

HARMONISING RESTORATIVE JUSTICE IN THE INDONESIAN LEGAL SYSTEM: INTEGRATING PANCASILA VALUES AND HUMAN RIGHTS PROTECTION

Zentoni

Zentoni & Partners Law Firm, Jalan Sentra Primer Timur No. 6, Pulo Gebang, Cakung, Jakarta 13950, Indonesia

Email: zenlaw79@gmail.com

Abstract

The harmonisation of the concept of restorative justice in Indonesia is a significant step towards developing a judicial system that prioritises recovery and reconciliation, rather than the traditional approach that emphasises punishment. With the increasing integration of restorative justice principles into legal regulations, such as Attorney General Regulation No. 15 of 2020, National Police Chief Regulation No. 8 of 2021, and the inclusion of this concept in the 2023 Criminal Code, Indonesia is making substantial progress towards a more humane and effective legal system. This study employs a doctrinal legal approach, analysing various regulations and their application within the Indonesian legal system. The findings demonstrate that the application of restorative justice in Indonesia is strongly rooted in the values of Pancasila and the 1945 Constitution, which highlight the principles of social justice, humanity, and respect for human rights. By involving perpetrators, victims, and the community in the conflict resolution process, restorative justice provides space for the restoration of social relationships damaged by criminal acts, strengthens social cohesion, and minimises the negative impacts of the retributive justice system. However, the primary challenge lies in ensuring that the application of these principles does not lead to imbalance or injustice, particularly in more serious cases. Therefore, harmonising constitutional values with the implementation of restorative justice must be undertaken with great care to preserve the integrity of the Indonesian legal system and ensure the protection of human rights, while achieving a more comprehensive and sustainable form of justice.

Keywords: *Harmonisation; Restorative Justice; Legal System; Pancasila; Human Rights.*

A. Introduction

Law is legislation created by the authorities to regulate social life.¹ Human interests are safeguarded when society is orderly, and society itself will remain orderly when there is a balance of order within it.² In today's advanced world, simply relying on traditions passed down through generations is no longer sufficient, as was the case before the emergence of modern civilisation. As a result, communities within a nation or society require written rules, known as laws, to govern

¹ Khudzaifah Dimiyati et al., 'Indonesia as a Legal Welfare State: A Prophetic-Transcendental Basis', *Heliyon* 7, no. 8 (2021): e07865, <https://doi.org/10.1016/j.heliyon.2021.e07865>; Nir Kosti et al., 'Legislation and Regulation: Three Analytical Distinctions', *The Theory and Practice of Legislation* 7, no. 3 (2019): 169–78, <https://doi.org/10.1080/20508840.2019.1736369>.

² Zygmunt Bauman, 'Social Issues of Law and Order', *The British Journal of Criminology* 40, no. 2 (2000): 205–21, <https://doi.org/10.1093/bjc/40.2.205>; Steven Vago and Steven E. Barkan, *Law and Society* (Routledge, 2017); Donald J. Black, *The Behavior of Law* (Academic Press, 1976).

their interactions.³ The principles of law ensure the creation of a balanced and prosperous society. When discussing the law, people tend to delve into its details, focusing on clear, written sanctions, in contrast to the past when rules and sanctions were often unwritten.⁴ Despite this, unwritten laws continue to play a role in today's legal landscape.⁵

Lawrence M. Friedman⁶, a prominent legal scholar, offers profound insights into the role of law in society. He argues that law is not merely a set of rules applied within society, but also serves a broader function as a mechanism for social control, dispute resolution, and social engineering. This perspective highlights the vital role of law in maintaining social order and stability. On one hand, law functions to regulate the behaviour of individuals and groups, ensuring compliance with established norms. On the other hand, law serves as a tool for resolving conflicts within society, whether they arise between individuals, groups, or between individuals and the state. Moreover, law can be employed as a means of social engineering, driving social change and fostering justice.

In this framework, Friedman⁷ underscores the importance of balancing legal stability with the evolution of law as a tool for social transformation. Legal stability is essential for preserving social order, yet the progressive development of law is crucial for addressing existing injustices and promoting positive social change. Modern national legal systems, as outlined by a country's legal framework, possess significant potential to influence and reshape people's lives. Therefore, law is not only an instrument for enforcing established rules but also a powerful tool for advancing progressive social change.

