

# **An Analysis of Indonesian Administration of Criminal Legislation as Instrument of Restorative Justice for Prisoners**

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## **Abstract**

This paper seeks to examine the extent to which restorative justice principles have been integrated into Indonesia's criminal justice process, particularly concerning sentenced offenders. However, in Indonesia, while criminal enforcement concerning the rights of suspects and accused individuals are provided in several legislations, the aspects of victims' protection have remained unattended to. The paper therefore argued for the review of the administration of criminal justice legislations and retraining of officials under the criminal justice system in order to strengthen the justice system and her service delivery. While these reforms are widely regarded as an essential task's, the paper explores the challenges encountered in implementing restorative justice for Indonesian Prisoners, especially at the investigation stage. The paper's analysis revealed how law enforcement agencies, like the Indonesian National Police, can practically apply restorative justice principles to create more robust frameworks for its use. Drawing on the analysis of the paper, it argues that despite efforts made



to promotes restorative justice, differences still exists between traditional criminal concepts and its applications in Indonesia. Examining the findings of the paper, it concludes that there is need to align investigative methods with restorative justice principles in order to be able to address minor offences effectively and improve community well-being.

### Keywords

Restorative Justice; Indonesia Criminal Justice; Criminal Legislations; Instruments; Prisoners.

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## Introduction

In general, Indonesia had a criminal justice system that emphasized punitive punishment for crime offenders. The primary purpose of this system is to address the root causes of crime commission.<sup>1</sup> While acknowledging the necessity of criminal justice system, there was a need to embrace a more robust restorative system approach that is capable of addressing the harms perpetrated; there was also the need for victims' rehabilitation and reintegration into the community.<sup>2</sup> As civilization advances, it not only enriches our lives but also unveils new shadows of wrongdoing, demanding vigilant and adaptive responses which will aim at restoring and reconciling crime offenders, victims of crimes and community, distinct from the existing customary approach to crime resolution in Indonesia.<sup>3</sup> The essence of legal consciousness and communal values emerges as the cornerstone in the enforcement of laws, shaping a path where societal perceptions harmonize with the essence of justice to prevent the stagnation of legal systems. This process is a multifaceted and intricate journey that encompasses various stages, including inquiry, investigation, arrest, detention, prosecution, trial, and sentencing. In Indonesia, there is a growing interest in implementing restorative justice as an alternative to traditional punitive approaches. It may be argued that restorative justice is not primarily designed to reduced regression or ceaseless commission of

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<sup>1</sup> David MacRae, "The Root Causes of Crime," *Le Québécois Libre*, 2000; "Why Addressing the Root Causes of Crime Is More Effective Than Incarceration | Faculty of Social Sciences," April 16, 2024, <https://www.uottawa.ca/faculty-social-sciences/news-all/why-addressing-root-causes-crime-more-effective-incarceration>.

<sup>2</sup> Septhian Eka Adiyatma, "Legal Paradox: Protection of Victims Taking the Law into Vigilantism," *Ius Poenale* 4, no. 2 (2023), <https://doi.org/10.25041/ip.v4i2.3004>; Annemarie Ten Boom and Karlijn F Kuijpers, "Victims' Needs as Basic Human Needs," *International Review of Victimology* 18, no. 2 (2012): 155–79.

<sup>3</sup> Riska Andi Fitriono et al., "The Role of Customary Criminal Law in Resolving Cases," in *Proceedings of the ASEAN Conference on Sexual Exploitation of Children (ACOSEC 2024)*. (Springer Nature, 2024), 288; Bintara Sura Priambada, "The Urgency of Restorative Justice Regarding Customary Criminal Violations: Harmonization Between Customary and National Criminal Laws," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 22, no. 3 (2023): 847–62.

unlawful acts as globally understood.<sup>4</sup> Restorative justice focuses on repairing harm by bringing together victims and offenders to address the impact of the crime. This approach emphasizes restoring relationships and finding fair settlements rather than solely focusing on punishment. Restorative justice is seen as a voluntary process that can enhance victim satisfaction, reduce reoffending rates, and promote community reintegration. Beyond restorative justice, there are broader restorative practices within the criminal justice system aimed at recognizing harm, resolving conflicts, and rebuilding relationships. These practices extend to interventions in prisons to reduce violence and in schools to prevent further criminal involvement among children.<sup>5</sup>

The failure of Indonesia's criminal justice administration in applying restorative justice principles was as a result of the culture of adopting punishment by the law enforcement officials instead of a better way of punishing the crime offender which is the restorative justice system.<sup>6</sup> Despite efforts to introduce restorative justice concepts, challenges persists in full realizations of its potential impacts. The discourse surrounding restorative justice in Indonesia has been ongoing, reflecting the evolving landscape of national Criminal Law. While the concept is not entirely novel to some, its integration and practical application within the Indonesian legal framework have sparked inquiries and debates.<sup>7</sup> The Indonesian legal system has started to adopt the concept of restorative justice, particularly evident in the Law Number 11 of 2012 on the Juvenile

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<sup>4</sup> Howard Zehr, "Changing Lenses: A New Focus for Crime and Justice," *Corrections Compendium* 23, no. 12 (1998); Yutaka Osakabe, "Restoring Restorative Justice: Beyond the Theology of Reconciliation and Forgiveness," *International Journal of Public Theology* 10, no. 2 (June 2016): 247–71, <https://doi.org/10.1163/15697320-12341445>.

