

Restorative Justice In Indonesian Criminal Code: Navigating Fragmentation And Lessons From Malaysia And The United States

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Abstract

Restorative justice is an approach to criminal case resolution that prioritizes restoration over retribution by involving victims, offenders, their families, and other relevant parties in a participatory process. This study examines the development of restorative justice in Indonesia, particularly its incorporation into the new Indonesian Criminal Code, using a normative legal method combined with a comparative study of practices in the United States and Malaysia. The novelty of this research lies in its focus on Indonesia's unique regulatory challenges, specifically the persistence of regulatory dissonance due to fragmented implementing regulations and inconsistent law enforcement practices, and in offering a comparative perspective on how harmonized policies in other jurisdictions can provide solutions. The findings reveal that, although the new Code formally accommodates restorative justice principles, the lack of harmonization has resulted in unclear guidelines, varied field



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applications, and suboptimal victim recovery. Victims often experience confusion in accessing restorative mechanisms, while law enforcement officers face obstacles due to inadequate training and the absence of unified standards. To address these challenges, this paper recommends policy harmonization at all governmental levels, the establishment of coordinated guidelines across law enforcement agencies, and the enhancement of institutional capacity through specialized training. By drawing lessons from the cohesive frameworks adopted in the United States and Malaysia, this study contributes to the existing literature by highlighting the importance of harmonized policies to ensure legal certainty, consistency, and better restorative justice outcomes for both victims and offenders in Indonesia.

KEYWORDS *Harmonization, Indonesian Criminal Code Restorative Justice*

I. Introduction

Criminal law reform has become a crucial issue to accommodate social change and cultural values in developing Indonesia's national legal system, particularly the Criminal Code (referred as the KUHP), which is a legacy of Dutch colonialism.¹ The reform of criminal law is undertaken to fulfil society's legal needs, considering the cultural values (latency) of a sovereign nation. Until now, law has been perceived as a rigid and coercive set of rules, primarily focusing on the legal system without considering the

¹ Maroni, "Problema Penggantian Hukum-Hukum Kolonial Dengan Hukum-Hukum Nasional Sebagai Politik Hukum," *Dinamika Hukum* 12, no. 1 (2012): 85–96, <https://doi.org/https://doi.org/10.20884/1.jdh.2012.12.1.199>.

interconnectedness between legal science and the issues it addresses. This rigidity and lack of flexibility can lead to various complexities and conflicts within social life, emphasizing the need for a legal concept adaptable to societal norms, characteristics, and life patterns. In essence, the punishment imposed on criminals is intended to restore victims to their pre-crime state. Within the criminal justice system, this is referred to as the implementation of restorative justice.²

The legal system inherited from the Dutch colonial period is perceived as insufficient to handle the problems or legal challenges that developed in Indonesia, either in terms of human rights protection or a more humane approach to law enforcement that is left for the new generation of the inheriting country. Therefore, indirectly, criminal law reform is an important urgency that must be carried out for a country to create a national criminal law.³

Criminal law reform as a new criminal code is conducted to provide a more equitable justice system, by balancing punishment and recovery for perpetrators and victims.⁴ One of the significant changes promoted by the new Criminal Code is through the adoption of the restorative justice concept, which is an approach that focuses on the recovery of victims, perpetrators, and society as

² M. Alvin Syahrin, "Penerapan Prinsip Keadilan Restoratif Dalam Sistem Peradilan Pidana Terpadu," *Majalah Hukum Nasional* 48, no. 1 (2018): 97–114, <https://doi.org/https://doi.org/10.33331/mhn.v48i1.114>.

³ "Naskah Akademik Rancangan Kitab Undang-Undang Hukum Pidana," Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, 2015, https://bphn.go.id/data/documents/naskah_akademik_tentang_kuhp_dengan_lampiran.pdf.

⁴ Humas dan Kerjasama, "BPHN Sosialisasikan KUHP Baru Di Sekolah Tinggi Hukum Militer," Badan Pembinaan Hukum Nasional, 2024, <https://bphn.go.id/berita-utama/bphn-sosialisasikan-kuhp-baru-di-sekolah-tinggi-hukum-militer>.

a whole, rather than only imposing punitive sanctions on perpetrators. The process of criminal law reform in Indonesia is also influenced by international practice. Many countries, such as the United States⁵ and Malaysia, have already implemented restorative justice principles in their justice systems. In the United States, restorative justice has been used in the handling of misdemeanour and juvenile cases, while Malaysia has implemented this principle in various aspects of its criminal law. In order to achieve this goal, the adoption of restorative justice concepts as a new criminal code is one of the important steps in criminal law reform.