It is important to remember that law, in a social context, does not solely focus on the enforcement of rigid rules but also on a more comprehensive understanding of justice.⁸ A notable

³ Roger Cotterrell, 'Transnational Communities and the Concept of Law', in *The Methodology of Legal Theory* (Routledge, 2017); Gad Barzilai, *Communities and Law: Politics and Cultures of Legal Identities* (University of Michigan Press, 2010).

⁴ Tyas Ismi Trialfhianty et al., 'Engaging Customary Law to Improve the Effectiveness of Marine Protected Areas in Indonesia', *Ocean & Coastal Management* 261 (February 2025): 107543, <https://doi.org/10.1016/j.ocecoaman.2025.107543>; Hans Oberdiek, 'The Role of Sanctions and Coercion in Understanding Law and Legal Systems', *The American Journal of Jurisprudence* 21, no. 1 (1976): 71–94, <https://doi.org/10.1093/ajj/21.1.71>.

⁵ Brian Z. Tamanaha, 'Understanding Legal Pluralism: Past to Present, Local to Global', in *Legal Theory and the Social Sciences* (Routledge, 2017); Erica Harper, 'The Enduring Utility of Customary Justice in Fragile and Post-Conflict States: Why Development Actors Need to Stop Searching for Magic Bullets and Solve the Political Economy and Human Rights Challenges Associated with Justice Programming', *The Journal of Legal Pluralism and Unofficial Law* 53, no. 3 (2021): 342–55, <https://doi.org/10.1080/07329113.2021.2004845>.

⁶ Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (Russell Sage Foundation, 1975).

⁷ Ibid.

⁸ Tom R. Tyler, 'Restorative Justice and Procedural Justice: Dealing with Rule Breaking', *Journal of Social Issues* 62, no. 2 (2006): 307–26, <https://doi.org/10.1111/j.1540-4560.2006.00452.x>; Amir N. Licht, 'Social Norms and the Law: Why Peoples Obey the Law', *Review of Law & Economics* 4, no. 3 (n.d.): 715–50, <https://doi.org/10.2202/1555-5879.1232>.

example reflecting changes in legal thinking is the concept of restorative justice in criminal law. This concept signifies a paradigm shift in the settlement of criminal cases, where the focus is not only on identifying the perpetrator and determining the appropriate punishment but also on healing or restoring the relationship between the offender and the victim.⁹

In criminal law, a more restorative approach is increasingly being applied through the concept of restorative justice. Restorative justice differs from the traditional approach, which primarily emphasises punishing the offender.¹⁰ In restorative justice, the questions are not merely “Which law has been broken?”, “Who committed the offence?”, and “What punishment do they deserve?”, which are the classic questions in criminal law. Instead, the restorative justice approach prioritises restoring relationships and providing victims with opportunities to heal from the impact of the crime.¹¹

The three main questions in restorative justice are: first, “Who has been harmed?” This question invites us to focus on the victims and the impact they have experienced. Crime is not only about the perpetrator, but also about how their actions affect the victims and the surrounding community. Second, “What are their needs?” In the restorative justice approach, it is important to identify victims’ needs, which may include recovery, justice, and reparation for the losses they have suffered. Finally, the third question is “Whose obligations must be fulfilled?” In this case, it is not only the perpetrator who has obligations; society and the state also have a responsibility to ensure that victims receive the support they need for recovery.

With this approach, restorative justice seeks to engage perpetrators, victims, and the community in the conflict resolution process. It is not solely focused on punishing offenders but also on repairing the harm caused and assisting all parties in moving forward. This approach creates space for offenders to take responsibility for their actions, while also providing victims with an opportunity to be heard and receive a more humane form of justice.¹²

⁹ Masahiro Suzuki and Tamera Jenkins, ‘Redefining Forgiveness in Restorative Justice’, *Criminal Justice Studies* 37, no. 3 (2024): 273–89, <https://doi.org/10.1080/1478601X.2024.2349586>; Roger J. R. Levesque, ‘Restorative Justice’, in *Encyclopedia of Adolescence*, ed. Roger J. R. Levesque (Springer International Publishing, 2018), https://doi.org/10.1007/978-3-319-33228-4_689; Salo de Carvalho and André Giamberardino, ‘Restorative Justice’, in *Elgar Encyclopedia of Crime and Criminal Justice* (Edward Elgar Publishing, 2024), <https://doi.org/10.4337/9781789902990.restorative.justice>.