<sup>5</sup> Ketut Adi Wirawan, "Restorative Justice as a Law Renewal in Indonesia: A Concept or Theory?," in *Proceedings of the 3rd International Conference on Business Law and Local Wisdom in Tourism (ICBLT 2022)*, 2023, [https://doi.org/10.2991/978-2-494069-93-0\\_86](https://doi.org/10.2991/978-2-494069-93-0_86).

<sup>6</sup> Wagiman Wagiman and Didi Jubaidi, "Ultimum Remedium Principles: Realizing Restorative Justice For Children In Conflict With The Law," *Krtha Bhayangkara* 18, no. 3 (2024): 685–701.

<sup>7</sup> *Ibid*

Justice System (hereinafter referred to as the SPPA Law) which emphasizes collaboration between perpetrators, victims, families, and other relevant parties to find fair settlements focusing on restoration rather than retaliation.<sup>8</sup> However, the application of restorative justice remains partial and fundamental, with scattered implementations across various laws and regulations.<sup>9</sup> One key criticism is that the current legal system tends to resort to imprisonment as a default solution for criminal cases, leading to overcrowded prisons and potentially missing the opportunity for more effective crime prevention strategies.<sup>10</sup> The traditional retributive approach embedded in the Criminal Code inherited from Dutch colonial times still dominates, hindering the full integration of restorative justice principles into law enforcement practices. In light of that, efforts towards restorative justice exist within correctional institutions but are not yet prominent. These efforts aim to reduce the number of prisoners, eliminate stigma, reintegrate offenders into society, prevent recidivism, and reduce the burden on law enforcement agencies and judicial institutions. The ultimate goal is to create a justice system that focuses on healing relationships between offenders and victims rather than solely punitive measures.<sup>11</sup> While most agreed with the above assertions, it must be emphasized that the principles of restorative justice is otherwise construed as a demonstration of pity or contrition for crime offenders, resolutions of disputes at correction centres or adoptions of correction centres as most suitable outlet in resolution of criminal wrongs.<sup>12</sup>

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<sup>8</sup> Viand Dwi Prasetya, Setiyono Setiyono, and Teguh Suratman, "Implementation of Restorative Justice for Handling of Criminal Acts of Abuse," *EAS Journal of Humanities and Cultural Studies* 5, no. 02 (2023), <https://doi.org/10.36349/easjhcs.2023.v05i02.003>.

<sup>9</sup> Virginia Garcia, Hari Sutra Disemadi, and Barda Nawawi Arief, "The Enforcement of Restorative Justice in Indonesia Criminal Law," *Legality: Jurnal Ilmiah Hukum* 28, no. 1 (2020), <https://doi.org/10.22219/ljih.v28i1.10680>.

<sup>10</sup> Prasetya, Setiyono, and Suratman, "Implementation of Restorative Justice for Handling of Criminal Acts of Abuse."

<sup>11</sup> *Ibid*

<sup>12</sup> Marian Liebmann, *Restorative Justice: How It Works* (Jessica Kingsley, 2007), 67.

## Method

The research methodology employed in this article is grounded in a qualitative, normative juridical approach, with a particular emphasis on library research and document analysis. This method is chosen to enable a comprehensive and critical examination of the integration of restorative justice principles within the Indonesian criminal justice system, especially as they pertain to the administration of criminal legislation for prisoners.

The study relies primarily on secondary data, which is systematically collected from a range of legal sources. These include statutory regulations such as Law No. 11 of 2012 on the Juvenile Justice System, Law No. 8 of 1981 on the Criminal Procedure Code (KUHAP), and other relevant legislative instruments, as well as official documents, policy papers, academic literature, scholarly journals, and judicial decisions. The selection of these sources is intended to provide a holistic understanding of both the normative framework and the practical realities of restorative justice implementation in Indonesia.

Data collection is conducted through an extensive review of legal documents and academic works, allowing for the identification, classification, and synthesis of information pertinent to restorative justice practices. This process involves a careful reading and interpretation of legal texts, as well as an analysis of the broader socio-legal context in which these norms operate.

The analytical phase of the research employs a normative juridical method, focusing on the interpretation and critical evaluation of existing legal provisions. This analysis is complemented by a comparative perspective, juxtaposing restorative justice theories with their actual application in the Indonesian legal system. Through this approach, the study seeks to uncover inconsistencies, gaps, and challenges in the current legal and institutional framework, particularly those arising from the enduring dominance of retributive justice paradigms.

