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Restorative Justice as a Legal Policy on Criminal Punishment: An Integrative Study of Legal Certainty and Substantive Justice

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Abstract: The concept of restorative justice has emerged as a contemporary paradigm in modern criminal justice systems, shifting the focus away from mere retribution toward the restoration of social relationships and the reparation of harm suffered by victims. This transformation reflects a broader change in the direction of criminal law policy toward a more humane and justice-oriented approach. This study aims to examine restorative justice within the framework of criminal law policy, with particular emphasis on the integration of legal certainty and substantive justice. The research employs a normative legal method, utilizing conceptual, statutory, and comparative approaches to achieve a comprehensive analysis. The findings indicate that restorative justice holds significant potential in reconciling the tension between formal legal procedures and the evolving sense of justice within society. However, its implementation continues to face several challenges, including inconsistencies in law enforcement practices, limited technical regulations, and the need for a paradigm shift among legal practitioners. Therefore, strengthening policy frameworks and establishing clear operational guidelines are essential to ensure the effective and consistent application of restorative justice.

Keyword: Restorative Justice, Legal Certainty, Substantive Justice, Legal Policy, Criminal Punishment.

INTRODUCTION

The development of modern criminal law over recent decades reflects a significant shift in paradigm, particularly in how the state conceptualizes the purpose and function of punishment. Previously, criminal justice systems were largely dominated by a retributive approach that emphasized retaliation against offenders. However, contemporary developments indicate a transition toward more humanistic, progressive, and restorative-oriented approaches. This transformation is closely linked to growing criticism of traditional penal systems, which

are often considered inadequate in addressing the broader demands of justice for victims, offenders, and society as a whole (Braithwaite, 2016).

The retributive model, rooted in the principle of just deserts, positions punishment as a proportionate response to the offender's wrongdoing. Within this framework, the state assumes a central role in resolving conflicts by imposing sanctions, often without actively involving victims in the process. As a consequence, victims are frequently reduced to passive participants in the criminal justice system and are not provided sufficient opportunities to express their interests, including the need for restitution and recovery (Zehr, 2015). Furthermore, this approach has been criticized for its limited effectiveness in reducing recidivism and its inability to restore damaged social relationships.

As legal thought has evolved, there is increasing recognition that crime should not be viewed solely as a violation against the state, but also as a social conflict involving individuals and communities. Accordingly, its resolution should extend beyond punishment to include efforts aimed at repairing harm and rebuilding social ties. In this context, the concept of restorative justice emerges as an alternative paradigm within criminal justice systems (Daly, 2012).

Restorative justice emphasizes dialogue, participation, and reparation as central elements in resolving criminal cases. It promotes active engagement among offenders, victims, and the community in seeking fair and balanced solutions. Its primary objective is not merely to punish offenders, but to address the harm caused and to restore disrupted social relationships (Hansen & Umbreit, 2018). In this sense, restorative justice offers a more inclusive and responsive framework that better accommodates the needs of all parties involved.

In practice, restorative justice may be implemented through various mechanisms, including victim-offender mediation, family group conferencing, and community-based forums. These processes create space for victims to articulate the impact of the crime while providing offenders with the opportunity to take direct responsibility for their actions. Empirical studies suggest that such approaches can enhance victim satisfaction, reduce recidivism rates, and strengthen social cohesion within communities (Sherman & Strang, 2012).

In the Indonesian context, the advancement of restorative justice is closely connected to ongoing developments in legal policy, particularly in efforts to reform the criminal justice system. Legal policy, as a reflection of the state's direction in shaping and implementing law, plays a crucial role in determining the trajectory of legal development (Sari, 2023). The adoption of restorative justice thus signals a shift in criminal law policy toward a framework that prioritizes not only punishment but also restoration and social justice.