Restorative justice is a concept orientated towards restoring social relationships and seeking reconciliation between offenders, victims and community.⁶ Restorative justice represents a shift towards a more humane and comprehensive approach away from the retributive approach that dominated the old criminal law system. The implementation of restorative justice in Indonesia began in 2012 with the issuance of the Law on Juvenile Justice System (SPPA). Article 81 paragraph (2) of Law Number 11 Year 2012 states that juvenile offenders can be sentenced to imprisonment for $\frac{1}{2}$ of the maximum penalty for adults, with the affirmation that imprisonment is the last resort.⁷ Until now, there

⁵ "The United States Is One of the Pioneers in the Application of Restorative Justice, Which Began in 1970 with the Term Victim Offender Mediation (Vom), Which Was Applied in North America. This Process Gives the Victim the Opportunity to Question the Reason for the Offender's Crime and Ask for Direct Accountability. The Complex Legal System Allows for the Application of Rhetorative Justice at the Discretion of the Judiciary in Each State."

⁶ M. Ali Zaidan, *Menuju Pembaruan Hukum Pidana* (Jakarta: Sinar Grafika, 2015).

⁷ "Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak" (n.d.).

is no specific law on the criminal offence of bullying, so it still refers to the Criminal Code and other child-related policies. Child protection in the criminal justice system must be fair and in favour of children's rights, with the role of judges being crucial in deciding sanctions for child offenders.

Accordingly, in the last two years, the application of restorative justice has shown a significant increase in various law enforcement agencies such as the prosecution, police and judges. In 2023, the Public Prosecution Service resolved 2,407 cases through this approach, up from 1,456 cases in 2022. The Police also recorded 18,175 cases settled in 2023, 15% higher than the previous year. The Supreme Court resolved 464 juvenile cases through diversion, compared to 27 cases in 2022. This increase reflects the serious efforts of law enforcement institutions to focus on victim recovery and reduce the burden of detention in prison.⁸

The increase number of restorative justice cases has shown that the principle of restorative justice, which is orientated towards the recovery of victims and perpetrators, is increasingly relevant in Indonesia. This approach not only reduces the overcapacity of correctional institutions, but also helps victims to obtain a more meaningful recovery in society aimed at correcting an unlawful act

⁸Reda Manthovani, "Tantangan Mengharmonisasi Restorative Justice Dalam Ius Constituendum Antar Penegak Hukum," Hukum Online, 2024, <https://www.hukumonline.com/berita/a/tantangan-mengharmonisasi-restorative-justice-dalam-ius-constituendum-antar-penegak-hukum-lt6684ef9454254/>.

by using awareness and conviction as a basis for improving social life, especially for the victim.⁹

Basically, restorative justice has been adopted in several laws and regulations in Indonesia, including National Police Chief Regulation Number 8 of 2021 and Prosecutor's Regulation Number 15 of 2020. In Supreme Court Regulation No. 1 of 2024, restorative justice aims for recovery that involves all parties, including victims and their families. However, there are differences between the implementing regulations issued by the Supreme Court and other institutions, which causes an imbalance in the application of restorative justice principles. Then, Article 1 of Supreme Court Regulation No. 1 of 2024 stipulates that restorative justice aims for recovery and involves all relevant parties, including victims and their families.¹⁰

However, there are differences between the implementing regulations issued by the Supreme Court and other regulations, which cause imbalances in the implementation of restorative justice principles at various levels of law enforcement. Each law enforcement agency has its own approach and rules, which makes disparities in the implementation of restorative justice still vary and lack uniformity between the Supreme Court and the Perkapolri that has been issued, causing imbalances in the implementation of

⁹Henny Saida Flora, "Keadilan Restoratif Sebagai Alternatif Dalam Penyelesaian Tindak Pidana Dan Pengaruhnya Dalam Sistem Peradilan Pidana Di Indonesia," *UBELAJ* 3, no. 2 (2018): 142–58, <https://doi.org/https://doi.org/10.33369/ubelaj.3.2.142-158>.

¹⁰ "Peraturan Mahkamah Agung Nomor 1 Tahun 2024 Tentang Pedoman Mengadili Perkara Pidana Berdasarkan Keadilan Restoratif" (n.d.).

restorative justice principles at various levels of law enforcement, mainly because each agency has its own approach and rules.

The imbalance in the different guidelines has led to conflicts in the consistent implementation of restorative justice across different legal institutions. This research aims to analyse the implementation of the concept of restorative justice in the new Indonesian Criminal Code, with a focus on its impact on victim recovery. To understand more deeply, it is important to analyse the regulations governing the implementation of restorative justice in the new Criminal Code as well as the regulations in the Supreme Court. In addition, a comparative study with restorative justice practices in other countries can provide a broader perspective and solutions for more effective implementation in Indonesia.

This research uses doctrinal research methods, which is a study aimed at examining a norm, provision, principle contained, and applicable laws and regulations relating to the concept of restorative justice. This research aims to analyse legal concepts systematically by using the technique of examining library materials through library research or literature studies, other legal materials related to the problem and focusing on the 1945 Constitution, PERMA Number 1 of 2024, Perkapolri Number 8 of 2021 concerning Handling Crimes Based on Restorative Justice, and comparing it with the restorative justice system in the United States and Malaysia.

