



The Essence of the Concept of Diversion in General Criminal Offenses

I Dewa Gede Budhy Dharma Asmara

Program Pascasarjana, Universitas Muslim Indonesia

Corresponding Author: I Dewa Gede Budhy Dharma Asmara

dewabudhy73@gmail.com

ARTICLE INFO

Keywords: Diversion, Restorative Justice, Criminal Justice System, Social Restoration, Living Law

Received : 03 July 2025

Revised : 23 July 2025

Accepted: 26 August 2025

©2025 Asmara: This is an open-access article distributed under the terms of the [Creative Commons Atribusi 4.0 Internasional](https://creativecommons.org/licenses/by/4.0/).



ABSTRACT

The handling of general criminal cases with a sentence of less than five years, provided they are not repeat offenses, is increasingly being directed toward a diversion mechanism based on the principles of restorative justice. This approach aims to restore relationships between the offender, the victim, and the community through dialogue and mediation, rather than focusing on punishment. Restorative justice emphasizes the offender's responsibility toward the victim and the community, with the primary goal of fostering social harmony and avoiding the negative impacts of conventional sentencing. In Indonesia, restorative justice has been recognized in various regulations, such as Law Number 11 of 2012 on the Juvenile Criminal Justice System and Supreme Court Regulation Number 4 of 2014, which highlights the importance of diversion as a means of resolving criminal cases outside of court proceedings. Additionally, Prosecutor's Decree Number 15 of 2020 allows for the discontinuation of prosecution in minor cases under certain conditions. The concept of restorative justice, introduced by Albert Eglash in 1977, distinguishes three forms of justice: retributive, distributive, and restorative. This principle of restoration has long been recognized in various legal traditions, including in Indonesia, where customary law (living law) plays a significant role. By prioritizing mediation and restitution, restorative justice offers a new paradigm in the criminal justice system – one that is more humane and focused on social recovery.

INTRODUCTION

Indonesia is a state based on the rule of law, as affirmed in Article 1, Paragraph (3) of the 1945 Constitution. This means that all aspects of national and state life must be based on law to ensure justice, legal certainty, and the protection of human rights. In a state governed by law, the supremacy of law is the main principle, meaning that every action by the government and society must comply with the prevailing legal provisions.

In Indonesia's criminal law system, there are two main branches: substantive criminal law and procedural criminal law. Substantive criminal law regulates criminal acts and their sanctions, while procedural criminal law governs the process of criminal law enforcement. Although the criminal law system is regulated in the Criminal Code (KUHP) and the Criminal Procedure Code (KUHAP), its implementation often fails to meet public expectations in realizing substantive justice.

Law enforcement in Indonesia faces various challenges, one of which is case backlog in courts due to a justice system that is punishment-oriented. This situation is exacerbated by low public satisfaction with the judicial system. A 2019 survey by LP3ES indicated that 24% of respondents were dissatisfied with court services. Additionally, overcrowding in correctional institutions (LAPAS) is a serious issue, highlighting the ineffectiveness of conventional criminal law approaches in reducing crime rates. In response to these challenges, alternative approaches to criminal case resolution have become a necessity.

One concept currently being developed in Indonesia is restorative justice through diversion mechanisms. Diversion is an effort to shift case resolution from formal judicial proceedings to deliberation and reconciliation involving the offender, the victim, and the community. This concept aims to create balance and recovery for all parties involved, focusing not only on punishing offenders but also on safeguarding victims' rights.

Indonesia's criminal justice system tends to emphasize punishment as retribution for criminal acts. This approach has several weaknesses, including failing to address victims' needs and not guaranteeing that offenders will not reoffend. For example, in fraud and embezzlement cases, the justice system prioritizes punishing the perpetrator without ensuring restitution for the victim's losses. Furthermore, the conventional justice model often prolongs case resolution, increasing law enforcement workloads and causing case accumulation in courts.

Satjipto Rahardjo stated that the current criminal justice system is a slow track in law enforcement, as cases must go through multiple stages, from the police, prosecution, and district courts to the Supreme Court. Conventional criminal law enforcement also contributes to overcapacity in correctional facilities. The high number of imprisoned individuals not only increases the state's burden in providing correctional facilities but also creates new social problems, such as rising prison crimes and high recidivism rates. In this context, a more flexible and humane legal approach is needed to ease the burden on the justice system and enhance law enforcement effectiveness.