The integration of restorative justice into Indonesia's legal system can be observed through various regulatory frameworks and institutional policies, such as the Attorney General Regulation No. 15 of 2020 concerning the termination of prosecution based on restorative justice, as well as initiatives by the Indonesian National Police to resolve certain cases through similar approaches. These policies demonstrate formal recognition by the state of the importance of restorative principles within a more equitable criminal justice system (Salsabila & Wahyudi, 2022).

Nevertheless, the practical implementation of restorative justice is not without challenges, particularly in relation to the principle of legal certainty. Legal certainty, as a fundamental element of the rule of law, requires clarity of norms, consistency in application, and the protection of individual rights (Pound & DeRosa, 2017). In this regard, the flexible and contextual nature of restorative justice may be perceived as potentially undermining legal certainty, especially in the absence of clear and standardized regulatory frameworks (Nashir et al., 2024).

On the other hand, the concept of substantive justice emphasizes the realization of genuine fairness rather than mere procedural compliance. It focuses on outcomes that are perceived as just by the parties involved and by society, even if such outcomes occasionally diverge from rigid formal procedures (Wahid, 2022). From this perspective, restorative justice holds considerable potential in achieving substantive justice, as it allows for more flexible, context-sensitive, and needs-based resolutions.

The tension between legal certainty and substantive justice thus becomes a central issue in the development of restorative justice as part of criminal law policy. On one hand, the state must ensure legal certainty to maintain order and fairness; on the other hand, it is also expected to deliver a more humane and socially responsive form of justice. Consequently, an integrative approach is required to balance these two principles effectively.

Such an integrative approach necessitates policy formulation that not only prioritizes formal legal certainty but also incorporates the values of justice that exist within society. In this regard, restorative justice can be positioned as a strategic legal policy instrument capable of bridging the gap between law as written norms and law as a social reality (Agnihotri & Veach, 2016). Therefore, its application should be viewed not merely as an alternative dispute resolution mechanism, but as part of a broader transformation toward a more substantively just legal system.

Furthermore, the success of restorative justice implementation largely depends on the readiness of law enforcement officials, the adequacy of regulatory support, and public acceptance of this approach. Without shared understanding and commitment among stakeholders, restorative justice risks being distorted in practice, potentially leading to abuse of authority or inconsistent application (Hutapea et al., 2023). Accordingly, systematic efforts are required to enhance the capacity of legal practitioners, establish clear technical guidelines, and increase public awareness of restorative principles.

Based on the foregoing discussion, it can be concluded that restorative justice occupies a strategic position within Indonesia's criminal law policy. It not only offers an alternative approach to resolving criminal cases but also contributes to the realization of a more just, humane, and responsive legal system. Therefore, it is essential to further examine how restorative justice can be optimally integrated into the national legal framework, particularly in reconciling the relationship between legal certainty and substantive justice.

METHOD

This study employs a normative legal research approach, which focuses on examining legal norms as reflected in statutory regulations, legal doctrines, and relevant scholarly literature. The primary objective of this research is to analyze restorative justice within the framework of criminal law policy, particularly in relation to the integration of legal certainty and substantive justice (Ariawan, 2013). Accordingly, this study does not merely assess law as a set of written rules, but also as a system of values that evolves within society.

In conducting this research, several approaches are utilized. One of the main approaches is the statutory approach, which involves analyzing various legal instruments related to the implementation of restorative justice in Indonesia. The scope of analysis includes the Indonesian Penal Code, the Code of Criminal Procedure, as well as specific regulations such as Attorney General Regulation No. 15 of 2020 concerning the termination of prosecution based on restorative justice, and internal policies of the Indonesian National Police. Through this approach, the study seeks to evaluate the extent to which Indonesia's positive law has incorporated restorative justice principles into its criminal justice system.

In addition, this research applies a conceptual approach aimed at exploring theoretical frameworks relevant to the topic. These include theories of restorative justice, legal certainty, and substantive justice. This approach is essential for constructing a comprehensive analytical

framework to understand the relationship among these concepts, as well as to assess their practical implementation within the legal system. In this regard, the study draws upon perspectives from both national and international legal scholars.