II. The Juridical Position of Restorative Justice Law in the Indonesian Criminal Code

To start Indonesia as a state of law, the fundamental power is law and the entire exercise of power is under the law, based on *rechstaat* to uphold justice.¹¹ All duties and powers of state organs and authorities are based on what is regulated by law for the purpose of reflecting justice.¹² Indonesia with a civil law legal system, realising a state based on law is through legislation that is compiled systematically.¹³

The principle of human rights is human dignity, which emphasises that every person is entitled to a life of dignity, respect, kindness and value. This is related to how one person treats another human being.¹⁴ Humans are considered rights holders because as a human being, they need the protection of each other provided by rights.¹⁵ Human rights are laws that every person has as a human being, are universal and can never be removed by anyone and by any action.

¹¹ Hamid S. Attamimi, "Teori Perundang-Undangan Di Indonesia," 8, 1992.

¹² Tim Icce Uin Jakarta, *Demokrasi, Hak Asasi Manusia Dan Masyarakat Madani* (Jakarta: Prenada Media, 2003).

¹³ Fajar Nurhardianto, "Sistem Hukum Dan Posisi Hukum Indonesia," *Jurnal Tapis* 11, no. 1 (2024): 7, <https://doi.org/https://media.neliti.com/media/publications/132702-ID-sistem-hukum-dan-posisi-hukum-indonesia.pdf>.

¹⁴ Eko Riyadi, *Hukum Hak Asasi Manusia* (Jakarta: Rajagrafindo Persada, 2020).

¹⁵ Cindy Holder and David Reidy, *Human Rights: The Hard Questions* - Google Books (England: Cambrige University Press, 2013).

In the context of the criminal justice system, restorative justice exists as an approach that emphasises recovery for victims as well as creating a balance in society regarding levels of harm. Restorative justice is part of the criminal justice system that emphasises recovery for victims and balance in relation to the level of harm in society. In this context, the principle of restorative justice, as expressed by Gustav Radbruch, focuses on certainty, justice and expediency, not only seeking victory or punishing the perpetrator retributively, but rather restoring and maintaining community harmony.

The 4th principle of Pancasila said which prioritises deliberation in decision-making, is also in line with restorative justice, which uses a dialogue approach between perpetrators, victims and the community to achieve a fair settlement. This substance illustrates what needs to be implemented through restorative justice practices.¹⁶ This substance of deliberation illustrates the essence of the restorative justice approach, where repairing relationships and healing for victims are the main goals, while still holding perpetrators accountable for their actions. The implementation of the value of deliberation in restorative justice can strengthen the practice of justice that is more inclusive, fair, and focused on restoration rather than just punishment. the principles of dialogue, mediation, and reconciliation are not only

¹⁶ Naomi Renata, "Kedudukan Perdamaian Dalam Sistem Peradilan Pidana," Pengadilan Negeri Sumedang Kelas IB, 2024, <https://pn-sumedang.go.id/kedudukan-perdamaian-dalam-sistem-peradilan-pidana>.

expected values, but have also been recognised and regulated in law.¹⁷

Legally, restorative justice is regulated in various provisions in the new Criminal Code which aims to create a justice system that focuses more on recovery, both for victims and perpetrators. In light of this, restorative justice law can be seen as an approach that promotes dialogue, mediation and reconciliation between all parties involved in a crime, so that it does not only focus on the punishment imposed on the perpetrator.

III. Evaluation of Restorative Justice Implementation under the Indonesian Criminal Code

The implementation of restorative justice in the new Criminal Code is a progressive step in the reform of Indonesia's criminal law system. However, an evaluation of its implementation shows that there are several challenges and misalignments that need to be addressed. One key issue is the disparity in implementing regulations issued by different law enforcement agencies, such as the Supreme Court, the Public Prosecution Service, and the Police. While each agency has an important role to play in the justice

¹⁷ Dicky Eko Prasetyo et al, "The Legal Pluralism Strategy of Sendi Traditional Court in the Era of Modernization Law," *Rechtsidee* 8, no. 10 (2021): 1-12, <https://doi.org/10.21070/jihr.2021.8.702>.

process, variations in approaches and implementation guidelines can create imbalances in the application of restorative justice principles. This can result in difficulties for offenders, victims, and law enforcement officers to understand and implement appropriate procedures.

These differences in implementing regulations issued by various law enforcement agencies create imbalances in the application of restorative justice principles in the field. Although reform measures are in place, the variation in the approach of the implementing regulations used as guidelines between the Supreme Court, the Attorney General's Office and the Police shows that there are gaps in the uniformity of implementation.