¹⁰ John Braithwaite, ‘Principles of Restorative Justice’, in *Sociology: Introductory Readings* (Polity, 2010); Kathleen Daly, ‘The Punishment Debate in Restorative Justice’, in *The Sage Handbook of Punishment and Society* (Sage, 2012).

¹¹ Carolyn Boyes-Watson and Susan T. Krumholz, *Crime and Justice: Learning through Cases*, Learning through Cases (Bloomsbury Publishing, 2018); Rachel King, ‘Restorative Justice: How Law Schools Can Help Heal Their Communities’, *Fordham Urban Law Journal* 34, no. 4 (2007): 1285–302, <https://ir.lawnet.fordham.edu/ulj/vol34/iss4/5/>.

¹² Mark Umbreit and Marilyn Peterson Armour, *Restorative Justice Dialogue: An Essential Guide for Research and Practice* (Springer publishing company, 2010); Patrick M. Gerkin, ‘Who Owns This Conflict? The Challenge of

Restorative justice offers a more humane approach to the criminal justice system, aiming to foster peace and reconciliation.¹³ In this context, the law serves not only to punish but also to repair and restore harmony within society. Through restorative justice, it is hoped that the community will come to view the legal system as a more constructive means of resolving conflicts, rather than simply a tool for punishing and isolating offenders.¹⁴

At present, the term restorative justice is widely used. The fundamental idea behind this concept is to assist victims, yet the concept has evolved beyond this initial scope.¹⁵ As can be seen, restorative justice has been defined in various ways. For example, the Restorative Justice Consortium in the United Kingdom states in its manifesto that restorative justice seeks to balance the interests of victims and society with the need to reintegrate offenders.¹⁶ Some supporters of restorative justice place significant trust in social movement policies to ensure progressive outcomes in the restorative process.

On Tuesday, 22 February 2022, President Joko Widodo encouraged the Supreme Court to promote mediation as an alternative method for resolving civil disputes. He also reminded the Supreme Court to prioritise restorative justice in criminal cases. President Widodo conveyed these messages during the Special Session of the 2021 Annual Report of the Supreme Court of the Republic of Indonesia, held virtually from the State Palace in Jakarta.¹⁷

The emergence of legal regulations by the Chief of the Indonesian National Police, particularly the issuance of Police Chief Regulation No. 8 of 2021, which serves as a guideline for the application of restorative justice principles, was preceded by Police Chief Circular Letter No.

Community Involvement in Restorative Justice', *Contemporary Justice Review* 15, no. 3 (2012): 277–96, <https://doi.org/10.1080/10282580.2012.707423>; Albert W. Dzur and Susan M. Olson, 'The Value of Community Participation in Restorative Justice', *Journal of Social Philosophy* 35, no. 1 (2004): 91–107, <https://doi.org/10.1111/j.1467-9833.2004.00218.x>.

¹³ John Braithwaite, 'Restorative Justice and a Better Future', in *Restorative Justice: Critical Issues*, vol. 3 (Sage Publications London, 2003); Janine Natalya Clark, 'The Three Rs: Retributive Justice, Restorative Justice, and Reconciliation', *Contemporary Justice Review* 11, no. 4 (2008): 331–50, <https://doi.org/10.1080/10282580802482603>.

¹⁴ George Mousourakis, 'Understanding and Implementing Restorative Justice', *Tilburg Law Review* (Leiden, The Netherlands) 11, no. 3 (2003): 626–52, <https://doi.org/10.1163/22112596-01103002>; Steve Kirkwood, 'A Practice Framework for Restorative Justice', *Practice Frameworks in the Criminal Justice System* 63 (March 2022): 101688, <https://doi.org/10.1016/j.avb.2021.101688>.

¹⁵ Theo Gavrielides, *Restorative Justice Theory and Practice: Addressing the Discrepancy* (RJ4All Publications, 2020); Gerry Johnstone, *Restorative Justice: Ideas, Values, Debates* (Routledge, 2013).

