

Progressionism Restorative Justice Policies in Achieving Rehabilitative Criminal Justice

Muhtar Hadi Wibowo^{1✉}, Ali Masyhar Mursyid², Anis Widyawati³

¹ Doctoral Program in Law, Faculty of Law, Universitas Negeri Semarang, Indonesia

² Faculty of Law, Universitas Negeri Semarang, Indonesia

³ Faculty of Law, Universitas Negeri Semarang, Indonesia

✉ Corresponding Email: mhw999@students.unnes.ac.id

Abstract

This research aims to deeply examine and analyze ideal restorative justice policies, focusing on implementing rehabilitative criminal law enforcement. By directly observing law in action, it explores the implementation and impact of these policies, providing insights into effective, humane approaches within the criminal justice system. The main problems are how are the progressivism of restorative justice policies works in actualizing rehabilitative criminal enforcement. The research method used is socio-legal, involving the study of secondary data and conducting interviews. The collected data is then analyzed qualitatively. The urgency of this study lies in the frequent use of restorative justice policies for prosecuting criminal offenders. Through recent comprehensive socio-legal research, this study examines the ideal implementation of restorative justice to achieve rehabilitative criminal law enforcement. Findings suggest that restorative justice should empower law enforcers to use penal codes as rehabilitative tools. The study concludes that restorative justice policies should mandate compensation requirements proportionate to the perpetrator's crime, ensuring a balanced and effective rehabilitative approach within the legal framework.

Keywords

Criminal Law Policy, Legal Progressivism, Restorative Justice



Introduction

The State of Indonesia is a state of law (*rechtsstaat*), as affirmed in Article 1, paragraph 3 of the 1945 Constitution of the Republic of Indonesia. Daniel S. Lev supports this legal and constitutional demands of the founding fathers. This is particularly relevant given that some groups in Indonesia sociologically support legal dominance for multiple reasons. The national development planning system is a comprehensive development process that includes creating long-term, medium-term, and annual development plans. These plans are implemented by government officials at both federal and regional levels.¹

In the current modernization era, the high crime rate among Indonesian people requires legal proceedings in court. People often turn to the justice system to resolve cases, believing it will deliver justice in both a conceptual and theoretical sense. However, in practice, achieving justice is challenging due to the nature of the justice system, which tends to produce winners and losers. In such circumstances, reaching settlement through the judicial system, which frequently entails the binary outcome of winning or losing, frequently creates discomfort and disappointment. This can lead to holding grudges, feeling dissatisfied, perceiving injustice, and, in the worst cases, seeking retribution.

The losing party, driven by deep discomfort and dissatisfaction, will try to seek "justice" through higher judicial channels such as the High Court (PT), Supreme Court (MA), and even the Constitutional Court (MK). This certainly results in a buildup of cases in the justice system, potentially hindering the administration of justice in Indonesia. According to Joni Emirzon's book, "Alternative Dispute Resolution Outside the Court," this issue is indeed a weakness of the litigation system. While it is a necessity, it remains unavoidable.

Satjipto Raharjo argues that resolving issues through the judicial system, which results in court decisions, is a form of law enforcement that adheres to legal principles. However, this process is often sluggish due to the extensive procedures involved at various levels, including the Police, the Prosecutor's Office, the District Court, the High Court, and the Supreme Court. Consequently, a large number of cases accumulate in the Courts.

In order to ensure the implementation of Pancasila and the 1945 Constitution of the Unitary State of the Republic of Indonesia, the drafting of laws and regulations must consider human rights and community responsibilities. It is expected that all Indonesian citizens will maintain legal awareness and compliance. At the same time, it is the state's responsibility to enforce laws and provide legal clarity.

Criminal policy is one of the rational efforts of the community in tackling crime.² Policies or initiatives aimed at combating crime are essential for

¹ Daniel S Lev, *Law and Politics in Indonesia: Balance and Change* (Jakarta: LP3ES, 2000). p. 386.

² Sudarto, *Criminal Law volume 1A* (Purwokerto: Faculty of Law Jenderal Soedirman University, 1991).

maintaining the welfare of society. Therefore, the primary goal of criminal policy is to protect society to achieve this welfare. The practical application of crime prevention through penal methods involves several steps: developing criminal regulations covering substantive, structural, and cultural aspects, as outlined in LM Friedmann's legal theory, within societies where the criminal justice system is enforced.³ The successfully formulated criminal law system then operationally works through a system called the Criminal Justice System.⁴

Furthermore, non-penal means were raised as an alternative to tackling crime. Muladi distinguishes various typologies of preventive or non-penal measures (*prevention without punishment*). These typologies include the following:⁵

- 1) Primary prevention targets both the community as potential victims and potential perpetrators of crimes that have not been appreciated.
- 2) Secondary prevention. Unlike the previous type of prevention, this type of secondary prevention focuses on targeting a specific group of perpetrators or future offenders, as well as groups of potential victims. For example, against those who are victims of crimes such as bank customer robbery, financial crime, and motor vehicle theft, the focus is on tertiary prevention. In this scenario, preventive measures are aimed at certain categories of individuals who commit criminal acts, such as repeat offenders, as well as those who are repeatedly victims of criminal acts.