Tabel 1.1 Comparison of Guidelines for the Implementation of Restorative Justice in PERMA Number 1 2024 Perkapolri Number 8 Year 2021, Guideline for the Prosecutor's Office Number 15 Year 2020, Prosecutor's Office Guidelines Number 15 of 2020

PERMA Number 1 (2024)	Perkapolri Number 8 (2021)	Prosecutor's Office Guidelines Number 15 of (2020)
Purpose Article 3 paragraph (1) of Perma on Restorative Justice explains that the	Purpose Article 2 paragraph (5) of Perkapolri stipulates that the purpose of the use	Purpose Article 3 paragraph (4) of the Prosecutor General's Regulation stipulates that the

<p>purpose of trying criminal cases based on Restorative Justice is to:</p> <p>restore the Victim of the criminal offence;</p> <p>restore the relationship between the Defendant, the Victim, and/or the community;</p> <p>encourage the responsibility of the Defendant; and</p> <p>prevent every person, especially children, from deprivation of liberty.</p> <p>Then, in paragraph (2) it is enforced that the application</p>	<p>of restorative justice in the police institution is to stop the investigation or inquiry.</p>	<p>purpose of applying restorative justice within the prosecutorial institution is the Termination of Prosecution.</p>
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of the principle of Restorative Justice does not aim to eliminate criminal responsibility.		
<p>Type of case</p> <p>Article 6 paragraph (1) Judges apply guidelines to try criminal cases based on minor offences or the victim's loss is not more than 2,500,000 or not more than the minimum wage of the local province</p> <p>The criminal offence is a complaint offence;</p> <p>The criminal offence is a criminal offence with a maximum penalty</p>	<p>Type of case</p> <p>According to Article 4 of the Perkapolri, the implementation of restorative justice requires both material and formal conditions. The material requirements emphasize that the case must not trigger public unrest or rejection, lead to social conflict, or carry the potential to divide the nation. In addition, it must not involve elements of</p>	<p>Types of Cases</p> <p>Article 5 of the Regulation provides that a criminal case may be legally terminated and prosecution discontinued through the application of restorative justice if certain requirements are fulfilled. These include the condition that the suspect is a first-time offender, the offence carries only a fine or a maximum prison sentence of five</p>

of 5 years in one of the charges including jinayat offences according to qanun; Criminal offences with juvenile offenders whose diversion was unsuccessful; Traffic offences that are crimes	radicalism or separatism, must not constitute a repeated criminal act as determined by a court decision, and cannot concern offences related to terrorism, state security, corruption, or crimes against life. The formal requirements a. Peace settlement from both parties, except for Drug Offences; and b. Fulfilment of victims' rights and	years, and the value of the evidence or financial loss resulting from the crime does not exceed IDR 2,500,000 (two million five hundred thousand rupiah). Restorative justice is implicated by the principle of <i>dominus litis</i> ¹⁸ which emphasise on the active role of the prosecutor in determining the resolution of cases.
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¹⁸ *Dominus Litis* is a universal principle attached to prosecutors. The Prosecutor has a central role in the criminal justice system. The presence of Perja No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice is a foundation for prosecutors to carry out Restorative Justice-Oriented Criminal Law Enforcement Quoted from Dedy Chandra Sihombing, et al, 'Strengthening the Authority of Prosecutors as Domitus Litis as an Effort to Optimise Restorative Justice-Oriented Criminal Law Enforcement

	perpetrators' responsibilities, except for Drug Offences.	
Exceptions	Exceptions	Exceptions
Article 6 paragraph (2) of the Supreme Court Regulation states that judges are not permitted to apply restorative justice guidelines in criminal trials if certain conditions arise, namely when either the victim or the defendant refuses reconciliation, when the parties are bound by a power of attorney relationship, or when the defendant	There are criminal offences that cannot be resolved, namely: a. Not criminal offences of terrorism, criminal offences against state security, criminal offences of corruption and criminal offences against human life; In narcotics cases, the perpetrator is not involved in a network of drug offences, dealers and/or traffickers.	The application of restorative justice as a basis for terminating prosecution is not permitted in certain cases, namely crimes against state security, the dignity of the President and Vice President, friendly nations and their representatives, as well as offences that disrupt public order and morality. It is also excluded for offences carrying

commits the same offence again within three years after completing a sentence based on a final and binding court decision.		minimum statutory penalties, narcotics-related crimes, environmental violations, and crimes committed by corporations.
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Source: collated from laws and regulations.

Based on the table above, it explains that there are differences between the implementing regulations issued by the Supreme Court and the National Police Chief Regulation in terms of the objectives of handling through a restorative justice approach, causing conflicts because each institution regulates restorative justice based on their respective perspectives in handling justice. The difference can be seen from the Supreme Court which focuses on judicial decisions and court guidelines, while the police focus more on the investigation process and prevention of detention. These differences in the guidelines for handling restorative justice have led to inconsistencies in implementing legal actions related to restorative justice. As a result, perpetrators, victims and even law enforcement officers are confused about the overlapping restorative justice procedures that must be applied.