The research is structured to proceed through several interrelated stages. First, it describes and contextualizes the relevant regulations and policies that govern the administration of criminal justice and the application of restorative justice in Indonesia. Next, it assesses the alignment between restorative justice principles and their practical implementation, with particular attention to the experiences of offenders, victims, and the broader community. The analysis then moves to identify the obstacles that hinder the effective realization of restorative justice, whether they stem from legal, cultural, or institutional factors. Finally, the study formulates recommendations aimed at strengthening the integration of restorative justice within Indonesia's criminal justice system, with the ultimate goal of promoting a more humane, equitable, and restorative approach to crime and its consequences.

## Result and Discussion

### A. Relevant Acts of Indonesian Criminal Justice System

Indonesia's criminal justice system operates within a dynamic socio-cultural context, facing challenges in effectively addressing crime while upholding human rights and promoting community well-being. Restorative justice, with its emphasis on reconciliation, healing, and community involvement, offers an alternative approach to traditional punitive methods.<sup>13</sup> In 1981, Indonesia introduced the Code of Criminal Procedure (Kitab Undang-Undang Hukum Acara Pidana). This legal framework, influenced by Dutch criminal law, incorporated adversarial elements from common law practices.<sup>14</sup> The issue of insufficient participation and engagement of victims is also prevalent within the current Indonesian criminal justice

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<sup>13</sup> Robert R Strang, "More Adversarial, but Not Completely Adversarial: Reformasi of the Indonesian Criminal Procedure Code," *Fordham Int'l LJ* 32 (2008): 188.

<sup>14</sup> *Ibid*

system. Under the framework of criminal offense and procedural regulations outlined in the Criminal Code (referred to as KUHP) and Law No. 8 of 1981 on Criminal Procedure (referred to as KUHAP), a criminal offense is primarily perceived as an infringement against the state's interests. Consequently, the state designates entities to enforce these interests, notably empowering the public prosecutor with the authority to prosecute criminal offenses. This orientation primarily focuses on punishing the offender while often neglecting the rights of the victim. Within the procedural framework governed by KUHAP, victims of crime are typically relegated to the role of witnesses, aiding the public prosecutor in formulating charges. The repercussion of this scenario is closely tied to the applied concept of punishment. The predominant form of punishment employed is imprisonment, resulting in a significant reliance on carceral measures with little consideration for the welfare of victims. Consequently, this contributes to issues of overcrowding within State Detention Centers (referred to as Rutan) and Correctional Institutions (referred to as Lapas). The upward trajectory of imprisonment rates indicates a consistent increase annually, highlighting a dissonance between the prevailing forms of punishment and the imperative of providing restitution for victims. In this sense, in order to have a better appreciation of the application of restorative justice in the enforcement of criminal wrongs in Indonesia, Law No. 11/2012 provided the most widely insights on juvenile criminal justice system in Indonesia.<sup>15</sup>

In all contexts, there seemed to be efforts made in changing from retributive justice system to restorative justice with emphasis on legal tools for facilitations of its executions by law enforcement officials in order to be effectively executed. The analysis above provides that there should be need for regulatory frameworks that will specifically regulate the applications of

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<sup>15</sup> Muhammad Fatahillah Akbar, "Pembaharuan Keadilan Restoratif Dalam Sistem Peradilan Pidana Indonesia," *Masalah-Masalah Hukum* 51, no. 2 (2022): 199–208.



restorative justice in order to guarantee its consistency and effectiveness within Indonesia.<sup>16</sup>

A typical example of the impact of cultural paradox for which the community considers that every criminal act perpetrated irrespective of the age of the perpetrator should be punished with the corresponding punishment is exemplified in the conviction of a minor.<sup>17</sup> On January 1, 2012, a 15-year-old boy was convicted by an Indonesian judge for stealing a pair of old rubber sandals. This verdict carried a maximum sentence of five years in prison, equivalent to penalties for terrorism and rape. During the trial, the boy admitted to finding the sandals near a police boarding house in November 2010. Subsequently, he was interrogated and physically assaulted by three police officers six months later, who accused him of theft. However, the sandals presented in court differed in brand, size, and color from the reported stolen pair. The only evidence against the boy was a confession obtained under duress. Despite being found guilty, he was released to his parents' care. This case sparked outrage among activists in Indonesia, highlighting a justice system that often overlooks police misconduct while disproportionately punishing vulnerable individuals based on scanty evidence. In response, activists gathered over 1,200 pairs of sandals and placed them at police stations nationwide as a symbolic protest. This unique demonstration drew international attention to the incident and shed light on the shortcomings of Indonesia's Juvenile Justice System. The protest not only exposed the harsh treatment of children entangled in legal issues in Indonesia but also underscored the lack of credible information accessible to local and global media for reporting on such matters.