As a solution, the restorative justice concept emerges as an approach that emphasizes restoring relationships between offenders and victims through dialogue and mediation. This model allows victims to obtain fair restitution while enabling offenders to take responsibility in a more constructive manner. In Indonesia's criminal law system, this concept has been applied through diversion, particularly in juvenile cases. However, its application in general criminal offenses remains limited.

Based on the background outlined above, this research aims to answer the central question: What is the essence of the diversion concept in general criminal offenses? The primary objective of this research is to identify, analyze, and define the essence of diversion in general criminal offenses. By examining this concept in depth, this study is expected to provide a more comprehensive understanding of the role of diversion in reforming Indonesia's criminal justice system. This research has both theoretical and practical benefits. Theoretically, it contributes to the development of the restorative justice concept in Indonesia's criminal law system, particularly in the application of diversion for general offenses with sentences of less than five years. The findings of this study are expected to serve as an academic reference for legal studies focusing on criminal justice reform. Practically, this research aims to provide insights for policymakers and law enforcement officials in developing diversion mechanisms for general criminal offenses. With such mechanisms in place, Indonesia's criminal justice system is expected to become more efficient, reduce court burdens, and enhance public satisfaction with the legal system.

LITERATURE REVIEW

In examining legal issues, a strong theoretical foundation is necessary to ensure that research has a solid academic basis and can provide solutions to the problems being studied. The theories used in this study are categorized into three levels: Grand Theory, Middle Theory, and Applied Theory. Each of these theoretical levels serves as an analytical tool for understanding the concept of diversion in general criminal offenses, particularly in cases with a criminal penalty of fewer than five years that do not involve repeat offenses, as well as for formulating solutions based on restorative justice.

As the Grand Theory, punishment theory is used to understand the essence of imposing criminal sanctions within the legal system. Punishment theory explores the philosophy behind sentencing offenders and how criminal law functions to maintain social order. In criminal law doctrine, punishment has several primary objectives, including:

- Repressive (punishing the offender),
- Preventive (detering crime), and
- Rehabilitative (reforming the offender to prevent recidivism).

In this study, punishment theory serves as the foundation for evaluating the effectiveness of diversion compared to conventional criminal punishment. A punishment-oriented legal system often fails to provide comprehensive solutions for offenders, victims, and society. Therefore, punishment theory is essential in assessing whether diversion can be a more effective approach in achieving criminal law objectives.

At the Middle Theory level, this study applies the criminal justice system theory to analyze how criminal law operates in practice. The criminal justice system consists of various institutions—police, prosecutors, courts, and correctional facilities—each playing a role in enforcing the law and delivering justice to society. One of the key challenges in Indonesia’s criminal justice system is the slow case resolution process and the accumulation of cases in courts and correctional institutions. Many cases that could be resolved through alternative approaches end up in court, leading to criminal sentences that may not necessarily be the most effective means of justice.

The criminal justice system theory helps to identify structural obstacles within the system and explore ways to integrate diversion mechanisms into existing legal processes. At the Applied Theory level, this study employs diversion theory and restorative justice theory.

- Diversion theory focuses on shifting case resolution from formal judicial proceedings to alternative methods that prioritize dialogue and joint resolution between the offender, victim, and community. In juvenile criminal law, diversion mechanisms have been recognized and regulated under Law No. 11 of 2012 on the Juvenile Criminal Justice System (SPPA). However, in general criminal offenses, the application of diversion remains limited and has not yet become a primary policy in law enforcement. Thus, diversion theory serves as an analytical tool to examine how this mechanism can be expanded to include general offenses with sentences under five years that do not involve repeat offenses.
- Restorative justice theory is another key component of this research. This theory emphasizes restoring relationships between offenders and victims and rebuilding the social conditions disrupted by crime. Unlike punitive approaches, restorative justice focuses not only on punishing offenders but also on addressing the needs of victims and social balance within the community. Many legal systems worldwide have adopted restorative justice as a solution to the shortcomings of excessively repressive criminal justice systems.