A comparative approach is also employed by examining the application of restorative justice in Indonesia alongside practices in other jurisdictions that have more extensively developed this model, such as New Zealand, Canada, and Australia. This comparative analysis aims to identify similarities, differences, and best practices that may serve as valuable references for strengthening legal policy in Indonesia, particularly in enhancing the effectiveness of restorative justice implementation.

The sources of legal materials in this study consist of primary, secondary, and tertiary legal sources. Primary legal materials include statutory regulations, court decisions, and official policies related to restorative justice. Secondary materials encompass textbooks, academic journal articles, research findings, and expert opinions relevant to the subject matter. Meanwhile, tertiary materials include legal dictionaries, encyclopedias, and other supporting references that provide additional clarification of primary and secondary sources.

The collection of legal materials is conducted through library research, involving a systematic review of relevant literature in both printed and digital formats. This process includes accessing academic journal databases, library resources, and other credible sources that meet scholarly standards. This method is appropriate given the nature of normative legal research, which emphasizes document-based analysis.

Furthermore, the analysis of legal materials is carried out qualitatively using a descriptive-analytical method. The descriptive aspect aims to systematically present concepts, regulations, and practices related to restorative justice, while the analytical aspect focuses on examining the relationship between legal certainty and substantive justice within the context of criminal law policy. Through this approach, the study seeks to produce findings that are not only descriptive but also critical, argumentative, and comprehensive.

By employing this research methodology, the study is expected to provide an in-depth understanding of the position of restorative justice within Indonesia's criminal law system. Additionally, it aims to contribute to the development of legal policies that are more responsive to societal needs, particularly in achieving a balanced integration between legal certainty and substantive justice.

RESULTS AND DISCUSSION

Restorative Justice as a New Paradigm of Punishment

Restorative justice represents an approach in criminal law that prioritizes restoration rather than punishment. This model emerged as a response to the limitations of conventional penal systems, which have traditionally emphasized retribution against offenders. Within the restorative framework, crime is not merely viewed as a violation against the state, but as a social conflict that causes harm to victims, offenders, and the broader community. Consequently, the resolution of criminal cases is directed toward repairing such harm through dialogue, mediation, and mutual agreements among the involved parties (Hakeem et al., 2026).

From a conceptual standpoint, restorative justice positions victims as central actors in the criminal justice process. This differs significantly from the retributive system, where victims are often treated as passive participants, primarily serving as witnesses. In a restorative approach, victims are given the opportunity to express their experiences, articulate the harm they have suffered, and convey their expectations regarding case resolution. At the same time, offenders are encouraged to acknowledge their wrongdoing, accept direct responsibility, and undertake concrete actions to repair the damage caused. As a result, the resolution process extends beyond formal legal procedures and incorporates moral as well as social dimensions (Pramita, 2025).

The fundamental distinction between retributive and restorative approaches lies in their respective objectives. Retributive justice focuses on imposing sanctions as a form of proportional retaliation for the offender's conduct. In contrast, restorative justice emphasizes the restoration of social relationships, reconciliation, and the reintegration of offenders into society. Within this perspective, justice is not solely measured by the severity of punishment, but also by the extent to which the victim's harm is addressed and social harmony is reestablished (Putra et al., 2026).

In practice, restorative justice is implemented through various mechanisms, including victim-offender mediation, family group conferencing, and community conferencing. These processes facilitate direct communication between victims and offenders in a structured and supportive environment. Through such interactions, victims may achieve psychological recovery, while offenders gain a deeper understanding of the consequences of their actions and are given the opportunity to make amends. Empirical findings indicate that this approach not only enhances victim satisfaction but also contributes to reducing recidivism rates.

In Indonesia, restorative justice has increasingly been incorporated into the criminal justice system as part of broader legal reform efforts. This development is reflected in several policy instruments, such as Attorney General Regulation No. 15 of 2020, which authorizes prosecutors to discontinue prosecutions based on restorative justice principles. In addition, the Indonesian National Police have adopted similar approaches in handling certain cases. These policy initiatives signify a shift in criminal law policy toward a more humanistic and socially responsive model of justice (Sanna, 2025).