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<sup>16</sup> Rofiq Hidayat, "Perlu Penyeragaman Definisi Keadilan Restoratif Bagi Apgakum," Hukum Online, November 3, 2022, <https://www.hukumonline.com/berita/a/perlu-penyeragaman-definisi-keadilan-restoratif-bagi-apgakum-lt636367fe47cd0/>.

<sup>17</sup> Sharyn Graham Davies and Jazz Robson, "Juvenile (in) Justice: Children in Conflict with the Law in Indonesia," *Asia-Pacific Journal on Human Rights and the Law* 17, no. 1 (2016): 119–47.

Thus, most policies and scholarly discourse surrounding a possible advancement of a regulatory framework point to the establishment of correctional centres that will provide a significant meaning for the emergence of a criminal law mechanism in the aspects of criminal executions in Indonesia. This suggests that the execution of such legislations should be in conformity with the overall purpose of the penal system.<sup>18</sup>

The Law No. 11/2012 on the Juvenile Justice System, Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHP), and various local regulations and initiatives, contributes to the implementation of restorative justice principles. By analyzing these legal instruments, we seek to understand their impact on promoting rehabilitation, accountability, and community cohesion within the Indonesian criminal justice system. Indonesia's Law No. 11/2012 on the Juvenile Justice System represents a significant step towards incorporating restorative principles into the country's legal framework. By prioritizing rehabilitation and reintegration over punitive measures, the law acknowledges the unique vulnerabilities and developmental needs of juvenile offenders. One of the fundamental aspects of Law No. 11/2012 is its emphasis on rehabilitation and reintegration. The law recognizes that juvenile offenders are still in a formative stage of development and need support rather than harsh punishment. It encourages personalized interventions tailored to the needs of each young individual. Through diversion programs, community service, and educational interventions, the law aims to address the underlying factors contributing to juvenile delinquency while holding young offenders accountable for their actions.<sup>19</sup> The analysis of the paper

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<sup>18</sup> Dina Safitri, "Application of Restorative Justice in the Crime of Theft," *NEGREI: Academic Journal of Law and Governance* 2, no. 2 (2022): 139.

<sup>19</sup> Triyadi Rizki Budiman and Hadi Purnomo, "Restorative Justice in the Indonesian Criminal Justice System," *International Journal of Asia Pacific Collaboration* 1, no. 4 (2023): 1–5; Lidya Rahmadani Hasibuan, "The Concept of Restorative Justice in the Juvenile Criminal Justice System: A Narrative

shows that what gave rise to the emergence of Law No. 11 of 2012 otherwise understood as the legislations for child criminal justice system remained significant in Indonesia as result of its efforts to transform the juvenile justice system. As an established regulatory framework in charge of minors in conflict with the law specifically maintained that restorative justice system is key to resolutions of conflicts involving minors, instead of resorts to traditional methods of criminal adjudicatory procedures.<sup>20</sup> The aim of this legal instrument is to ensure the effective enforcement of positive law, benefiting the offender, the victim, and the public by promoting fairness and restoration rather than retaliation. This aligns with the concept of Restorative Justice as defined in Article 1 point 6 of Law Number 11 of 2012. The legislation emphasizes utilizing methods that prioritize fairness, such as diversion strategies, to address juvenile cases early on and throughout the legal process, steering them away from formal legal proceedings. To facilitates the application of Restorative Justice and diversion processes, adequate facilities and infrastructure are essential to prevent delays in law enforcement and service delivery, which could otherwise prolong case resolutions. The objectives of diversion includes fostering reconciliation between offenders and victims, handling juvenile cases outside traditional court settings, avoiding the incarceration of minors, promoting community involvement in resolving juvenile cases, and instilling a sense of accountability in children involved in legal conflicts.<sup>21</sup> A cursory look at the Indonesian Criminal Justice legislations shows that as retribution legislations along with restorative legislations remained two notable approaches to the resolutions of criminal wrongs. It may be argued

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Review of the Indonesian Context,” *Scholars International Journal of Law, Crime and Justice* 5, no. 7 (2022): 264, <https://doi.org/10.36348/sijlcj.2022.v05i07.004>.

<sup>20</sup> Holli Vah Seliskar, *Restorative Justice and Practices in the 21st Century*, *Restorative Justice and Practices in the 21st Century*, 2023, <https://doi.org/10.4018/978-1-6684-6145-7>; Sajad Fatahi Zafarqandi and Majid Vaziri, “Comparative Analysis between Traditional and Modern Criminal Procedure Code,” *J. Pol. & L.* 9 (2016): 97.