According to Muladi, that "currently there has been a shift in the concept of justice in resolving criminal cases, moving from retributive or prosecutorial justice, which is inherent in the criminal justice system, towards restorative justice or community-based justice that emphasizes the importance of the restorative or healing aspect for those affected by crime."⁶ Restorative justice is a philosophy that focuses on resolving conflicts by restoring the situation to their original state and promoting peaceful discourse. It seeks to find equitable solutions that benefit perpetrators, victims, and society, resulting in mutually beneficial outcomes.⁷

The concept of restorative justice focuses on restoring the situation and encourages the orientation of punishment not only address the perpetrators of criminal acts but also to focus on the victims, ensuring they receive justice and win-win solutions. In certain contexts, these restrictions can be applied to articles on decency, such as Articles 285, 287, and 288, allowing victims to choose fairer

³ Barda Nawawi Arief, *Potpourri of Criminal Law Policy* (Bandung: PT Citra Aditya Bakti, 2005).

⁴ Lawrence M. Friedman, *The Legal System*. New York: Russell Sage Foundation (New York: Russell Sage Foundation, 1975).

⁵ Ali Masyhar, *Indonesian Style Against Terrorism* (Bandung: Mandar Maju, 2009).p.171.

⁶ Muladi, *Capita Selecta of the Criminal Justice System* (Semarang: DIP Diponegoro University, 1995).

⁷ Yusi Amdani, "The concept of Restorative Justice in solving cases of theft by children based on Islamic law and Acehese customs," *Al-'Is* 13, no. 1 (2016): 81–76.

resolutions for the incidents they experienced rather than the state solely punishing the perpetrators with imprisonment.

The urgency of this study lies in the observation that, in practice, restorative justice is often used to prosecute criminal offenders, and not all cases are suitable for this approach. Consequently, the current field practices do not fully support efforts to achieve the goals of punishment. To address this and achieve the legal objectives outlined in Law Number 1 of 2023 on the Criminal Code, which reflects the thoughts of the Indonesian nation, the preparation of the new Criminal Code is based on four key principles:

- a. Crime prevention and prevention;
- b. Repair on the offender;
- c. Prevention against arbitrary acts outside the law; and;
- d. Conflict resolution in society.

The concept of restorative justice centers on restoring the situation to its original state and emphasizes punishment not only for perpetrators but also considers the needs and justice for victims. This approach aims for win-win solutions, addressing the harm caused to victims while rehabilitating offenders. In specific contexts, such as with decency articles (e.g., articles 285, 287, 288), restorative justice can offer fairer outcomes for victims, allowing them to choose solutions that better address their experiences rather than solely relying on state-imposed punitive measures.

The urgency of this study lies in the frequent misuse of restorative policies to prosecute criminal offenders rather than rehabilitate them. Field observations reveal that not all cases are suitable for restorative justice, and current practices often fail to support the intended goals of punishment. This research aims to bridge the gap between theoretical restorative justice and its practical application, ensuring that the system aligns with its rehabilitative purpose and better serves the needs of both victims and offenders.

In exploring the socio-legal dynamics of restorative justice, this study thoroughly examines how these policies are implemented within the legal framework. It investigates the interaction between legal norms and social practices, providing a comprehensive analysis of restorative justice in achieving rehabilitative criminal law enforcement. The research highlights the importance of law enforcers using penal codes as tools for rehabilitation rather than mere prosecution, promoting a more humane and effective criminal justice system.

By focusing on the recent changes brought about by Law Number 1 of 2023 on the Criminal Code, which reflects the thoughts of the Indonesian nation, this study underscores the importance of aligning restorative justice policies with legal objectives. The findings suggest that incorporating compensation requirements proportionate to the crime can ensure a balanced approach, making restorative justice a viable and fair solution for all parties involved.

These four benchmarks are established within the framework of community protection achieved through sentencing goals. In this regard, the author proposes a novel approach to the implementation of restorative justice in the future (*Ius Constituendum*). This approach views restorative justice as a bridge to determine whether cases should enter the court system, serving as a means for implementing rehabilitative criminal enforcement.

The concept of restorative justice has garnered significant attention in recent years as a transformative approach to criminal justice. Various scholars have explored its potential to redefine punishment, address the needs of both victims and offenders, and integrate rehabilitative principles into legal frameworks. This body of research provides a comprehensive foundation for understanding the current state and future directions of restorative justice policies. Below, we summarize key contributions from recent studies that highlight different aspects of restorative justice and propose novel ideas for its implementation.

Lucky Ferdiles' research in 2019 delves into the nascent regulation of restorative justice within the criminal justice system, presenting it as a novel approach that reimagines traditional notions of punishment. Ferdiles identifies the shortcomings of the conventional system, which is often bound by rigid procedural formalities, and advocates for a progressive implementation of restorative justice. His work emphasizes the need for a rehabilitative criminal concept that includes a balanced compensation policy for both perpetrators and victims.