¹⁶ Robert E. Mackay, 'The Institutionalization of Principles in Restorative Justice—a Case Study from the UK', in *Institutionalizing Restorative Justice* (Willan, 2013); Carolyn Hoyle and Fernanda Fonseca Rosenblatt, 'Looking Back to the Future: Threats to the Success of Restorative Justice in the United Kingdom', *Victims & Offenders* 11, no. 1 (2016): 30–49, <https://doi.org/10.1080/15564886.2015.1095830>.

¹⁷ M. Julnis Firmansyah, *Jokowi Dorong MA Utamakan Mediasi Dan Restorative Justice Selesaikan Perkara*, 22 February 2022, <https://www.tempo.co/hukum/jokowi-dorong-ma-utamakan-mediasi-dan-restorative-justice-selesaikan-perkara-423498>.

SE/8/VII/2018.¹⁸ This has provided a framework for case resolution through a restorative justice approach. This has been further reinforced by the Attorney General of the Republic of Indonesia with the issuance of Attorney General Regulation No. 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, further emphasising the existence and implementation of restorative justice in Indonesia. Moreover, the inclusion of restorative justice principles in Law No. 1 of 2023 on the Criminal Code marks a significant step towards integrating them into the broader Indonesian legal framework.¹⁹

However, with the increasing application of restorative justice within the Indonesian legal system, it is crucial to examine whether its implementation aligns with the fundamental values enshrined in the Constitution, namely the 1945 Constitution of the Republic of Indonesia, Pancasila as the fundamental state norm (*staatsfundamentalnorm*), and *grundnorm*, as well as the universally recognised principles of human rights. The 1945 Constitution and Pancasila form the foundation of all laws and policies in Indonesia, emphasising justice, humanity, and a balance between individual rights and the interests of society.²⁰

The implementation of restorative justice requires the active participation of law enforcement agencies, including the police, prosecutors, and courts, in resolving criminal cases through an approach that differs from the traditional justice system.²¹ This system aims to achieve more comprehensive justice by offering room for peaceful, sustainable resolutions, rather than a retributive approach that focuses on punishment. However, critical questions arise regarding how law enforcement agencies apply the principles of restorative justice and whether their application continues to respect and uphold the human rights values contained in the 1945 Constitution and

¹⁸ Cahya Wulandari et al., 'Restorative Justice-Based Criminal Case Resolution: A Study at Restorative Justice Houses in Yogyakarta', *Indonesian Journal of Criminal Law Studies* 10, no. 1 (2025): 239–66, <https://doi.org/10.15294/ijcls.v10i1.24071>.

¹⁹ Daffa Ladro Kusworo et al., 'Reflections on the Dismissal of Theft Charges Through Prosecutor's Restorative Justice House in Lampung', *Jurnal Media Hukum* 30, no. 2 (2023): 136–52, <https://doi.org/10.18196/jmh.v30i2.18384>; Joko Sriwidodo, 'The Efforts to Resolve Criminal Cases Based on the Restorative Justice Concept by Attorney Offices', *Substantive Justice International Journal of Law* 4, no. 1 (2021): 1–14, <https://doi.org/10.33096/substantivejustice.v4i1.121>.

²⁰ Sukardi and Hadi Rahmat Purnama, 'Restorative Justice Principles in Law Enforcement and Democracy in Indonesia', *Journal of Indonesian Legal Studies* 7, no. 1 (2022): 155–90, <https://doi.org/10.15294/jils.v7i1.53057>; Rinda Philona and Awaludin, 'Constitutional Values and Restorative Justice: A Critical Analysis in the Indonesian Context', *KARSA* 33, no. 1 (2025): 241–71, <https://doi.org/10.19105/karsa.v33i1.20264>.

²¹ Efa Nur et al., 'Restorative Justice in Settling Criminal Case: A Normative-Empirical Study of the Law', *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 8, no. 2 (2025): 539–52, <https://doi.org/10.24090/volksgeist.v8i2.13017>; Ruslan Abdul Gani and Retno Kusuma Wardani, 'Restorative Justice for Settlement of Minor Maltreatment in the Legal Area of the Merangin Police, Jambi Province', *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 23, no. 1 (2023): 93–107, <https://doi.org/10.30631/alrisalah.v23i1.1333>; Muhammad Firdaus et al., 'Shifting Polri's Law Enforcement Strategy: Restorative Justice for Public Trust', *Media Hukum* 30, no. 2 (2023): 153–70, <https://doi.org/10.18196/jmh.v30i2.18628>.