By utilizing restorative justice theory, this study aims to assess the extent to which diversion can serve as a more humane and effective mechanism in handling general criminal offenses with penalties under five years. Thus, the literature review in this study serves as an analytical tool that helps in understanding the issue from multiple theoretical perspectives. The combination of punishment theory, criminal justice system theory, diversion theory, and restorative justice theory provides a comprehensive analytical framework for examining diversion as an alternative method for resolving general criminal offenses. With this approach, this study aims to make a meaningful contribution to legal policy development in Indonesia and offer more effective solutions for criminal law enforcement.

METHODOLOGY

This study employs a normative legal research method (doctrinal legal research), which views law as a doctrine or normative rule (law in books). The research approach includes:

- 1) Statutory Approach (Statute Approach) – Examining relevant laws and regulations.
- 2) Case Approach (Case Approach) – Analyzing court decisions that have permanent legal force.
- 3) Conceptual Approach (Conceptual Approach) – Understanding legal issues based on fundamental legal concepts.

The type of data used in this study is secondary data, obtained through library research. Legal sources are classified into:

- 1) Primary legal sources – Laws, regulations, and court decisions related to the research topic.
- 2) Secondary legal sources – Literature, journals, and previous research discussing punishment theory, the criminal justice system, diversion, and restorative justice.
- 3) Tertiary legal sources – Additional references such as legal dictionaries, encyclopedias, and supporting articles.

Data is collected through library research, compiling legal documents, books, and academic journals relevant to the study. The collected data is then systematically organized for ease of analysis. Additionally, interviews with relevant stakeholders are conducted to gain additional perspectives and enhance understanding of the legal issues examined. Data analysis is carried out using a qualitative descriptive method, which involves organizing, classifying, and systematically arranging data to find answers to the research problem. This technique aims to thoroughly examine how the concepts of diversion and restorative justice can be applied in resolving general criminal offenses with penalties under five years. The analysis results are presented descriptively, focusing on the interpretation of legal phenomena. By using this method, the study is expected to contribute both academically and practically to the development of a more effective and just legal policy.

RESEARCH RESULT

The handling of general criminal offenses with a penalty of less than five years and non-recidivist cases through the diversion mechanism based on the principles of restorative justice is an approach that is increasingly recognized within Indonesia's criminal justice system. Restorative justice emphasizes the restoration of relationships between the offender, the victim, and the community while promoting the offender's accountability for their actions without imposing severe punishment.

This approach is considered more humane and effective, especially for minor offenses that do not pose a serious threat to public order and security. According to Prof. Dr. Romli Atmasasmita, S.H., LL.M., restorative justice in handling minor cases reflects legal principles that prioritize recovery and social

reintegration rather than mere punishment (Atmasasmita, 2014). Thus, diversion serves as an appropriate alternative for resolving minor criminal offenses, while also ensuring the protection of both the offender's and the victim's rights during the judicial process. The following discussion outlines the essential aspects of handling general criminal offenses with penalties of less than five years and non-recidivist cases through diversion based on restorative justice principles.

1. Restorative Justice as a Humanistic Approach

Restorative justice in the context of law enforcement is a humanistic approach to the judicial system. Humanism, as a philosophical movement, emphasizes an awareness of human values, with a primary focus on individuals as beings with personal rights, as knowledgeable entities, and as historical subjects who actively shape themselves and their environment through natural processes. As a form of law enforcement, restorative justice aims to establish a more humane judicial process that prioritizes recovery for victims, offenders, and society rather than solely focusing on punishment.

In practice, guidelines for implementing restorative justice within the general court system have been regulated through the Decree of the Director General of the General Judiciary of the Supreme Court of the Republic of Indonesia No. 1691/DJU/SK/PS.00/12/2020, dated December 22, 2020, concerning the Enforcement of Guidelines for the Implementation of Restorative Justice. These guidelines serve as a legal foundation for law enforcement officers in applying the principles of restorative justice, which not only emphasize fair conflict resolution but also focus on restoring relationships and ensuring social reintegration for the parties involved. Thus, restorative justice not only reflects humanistic values within the judicial system but also significantly contributes to creating a holistic and sustainable form of justice.