These discrepancies can have a significant impact on offenders, who may feel confused by inconsistent procedures, and on victims, who may not get the remedies they expect. In addition,

law enforcement officers may also find it difficult to carry out their duties when faced with doubts about the procedures to be followed. An evaluation of the implementation of restorative justice in the new Criminal Code shows an urgent need to harmonise the implementation guidelines issued by various law enforcement agencies. By identifying and addressing these discrepancies, it is hoped that the implementation of restorative justice principles can be more effective and provide greater benefits to all parties involved in the justice process.

The regulation covers a wide range of minor offences, with certain criteria to determine which cases are eligible. This aims to ensure that restorative justice can be applied appropriately and effectively, without creating the impression of impunity for perpetrators of more serious offences. However, the implementation of restorative justice in Indonesia still faces various challenges.

Firstly, differences in understanding among law enforcers often lead to variations in application in the field. Secondly, standardisation of procedures is still an issue that needs to be addressed so that restorative justice can be applied consistently throughout the region. In addition, voluntary participation from perpetrators and victims has also been an obstacle in some cases, as not all parties are willing to participate in dialogue and reconciliation processes. Efforts to overcome these challenges involve increasing community and law enforcement understanding of the importance of restorative justice as an alternative approach

in resolving legal conflicts. In addition, clearer regulations and training for mediators are needed to ensure effective and consistent implementation of restorative justice.

Based on this analysis, Article 6 of PERMA No. 1 Year 2024, by adopting the principles of restorative justice, seeks to balance the need for restoration and the interests of the law, while setting limits to prevent inappropriate application. The application of these theories helps to explain and support the legal framework set out in the article, and how it can be implemented effectively and fairly. Restorative justice aims to repair the damage caused by a criminal offence, not just to punish the perpetrator. This is in line with the provisions of Article 6 which emphasise the resolution of minor criminal cases with minimal harm.

The concept of restorative justice is reflected in the Indonesian Criminal Code, particularly in Article 51, which outlines the objectives of punishment. These include preventing crime through the enforcement of law to protect society, rehabilitating offenders by offering guidance and counselling so they may become responsible and beneficial individuals, addressing conflicts caused by criminal acts to restore balance and ensure public peace, as well as instilling remorse in offenders and alleviating their sense of guilt. Based on the aforementioned description, restorative value in the form of state recovery is one of the objectives of the current Indonesian criminalisation that has been accommodated in the Indonesian Criminal Code. Furthermore, it is affirmed in Article 54 paragraph (1) letter i and j of the Indonesian Criminal Code that in

imposing punishment, the judge is obliged to consider, among others, the effect of the criminal offence on the victim or the victim's family as well as the forgiveness from the victim and/or the victim's family. In fact, Article 70 of the Indonesian Criminal Code emphasises that imprisonment should not be imposed if there are circumstances such as the loss and suffering of the victim is not too great and the defendant has paid compensation to the victim.¹⁹

The Indonesian Criminal Code also places restrictions on the types of offences that may be resolved through restorative justice, in line with earlier regulations. These limitations cover crimes carrying a prison sentence of five years or more, offences with statutory minimum penalties, certain crimes considered highly dangerous or harmful to society, as well as offences that cause losses to state finances or the national economy.²⁰

Based on this description, it was found that the current regulation on restorative justice is in the stage of unification of understanding where the goal is to resolve the crime by involving the victim of the crime in the hope of creating a recovery and the value of justice that restorative justice does not aim to eliminate criminal liability but as a consideration for judges in determining the severity of the punishment to be given.

¹⁹ Article 70 paragraph (1) of the National Criminal Code provides that by considering the provisions as referred to in Article 51 to Article 54, *the punishment of imprisonment may not be given if it is found that the defendant is a child, or the defendant is over 75 years old, the defendant is the first time committing a criminal offence, the defendant has paid compensation to the victim, the defendant did not realise that the criminal offence committed would cause great loss, and other circumstances.*

²⁰ "Article 70 Paragraph (1)," n.d.

IV. Comparison of Restorative Justice Implementation with Other Countries

a) Implementation of Restorative Justice in America

Restorative justice has been developed and applied for decades, but it has generally been applied in small settings such as traditional, family or religious communities without the intervention of state justice institutions. It was further developed by experts such as Howard Zehr, Jon Braithwaite, Mark Umbreit, Lode Walgrave and Kay Pranis. Howard Zehr argues that restitution, participation, inclusion and accountability are the four pillars on which restorative justice is built.²¹ The restorative justice approach was first introduced by Albert Eglash who mentioned the term *restorative justice* in his article on reparation, which states that restorative justice is an alternative to retributive approaches and rehabilitative justice.²²

Restorative justice in the United States developed as *an alternative to the traditional justice system that focuses on punishment*. It emphasises the restoration of relationships between offenders, victims and the communities affected by crime. The process includes mediation between offenders and victims, diversion programmes and recovery conferences that directly

²¹ Abdurrahman Alhakim; Emiliya Febriani and Atila Jeny Febria, "Kebijakan Restorative Justice Dalam Upaya Penyelesaian Tindak Pidana Anak Di Berbagai Negara," *Hukum Responsif* 15, no. 1 (2024): 1–15, <https://doi.org/https://doi.org/10.33603/responsif.v15i1.8903>.