Pancasila. In this context, it is important to consider whether law enforcement officials' application of restorative justice is in accordance with human rights principles, including the right to a fair trial, the right of victims to protection, and the right of offenders to be treated with dignity. Furthermore, it is necessary to assess whether the restorative justice approach aligns with the principles of social justice, a key pillar of Pancasila. Does the application of restorative justice enhance social harmony and justice, or does it risk creating new imbalances?

These questions are highly relevant in the context of ongoing legal reforms in Indonesia. Therefore, the purpose of this study is to critically explore whether the application of restorative justice truly reflects the values enshrined in the Constitution, Pancasila, and human rights principles, and to examine how its implementation can be refined to better align with the ideals of justice expected by the Indonesian people. It is hoped that this research will make a significant contribution to steering Indonesian legal policy towards a more just and humane path, consistent with the nation's values.

Research is essentially an activity that seeks the truth within a particular field of knowledge, arising from doubt or curiosity about a specific issue. The harmonisation of the concept of restorative justice in Indonesia is carried out through doctrinal legal research using secondary data (library materials). This research involves collecting primary, secondary, and tertiary legal materials. The study will employ three approaches: legislative, conceptual, and historical. The study is characterised by descriptive and prescriptive elements. The collected materials will be processed and analysed to strengthen the results of this study.

B. The Evolution of Restorative Justice: A Comprehensive Analysis of its Concept, Application, and Impact within the Indonesian Legal System

Law can be understood from various perspectives. In general, there are three main perspectives for understanding law: philosophical, normative, and sociological. The philosophical perspective views law as an idea about values, truth, and justice. The normative perspective views law as a collection of norms or rules systematically and logically arranged. In contrast, the sociological perspective defines law as a social phenomenon, specifically a social institution that interacts with other social institutions within a broader social system.²² To provide a clearer comparison, Table 1 outlines the differences in focus, key concepts, and methodologies across these three perspectives:

²² Satjipto Rahardjo, *Ilmu Hukum* (PT. Citra Aditya Bakti, 2000).

Tabel 1. Comparison of Perspectives

Perspective	Focus	Key Concepts	Methodologies
Philosophical	Values, truth, justice	Natural law, legal positivism, morality	Historical analysis, theoretical reflection
Normative	Norms and rules	Legal obligations, normativity	Systematic analysis, logical arrangement
Sociological	Relationship between law and society	Social ordering, law in action	Empirical research, interdisciplinary study

Source: author's analysis results

The rapid development of society today, accompanied by advances in science and technology and the expansion of human rights, also influences the development of restorative justice and other legal concepts. Society needs legal protection amid rising crime to ensure individuals can properly exercise their rights and obligations as citizens.²³

In line with these evolving needs, Marian Liebmann²⁴ states that “restorative justice” has become a commonly used term to describe an approach within the criminal justice system that focuses on the recovery of victims and communities, rather than merely punishing perpetrators. This means that restorative justice prioritises repairing the harm done and restoring broken relationships, rather than simply punishing the guilty party. This approach emphasises the importance of recovery for victims and the reintegration of perpetrators into society, aiming to achieve a more holistic and sustainable form of justice.

Restorative justice did not emerge from formal structures and laws but was born from the voluntary actions of dedicated and passionate practitioners worldwide.²⁵ The term “restorative justice” was first introduced in contemporary criminal justice literature and practice in the 1970s. However, if we look deeper, the roots of the concept of restorative justice can be traced back to ancient times, embedded in the customs and religions of most traditional societies. Some argue that the values of restorative justice are rooted in traditions of justice as old as those of Greek and Roman civilisations.²⁶ Restorative justice places significant importance on the degree of harm restoration. Supporters of restorative justice often view the satisfaction of the victim and the

²³ Vinda Agustina et al., ‘Restorative Justice as an Effort to Fulfill the Constitutional Rights of Citizens: Restorative Justice Sebagai Upaya Pemenuhan Hak Konstitusional Warga Negara’, *Jurnal Konstitusi* 21, no. 2 (2024): 244–57, <https://doi.org/10.31078/jk2125>.

²⁴ Marian Liebmann, *Restorative Justice: How It Works* (Jessica Kingsley Publishers, 2007).

²⁵ Jennifer J. Llewellyn and Daniel Philpott, *Restorative Justice, Reconciliation, and Peacebuilding* (Oxford University Press, 2014).