Furthermore, restorative justice aligns closely with the social and cultural values of Indonesian society, which emphasize deliberation (*musyawarah*) and the resolution of disputes through familial or communal consensus. In many local communities, conflict resolution mechanisms grounded in reconciliation and restoration have long been practiced as part of customary law traditions. Therefore, the incorporation of restorative justice into the national legal system can be understood as a revitalization of these local values within a modern legal framework.

Nevertheless, the adoption of restorative justice as a new paradigm in criminal punishment is not without challenges. One of the primary obstacles is resistance from law enforcement officials who remain oriented toward retributive approaches. Additionally, the absence of standardized operational guidelines creates the potential for inconsistencies in the application of restorative justice across different regions. There are also concerns that this approach could be misused to circumvent formal legal processes, particularly in cases that should still be addressed through conventional criminal procedures (Pramujayanto, 2022).

Integrating Legal Certainty within Restorative Justice

One of the most common criticisms directed at the implementation of restorative justice concerns its perceived potential to weaken the principle of legal certainty. In modern legal systems, legal certainty serves as a fundamental pillar, ensuring that individuals are treated equally before the law and that law enforcement is carried out based on clear, consistent, and predictable rules. In contrast, restorative justice emphasizes flexibility, contextual considerations, and resolutions based on mutual agreement between the parties. This characteristic is often viewed as potentially conflicting with the principle of legality, which requires well-defined norms and standardized procedures (Muti'ah et al., 2022).

In practice, the flexible nature of restorative justice may raise concerns about disparities in law enforcement. Cases with similar characteristics may be resolved differently depending on the discretion of law enforcement officials or the willingness of the parties to reach a settlement. Such conditions may create legal uncertainty, open the door to subjectivity, and even increase the risk of abuse of authority. Therefore, without clear and standardized

regulations, the application of restorative justice may generate tension with the principle of legal certainty, which is a cornerstone of the rule of law (Sinaga et al., 2023).

However, the view that restorative justice inherently threatens legal certainty is not entirely accurate. When properly designed and systematically regulated, restorative justice can actually reinforce legal certainty by providing alternative mechanisms that are clearly defined, measurable, and institutionally embedded within the criminal justice system. In this sense, legal certainty should not be interpreted solely in procedural terms, but also as certainty in achieving substantive justice for the parties involved.

Efforts to integrate restorative justice with legal certainty in Indonesia can be observed through various state policies and regulatory frameworks. One notable example is Attorney General Regulation No. 15 of 2020 concerning the termination of prosecution based on restorative justice. This regulation establishes a clear legal basis for prosecutors to discontinue prosecution under specific conditions, such as the existence of a reconciliation agreement between the offender and the victim, the offender being a first-time offender, and the offense carrying a relatively minor penalty. By setting explicit criteria, this regulation seeks to minimize subjectivity and ensure that restorative justice is applied within a well-defined legal framework (Hamamudin et al., 2024).

In addition, similar policies have been adopted by the Indonesian National Police through internal regulations that encourage the restorative resolution of certain cases. This demonstrates that the integration of restorative justice into the national legal system is not sporadic, but rather part of a broader institutionalization process aimed at achieving consistency and predictability in its application. As a result, restorative justice is no longer regarded as an informal practice, but as a legitimate component of the criminal justice system.

Furthermore, the integration of legal certainty and restorative justice requires the establishment of clear and measurable standard operating procedures (SOPs). These procedures are necessary to regulate the stages of the process, determine the types of cases eligible for restorative resolution, and provide mechanisms for oversight and accountability. Without such standards, the application of restorative justice risks inconsistency and potential injustice. Therefore, strengthening the regulatory framework is essential to ensure that the flexibility inherent in restorative justice does not undermine legal certainty.