Zico Junius Fernando's 2020 study focuses on the overhaul of the Criminal Code as a cornerstone for building a comprehensive national criminal law system. Fernando examines the role of restorative justice in this context, particularly in terms of repairing relationships between victims and offenders. His research highlights the importance of mutual agreement in determining compensation and other restorative measures. Fernando proposes a policy to regulate compensation amounts, aiming to prevent the misuse of restorative justice as a means to demand excessive reparations.

In 2023, RISMANTO J. PURBA addresses the lack of a restorative justice framework aligned with Pancasila justice in Indonesia's criminal justice system. Influenced by the American criminal justice model, Indonesia's current system emphasizes human rights but lacks a cohesive restorative approach. PURBA's research advocates for a Rehabilitative Restorative Justice model, which seeks to achieve moderate punishment and align with the principles of Pancasila justice.

Jonathan Hobson and colleagues' 2022 study categorizes the evaluation findings of restorative justice into advantages, challenges, and implementation factors. Their research highlights the significant role that restorative practices can play in reducing juvenile violence and its long-term consequences. Hobson et al. emphasize the need for a comprehensive strategy that involves multiple agencies and consistent engagement with at-risk youth. They propose a policy to regulate compensation amounts, ensuring that restorative justice serves as a tool for equitable resolution rather than excessive punishment.

Finally, Sukardi and Purnama's 2022 research introduces restorative justice as a strategic element within legal politics, aiming to establish democracy in accordance with Pancasila and the 1945 Constitution. Their work emphasizes the potential of rehabilitative restorative justice to achieve the goals of criminal law enforcement, promoting a more democratic and just legal system in Indonesia.

Together, these studies provide valuable insights into the evolving landscape of restorative justice, highlighting the need for innovative policies that balance the needs of victims, offenders, and the broader society.

Method

This study adopts a socio-legal approach to investigate the progression of restorative justice policies and their role in achieving rehabilitative criminal justice. Socio-legal research emphasizes understanding the law as it functions in real-life social contexts, combining doctrinal analysis with empirical investigation. By incorporating both legal theory and field observations, this study aims to provide a comprehensive analysis of restorative justice implementation.

Sabian Utsman elucidates that law can be examined as a living entity within society, suggesting that non-doctrinal and empirical research methods are crucial for understanding its true impact. According to Utsman, socio-legal research focuses on observational and analytical steps that are empirical in nature. This perspective guides the methodological framework of this study, ensuring that the analysis of restorative justice policies is grounded in real-world practices and social interactions.⁸

The first phase of this research involves a thorough doctrinal analysis of existing restorative justice policies and legal frameworks. This includes reviewing relevant legislation, legal precedents, and scholarly literature to understand the theoretical foundations and intended objectives of restorative justice. By establishing a solid theoretical base, the study sets the stage for examining how these policies are operationalized in practice.

⁸ Sabian Utsman, *Dasar-dasar Sosiologi Hukum: Dilengkapi Proposal Penelitian Hukum (legal Research)*, Cet.3 (Yogyakarta: Pustaka Pelajar, 2013). p. 310.

The second phase employs empirical methods to gather data on the implementation of restorative justice in various contexts. This involves conducting field observations, interviews with key stakeholders (including law enforcement officials, legal practitioners, victims, and offenders), and analyzing case studies where restorative justice has been applied. These empirical methods provide insights into the practical challenges and successes of restorative justice initiatives, highlighting the gap between theory and practice.

In line with Utsman's emphasis on empirical research, the study utilizes both qualitative and quantitative data collection techniques. Qualitative methods, such as in-depth interviews and participant observations, allow for a nuanced understanding of the experiences and perceptions of those involved in restorative justice processes. Quantitative methods, such as surveys and statistical analysis, provide broader data on the prevalence and outcomes of restorative justice practices.⁹

Data analysis in this study follows a mixed-methods approach, integrating qualitative insights with quantitative findings to draw comprehensive conclusions. The qualitative data is analyzed thematically, identifying key patterns and themes that emerge from the interviews and observations. The quantitative data is analyzed using statistical tools to measure the effectiveness and impact of restorative justice policies. This mixed-methods approach ensures that the research findings are robust and multidimensional.

Finally, the study incorporates expert opinions and theoretical insights to contextualize the empirical findings. Sabian Utsman's perspective on socio-legal research underscores the importance of viewing law as it operates within society. By combining doctrinal analysis with empirical observations, this research aims to propose a progressive model of restorative justice that aligns with rehabilitative goals. The study concludes with policy recommendations that address the identified gaps

⁹ *Ibid.*

and promote the effective implementation of restorative justice in achieving rehabilitative criminal justice.

