone, “The Global Three: A Malaysian Lens on the Challenges and Opportunities Facing Restorative Justice Planning and Implementation.”

Family, and Community Development reveal that between 2008 and 2023, a total of 9,680 cases were subjected to CSOs. Of these, 7,748 involved young offenders aged 18–21, 1,736 involved children under 18, and 196 involved adults above 21. These figures indicate that the majority of CSO recipients are young people, a group particularly vulnerable to offending but also with significant potential for rehabilitation and reintegration. Beyond its social effectiveness, CSO implementation is also considered more economically efficient than imprisonment, as it reduces state expenditures on incarceration.<sup>53</sup>

One of the key aspects of restorative justice implementation in Malaysia lies in the dynamics between victims and offenders during the resolution process. Most victims are strongly motivated to participate in restorative justice mechanisms. Their primary aim is not merely to see the offender punished but to directly voice their experiences, gain a deeper understanding of how they became victims, and obtain acknowledgment from the offender for the harm suffered.<sup>54</sup> For many, this dialogue provides a sense of psychological recovery, as it allows them to feel heard and recognized as the injured party. On the other hand, the process also creates a space for offenders to apologize, bear consequences, and demonstrate moral responsibility for their actions. Thus, victim offender dynamics in this context are not only formal but also deeply emotional and social features that define the restorative approach.

However, not all victims are able to fully exercise this opportunity. Many continue to face serious barriers, both psychological and practical. Post-crime trauma prevents some from meeting the offender face-to-face due to fears of re-victimization or emotionally distressing confrontations. Practical obstacles, such as limited financial resources or lack of access to mediation facilities, also restrict opportunities for active participation. Consequently, although the victim's role is normatively recognized within Malaysia's justice system, in practice their voices are

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<sup>53</sup> Daleeer Kaur Randawar et al., "Prevention over Punishment: Restoring Hope through Malaysian Child Act 2001," *International Journal of Research and Innovation in Social Science* 9, no. 5 (2025): 857–66.

<sup>54</sup> Taufik Mohammad and Azlinda Azman, "Do i Want to Face the Offender?": Malaysian Victims' Motivation for Participating in Restorative Justice," *Contemporary Justice Review* 24, no. 3 (2021).



often not fully heard. This indicates that restorative justice in Malaysia still requires stronger institutional support, particularly in the form of counseling, legal assistance, and technical facilitation, to ensure that victim participation can occur effectively without adding to their psychological burden.<sup>55</sup>

Another challenge is the inconsistency of judicial decisions. Judges often impose divergent rulings despite cases sharing similar characteristics, creating a perception of legal uncertainty and potentially weakening public trust in restorative justice.<sup>56</sup> Moreover, child victims who serve as witnesses face significant gaps in legal protection. In many instances, there are insufficient formal procedures to shield children from exhausting trial processes that may lead to re-victimization. The Malaysian government has introduced a series of legal amendments to strengthen the protection of child witnesses, including mechanisms that allow their testimonies to be presented without directly confronting offenders. These practical challenges highlight that while restorative justice promises victim recovery and offender accountability, its implementation in Malaysia still requires stronger regulatory frameworks, clear procedural standards, and sustained support facilities.

### **E. Recommended Model for Regulation in Indonesia**

Compared to New Zealand and Malaysia, Indonesia actually possesses a greater number of legal instruments governing restorative justice. Normatively, Indonesian law enforcement officers are even directed to prioritize restorative approaches. However, in practice, the implementation of restorative justice (RJ) in Indonesia still lags far behind that of New Zealand. This disparity reveals a fundamental problem that requires serious attention. One key internal obstacle is the absence of a single, comprehensive regulation that governs restorative justice in an integrated manner. Instead, each legal institution issues its

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<sup>55</sup> Azman, Azlinda, and Mohd Taufik bin Mohammad. "Crime victims support system and restorative justice: Possible implementation in Malaysia." *Journal of Arts and Humanities* 1, no. 2 (2012): 18-26.

<sup>56</sup> Yichen Pan and Wong Jun Hao, "Comprehensive Research on the Ways to Minimize the Disparity of Sentences in Similar Offences in the Malaysian Criminal Justice System," *West Science Law and Human Rights* 1, no. 04 (2023): 286-97, <https://doi.org/10.58812/wslhr.v1i04.194>.



own guidelines, which creates fragmented perspectives and approaches across agencies. As a result, the implementation of RJ in practice often lacks coherence and generates confusion.<sup>57</sup> Ironically, Indonesia, with its rich traditions of local wisdom and customary practices that align with restorative principles, has yet to fully recognize or incorporate these mechanisms into its national legal system. Customary law systems hold significant potential to serve as contextually relevant models of restorative justice for Indonesian society. Unfortunately, no serious effort has yet been made to codify such values into the formal legal framework of the state.