On the other hand, it is important to recognize that legal certainty should not be equated with rigid formalism. From the perspective of progressive law, legal certainty must be adaptable to social dynamics and the evolving needs of society. In this context, restorative justice can be understood as a form of legal innovation that seeks to bridge the gap between formal legal norms and complex social realities. Accordingly, the integration of legal certainty and restorative justice should not be viewed as contradictory, but rather as complementary elements.

Nevertheless, the challenges in harmonizing these two principles remain significant. A strong commitment from law enforcement officials is required to ensure that restorative justice is applied in a professional and accountable manner. Moreover, effective oversight mechanisms are necessary to prevent potential abuses of authority or deviations from the principles of justice. Education and training for legal practitioners also play a crucial role in developing a comprehensive understanding of restorative justice and its proper implementation.

Restorative Justice as an Expression of Substantive Justice

Substantive justice refers to a conception of justice that prioritizes outcomes genuinely perceived as fair by the parties involved, rather than merely ensuring compliance with formal legal procedures. Within this perspective, law is not only understood as a system of rules to be followed, but also as an instrument for realizing the values of justice that exist within society.

Consequently, substantive justice is often positioned as a corrective to formal justice, which tends to be rigid and procedural in nature.

In conventional criminal justice systems, justice is frequently assessed based on adherence to procedural requirements, such as investigation, prosecution, and adjudication in accordance with statutory provisions. However, this approach does not always produce outcomes that are perceived as fair by victims or society. Victims often fail to obtain adequate restoration, whether materially or psychologically, while offenders may undergo punishment without fully understanding the consequences of their actions. This situation highlights a gap between formal justice and substantive justice.

In this context, restorative justice emerges as an approach capable of bridging this divide. It provides opportunities for victims to actively participate in the resolution process, ensuring that their voices and interests are directly acknowledged. Such participation is a key element in achieving substantive justice, as victims are no longer treated as passive objects but as active subjects with the right to determine the form of reparation they consider appropriate (Khasanofa et al., 2025).

Moreover, restorative justice adopts a more comprehensive view of offenders by taking into account the social, economic, and psychological factors underlying their actions. The objective is not solely to impose punishment, but also to rehabilitate offenders so that they can reintegrate into society. In this sense, justice is not limited to retribution, but extends to efforts of repair and social reintegration (Dekker & Breakey, 2016).

Furthermore, restorative justice allows for more flexible and context-sensitive solutions. Each case is treated as unique, enabling resolutions to be tailored to the specific needs and circumstances of the parties involved. For example, restoration may take the form of compensation, apologies, community service, or other mutually agreed arrangements. This approach creates opportunities to achieve more meaningful justice compared to the mere imposition of criminal sanctions (Ashworth, 2017).

From a societal perspective, the application of restorative justice also contributes to strengthening social cohesion and maintaining community harmony. Through dialogue and reconciliation, conflicts arising from criminal acts can be resolved peacefully without leaving prolonged resentment. This stands in contrast to retributive systems, which may exacerbate conflict by failing to provide space for reconciliation. Therefore, restorative justice promotes not only individual justice but also collective social harmony.

Within the Indonesian legal context, the concept of substantive justice aligns closely with societal values such as deliberation (*musyawarah*), familial principles, and peaceful dispute resolution. These values have long been embedded in customary law practices that emphasize restoration and social balance. Accordingly, the implementation of restorative justice can be viewed as a manifestation of local values within a modern legal framework.

Nevertheless, the application of restorative justice as a realization of substantive justice is not without challenges. One key concern is ensuring that restorative processes are conducted voluntarily and free from coercion, particularly with regard to victims. Additionally, there is a risk of power imbalances between offenders and victims that may influence the outcome of agreements. Therefore, robust oversight mechanisms and the involvement of professional facilitators are essential to ensure that the process remains fair and balanced.

On the other hand, there are concerns that restorative justice may be misused as a means to avoid formal legal proceedings, particularly in certain types of cases. For this reason, it is important to establish clear limitations regarding which cases are appropriate for restorative resolution. By defining such boundaries, restorative justice can function effectively as a tool for achieving substantive justice without undermining the fundamental principles of criminal law.