<sup>21</sup> *Ibid*

that prosecutorial processes of criminal wrongs against crime offenders in Indonesia, is done through the regular court proceedings.<sup>22</sup>

While Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP) is not explicitly focused on restorative justice, its procedural flexibility allows for the integration of restorative principles into certain stages of the criminal process. Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP) is a crucial legal framework that governs criminal proceedings in Indonesia. It outlines the procedural framework for criminal proceedings in Indonesia, ensuring due process and procedural fairness for all parties involved. However, the extent to which restorative practices are utilized within KUHAP varies depending on factors such as the discretion of law enforcement officials and judicial interpretation. Attorney General Regulation on Discontinuation of Prosecution, Regulation Number 15 of 2020 focuses on terminating prosecution based on restorative justice principles, considering reasonableness, public interest, proportionality, condemnation as a last resort, and ensuring swift and simple justice. Public prosecutors play a crucial role in making demands for termination of prosecution based on restorative justice principles. Police Regulation on Handling Crimes, Police Regulation Number 8 of 2021 emphasizes early detection and resolution of crimes through restorative justice. It involves inviting disputing parties, mediating relationships, preparing reports, and documenting solutions in a Restorative Justice register book. This approach aims to resolve conflicts voluntarily and without coercion. Incorporating restorative justice into criminal investigations in Indonesia is seen as a way to address harms collectively and heal the impacts of offenses.<sup>23</sup> This approach aims to reduce dissatisfaction among those involved in the criminal justice system by focusing on healing

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<sup>22</sup> Mira Anjar Oktaviani, "Analisis Yuridis Terhadap Sanksi Pidana Pembunuhan Oleh Anak Dibawah Umur Dala Perspektif, Hukum Positif Dan Hukum Islam" (Ponorogo: Universitas Muhammadiyah Ponorogo, 2019).

<sup>23</sup> Ibid.

and restoration rather than solely punitive measures. These regulations highlight Indonesia's efforts to integrate restorative justice principles into its legal system to promote fairness, community involvement, and rehabilitation rather than punitive measures in addressing criminal offenses. In 2018, collaborative efforts between the Institute for Criminal Justice Reform (ICJR), Indonesia Judicial Research Society (IJRS), Institute for Judicial Independence (LeIP), and the Ministry of National Development Planning/National Development Planning Agency (Bappenas) conducted an examination of regulations enabling the application of Restorative Justice (RJ) within Indonesia's current criminal justice system. This approach aims at engaging both perpetrators and the community to facilitate rehabilitation. At the investigative phase, discretionary powers allow investigators to bring together perpetrators and victims, supported by the revocation of complaints for certain offenses outlined in Articles 73, 74, 75 of the Criminal Code, alongside Circular Letter No. 8 of 2018 detailing the application of RJ in criminal case resolutions at the investigative level. These provisions empower investigators to focus on victim restoration in line with perpetrator accountability. Trial judges also wield authority to apply RJ, ensuring consideration of victim losses. They may decide on compensation using Article 98 of the Criminal Procedure Code or opt for conditional punishment with probation, incorporating compensation conditions outlined in Articles 14a and 14c of the Criminal Code. This may involve granting restitution claims in court decisions. In 2019, follow-up studies were conducted in Mataram (NTB), Makassar (South Sulawesi), and Banda Aceh (Aceh) to assess the implementation of RJ opportunities outlined in normative provisions. Field studies and literature reviews provided insights into the application of RJ in these regions, further informing the analysis of regulatory opportunities and field practices.

The adoption of Restorative Justice as a significant shift in Indonesia's punishment orientation was included in the 2020-2024 Medium-Term

Development Plan (RPJMN). Subsequently, various law enforcement institutions began formulating rules governing RJ implementation. Despite these developments, it's noteworthy that law enforcement officials still tend to narrowly interpret RJ as a means of reconciling or terminating cases, focusing primarily on achieving peace or case resolution through formal court mechanisms or alternative means outside trial proceedings.

Evidently, practices of restorative justice in Indonesia are executed through several mechanisms stemming from mediation, communal service along with compensatory agreement oftentimes orchestrated by lawyers or local advocates.<sup>24</sup>

## **B. Implementation/Challenges**

The challenge of certain cultural values perpetuating patriarchy and conflicting with human rights is a significant aspect to consider within the context of Indonesia's criminal justice system. Despite efforts to incorporate restorative justice principles and promotes community involvement, deeply ingrained cultural norms are likely to hinder progress towards gender equality and human rights.

Broadly speaking, one of the challenges confronting Indonesia's criminal justice system stems from corrupt practices that oftentimes disregards the sanctity of the legal institutions thereby weakening public trust in the justice system. In a similar fashion, challenges arising from the mediation procedures bordering on difficulties in arriving at a consensus with the victims and perpetrators or issues on lacks of skills by the mediator oftentimes raises doubt on the outcomes of the mediation procedures.<sup>25</sup> It

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<sup>24</sup> Henny Saida Flora, "Perbandingan Pendekatan Restorative Justice Dan Sistem Peradilan Konvensional Dalam Penanganan Kasus Pidana," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 5, no. 2 (2023): 1933–48.