Restorative justice serves as an alternative approach to resolving criminal cases by shifting the focus from conventional punishment to a participatory process of dialogue and mediation. This process involves the offender, the victim, their families, and other relevant parties to collectively formulate a fair and balanced resolution. The ultimate goal is to restore the original state (*restitutio in integrum*) and rebuild harmonious relationships within society. Accordingly, restorative justice emphasizes recovery—both materially and socially—while facilitating the reintegration of both the offender and the victim into the community.

Restorative justice is deeply rooted in characteristics that reflect humanistic values. In this context, humanistic values are manifested through movements that support an inclusive (generalist) approach, ensuring that all crime victims have access to restorative justice procedures at every stage of the criminal process. This process involves all relevant parties, considers the needs of the victim, acknowledges the harm and violence that occurred, and facilitates the reintegration of both the offender and the victim into society. Additionally, restorative justice encourages offenders to take responsibility for their actions, thereby helping to restore the sense of justice that existed before the crime occurred.

As reflected in its fundamental concept, the term restorative justice originates from the word to restore, which means to recover or return something to its original state. In this context, what is being restored is the sense of justice and social balance disrupted by criminal acts. Therefore, restorative justice aims not only to resolve legal conflicts but also to foster reconciliation and lasting social harmony. Through this approach, restorative justice offers a new paradigm within the criminal justice system – one that is more humane, fair, and recovery-oriented – aligning with the principles of living law within society.

Agus Widjojo provides his perspective on the implementation of restorative justice within the framework of criminal law, stating:

- 1) Restorative justice does not seek to empty correctional institutions, as many criminal cases can be resolved without resorting to retributive justice. “Restorative justice and a humanistic approach are not intended to replace retributive justice.”
- 2) A humanistic approach should be incorporated from the legislative drafting stage, becoming an integral part of the criminal justice system and the moral conscience of judges within the judiciary.
- 3) The humanistic approach should not be seen as an external dimension of the criminal justice system, questioning its validity and serving as a mere checks-and-balances mechanism for judicial conscience. The system already acknowledges that judges make decisions based on their conscience, and this should be accepted. If certain aspects are not yet fully embraced, discussions should be held to reach an agreement.
- 4) In criminal law, where the rehabilitation of individuals offers greater benefits than physical punishment, restorative justice with a humanistic emphasis can be applied as a criminal law perspective.
- 5) Restorative justice must remain an integrated part of the judicial process and coexist with retributive justice.

Agus Widjojo further emphasizes that considerations of humanistic aspects in criminal law should not be viewed sectorally as a means to address prison overpopulation but should instead be integrated systematically. Key considerations include prioritizing quality over quantity in legal proceedings, finding solutions for delays in case resolution, and placing greater emphasis on prevention rather than merely handling cases. This approach aligns with the overarching goals of law enforcement, public security, and social order.

2. The Historical Approach to Restorative Justice

According to James Dignan in his work, the concept of restorative justice has historical roots that can be traced back to Albert Eglash’s thoughts in 1977. Eglash identified three main forms of the criminal justice system:

- 1) Retributive justice, which focuses on punishing offenders for their actions.
- 2) Distributive justice, which emphasizes rehabilitating offenders to reintegrate them into society.
- 3) Restorative justice, which Eglash associated with restitution or restoring the victim’s situation.

As Eglash stated, “The term restorative justice is usually attributed to Albert Eglash (1977), who sought to differentiate between what he saw as three distinct forms of criminal justice. The first is concerned with ‘retributive justice,’ in which the primary emphasis is on punishing offenders for what they have done. The second relates to what he called ‘distributive justice,’ in which the primary emphasis is on the rehabilitation of offenders. The third is concerned with ‘restorative justice,’ which he broadly equated with the principle of restitution.” This statement confirms that the term “restorative justice” was first linked to Albert Eglash in 1977. In his analysis, Eglash distinguished between three main approaches to criminal justice: retributive justice, which focuses on punishment; distributive justice, which emphasizes rehabilitation; and restorative justice, which prioritizes restoring victims’ rights through restitution mechanisms. This demonstrates that restorative justice is not solely offender-centered but also considers the interests of victims and society in resolving criminal cases.