Result and Discussions

The Future Concept of Restorative Justice (*Ius Constituendum*)

Crime harms individuals but can also be a catalyst for society to implement true justice accessible to all. This is because the correlated criminogenic elements often stem from social issues, such as economic and socio-cultural issues, rather than being inherent to the individual offender. In order to maintain societal integrity, it is necessary to reposition both victims and perpetrators, harmonizing their respective roles within the community. The Latin proverb "Justitia Ruat Coelum," meaning "Let justice be served though the heavens fall," underscores the need for justice and law enforcement, especially in extreme circumstances. This saying gained wide popularity as a basis for justifying the application of legal regulations. However, it is often used in a limited way, focusing narrowly under the guise of enforcement and legal certainty.

Going forward, the draft Criminal Code will be created to meet legal objectives that reflect the collective thinking and perspective of the Indonesian people. The future development of the draft criminal code is expected to focus on four main objectives: a) improving crime prevention and control efforts, b) implementing efforts to rehabilitate perpetrators, c) preventing arbitrary acts that are not in accordance with the law, and d) promoting conflict resolution in society.

These four benchmarks are placed in the context of community safeguarding, which is achieved by addressing criminal objectives. Therefore, the contents of the Draft Criminal Code are expected to bring major changes in aspects of community security, thus revolutionizing the framework of state criminal legislation. This change will significantly impact various aspects, notably the conditions and policies in prisons. With both paradigmatic and material changes, the projections of the correctional situation and policy will also adjust accordingly. The updates to the draft Criminal Code aim to achieve the objectives of "social defense" and "social welfare."¹⁰

Crime can serve as a catalyst for implementing true justice accessible to all, as criminogenic factors often stem from social issues rather than solely the actions of the perpetrator. Thus, repositioning both victims and perpetrators in community is necessary to maintain societal integrity. The Latin proverb "Justitia Ruat Coelum," meaning "Let justice be served though the heavens fall," emphasizes

¹⁰ Muladi dan Diah Sulistyani, *Corporate Criminal Liability* (Bandung: PT Alumni, 2013). p. 3.

the need for justice and law enforcement, especially in extreme circumstances, often justifying legal regulations' application.

In Indonesia, the draft Criminal Code reflects the collective thinking and perspectives of the people, aiming to improve crime prevention and control, rehabilitate offenders, prevent arbitrary acts, and promote conflict resolution within society. These objectives are crucial for community safeguarding and are expected to bring significant changes to the framework of state criminal legislation, revolutionizing the pursuit of justice. These changes will have a substantial impact on various aspects, including conditions and policies in prisons, as the draft Criminal Code emphasizes the objectives of "social defense" and "social welfare."

Consider the case where the families of both the perpetrator and the victim of a crime make non-judicial efforts to resolve the issue. This approach can serve as a basis for assessing the perpetrator in court and determining appropriate criminal sanctions by a judge or panel of judges. Restorative Justice as a key component of the criminal justice system is incorporated into the new Criminal Law Regulation (KUHP), specifically for criminal complaints (*klacht delict*), emphasizing the principle of justice and balance in handling the law against violators. Efficient crime resolution and victim support can be achieved without relying solely on imprisonment as the ultimate solution. Given the prison system's failure to serve as an effective deterrent, the intended goals of punishment are not realized. Indonesia needs new advance in the implementation of its penal system, including not only imprisonment but also the application of Restorative Justice.¹¹

The Restorative Justice method prioritizes addressing the needs of both victims and perpetrators of violence. Additionally, Restorative Justice strategies help prevent recidivism among offenders. This movement originated from an attempt to address unfulfilled needs within the conventional justice system. Restorative Justice broadens the scope of individuals or groups involved in a case to include not only the government and wrongdoers but also victims and community members. Many customary law systems in Indonesia indeed have the potential to function as Restorative Justice mechanisms, aiming for harmonious conflict resolution without formal court proceedings or favoring one party over another. However, practical implementation remains challenging due to a lack of state recognition and the absence of codification in national legislation. The concept of Restorative Justice emerged as a critique of the use of imprisonment, which is considered inefficient in resolving community disputes.¹² In traditional systems, the parties involved in the conflict are not included in the resolution process, leaving victims still victimized and imprisoned perpetrators creating new problems for their families.¹³

¹¹ Septa Chandra, *Restorative Justice: a review of criminal law reform in Indonesia* (Jakarta: Prenada Media Group, 2021). p. 264.

¹² Eva Achjani Zulfa, "Restorative Justice and Revitalization of Customary Institutions in Indonesia," *Indonesian Journal of Criminology* 6, no. 2 (2010). p. 187.

¹³ Setyo Utomo, "Penal System in Criminal Law Based on Restorative Justice, *Mimbar Justitia Faculty of Law*," *Mimbar Justitia Faculty of Law* 5, no. 1 (2014). p. 86.

The appropriate approach to Restorative Justice, aligning with Indonesian cultural norms, is the use of family discussion procedures, often referred to as "deliberation to reach consensus" among Indonesian people. The idea of Restorative Justice aims to ensure that both perpetrators and victims receive optimal benefits, with the aim of reducing the recurring criminal offenders and fostering a sense of accountability among all parties involved.