<sup>25</sup> Syaiful Asmi Hasibuan et al., "Restorative Justice Sebagai Bentuk Hukum Progresif Dalam Peraturan Perundang-Undangan Indonesia Tidak Untuk Menggantikan Keadilan Retributif," *Indonesian Journal of Law* 1, no. 1 (2024): 14–25; Mukhammad Ardiansyah Tri Saputra, Abid Zamzami, and M. Taufik, "Mediasi Penal Sebagai Alternatif Penyelesaian Perkara," *Universitas Islam Malang*, no. 4 (2022).

is worth noting that issues bordering on enforcement of certain legislations along with the customary practices of the people contributes to the challenges faced by law enforcement officials in the implementation of criminal justice system in Indonesia.<sup>26</sup>

In a similar manner, Hilman Hadikusuma maintained that the existence of Native Courts in Indonesia traceable from the period of Hindu-Buddist era was found as another means of resolving disputes which it's mode of operations remained alien to Indonesian justice system.<sup>27</sup> Another significant point to note in respect of adoptions of restorative justice system in the criminal law jurisprudence of Indonesia as contained in Article 54 which emphasized on the need to consider certain values of the community along with diversions of minors also contained in Article 96 all emanated from the common practices of traditional resolutions of conflicts in Papua and Kalimantan.<sup>28</sup> By implications, this conception's shows an advancement from the guidelines on legal procedures known to be dependent on written legislations to the guidelines bordering on Unwritten legislations like Customary legislations.<sup>29</sup> In this sense, incorporating customary criminal legislations into the new criminal code entails that State should be more committed to ensuring that legal diversities along with traditional knowledge are fully respected.<sup>30</sup> Nevertheless, it should be noted

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<sup>26</sup> Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum* (Depok: Raja Grafindo Persada, 2011).

<sup>27</sup> M Zaid et al., "Eradicating Public Official Corruption Indonesia: A Revolutionary Paradigm Focusing on State Financial Losses," *Wacana Hukum* 29, no. 2 (2023), <https://doi.org/10.33061/wh.v29i2.9564>.

<sup>28</sup> Eva Achjani Zulfa, "Restorative Justice in Indonesia: Traditional Value," *Indonesia Law Review* 1, no. 2 (2011), <https://doi.org/10.15742/ilrev.v1n2.81>; Adwi Mulyana Hadi, Anik Iftitah, and Syahrul Alamsyah, "Restorative Justice Through Strengthening Community Legal Culture in Indonesia: Challenges and Opportunity," *Mulawarman Law Review* 8, no. 1 (2023): 32–44, <https://doi.org/https://doi.org/10.30872/mulrev.v8i1.1140>.

<sup>29</sup> Aliyih Prakarsa and Rena Yulia, *Hukum Pidana Adat: Beserta Kajian Terhadap Pasal Pidana Adat Dalam UU No. 1 Tahun 2023 Tentang KUHP* (Jakarta: Kencana, 2023).

<sup>30</sup> Muhammad Junaidi and Yoghi Arief Susanto, "Reformulation of Customary Criminal Law in the National Criminal Code Based on the Formation of Legislation," *Jurnal Pembangunan Hukum Indonesia* 7, no. 1 (2025): 43–60; Gede Eka Rusdi Antara, I Nyoman Budiana, and Ida Ayu Sadnyini, "Formulation of Customary Criminal Law in Future Criminal Code and Legal

that it's executions also entails monitoring in order not to depart from the guidelines of global justice.

In some cases, cultural norms may dictate that women's voices are marginalized or ignored, leading to systemic biases and injustices. Within the criminal justice system, patriarchal attitudes may manifest in ways that undermine the rights of women, particularly in cases of gender-based violence or discrimination. Victims of such offenses may face additional challenges in seeking justice, as societal norms may discourage them from speaking out or seeking legal recourse. Moreover, patriarchal structures within law enforcement agencies and judicial institutions may perpetuate gender biases, leading to disparities in how cases involving women are handled and adjudicated.

Furthermore, cultural values that prioritize conflict resolution through traditional mechanisms may conflict with internationally recognized human rights standards, particularly concerning gender equality and women's rights. Also, the concept of Restorative Justice (RJ) being perceived solely as a "dispute resolver" oriented towards results rather than process and outcomes is deeply rooted in the socio-cultural context and the existing legal framework of Indonesia's criminal justice system. Despite efforts to integrate RJ principles into various laws and regulations, including Law No. 11/2012 on the Juvenile Justice System and Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHP), there remains a fundamental misunderstanding among law enforcement officials regarding the essence and objectives of Restorative Justice. Within Indonesia's legal framework, which predominantly emphasizes punitive measures and state interests in criminal proceedings, the concept of Restorative Justice as a process-oriented approach aimed at healing, reconciliation, and community involvement often gets overshadowed. The prevailing focus on achieving peace or resolving cases through formal court mechanisms or alternative means outside trial proceedings reflects a narrow interpretation of Restorative Justice by law enforcement officials. Despite

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Enforcement in Indonesia," *Substantive Justice International Journal of Law* 4, no. 2 (2021): 164–81.