Therefore, discussions on restorative justice cannot be separated from Albert Eglash, who, in 1977, categorized criminal justice systems into three models: (a) retributive justice, which focuses on punishing offenders; (b) distributive justice, which emphasizes offender rehabilitation; and (c) restorative justice, which aims to restore harm and repair broken relationships caused by crimes. In short, the concept of restorative justice was formally introduced by Albert Eglash. However, long before Eglash introduced his ideas, various ancient civilizations and traditions—including those of Ancient Arabia, Greece, Rome, and India—had already embraced principles aligned with restorative justice, particularly in cases involving the loss of life. While the term “restorative justice” was not used at the time, practices resembling this approach—such as conflict resolution through restoration, reconciliation, and restitution—were already in place, reflecting the same fundamental meaning and purpose.

Thus, although Eglash is credited with popularizing the term “restorative justice,” the philosophical and practical foundations of this approach have existed since ancient times, proving that the values of restoration and holistic justice have long been embedded in human civilization. This explanation confirms that restorative justice is not a new concept but has strong historical roots in various cultural and legal traditions, later adapted to modern justice systems.

Among Buddhist, Taoist, and Confucian societies, restorative justice principles have been long embraced in legal conflict resolution, reflected in the saying: “He who atones is forgiven.” John Braithwaite supports this by stating: “Restorative justice has its grounding in traditions of justice from ancient Arab, Greek, and Roman civilizations, as well as Indian Hindu, Taoist, and Confucian societies, which accepted a restorative approach even to homicide, emphasizing that ‘he who atones is forgiven’.”

Wesley Cragg connects the emergence of restorative justice with retributive theory in criminal law. He argues that retributive justice has been largely ineffective in reducing crime and, more importantly, in addressing the harm suffered by victims. Consequently, there has been a shift in the penal

paradigm from retribution to restoration. Over time, the concept of restorative justice has evolved, acquiring different names and becoming a dominant model in criminal justice throughout human history. John Braithwaite notes that restorative justice was initially considered an alternative model for juvenile justice, as it balances justice and welfare, merging rehabilitation with retribution. Punishing offenders is essential, but so is rehabilitating their mindset.

Kathleen Daly expands on this by stating: "Restorative justice is a set of ideals about justice that assumes a generous, empathetic, supportive, and rational human spirit". Joanna Shapland, citing Marshall, defines restorative justice as: "A process whereby all the parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future". This means that restorative justice is a process in which all involved parties—offenders and victims—collaborate to address the crime and its future consequences. Wayne R. LaFave positions restorative justice within sentencing theory, stating: "Restorative justice creates an avenue to bring criminals and their victims together rather than keep them apart".

Thus, restorative justice seeks to unite offenders and victims to jointly discuss solutions. Joshua Dressler further clarifies: "Restorative justice emphasizes the importance of elevating the role of crime victims and community members, holding offenders directly accountable to those they have harmed, restoring the emotional and material losses of victims, and providing a range of opportunities for dialogue, negotiation, and problem-solving. This approach fosters community safety, conflict resolution, and closure for all involved".

Restorative justice highlights the crucial role of victims and communities in ensuring that offenders take responsibility, restoring victims' emotional and material losses, and facilitating dialogue or negotiation to resolve conflicts. This prevents prolonged disputes and promotes social harmony. In line with this, Bazemore and Walgrave outline three core principles of restorative justice :

- 1) Ensuring fairness so that all parties involved are treated equally.
- 2) Restoring relationships between victims, offenders, and society by addressing their needs.
- 3) Providing legal protection against arbitrary state actions.

Thus Similarly, Van Ness and Strong identify three additional principles :

- 1) Justice requires healing for victims, offenders, and communities harmed by crime.
- 2) Victims, offenders, and communities should actively participate in the justice process as early and fully as possible.
- 3) The roles and responsibilities of government and communities should be reconsidered—governments maintain justice, while communities establish peace.

From these definitions and principles, it is evident that the penal paradigm has shifted from retributive to restorative justice. Key values underlying restorative justice include :

- 1) Prioritizing victim and community restoration over costly offender punishment.
- 2) Increasing victim involvement in the justice process.
- 3) Holding offenders directly accountable to those they have harmed.
- 4) Encouraging community participation in offender accountability and victim support.
- 5) Emphasizing offender responsibility and reparation rather than harsh punishment.
- 6) Recognizing the community's role in shaping conditions that contribute to crime.