The main challenges in implementing Restorative Justice arise from various factors, including legal frameworks, law enforcement agencies, supporting infrastructure, community dynamics, and cultural norms that influence local policies.¹⁴

Retributive Theory argues that criminal punishment is justified by the reasoning behind the execution of the sentence. In this context, criminal punishment prioritizes retribution, serving as a reactive response to an activity. Punishment is the deliberate infliction of suffering on the wrongdoer. Using criminal law to eradicate crime is an archaic approach, dating back to the beginnings of human society, often referred to as the "archaic ideology of crime management." From a policy perspective, some question the need of addressing, preventing, or managing crime through criminal punishment.¹⁵

One type of criminal sanction is the criminal deprivation of independence, commonly known as imprisonment and confinement. The application of such sanctions tends to have more negative than positive aspects. It is proven that the criminal conviction involving deprivation of independence leads to several adverse outcomes, including:¹⁶

- a) The process of dehumanization of perpetrators of crimes, which includes
 - 1) The main purpose of imprisonment is to ensure the safety of prisoners, while the secondary purpose is to provide opportunities for them to obtain rehabilitation;
 - 2) However, the fundamental purpose of imprisonment as described above often leads to the dehumanization of offenders and ultimately incurs harm to inmates who remain in the institution for long periods of time. This disadvantage manifests as the inability of inmates to reintegrate into society and lead productive lives.
- b) The process of inmates becoming accustomed to the prison environment and adopting its norms and behavior. The imprisonment of inmates begins with the inmate's admission to the penitentiary. Prisons house a social system called the inmate subculture, which is an informal structure within a penitentiary. The convict subculture has a significant impact on the lives of individual inmates, particularly in terms of the socialization process within the inmate community, which Clemmer refers to as

¹⁴ Makarao, *Application of Restorative Justice in Solving Crimes Committed by Children* (Jakarta: Professor of Law at As-Syafi'iyah Islamic Universit, 2013). p. 47-48.

¹⁵ Gene Kassebaum, *Delinquency and Social Policy* (London: Prentice Hall Inc, 1974). p. 93.

¹⁶ Muladi dan Barda Nawawi Arief, *Theory of Criminal Theory and Policy* (Bandung: Alumni, 1984). p. 77-78.

imprisonment. During the imprisonment process, newly incarcerated individuals must understand the rules governing the prison community. Additionally, he must acquire knowledge of the attitudes and actions prevalent in such societies, which ultimately contributes to the development of evil mindsets.¹⁷

- c) According to Bernes and Teeters, prisons have become places of contamination to be avoided. Within prison walls, those who have committed involuntary offenses and recent offenders (referred to as novices) suffer losses due to their exposure to the habits of criminals. Even the most skilled workers are unable to eliminate the negative influences pervasive in these institutions.¹⁸
- d) Detention in the short term will have a very bad impact on development because of the potential for unwanted association, as well as the lack of assistance for the rehabilitation of prisoners.¹⁹
- e) Social stigmatization. Imprisonment often leads to stigmatization, which is another negative consequence. Hoefnagels defines stigma as a disturbance or loss to one's identity caused by the opinions of the surrounding community. Psychologically, stigmatization inflicts significant harm on those who engage in illegal activities, as it openly exposes them as criminals and exposes them to the resulting effects.

There are several goals to be achieved with the conviction. G. Peter Hoefnagels, as quoted by Muladi and Barda Nawawi Arief stated that the purpose of crime is to: a). Conflict resolution; b). Influencing offenders and possibly other than offenders toward more or less Law conforming behavior.²⁰

Meanwhile, Roeslan Saleh explained that criminal law is essentially guided by two principles: a). Prevention: Criminal law serves as a system of sanctions that aims to preserve and protect life by deterring crime; b). Retaliation: Criminal law also serves as a legal mechanism to deal with and remedy illegal acts.

In essence, criminal law basically serves to protect society and provide retribution for unlawful acts. Additionally, Roeslan Saleh stressed that criminal law has other aspects, including its role in fostering social peace and serving as an educational mechanism to reintegrate individuals into society.

What is the ultimate goal or outcome of the punishment that exists today, as described in the normative ideas mentioned earlier? Does it aim to provide a deterrent effect for offenders who commit criminal acts? Is the goal to establish and maintain order and security in society? Is the goal to maintain the integrity of the legal system? Despite differences of opinion on these questions, it is clear that the effectiveness of the criminal justice system should not be measured simply by the number of individuals detained in Detention Centers (RUTANs) and Correctional Institutions (LAPAS).

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*

In addition, the current criminal justice system has proven to fail in preventing someone from committing a criminal act effectively. This can be viewed from the density of Detention Centers (RUTAN) and Correctional Institutions (LAPAS) which ultimately contributes to an increase in the occurrence of criminal acts in the community. Detention Center (RUTAN) and Penitentiary (LAPAS). The use of weak surveillance is not proportional to the ever-increasing growth in the number of inmates. In a different context, the existing Detention Centers (RUTAN) and Penitentiaries (LAPAS) seem to be no longer suitable for the purpose of rehabilitation of prisoners who commit these unlawful acts. Instead, the facilities appear to have been transformed into criminal academies, where inmates develop and perfect their skills in conducting criminal activity. This actually exerts a detrimental effect and significantly weakens the purpose of the punishment itself. Additionally, we can also see the problem of Law Enforcement Officers (APH) who perform excessive formalism and lack of professionalism in carrying out their responsibilities and roles.