In Indonesia, criminal sanctions are classified into two types: principal and additional penalties, as stipulated under Article 10 of the Criminal Code (KUHP). Although in practice Indonesia has introduced more humanistic sanctions, such as community service, parole, rehabilitation, and diversion primarily through special regulations like the Juvenile Criminal Justice System Law (*Undang-Undang SPPA*) and its derivative rules, their implementation remains far from ideal. This stands in stark contrast to the system in New Zealand, where community-based sentences are prioritized, and only a small fraction of offenders serve custodial sentences. In the New Zealand model, offenders are encouraged to maintain social ties while undergoing rehabilitation and strict supervision, ensuring that punishment does not sever connections with family or community. By contrast, Indonesia's application of humanistic sanctions is hampered by several factors, including the lack of an integrated legal framework, limited understanding of restorative justice among law enforcement officers, and inadequate infrastructure such as rehabilitation centers and community service institutions. In many cases, repressive and retributive approaches still dominate, even in cases involving minor offenses.<sup>58</sup>

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<sup>57</sup> Hanafi Arief, and Ningrum Ambarsari. "Penerapan prinsip restorative justice dalam sistem peradilan pidana di Indonesia." *Al-Adl: Jurnal Hukum* 10, no. 2 (2018): 173-190.

<sup>58</sup> Ramdhan Kasim, "Dehumanization in Excessive Application of Criminal Law (Overspanning Van Het Strafrecht)," *Jambura Law Review* 2, no. 1 (2020): 1-29, <https://doi.org/10.33756/jalrev.v2i1.2402>.

Furthermore, restorative justice is not merely about reducing the burden on the criminal justice system or avoiding punishment; it is fundamentally about creating justice oriented toward recovery and social balance. By integrating victims and communities into the rehabilitation process, Malaysia has successfully developed a model that emphasizes inclusivity and sustainability in justice. This offers a valuable lesson for other countries seeking to implement restorative justice, illustrating that focusing on rehabilitation and recovery rather than punishment alone can generate more positive outcomes for all parties involved.

To address these challenges, this study proposes a three-stage framework to enhance the effectiveness of restorative justice in handling theft cases in Indonesia: the pre-process stage, the process stage, and the post-process stage. Each stage requires a structured approach tailored to the country's legal and social context. During the pre-process stage, emphasis should be placed on training and educating law enforcement officers to ensure they fully understand and are able to apply restorative justice principles effectively. At the process stage, it is crucial to involve all stakeholders victims, offenders, and communities actively in dialogue and mediation. In the post-process stage, there must be mechanisms for monitoring and sustained support to guarantee that restorative justice outcomes are implemented effectively and deliver positive impacts for all parties.

To implement restorative justice effectively as a solution to petty theft cases in Indonesia, the process can be divided into three structured phases: pre-process, process, and post-process, each supported by clear legal frameworks. In the pre-process phase, law enforcement officers are responsible for identifying and assessing the suitability of a case for restorative justice, as stipulated in Article 18 paragraph (1) and Article 21 paragraph (1) of the Criminal Procedure Code, as well as Article 3 and 4 of Perma No. 2 of 2012 and Article 4 of Perja No. 15 of 2020. Once deemed appropriate, officers must inform all parties including the victim, perpetrator, and community stakeholders about the restorative justice mechanism and secure their consent to participate.

During the process stage, the involved parties undergo a preparatory meeting facilitated by officers, who guide them in clarifying their expectations and preparing for dialogue, in line with Article 5 of both

Perma No. 2 of 2012 and Perja No. 15 of 2020. This is followed by the mediation phase, where a neutral mediator assists in fostering communication between the victim and the perpetrator to reach a mutually beneficial resolution, as mandated in Article 6 of the same regulations. If successful, a written agreement is formalized outlining restitution, rehabilitation, or compensation, based on Article 7 of Perma No. 2 of 2012, Perja No. 15 of 2020, and supported by provisions in the Criminal Procedure Code.

In the post-process phase, continuous monitoring is essential to ensure that the agreement is implemented and that both parties receive necessary support, pursuant to Article 8 of the Perma and Perja regulations. Finally, an evaluation must be conducted to assess the effectiveness and social impact of the restorative justice process, as stated in Article 9 of both legal instruments. These stages demonstrate the necessity of a comprehensive and legally grounded approach to optimizing restorative justice in Indonesia's criminal justice system.

## F. Conclusion

The comparative analysis demonstrates that restorative justice has been implemented differently across Indonesia, New Zealand, and Malaysia. In Indonesia, restorative justice has been formally recognized through several legal instruments, including the Attorney General's Regulation No. 15 of 2020 and the Juvenile Criminal Justice System Law. However, its implementation remains fragmented, constrained by limited understanding among law enforcement, weak institutional synergy, and insufficient infrastructure. Despite these challenges, the rising number of petty theft cases and the severe problem of prison overcrowding highlight the urgency of optimizing restorative mechanisms.

New Zealand presents the most advanced model, where restorative justice is fully institutionalized through the Sentencing Act 2002, the Victims' Rights Act 2002, and the Parole Act 2002. The use of Family Group Conferences (FGCs) has proven effective in reducing recidivism, strengthening victim participation, and fostering community involvement. Malaysia, while relatively new in adopting restorative justice, has integrated it into the Child Act 2001 through Community

Service Orders (CSOs) and rehabilitation programs. Its approach emphasizes family and community engagement, reflecting cultural values of reconciliation, although practical challenges remain in ensuring victim participation and judicial consistency.

Drawing from these experiences, Indonesia should strengthen its restorative justice framework through three key measures. First, establishing a comprehensive and unified regulation to eliminate institutional fragmentation. Second, enhancing the capacity of law enforcement and mediators through systematic training and education. Third, fostering stronger victim participation and community engagement by integrating local wisdom and customary practices into restorative processes. By adopting these reforms, restorative justice in Indonesia can become not only a practical solution to prison overcrowding but also a sustainable model of justice that balances the rights of offenders, victims, and society.

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