To implement these values effectively, James Dignan proposes five restorative justice approaches :

- 1) Court-based restitutive and reparative measures – First introduced in England.
- 2) Victim-offender mediation programs – Practiced in North America.
- 3) Conferencing initiatives – Used in New Zealand.
- 4) Community reparation boards and panels – Applied in Scottish communities.
- 5) Healing and sentencing circles – Utilized by Indigenous Canadian communities.

Based on these discussions, several conclusions can be drawn about restorative justice:

- 1) It encourages offenders to take responsibility and offer solutions to the harm they caused.
- 2) Victims should be prioritized, as they directly suffer the consequences of crimes.
- 3) Offenders and victims should engage in dialogue to restore justice (restitutio in integrum).
- 4) The state must ensure that the restoration process follows the agreed-upon resolution to prevent prolonged conflicts.
- 5) Communities play a crucial role in supporting restorative justice and promoting reconciliation.

Beyond restorative justice, other forms of justice exist, such as community justice (Todd R. Clear), transitional justice (Ruti G. Teitel), and transformative justice (M. Key Harris). Additionally, corrective justice (Ernest J. Weinrib), distributive justice, and procedural justice (Kjell Tornblom & Riel Vermunt) are recognized. In the modern era, John Rawls contributed significantly to justice theory through *A Theory of Justice* and *Justice as Fairness*, which remain foundational texts in legal and political philosophy. Further discussions on these justice models will be explored in future writings.

3. Restorative Justice as a New Paradigm

The focus of Indonesia's criminal justice system is currently undergoing a fundamental shift from a retributive approach to a restorative-rehabilitative paradigm. This transformation is reinforced by various regulations, particularly Law Number 11 of 2012 on the Juvenile Criminal Justice System, which in Articles 6 and 8 emphasizes the concept of restorative justice through diversion. Furthermore, the provisions on diversion are regulated sectorally through Supreme Court Regulation Number 4 of 2014 on Diversion. This indicates that Supreme Court Regulation Number 4 of 2014 is a product of the development of the restorative justice system in Indonesia.

The purpose of implementing Supreme Court Regulation Number 4 of 2014 is to enhance judicial efficiency in Indonesia, especially concerning children in conflict with the law, who require special attention while still prioritizing their well-being. Additionally, it acknowledges the state's responsibility in safeguarding children facing legal issues. The government aims to facilitate the resolution of criminal cases through deliberative consensus based on a restorative justice approach, involving the child and their parents/guardians, the victim and/or their parents/guardians, community supervisors, professional social workers, community representatives, and other relevant parties.

The success of the diversion process in juvenile cases could be adopted in general criminal cases, as Indonesia currently needs a mechanism and procedure within the system to accommodate case resolution without having to go through court proceedings. This requires legal reforms that go beyond merely amending laws but also modifying the existing criminal justice system to ensure that the objectives of justice are fully realized.

Referring to the implementation of diversion in juvenile cases, it is evident that diversion is a promising approach to resolving general criminal offenses. Many criminal cases do not necessarily require court trials and can instead be resolved through diversion, which would significantly reduce case backlogs in courts. Consequently, justice can be achieved while streamlining a bureaucratic system that often takes too long.

This method of resolving cases involves multiple parties related to the victim or the offender, demonstrating that restorative justice aligns with the "living law" in Indonesian society, which values fraternity and kinship. In relation to case resolution through restorative justice, the Supreme Court issued Decree Number 1691/DJU/SK/PS.00/12/2020 on the Implementation Guidelines for Restorative Justice in 2020.

The decree outlines the guidelines for applying restorative justice in four categories of cases:

- 1) Minor criminal offenses
- 2) Juvenile cases
- 3) Cases involving women in conflict with the law
- 4) Narcotics-related cases

Similarly, in 2020, the Attorney General's Office of the Republic of Indonesia issued Decree Number 15 of 2020 on the Termination of Prosecution

Based on Restorative Justice. According to Article 5, prosecution can be discontinued if the following conditions are met:

- 1) The suspect has committed a criminal offense for the first time.
- 2) The offense carries only a fine or a prison sentence of no more than five years.
- 3) The offense involves evidence or financial loss amounting to no more than IDR 2,500,000 (two million five hundred thousand rupiah).