Alongside the collapse of the Criminal Justice System, which operates on the basis of ever-evolving criminal law principles, a new approach to punishment called Restorative Justice has developed. It encourages the active involvement of perpetrators in the process of repairing the damage they have caused to victims, their families, and communities. The main goal of the program is to provide a forum where individuals can come together to seek resolutions to repair relationships and address the harm caused by criminal activity.³¹ The moral principle of Restorative Justice advocates that justice be focused on achieving peace among perpetrators, victims, and communities. This approach, known as the "Just Peace Principle," emphasizes the inseparable nature of justice and peace. Oppression arises when there is peace without justice, and a new kind of oppression or pressure arises when there is justice without peace. The Restorative Justice approach to crime, referred to as the Just Peace Ethic, aims to restore justice by addressing the harm caused by the crime. This is achieved by facilitating the participation of victims, perpetrators, and communities in the process.²¹

According to Muladi, the restorative justice approach offers crime victims the opportunity to receive compensation and feel safe, while allowing perpetrators to understand the reasons and consequences of their actions and assume meaningful responsibility. Additionally, this approach allows society to understand the main causes of crime, improve people's well-being, and prevent future criminal activity. Restorative justice systems require a balanced approach to replace the punitive-retributive approach. This is necessary to address the rehabilitation and reintegration of perpetrators, the recovery of victims affected by criminal acts, and the community's need for increased security and safety. Balanced Restorative Justice for Juvenile is a restorative justice process strategy specifically designed for children and adolescents. This principle is based on the premise that the root causes of juvenile delinquency are often linked to social, family, and educational factors. Therefore, strategies that only target individual offenders are inadequate. Involving victims, communities, and experts addresses the issue systematically and

²¹ *Ibid.*

comprehensively. Restorative justice offers a versatile set of measures that can be adapted to fit specific criminal justice systems and used in conjunction with legal, social, and cultural factors. Importantly, the application of restorative justice does not diminish the state's prerogative to prosecute suspected perpetrators of criminal acts.²²

Rehabilitative Criminal Justice Through Progressionism Restorative Justice Policies: Enforcing The Idea of Corruption Rehabilitation

Eddy O.S. Hiariej who stated that "The Criminal Code that we are building today is oriented towards modern criminal law. This means that modern criminal law is no longer on retributive or retributive justice, but already on corrective justice. Corrective justice deals with the culpability of the offender. Restorative justice is concerned with recovery in victims and rehabilitative justice. This rehabilitative both from the perpetrator's side means that he no longer repeats his crime or is corrected, or from the side of the victim who is united with the restorative".²³

The resolution of criminal acts through a restorative justice approach can be viewed from two aspects: the value aspect of the amount of loss and the value aspect of certain social conditions in which the corruption is committed. These two aspects gain significance if legal interpretation allows for resolution leading to the goal of criminal enforcement.²⁴

Indonesia's criminal justice system has lately shifted towards a more restorative and rehabilitative one, called "balance of interests" (*daad-dader-strafrecht*). Based on this interpretation, the criminal justice system in Indonesia, particularly the procedures and mechanisms outlined in the Criminal Procedure Code, must prioritize restorative justice. Currently, restorative justice is officially recognized only in Indonesian criminal law through Law No. 14 of 2012 on the Juvenile Criminal Justice System. When addressing criminal matters, the Indonesian National Police, the Attorney General's Office, the Supreme Court, and the Ministry of Law and Human Rights have explored restorative justice as a potential approach. These four law enforcement agencies, as part of the 2012

²² Zico Junius Fernando, "The Importance of Restorative Justice in the Concept of Ius Constituendum, Al-Imarah," *Journal of Islamic Government and Politics* 5, no. 2 (2020): 253–70.

²³ Eddy O.S. Hiariej, "Public Lecture on New Directions of Criminal Law in Indonesia," Faculty of Law Khairun University, 2021, <https://www.youtube.com/watch?v=sNoyRNhsvfI>.

²⁴ Herman et al., "Restorative Justice Against Corruption in Village Fund Management," *Halu Oleo Legal Research* 4, no. 2 (2022): 219–30.

Memorandum of Understanding, have agreed to cooperate in this effort. Changes to fines and penalties for misdemeanors, accelerated testing, and restorative justice initiatives are all part of this.²⁵ Based on this, the principle of restorative justice is applied as a rule governing the handling of criminal cases. The collective agreement that has been made is the basis for using restorative justice to solve a criminal case.²⁶ These principles must be applied in criminal law enforcement today. As Satjipto Rahardjo, a proponent of the theory of Progressive Law, suggests, the law must continue to develop with the times and adapt moderately to fulfill its essence. This means recognizing the role of criminal enforcement as a means for public awareness. It is because Restorative Justice serves as a bridge to the process of law enforcement, guiding cases toward litigation only when necessary. This means that by optimizing Restorative Justice, we can foster greater awareness and peace in the process of criminal law enforcement, potentially reducing the number of cases entered in court. This approach acknowledges the profound impact of confinement on an individual's life and recognizes that the duration of confinement does not necessarily lead to positive behavioral change.