the presence of legal provisions allowing for the application of Restorative Justice principles at various stages of the criminal justice process, such as during investigations, prosecution, and trial, there persists a tendency among officials to view restorative justice merely as a tool for reaching agreements or settlements, rather than fully embracing its transformative potential.<sup>31</sup> In a similar vein, the paper revealed that sometimes the treatments or participations of victim in the restorative justice proceedings appears to be unfair thereby not taking into cognizance his needs.<sup>32</sup>

### C. Achievements/Shortcomings

The existence of law serves not only as a means to achieve justice but also as a tool to bring about benefits that can be enjoyed by all members of society. These benefits are realized when the law contributes to the well-being and prosperity of individuals. Legal actions should be founded upon rational reasoning, considering both the positive and negative consequences. This principle reflects the aim of the law to safeguard the interests of both individuals and communities.<sup>33</sup> Restorative justice is envisioned as a viable approach to addressing criminal acts or offenses, prioritizing the restoration of relationships among perpetrators, victims, and the broader community. By fostering reconciliation among these parties, restorative justice enhances legal certainty in law enforcement while fostering a sense of happiness and peace among the involved parties.<sup>34</sup> The Indonesian National Police navigate their duties in criminal law enforcement amidst two primary interests: societal welfare and the fulfillment of legal objectives aimed at establishing legal certainty. Upholding public order requires mechanisms to ensure certainty while also attending to societal compliance. However, the

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<sup>31</sup> Jung Jin Choi, Michael J. Gilbert, and Diane L. Green, "Patterns of Victim Marginalization in Victim-Offender Mediation: Some Lessons Learned," *Crime, Law and Social Change* 59, no. 1 (2013), <https://doi.org/10.1007/s10611-012-9382-1>.

<sup>32</sup> Gordon Bazemore and Mara Schiff, *Juvenile Justice Reform and Restorative Justice: Building Theory and Policy from Practice*, *Juvenile Justice Reform and Restorative Justice: Building Theory and Policy from Practice*, 2013, <https://doi.org/10.4324/9781843926368>.

<sup>33</sup> Ibnu Artadi, "Hukum: Antara Nilai-Nilai Kepastian, Kemanfaatan Dan Keadilan," *Hukum & Dinamika Masyarakat*, 2016.

<sup>34</sup> Diah Ratna Sari Hariyanto and Dewa Gede Pradnya Yustiawan, "Paradigma Keadilan Restoratif Dalam Putusan Hakim," *Kertha Patrika* 42, no. 2 (2020), <https://doi.org/10.24843/kp.2020.v42.i02.p06>.

pursuit of legal certainty and public order may occasionally lead to conflicts, particularly in contentious cases that garner public attention.<sup>35</sup> It is worthwhile to state that restorative justice is capable of providing incentives as well taking care of victims' families in such a manner that it prioritized restorative values based on collaborative processes and judicial agreement.<sup>36</sup> Restorative justice, conceived as a movement to counteract the retributivist mentality prevailing in our criminal justice system, relies on community members to collaborate in offering solutions to crimes and injecting a sense of obligation and redemption into society.<sup>37</sup> However, the implementation of restorative justice faces various challenges, particularly at the investigative level. Community participation is crucial for its success, as restorative justice aims to promote community welfare. Yet, skepticism remains regarding public willingness to engage in this endeavor, given the prevalent individualistic culture within our society. Additionally, restorative justice efforts necessitate cooperation from all parties and law enforcement officials, transforming judicial mechanisms focused on proving criminal cases into processes of dialogue and mediation.<sup>38</sup> Despite its transformative potential, it still faced several obstacles and criticisms regarding the efficacy of restorative justice practices, especially in restoring victims, due to inconsistent empirical evidence, legal frameworks, resource constrained and law enforcement officers' hesitancy in its implementation.<sup>39</sup> These doubts stem from different understandings of existing norms and rules governing restorative justice practices among law enforcement officers. Moreover, challenges arise from the compatibility of

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<sup>35</sup> Nurman Siddiq and Rudhiana Salam, "Enhancing Legal Certainty through Legal Reform in Indonesia: Problems and Efforts to Strengthen Legal Institutions," *Strata Law Review* 3, no. 1 (2025): 1–14, <https://doi.org/10.59631/slr.v3i1.62>.

<sup>36</sup> Dewi Setyowati, "Memahami Konsep Restorative Justice Sebagai Upaya Sistem Peradilan Pidana Menggapai Keadilan," *Pandecta Research Law Journal* 15, no. 1 (2020), <https://doi.org/10.15294/pandecta.v15i1.24689>.

<sup>37</sup> Christo Fosse, "Restorative Justice: The Politics and Philosophy of an Alternative Approach to Criminal Justice," *Xavier Journal of Politics* 9 (2020): 1–12.