²⁶ Gavrielides, *Restorative Justice Theory and Practice: Addressing the Discrepancy*.

perpetrator's sense of fairness as the two most important goals. The concept of restorative justice can be explained as follows:

Table 2. Common Attributes of Restorative Justice Programmes

Victims of criminal acts are given the opportunity to:	The offender is given the opportunity to:
Be directly involved in resolving the situation and addressing the consequences of the offence	Acknowledge responsibility for the offence and understand the effects of the offence on the victim
Receive answers to their questions about the crime and the offender	Express emotions (even remorse) about the offence
Express themselves about the impact of the offence	Receive support to repair harm caused to the victim or oneself and family
Receive restitution or reparation	Make amends or restitution/reparation
Receive an apology	Apologise to the victims
Restore, when appropriate, a relationship with the offender	Restore their relationship with the victim, if necessary
Reach closure	Reach closure

Source: Handbook on Restorative Justice Programmes²⁷

However, while restorative justice focuses on repairing harm and restoring relationships, Indonesia implements a criminal justice system based on the theory of retribution and emphasises retributive justice. Punishment is considered a necessary consequence as a form of retribution against those who commit criminal offences (*strafbaarfeit*). In practice, not all cases result in criminal convictions. Nevertheless, the criminal justice system remains one of the main means of resolution regulated by the Indonesian legal system.²⁸

In the Indonesian context, the investigation of criminal acts (*strafbaarfeit*) is the entry point into the criminal justice process through the Indonesian criminal justice system. Therefore, the investigation and disclosure of a criminal act (*strafbaarfeit*) is the initial or main key to determining whether the criminal act committed can proceed to prosecution and criminal trial.²⁹ This aims to realise the objectives of the law, namely justice, legal certainty, and benefit, while continuing to prioritise the principles of justice, which include simplicity, speed, cost efficiency, and respect for human rights.

²⁷ Yvon Dandurand and Curt Taylor Griffiths, *Handbook on Restorative Justice Programmes*, Criminal Justice Handbook Series (United Nations Publication, 2006).

²⁸ Virginia Garcia et al., 'The Enforcement of Restorative Justice in Indonesia Criminal Law', *Legality: Jurnal Ilmiah Hukum* 28, no. 1 (2020): 22–35, <https://doi.org/10.22219/ljih.v28i1.10680>.

²⁹ Topo Santoso, *Principles of Indonesian Criminal Law*, Studies in International and Comparative Criminal Law (Bloomsbury Publishing, 2023).

While restorative justice seeks to heal the damage caused by crime, the law is the most crucial system in the implementation of the institutional chain of power. These interests are realised through the restriction of human rights and the protection of certain interests. In practice, however, the protection of certain interests can only be achieved by restricting the interests of others.

The concept of restorative justice remains unclear to some people with this view. However, in practice (law in action), it is often applied indirectly by law enforcement officials. The concept of restorative justice is increasingly being incorporated into existing regulations, as seen in the Indonesian National Police and the Indonesian Attorney General's Office, which have issued legal frameworks for its use in the handling of criminal cases, though with certain conditions.³⁰

In accordance with the provisions of Regulation of the Chief of the Indonesian National Police No. 8 of 2021, which serves as a guideline for the application of restorative justice principles, the Indonesian National Police may apply the concept of restorative justice if it meets the material requirements, namely as long as it does not cause a disturbance to public order or unrest in the community, does not violate human rights, or affect specific social conflicts.³¹ The disputing parties must declare that they have no objection to the application of restorative justice, waive their right to pursue legal action, and fulfil the formal requirements of both parties. The parties involved (the complainant and the reported party), the existence of a peace statement, and the disputing parties (the complainant and the complainant's family members, the reported party and the reported party's family members, community leaders' representatives), are all known to the investigating officer, as well as further investigation reports from the parties involved after restorative reconciliation, which recommend specific names of cases of restorative justice to be agreed upon in the agreement, as long as the perpetrators do not object and voluntarily acknowledge responsibility and compensation.³²

For example, a law enforcement officer stopped two mothers from stealing milk and baby oil in the city of Blitar, East Java. This case was resolved through mediation between the perpetrators and the shop owner. Both parties (the perpetrators and the shop owner) consciously decided to reconcile. However, the perpetrators of the theft, identified by their initials MRS (55)

³⁰ Abdul Madjid and Milda Istiqomah, 'Restorative Justice: A Suitable Response to Environmental Crime in Indonesia?', *Krytyka Prawa* 15, no. 3 (2023): 86–100, <https://doi.org/10.7206/kp.2080-1084.622>.