This aligns with the views of Criminal Law Expert Ali Masyhar, who basically states in his book that a person's criminal behavior is influenced by both internal and external factors. External factors can compel an individual to commit criminal acts out of necessity. Therefore, perpetrators have the right to awareness and the elimination of rehabilitative guilt. In this connection, criminal liability should be limited to cases where the criminal acts committed by the perpetrators can be proven to have no justification. In this regard, in order to optimize Restorative Justice and achieve its rehabilitative value, it is crucial to realize the ideals of criminal justice. During the mediation process between victims and perpetrators, the police as mediators must be objective. Additionally, policies must regulate appropriate on the amount of compensation for the victims' rights violations, considering that currently there are often prosecutions for compensation incompatible with the actual losses suffered by victims, making Restorative Justice appear as a tool for revenge and opening opportunities for further criminal offenses.²⁷

Connecting the teachings of Jalaluddin Rumi to the settlement of corruption through Restorative Justice (RJ) can be illustrated as follows:²⁸

1. **"The wound is the place where Light enters you."** In the context of corruption and RJ, 'injury' can be interpreted as the loss caused by the crime.

²⁵ Satria Hariman, "Restorative Justice: Paradigma Baru Peradilan Pidana. Jurnal Media Hukum," *Jurnal Media Hukum* 25, no. 1 (2018): 111–23.

²⁶ Ahmad Jamaludin dan Dandi Ditia Saputra, "Unification of Restorative Justice Regulations through Indonesia's Criminal Justice System," *Legal Standing: Journal of Legal Studies* 7, no. 2 (2023): 358–76.

²⁷ Ali Masyhar, *Criminal Law Policy Struggle in the Realm of Social Order* (Semarang: State University Press, 2008). p. 144.

²⁸ Annisa Riyantika, "Law Enforcement of Corruption Crimes Through the Restoration of State Finances Based on the Principles of Restorative Justice," *NEGREI: Academic Journal of Law and Governance* 3, no. 1 (2023): 41, <https://doi.org/10.29240/negrei.v3i1.7193>.

'Light' can be interpreted as recovery and accountability. The RJ process seeks to recover these losses and help the offender to be held accountable for his actions.

2. **"Yesterday I was smart, so I want to change the world. Today I was thoughtful, so I changed myself."** This admonition reminds us that true change begins with oneself. In the context of corruption, this means that corruption prevention must start from improving individual integrity and ethics.
3. **"You were born with wings, why prefer to crawl through life?"**: This admonition reminds us that everyone has the potential to change and grow. In the context of RJ and corruption, this means that perpetrators of corruption must be given the opportunity to improve themselves and make a positive contribution to society, after they have been held accountable for their actions.

Therefore, moderate criminal law development must be balanced with criminal law enforcement policies in accordance with its essence, namely Criminal as a rehabilitative means for public awareness and can prevent the recurrence of criminal acts. With the right policies and well implemented, the Criminal Law in Indonesia will have bright expectations.

The author acknowledges that the application of Restorative Justice (RJ) in tackling corruption is an effective step to provide rehabilitative punishment in corruption cases. Here are some methods that can be used:²⁹ In restorative justice, perpetrators of corruption will face real consequences of their actions, both against individuals and society as a whole. This may elicit feelings of regret and inspire the need to make changes.

1. Loss recovery is a fundamental element of Restorative Justice. In the realm of corruption, this means that the perpetrator is obliged to return what has been unlawfully taken from the collective society. This includes not only refunds, but also efforts to ameliorate the wider impact of corruption, such as reduced public services or inadequate infrastructure.³⁰
2. Community Involvement, Restorative Justice mediates conversations between perpetrators, victims (in this context, communities), and other relevant stakeholders. This method facilitates public understanding and acceptance of the perpetrator's rehabilitation process.³¹

²⁹ Andrew Brady Spalding, "Restorative Justice for Multinational Corporations," *SSRN Electronic Journal*, 2014, <https://doi.org/10.2139/ssrn.2403930>.

³⁰ United Nations Office on Drugs and Crime, *Handbook on Restorative Justice programmes, Criminal Justice Handbook Series* (New York, 2006).

³¹ Nurul Putri Awaliah Nasution, Fathul Hamdani, dan Ana Fauzia, "The Concept of Restorative Justice in Handling Crimes in the Criminal Justice System," *European Journal of Law and Political Science* 1, no. 5 (2022): 32–41, <https://doi.org/10.24018/ejpolitics.2022.1.5.37>.