Challenges in Implementing Restorative Justice within Legal Policy

Although restorative justice offers a more humane and progressive approach within the criminal justice system, its application in legal policy continues to encounter both structural and cultural obstacles. One of the primary issues is the absence of standardized and comprehensive operational guidelines. In practice, different law enforcement institutions such as the police, prosecutors, and courts often apply restorative justice using varying interpretations and procedures. This inconsistency can lead to legal uncertainty and may undermine public trust in the justice system.

Another significant concern is the potential for disparities in law enforcement. Since restorative justice largely depends on the discretion of legal authorities, similar cases may be resolved in different ways based on subjective judgments. This situation risks violating the principle of equality before the law, thereby creating perceptions of unfairness and inconsistency in legal outcomes.

Furthermore, resistance from law enforcement officials who remain committed to a retributive paradigm presents an additional challenge. Traditionally, criminal law systems have emphasized punishment as a form of retribution. Transitioning toward a restorative model requires a substantial shift in legal culture, including changes in mindset, improvements in human resource capacity, and reforms in legal education. Without such transformation, the effective implementation of restorative justice will remain limited.

On the other hand, there is also a risk that restorative justice mechanisms may be misused as a means to bypass formal legal processes. In certain cases, particularly where offenders possess significant economic or social power, restorative approaches may be exploited to evade proper legal accountability. This can disadvantage victims, especially those in vulnerable positions who may feel pressured to accept outcomes that do not fully reflect justice.

In addition, the tension between legal certainty and flexibility remains a crucial issue in the implementation of restorative justice. On one hand, flexibility is necessary to accommodate the unique circumstances of each case and to achieve substantive justice. On the other hand, the legal system requires consistency, predictability, and clarity. Therefore, clear regulations, well-defined boundaries, and effective oversight mechanisms are essential to maintain a balance between these competing principles (Sujono et al., 2024).

To better illustrate the distinction between retributive and restorative approaches, the following comparison is presented:

No	Aspect	Retributive Justice	Restorative Justice
1	Primary Focus	Punishment of the offender	Restoration of harm to the victim
2	Role of Victim	Passive	Active and participatory
3	Objective	Imposition of sanctions	Reconciliation and recovery
4	Approach	Formal legalistic	Dialogical and human-centered
5	Social Impact	Limited	Repairs social relationships
6	Legal Certainty	High (formal)	Flexible (requires clear regulation)

Overall, while restorative justice holds significant promise for creating a more equitable and recovery-oriented justice system, its success is highly dependent on institutional readiness, regulatory clarity, and a shift in legal culture among law enforcement actors. Without these supporting factors, restorative justice risks remaining merely a normative concept that is difficult to implement effectively in practice.

CONCLUSION

Restorative justice, as an emerging paradigm in Indonesia’s penal policy, reflects a fundamental shift from a retributive model toward a more humane and recovery-oriented approach. Rather than focusing solely on punishing offenders, this framework emphasizes

repairing the harm suffered by victims, fostering reconciliation between the parties involved, and restoring disrupted social relationships. In this sense, restorative justice offers strong potential to achieve a more substantive and socially grounded form of justice.

At the same time, aligning restorative justice with the principle of legal certainty remains a crucial concern. While this approach allows flexibility in resolving cases, it must be supported by a clear and coherent regulatory framework to avoid inconsistency and unequal application of the law. Therefore, balancing legal certainty with substantive justice is essential to ensure the effective and fair implementation of restorative justice within the criminal justice system.

Nevertheless, the application of restorative justice continues to face multiple challenges, including institutional limitations, regulatory gaps, and entrenched legal cultures. Addressing these issues requires the establishment of standardized procedures, capacity building for law enforcement personnel, and robust oversight mechanisms to prevent misuse. With such support in place, restorative justice can move beyond a merely theoretical concept and function effectively as part of a more equitable, inclusive, and restorative reform of criminal law.

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