³¹ Gani and Wardani, 'Restorative Justice for Settlement of Minor Maltreatment in the Legal Area of the Merangin Police, Jambi Province'; Muhammad Rijaldy Alwy Alwy, 'The 'Afw Principle and The Indonesian Restorative Justice System', *Jurnal Hukum Islam* 19, no. 2 (2021): 313–28, <https://doi.org/10.28918/jhi.v19i2.4726>.

³² Dwiki Oktobrian et al., 'Pengawasan Pelaksanaan Kesepakatan Mediasi Penal Dalam Penerapan Restorative Justice Pada Tahapan Penyidikan', *Litigasi* 24, no. 1 (2023): 14–39, <https://doi.org/10.23969/litigasi.v24i1.6208>.

and YLT (29), were reported to the police on suspicion of stealing milk and baby oil from a shop in Blitar, East Java, on Tuesday, 31 August 2021.³³ A more in-depth analysis of the theft crime is needed, given the economic pressures facing the two women. The above incident is an example of restorative justice.

Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Proceedings Based on Restorative Justice also stipulates that criminal cases (*strafbaarfeit*) may be terminated in the interests of justice and human rights. The process can be terminated based on restorative justice if the following conditions are met: the suspect or perpetrator of the crime committed the crime for the first time and did not repeat it (no repeat offences), the crime committed is only punishable by a fine or a maximum imprisonment of 5 (five) years, and the crime committed involves goods or losses not exceeding Rp. 2,500,000.00 (two million five hundred thousand rupiah). Cases that have been dismissed by the Indonesian Attorney General's Office based on the concept of restorative justice include, for example, an accident in the city of Ternate, in which the suspect Wahyudi, also known as Yudi, was charged with violating Article 310 paragraph (3) of Law Number 22 of 2009 concerning Road Traffic and Transportation. The Ternate District Attorney's Office dismissed the case.³⁴

Another case related to persecution occurred in Boyolali Regency, where the perpetrator or suspect, Margiyanto, also known as Bagong bin Margono, was charged with violating Article 351 paragraph (1) of the Criminal Code concerning Maltreatment. The Boyolali District Attorney's Office also dismissed this case. There was also a traffic accident case in South Bengkulu Regency, in which the perpetrator, Sawan bin Yuhardin, was charged with violating Article 310, paragraph (2), of Law Number 22 of 2009 concerning Road Traffic and Transportation. This case was terminated by the South Bengkulu District Attorney's Office. In addition, there was a case involving defamation in the city of Jepara, in which the suspect, Shofiyatun, was charged with violating Article 310, paragraph (1), of the Criminal Code concerning Blasphemy. The Jepara District Attorney's Office also dismissed this case. Another defamation case involving the suspect, Shofiyatun, and related to Article 310, paragraph (1), of the Criminal Code concerning Blasphemy, was also dismissed by the Jepara District Attorney's Office.³⁵ In addition, the Indonesian Attorney

³³ Aris Danu, *Kasus Emak-Emak Curi Susu Di Blitar Dihentikan, Polisi Tegaskan Bukan Karena Hotman Paris*, 9 September 2021, <https://suaraIndonesia.co.id/news/kriminal/6139743843a54/kasus-emakmak-curi-susu-di-blitar-dihentikan-polisi-tegaskan-bukan-karena-hotman-paris>.

³⁴ Lisye Sri Rahayu, 'Restorative Justice, Jaksa Hentikan Kasus Kecelakaan Hingga Penganiayaan', *detikNews*, 20 February 2022, <https://news.detik.com/berita/d-5950913/restorative-justice-jaksa-hentikan-kasus-kecelakaan-hingga-penganiayaan>.