<sup>38</sup> Mark S. Umbreit and Marilyn Peterson Armour, "Restorative Justice and Dialogue: Impact, Opportunities, and Challenges in the Global Community," *Journal of Law & Policy* 36, no. 1 (2010).

<sup>39</sup> Kurniawan Tri Wibowo and Sunarko, "Challenges And Obstacles To The Application Of Restorative Justice On The Criminal Justice System In Indonesia," *International Journal of Law Policy and Governance* 2, no. 1 (2023), <https://doi.org/10.54099/ijlpg.v2i1.203>.

the Indonesian criminal system with the application of restorative justice. The historical influence of retributive patterns in the criminal system complicates community participation in enforcing the goals of punishment and justice. Consequently, determining the position of restorative justice within the Indonesian criminal system remains challenging. Indonesia's criminal justice system grapples with the challenge of incorporating restorative justice principles while navigating deeply ingrained patriarchal cultural norms. Despite efforts to promote community involvement and reconcile conflicting values with human rights, significant achievements coexist with persistent shortcomings. Indonesia has taken strides in embedding restorative justice principles within its legal framework. Laws like Law No. 11/2012 on the Juvenile Justice System and Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP) recognize the importance of rehabilitation and community involvement in addressing crime. Efforts have been made to elevate the voices of victims, particularly in cases of gender-based violence or discrimination. Initiatives to provide platforms for victims to seek justice and support reflect a growing awareness of the importance of victim participation in the justice process. The emphasis on community involvement in resolving conflicts signifies a departure from purely punitive approaches. Restorative justice principles encourage dialogue and reconciliation within communities, fostering a sense of accountability and collective responsibility. However, despite legal advancements, patriarchal values continue to permeate Indonesia's criminal justice system. Gender biases and inequalities persist, with women often marginalized or ignored in legal proceedings. Patriarchal attitudes within law enforcement agencies and judicial institutions exacerbate disparities in how cases involving women are handled. There remains a fundamental misunderstanding among law enforcement officials regarding the essence and objectives of restorative justice. The concept is often narrowly interpreted as a means to reach agreements or settlements, rather than embracing its transformative potential for healing, reconciliation, and community involvement. Cultural values that prioritize traditional conflict resolution mechanisms may conflict with internationally recognized human rights standards, particularly concerning gender equality and women's rights. This tension poses a significant challenge in reconciling

cultural norms with the principles of restorative justice and human rights. Hence, while Indonesia has made progress in integrating restorative justice principles within its criminal justice system, significant challenges remain. Patriarchal influences and cultural norms continue to hinder efforts to promote gender equality and human rights. Addressing these challenges requires a multifaceted approach, including raising awareness, providing training for law enforcement officials, and fostering dialogue within communities. Only through concerted efforts can Indonesia overcome these obstacles and fully embrace the transformative potential of restorative justice in promoting fairness, reconciliation, and community cohesion within its criminal justice system.<sup>40</sup>

## Conclusion

In this paper, we set out to analyze how Indonesian administration of criminal legislation applies restorative justice system in its criminal adjudicatory procedures. In each of the stages of the adjudicatory procedures, the paper examined the weaknesses and effectiveness of Restorative Justice System and the subsequent investigation processes. The analysis revealed that there are some practices that marginalizes victim offenders during the adjudicatory procedures. Sometimes, victims are meant to face some intimidations that has continued to impede the realization of justice and protection of prisoners' rights. It must be emphasized that these challenges stems from the misconceptions arising from the applications of Restorative Justice principles. The primary purpose of the paper is not to cast aspersions on Restorative Justice System or officials, but to ensure that the plight of victims and their families are not ignored or disregarded. In order to achieve the primary purpose of Restorative Justice, it is important to strengthen the regulatory frameworks, create grassroots awareness among investigators and

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<sup>40</sup> Deassy J.A. Hehanussa et al., "A Critical Review of Restorative Justice Policy in the Indonesian Criminal Justice System Post Law No. 1 of 2023 Concerning the Criminal Code," *Journal Equity of Law and Governance* 6, no. 1 (2023): 121–29.

judges, as well as reductions in pervasive police corruption. Moreover, while Restorative Justice offers a promising alternative to the formal legal process, particularly at the investigation level, its full integration into Indonesia's criminal justice system remains a gradual process. Although authorities have made strides in implementing restorative justice practices, challenges persist, including discrepancies between restorative justice principles and established criminal concepts and rules. Despite ongoing developments and efforts to address community dissatisfactions with the previous punitive system, the formal sentencing process still dominates in court proceedings. Moving forward, addressing these challenges will require comprehensive evaluations and adjustments to ensure the effective implementation of restorative justice principles. This includes enhancing community readiness, addressing investigators' doubts, and reconciling restorative justice practices with existing criminal procedures. By prioritizing the principles of justice and integrating restorative approaches into the criminal justice system, Indonesia can work towards fostering a more equitable and responsive legal framework that upholds the rights of all individuals involved.

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