²² Sophian Haryanto; Ida Musofiana and Achmad Sultan, "Perbandingan Sistem Hukum Restorative Justice Indonesia Dan Amerika," researchgate, 2024, https://www.researchgate.net/publication/382062400_PERBADINGAN_SISTEM_HUKUM_RESTORATIVE_JUSTICE_INDONESIA_DAN_AMERIKA.

involve communities and victims. The United States Constitution established the Supreme Court and gave the Congress the power to establish lower federal courts, which consist of the United States District Courts and the United States Courts of Appeals. The application of restorative justice in the United States is implemented through various legal measures, including victim/offender mediation, family group meetings. The United States has been one of the pioneers in the application of restorative justice, the process of which began in 1970 with the term Victim offender mediation (VOM) which was applied in North America. This process provides an opportunity for the victim to question the reason for the offender's crime and ask for direct accountability. This complex legal system makes the application of restorative justice based on the policies of the judiciary in each state.²³

Victim in Restorative Justice is given the opportunity to address the impact of the crime directly to the offender, while the offender takes responsibility for their actions and is required to repair the harm. In America, Restorative Justice, is considered effective for minor crimes, especially those involving juveniles. It is part of an alternative conflict resolution programme that focuses not only on punishing the offender, but also on restoring the affected community. However, one of the challenges of implementing this concept is the voluntary participation of all parties, as well as variations in implementation across states. The application of justice in the United States itself uses a judicial

²³ Ibid.

system in which the role of the Judge is only to approve the decision agreed upon by the Jury. One of the other examples of restorative justice applied in several US states (*New York, Pennsylvania, Illinois, etc.*) there are 45 states that have included Restorative Justice, in state law.²⁴ Where Restorative Justice is concerned, this usually involves a conflict between individuals which then harms the victim, the community and the offender.

Furthermore, the concept was used in America has flourished as an alternative to the traditional punitive justice system. Restorative justice is arguably the hallmark of the modern criminal justice system.²⁵ Restorative justice is an approach that emphasises restoring relationships between offenders, victims and society through dialogue and reconciliation. According to Howard Zehr, restorative justice focuses not only on the legal offence but also on restoring the social impact of the criminal offence.²⁶ Based on this, it is understood that this concept has developed as an alternative to the traditional justice system which is more punitive in nature. Furthermore, he argues that restorative justice views crime not as

²⁴ Thalia González, "The Legalization of Restorative Justice: A Fifty-State Empirical Analysis," *Utah Law Review*, no. 5 (2019): 1027–2019, <https://doi.org/https://dc.law.utah.edu/ulr/vol2019/iss5/3/>.

²⁵ Martin D. Schwartz and Suzanne E. Hatty, "Controversies in Critical Criminology," *Controversies in Critical Criminology*, 2014, <https://doi.org/https://doi.org/10.4324/9781315722047/CONTROVERSIES-CRITICAL-CRIMINOLOGY-MARTIN-SCHWARTZ-SUZANNE-HATTY/ACCESSIBILITY-INFORMATION>.

²⁶ Howard Zehr, "Changing Lenses: A New Focus for Crime and Justice," Herald Press, 1990, https://www.unodc.org/e4j/data/_university_uni_/changing_lenses_a_new_focus_for_crime_and_justice.html?lng=en.

a violation of the relationship to the state, but rather between individuals who commit offences or have their rights violated.²⁷

The application of restorative justice in the United States, an integral part of its criminal justice system for over three decades, is now under intense scrutiny as a key component of reform efforts. This heightened attention stems from pressing issues like mass incarceration, demands for equitable justice enforcement, and nationwide protests against racial violence and discrimination. An extensive analysis of 264 regulations across 46 U.S. jurisdictions reveals a fragmented and often risky reality of implementation: regulations are often localized with broad discretionary powers, the lack of a universal definition leads to diverse interpretations, and insufficient confidentiality protections pose significant risks to all parties involved. Furthermore, a concerning new trend of "pay-to-access" programs, involving fees, has also emerged. These findings challenge the theoretical assumption that restorative justice is universally applied, consistently defined, or always a safe alternative. While restorative justice offers a vital alternative to the status quo and holds great promise, its current form of implementation falls short of being a comprehensive solution to systemic problems, acting merely as a "basic infrastructure" that necessitates careful consideration of the benefits and risks associated with its rapid legalization and expansion.²⁸

²⁷ Shannon M. Sliva Elizabeth H, "Fulfilling The Aspirations Of Restorative Justice In The Criminal System? The Case Of Colorado," *Course Hero Journal Of Policy Practice*, 2015, 72, <https://www.coursehero.com/file/53628456/Shannon-Silvapdf/>.