These sectoral regulations enable case resolution outside the formal criminal justice system. However, not all offenses can be settled outside the court (through diversion) under restorative justice principles. In juvenile cases, exceptions apply if two conditions are met: the offense carries a prison sentence of less than seven years, and the offender is not a repeat offender (recidivist).

4. The Essence of Restorative Justice

Restorative justice is fundamentally centered on fostering reconciliation, accountability, and rehabilitation in resolving criminal cases. The core principles of this approach are as follows:

First, restorative justice seeks to bring together the offender, the victim, and their respective families to engage in meaningful dialogue. This process allows both parties to discuss the harm caused and explore possible resolutions, including restitution to the victim (*restitutio in integrum*). By facilitating direct interaction, restorative justice aims to promote understanding, healing, and a sense of closure for all involved.

Second, while restorative justice acknowledges the necessity of holding offenders accountable, the emphasis is on corrective rather than purely punitive measures. The punishment imposed is designed to be educational and constructive, ensuring that it benefits both the offender and the victim. This principle aligns with the legal maxim *delinquentis per iram provocatus puniri debet mitius*, which advocates for measured and rehabilitative sanctions rather than excessive punishment driven by anger or retribution.

Third, restorative justice incorporates two primary approaches. The first is victim-offender mediation, widely practiced in North America, where victims and offenders engage in facilitated discussions to reach a mutually satisfactory resolution. The second is the court-based restitutive and reparative measure, as implemented in the United Kingdom, which focuses on compensation and restoring losses suffered by the victim.

Ultimately, restorative justice is a legal and philosophical framework that prioritizes the well-being of victims and encourages offenders to take responsibility for their actions. By shifting the focus from mere retribution to healing and restoration, this approach seeks to create a more compassionate and effective justice system.

CONCLUSIONS AND RECOMMENDATIONS

The handling Criminal Cases Through Restorative Justice in Indonesia. The resolution of general criminal cases with a penalty of less than five years and without repeat offenses through diversion mechanisms based on the principles of restorative justice is increasingly recognized in Indonesia's criminal justice

system. Restorative justice emphasizes restoring relationships between the offender, the victim, and society while prioritizing the offender's responsibility without imposing severe punishment. This approach is considered more humane and effective, particularly for minor offenses that do not pose a serious threat to public security and order. According to Prof. Romli Atmasasmita, restorative justice reflects a legal principle oriented toward recovery and social reintegration rather than mere punishment. As a humanistic approach, it upholds humanitarian values, restores victims, offenders, and communities, and is guided by the implementation framework outlined in the Supreme Court's Directorate General of General Judiciary Decree No. 1691/DJU/SK/PS.00/12/2020.

Restorative justice involves dialogue and mediation between the offender, the victim, and relevant parties to reach a fair and balanced resolution, aiming to restore conditions to their original state (*restitutio in integrum*) and foster social harmony. The concept of restorative justice was first introduced by Albert Eglash in 1977, distinguishing three forms of justice: retributive justice (punishment), distributive justice (rehabilitation), and restorative justice (restoration). Although the term is relatively new, similar principles have existed since ancient times across various cultures, including Arab, Greek, Roman, and Indian civilizations.

In Indonesia, restorative justice is implemented through diversion, particularly in juvenile cases, as regulated by Law No. 11 of 2012 on the Juvenile Criminal Justice System and Supreme Court Regulation No. 4 of 2014. Diversion aims to resolve cases outside the courtroom by involving the offender, victim, family, and community. This approach is also reinforced by the Attorney General's Decree No. 15 of 2020, allowing prosecution to be dropped for minor cases under specific conditions.

The essence of restorative justice lies in restoring relationships between offenders and victims through mediation and restitution while ensuring that punishment remains educational. This approach aligns with humanitarian values and Indonesia's living law, reflecting the legal traditions embedded within society. As a result, restorative justice introduces a new paradigm in the criminal justice system – one that is more humane, fair, and focused on restoration rather than mere retribution.