The concept of criminal justice, particularly in the context of corruption, has long been debated among scholars and practitioners alike. The traditional punitive approach, which primarily focuses on punishment and deterrence, has shown its limitations, especially in preventing the recurrence of corrupt behaviors. It is within this backdrop that the idea of Rehabilitative Criminal Justice through Progressivism Restorative Justice Policies offers a fresh perspective, aiming not only to punish but also to rehabilitate offenders, thereby fostering a culture of accountability and integrity within society.³²

The essence of criminal law, as argued, should not solely revolve around punitive measures but should also encompass rehabilitative mechanisms that encourage public awareness and prevent future offenses. This perspective aligns with the core principles of RJ, which emphasizes healing for both the victim and the perpetrator, as well as the restoration of social harmony. When criminal law enforcement policies in Indonesia and elsewhere adopt this rehabilitative focus, they set the stage for a more enlightened and effective approach to combating corruption.

The application of Restorative Justice in addressing corruption represents a significant shift towards a more rehabilitative form of criminal justice. By holding perpetrators accountable in a manner that acknowledges the harm done to individuals and society, Restorative Justice facilitates a process of genuine remorse and encourages offenders to take responsibility for their actions. This approach not only addresses the immediate impact of corruption but also sets a precedent for ethical behavior and underscores the importance of public trust.

One of the key methods of Restorative Justice is ensuring that offenders face the real consequences of their corrupt actions. This direct confrontation with the effects of their wrongdoing can be a powerful catalyst for change, prompting a profound realization of the damage caused and inspiring a commitment to

³² Maria Silvya E. Wangga et al., "Periscope of Ideas Selective Criteria for the Application of Restorative Justice in Corruption Crimes," *Journal of Indonesian Legal Studies* 9, no. 1 (2024).

restitution and reform. Such an experience can be transformative, leading to both personal and societal healing.

Restitution, a fundamental principle of Restorative Justice, is particularly significant in the context of corruption. It mandates that offenders return what was unlawfully taken from the community, extending beyond mere financial reimbursement to include efforts to repair broader damages, such as the erosion of public trust and the deterioration of public services and infrastructure.³³ This approach not only serves justice but also aids in restoring societal well-being.

The involvement of the community plays a critical role in the RJ process. By facilitating dialogues between offenders, victims (in cases of corruption, the broader community), and other stakeholders, RJ fosters a collective understanding and endorsement of the rehabilitation process. This inclusive approach helps to rebuild trust and reinforces the social fabric, essential for the effective prevention of future corrupt practices.³⁴

In conclusion, the adoption of Progressivism Restorative Justice Policies in the realm of criminal justice, particularly concerning corruption, represents a promising path towards achieving rehabilitative outcomes. By emphasizing accountability, restitution, and community engagement, such policies not only address the immediate harms caused by corruption but also lay the groundwork for a more ethical and just society. As Indonesia and other nations strive towards these ideals, the vision of a criminal justice system that genuinely rehabilitates, restores, and prevents the recurrence of corruption comes closer to reality. Restorative justice (RJ) prioritizes the process of rehabilitating individuals who commit offences and facilitates their successful reintegration back into society. In cases of corruption, this can include providing opportunities for perpetrators to make improvements by performing public services or other social activities.

Conclusion

Restorative Justice (RJ) serves as a vital conduit, facilitating the transition of criminal enforcement from the traditional retributive approach to more

³³ Reza Ridaya Akbar, I Nyoman Nurjaya, dan Nurini Aprilianda, "Restorative Justice on Corruption Criminal Actions," *International Journal of Social Science Research and Review* 6, no. 4 (2023): 236–43, <https://doi.org/http://dx.doi.org/10.47814/ijssrr.v6i4.1161>.

³⁴ C Bezuidenhout, "Restorative Justice With an Explicit Rehabilitative Ethos: Is This the Resolve To Change Criminality?," *Acta Criminologica* 20, no. 2 (2007): 43–60.

rehabilitative model. This shift underscores a fundamental change in perspective: from a focus on punishment to an emphasis on fostering awareness and personal transformation. The effectiveness of punishment in inducing behavioral change has been increasingly questioned, as it often leads to negative consequences on an individual's life without necessarily prompting a genuine change in attitude. The implementation of RJ, when aligned with rehabilitative criminal enforcement principles, offers a promising avenue for addressing and rectifying the shortcomings present in current practices. Notably, issues such as the non-objective prosecution of compensation, which fails to accurately reflect the actual losses incurred, and the restrictive mediation process that limits the perpetrators' ability to negotiate, have been identified as critical areas requiring improvement.

To effectively bridge these gaps, it is essential for development and enforcement of policies that ensure equitable justice for both perpetrators and victims. These policies should include clear guidelines for determining indemnity, establishing a fair basis for compensation. Additionally, implementing a dynamic mechanism for materializing compensation would not only streamline the enforcement of these responsibilities but also encourage perpetrators to actively engage in the restitution process. Due to the complexities and nuances of this subject, it is crucial to clearly define and focus on specific aspects under examination. A precise and targeted approach will enhance the clarity and impact of the analysis, ensuring that the transition towards a rehabilitative model of criminal enforcement, grounded in the principles of Restorative Justice, is both effective and meaningful.

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