²⁸ T. Gonzalez, "The State of Restorative Justice in American Criminal Law Recommended Citation Recommended Citation," *Wisconsin Law review*, (2020): 1147 - 1197,

Comparing this to the implementation of restorative justice in Indonesia, a shared spirit of seeking out-of-court resolutions and prioritizing reconciliation is evident. However, significant differences lie in their maturity and regulatory frameworks. The United States, with its longer history of implementation, boasts a wider array of restorative justice models and applications, though it still grapples with fragmentation and standardization challenges. Conversely, Indonesia is still in the early stages of integrating restorative justice, as indicated by disparities in definitions and varying outcomes of its application. While Indonesia has now implicitly regulated restorative justice in the Indonesian Criminal Code, the practical application often sees success in police and Attorney General's Office policies translating to case termination, despite the principle that it should not necessarily eliminate criminal accountability, as stipulated in Supreme Court Regulation Number 1 of 2024. This highlights the crucial need for unifying existing procedural laws among the Indonesian National Police, the Attorney General's Office, and the Supreme Court as the key institutions implementing restorative justice. The U.S. experience, with its complexities in regulation and implementation, offers valuable lessons for Indonesia to swiftly and firmly establish a consistent and effective framework for integrating restorative justice, ensuring its objectives are met without compromising accountability.

https://repository.uclawsf.edu/faculty_scholarshiphttps://repository.uclawsf.edu/faculty_scholarship/1926.

b) Implementation of Restorative Justice in Malaysia

Malaysia, Until now, has not signed the United Nations resolution known as the *Basic Principles for the Use of Restorative Justice Programmes in Criminal Matters (referred to as Jenayah)*. The criminal justice system in Malaysia allows offenders and victims to settle criminal cases through compaun cases that have not yet been prosecuted or have been prosecuted but have not yet been finalised.²⁹

Malaysia Codified the Plea bargaining system in 2010, this process has been ongoing since the early introduction of the criminal justice system, but without proper guidelines and procedures. The introduction was in line with its main objective of reducing court backlogs and speeding up the resolution of criminal cases. The emphasis is on the active participation of judges in this process to ensure that offenders enter into the process voluntarily. The problem with this process is that there are no standardised guidelines in determining the requirements of the process. The process continues to rely on traditional practices where the prosecutor will usually determine the conditions.

In relation to the plea bargaining system, there is also a process or approach in the criminal justice system, which also pays attention to the conditions and rights of the offender and its balance with the interests of the victim, namely restorative justice.

²⁹ T. Mohammad, R. Mohd Ramli, and B. Anderstone, "Situating restorative justice in novel jurisdictions: considerations from the Malaysian experience," *Contemporary Justice Review: Issues in Criminal, Social, and Restorative Justice*, vol. 24, no. 1, pp. 1–22, 2021, doi: <https://doi.org/10.1080/10282580.2020.1819801>.

Although Malaysia has implemented plea bargaining, this approach still does not fully reflect the principles of restorative justice.

Law In Malaysia based on Laws of Malaysia, Act 593 - Criminal Procedure Code, no article explicitly regulates restorative justice mechanism as an alternative to criminal case settlement. The procedure for resolving criminal cases uses a punitive judicial approach that is retributive and rehabilitative in nature. Punitive justice views punishment as a just response to a crime. This view is derived from *The Law Of Lex Talionis*³⁰ where this legal arrangement mentions the punishment of an eye for an eye tooth for a tooth.

Some experts in Malaysia have argued that there is a need to balance the rights of offenders with the rights of victims, accommodating all stakeholders' rights within the existing legal framework. Malaysia already has some features of restorative justice in its current criminal justice system. For example, the concept of restorative justice in the juvenile justice system in the form of 'Community Service Order' as an alternative to imprisonment under Section 293 Criminal Procedure Code Act 593 Amendment 2006, which is aimed at Youthfull Offenders (young offenders aged between 18 to 21 years old). Section 293 (I) states that: "When any youthful offender is convicted before any Criminal Court of any offence punishable by fine or imprisonment, the Court may, instead of awarding any term of imprisonment in default of

³⁰ Robert M Paterson, *Tafsiran Alkitab: Kitab Keluaran* (Jakarta: BPK Gunung Mulia, 2006).

payment of the fine or passing a sentence of imprisonment.”

Furthermore, Section 293 (e) of Act 593 also states clearly that:³¹

“(i) to make an order requiring the offender to perform community service, not exceeding 240 hours in aggregate, of such nature and at such time and place and subject to such conditions as may be specified by the Court;

(ii) in this paragraph, “community service” means any work, service or course of instruction for the betterment of the public at large and includes, any work performed which involves payment to the prison or local authority; and

(iii) the community service under this paragraph shall be under the Minister charged with the responsibility for women, family and community.”