ADVANCED RESEARCH

Further research on restorative justice in Indonesia should focus on evaluating its practical implementation and effectiveness in reducing recidivism and fostering community harmony. While the legal framework has been established through various laws and decrees, empirical studies are still needed to measure how well restorative justice mechanisms are applied at different stages of the criminal justice process. Such research could analyze case studies across regions, comparing outcomes between restorative settlements and conventional court verdicts, particularly in terms of victim satisfaction, offender accountability, and long-term social reintegration.

Another important area of study is the identification of obstacles that hinder the wider application of restorative justice in Indonesia. These challenges may include a lack of trained mediators, limited public awareness, cultural

differences in conflict resolution, and resistance from law enforcement institutions accustomed to retributive approaches. By exploring these barriers, scholars can propose recommendations for capacity building, legal reform, and community-based initiatives that strengthen the restorative justice framework. This will not only enrich academic discourse but also contribute to shaping a more humane, fair, and effective criminal justice system in Indonesia.

REFERENCES

- Fazel S dan Wolf A, "A Systematic Review of Criminal Recidivism Rates Worldwide: Current Difficulties and Recommendations for Best Practice", PLoS ONE 10(6): 2015.
- Hanafi Arief & Ningrum Ambarsari, (2018). *Penerapan Prinsip Restorative Justice Dalam Sistem Peradilan Pidana di Indonesia*. Al-Adl: Jurnal Hukum, 10(2), 173-190.
- Howard Zehr and Harry Mika, 1998, *Fundamental Concepts of Restorative Justice, Contemporary Justice Review: Issues in Criminal, Social, and Restorative Justice*, Volume 1, Issue 1, p.54-55.
- John Braithwaite, "Restorative Justice Assessing Optimistic and Pessimistic Accounts" dalam *Crime and Justice*, Vol. 25 hal 1-127, The University of Chicago Press, 1999.
- Kuat Puji Prayitno. (2012). *Restorative justice untuk peradilan di Indonesia (perspektif yuridis filosofis dalam penegakan hukum In concreto)*. Jurnal Dinamika Hukum, 12(3).
- Marlina, 2008, "Penerapan Konsep Diversi Terhadap Anak Pelaku Tindak Pidana dalam Sistem Peradilan Pidana Anak", Jurnal Equality, Jakarta
- Melani, *Membangun Sistem Hukum Pidana dari Retributif ke Restoratif*, Jurnal Litigasi, Volume 6 Nomor 3 Oktober 2005.
- Prianter Jaya Hairi. "Konsep dan Pembaruan Residivisme dalam Hukum Pidana di Indonesia (Concept and Reform of Recidivism in Criminal Law in Indonesia)." *Jurnal Negara Hukum* (2018).
- Rahmi Dwi Sutanti, "Kebijakan Aplikatif Pemberatan Pidana Bagi Pelaku Pengulangan Tindak Pidana", Indonesian Journal Of Criminal Law Studies IJCLS II Universitas Negeri Semarang, Vol. 2, No.1, Mei 2017.
- Taufik Hidayat, "Restoratif Justice Sebuah Alternatif, *Jurnal Restorasi*, Edisi IV/Vol. I 2005.
- Travis III, Lawrence F, 2012, *Introduction Criminal Justice* (Seventh Edition), Anderson Publishing, London. VOL. 25 NO. 1 JUNI 2018 123
- Ulang Mangun osiawan, (2017). *Upaya Penanggulangan Kerusakan di Lembaga Pemasarakatan*. Jurnal Penelitian Hukum De Jure, 17(3).
- Yeni Widowaty dan Fadia Fitriyanti, 2014, *Membangun Model Perlindungan Hukum Terhadap Masyarakat Sebagai Korban Pencemaran Dan/Atau Perusakan Lingkungan Oleh Korporasi Dengan Prinsip Restorative Justice*, Jurnal Media Hukum Vol 21, No 1 (2014).
- Wright, Richard A and Miller, J. Mitchell, 2005, *Encyclopedia of Criminology* (Volume 2), Routledge Taylor and Francis Group, New York-London.