The article suggests that courts are given the option to impose community service of up to 240 hours on juvenile offenders instead of sentencing them to imprisonment. This alternative allows young offenders to stay engaged in their social environment, fostering interaction with the community and helping reshape public perceptions about them. The use of non-custodial sanctions as a means to address juvenile delinquency is also reflected in the Child Act 2001, specifically in Chapter 3, which regulates the Powers of the Court for Children at the conclusion of a trial.

The application of the law shows that the application of restorative justice in Malaysia is more about getting a lenient

³¹ “Criminal Procedure Code,” Low & Partners Low & Partners, 2024, <https://www.lowpartners.com/criminal-procedure-code-part-3/>.

sentence for the perpetrator and/or providing restitution or compensation to the victim. This means that the legal process continues as it should, it's just that the perpetrator gets a softer treatment or punishment, which is more restorative for the perpetrator. Where this restorative is more inclined to be similar to the simple lawsuit that has been implemented in Indonesia.³² Restorative justice aims to resolve cases with the orientation of involving victims and restoring them to their original condition and balancing the protection of the interests of victims and criminals that are not oriented towards retaliation is a legal necessity for society. In contrast to the current application in several institutions that put the goal on the existence of mediation and peace, so that the termination of investigation or termination of prosecution is carried out, so that the case is considered complete or even considered that the case never happened.

The implementation of restorative justice in Malaysia, as described, is in a challenging developmental phase, striving to align principles of restoration with a criminal justice system that tends to be punitive and adversarial. While its focus is on victim and offender restoration, its practical application is hindered by an unclear definition of victims, a lack of statutory recognition for victims' rights, and limited victim participation in decision-making processes that remain state-dominated. Despite these challenges and the absence of a robust, comprehensive regulatory framework

³² "Prosedur Gugatan Sederhana," MA RI Pengadilan Negeri Gunung Sitoli, 2024, <https://www.pn-gunungsitoli.go.id/prosedurgugatansederhana>.

for restorative justice, there is not a significant disparity in its application among different state institutions. This suggests a relatively consistent, though developing, approach across enforcement bodies.

Compared to Indonesia, which demonstrates a more advanced legal framework and institutional commitment to implementing restorative justice through explicit regulations from its Supreme Court and Attorney General's Office, Malaysia is in a more exploratory, nascent stage. Indonesia emphasizes diversion and out-of-court settlements through consensual deliberation, while Malaysia grapples with the philosophical and structural integration of restorative justice within its predominantly punitive system. However, a key difference lies in the domestic consistency: in Indonesia, there's a disparity among law enforcement agencies, with the police and prosecution often using restorative justice as a means for case termination, rather than solely as a mitigating factor in sentencing as envisioned by the Supreme Court's guidelines. This creates a fragmented application. From Malaysia's experience of relative internal consistency, Indonesia can learn the importance of harmonizing interpretations and applications of restorative justice across all law enforcement bodies. This would ensure a unified approach where restorative principles serve as a consistent factor for mitigating sentences and promoting accountability, rather than an inconsistent tool for case termination, thus better aligning with the Supreme Court's integrated vision.

V. Conclusion

Indonesia's criminal law reform, which seeks to integrate restorative justice principles, has demonstrated considerable progress since its 2012 implementation. While this approach aims to foster a more humane and recovery-oriented system, significant challenges persist due to regulatory inconsistencies and definitional disparities among law enforcement bodies, including the Indonesian National Police, the Attorney General's Office, and the Supreme Court. This often leads to differing interpretations, where success at the police and prosecutor levels tends to be equated with case termination. This stands in contrast to the current understanding that while Indonesia has now implicitly regulated restorative justice within the Indonesian Criminal Code, the principle, as stipulated in Supreme Court Regulation Number 1 of 2024, dictates that restorative justice should not necessarily eliminate criminal accountability but rather serves as a mitigating factor. Insights from countries like the United States, which has a long history with restorative justice but still grapples with regulatory fragmentation, a lack of universal definitions, and implementation risks, further underscore the urgency for Indonesia. This situation in Indonesia contrasts sharply with Malaysia, where despite the absence of a comprehensive national framework for restorative justice and ongoing challenges in its full integration, there's a notable consistency in how different state

institutions apply existing restorative principles, particularly within the Child Act 2001.

Therefore, to ensure a coherent, effective, and just implementation of restorative justice, policy harmonization and the unification of procedural laws among the Indonesian National Police, the Attorney General's Office, and the Supreme Court are critically needed. Specific recommendations include proposing reforms to existing regulations or establishing a national restorative justice framework through overarching legislation. This legislation's content must explicitly align with the principle that restorative justice acts as a mitigating factor, not an absolution of criminal accountability, consistent with the Supreme Court's stance. Furthermore, to guide future research and assess the actual impact of restorative justice, evaluating its effect on recidivism and examining victim experiences and satisfaction are crucial research topics. These steps are vital for restorative justice to truly become a holistic, accountable, and sustainable solution within Indonesia's criminal justice system.

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“Law is a system of norms regulating human behavior.”
Hans Kelsen