³⁵ *Ibid.*

General's Office recently dismissed a case based on the concept of restorative justice in a motorcycle theft case involving the suspect Arham.³⁶ Arham committed the crime to pay for the living expenses of his pregnant wife, and the case in Jembrana ended with the suspect, I Wayan Latra, who had abused his younger brother, I Komang Ardana. Many other cases up to 2024 were resolved through restorative justice.³⁷

The rules surrounding the concept of restorative justice, as mentioned above, were formulated to address the sense of justice. These rules are based on the fundamental values of human rights for victims of crime, ensuring that perpetrators are held accountable for their offences. It is hoped that law enforcement agencies, such as the police, prosecutors, and courts, will be able to implement rules grounded in the concept of restorative justice.

Restorative justice can be applied at various stages, including pre-trial, post-trial/pre-sentencing, and post-trial, with the voluntary participation of both victims and offenders. The concept can also facilitate a pre-trial process that leads to sentencing recommendations. However, most observers agree that the implementation of restorative justice measures is still in its exploratory phase, and more information is needed on its application to improve the system and ensure it does not violate human rights, particularly those of the victims.

The successful application of restorative justice requires strategic and innovative thinking, built through collaboration with the government, communities, non-governmental organisations, victims, and offenders, as well as the development of new, progressive programmes. Several steps are necessary for the effective and sustainable implementation of restorative justice initiatives. These include the establishment of clear rules and constitutions in the country, the commitment and leadership of law enforcement officials, communities, and organisations, as well as support from the criminal justice system and society at large. These efforts aim to create restorative justice programmes that align with applicable legal principles and human rights values, ultimately strengthening both existing communities and judicial systems, while considering all available possibilities.

³⁶ Rachmawati, 'Restorative Justice: Pria Yang Curi Motor Untuk Biaya Persalinan Istri', *Kompas.Com*, 20 February 2022, <https://regional.kompas.com/read/2022/02/20/110100878/restorative-justice-pria-yang-curi-motor-untuk-biaya-persalinan-istri?page=all>.

³⁷ Hasan and Priska Sari Pratiwi, 'Restorative Justice, Kejari Hentikan Kasus Kakak Aniaya Adik Di Jembrana', *Kompas.Com*, 23 February 2022, <https://denpasar.kompas.com/read/2022/02/23/160558478/restorative-justice-kejari-hentikan-kasus-kakak-aniaya-adik-di-jembrana>.

C. Integrating Restorative Justice: Strengthening Victim Protection in Indonesia's New Criminal Code

Restorative justice has become an innovative approach to law enforcement, emphasising the restoration of relationships between perpetrators, victims, and the community.³⁸ In this context, the primary focus is on providing better protection for crime victims, taking into account their emotional, psychological, and material needs. This approach differs fundamentally from the traditional, more retributive legal system, where the punishment of the perpetrator is the main objective. In restorative justice, conflict resolution and the restoration of social harmony are priorities, without neglecting the perpetrator's responsibility to make amends for their actions.³⁹ Philosophically, restorative justice is rooted in the concepts of retributive and distributive justice but goes beyond both by emphasising the values of reconciliation and restoration. Legal philosopher John Braithwaite⁴⁰ emphasises that restorative justice provides all parties involved with the opportunity to participate actively in the conflict-resolution process, ensuring outcomes that are not only fair but also sustainable. In this regard, victim protection is not solely viewed from the perspective of financial restitution, but also in terms of restoring their dignity and emotional well-being.⁴¹ This aligns with Aristotle's view of justice as a virtue, in which the ultimate goal of law is to achieve the common good and social balance.⁴²

From a legal theory perspective, restorative justice can be linked to Rousseau's Social Contract Theory and Talcott Parsons' Theory of the Function of Law. Social Contract Theory holds that laws exist to uphold social agreements within society, in which the protection of victims

³⁸ Daniel W. Van Ness, 'Justice That Restores: From Impersonal to Personal Justice', *Journal of Religion & Spirituality in Social Work: Social Thought* 23, nos 1–2 (2004): 93–109, https://doi.org/10.1300/J377v23n01_06; Jan Tomasek et al., 'Restorative Justice Programs in Czech Prisons: The Role of Perceived Usefulness and Familiarity with the Program', *The Prison Journal* 102, no. 6 (2022): 694–717, <https://doi.org/10.1177/00328855221136198>; Mark Briskey, 'Restorative Justice: Drawing from the Old to Develop New Justice Alternatives', in *The Cambridge Handbook of Forensic Psychology*, 2nd edn, ed. Jennifer M. Brown and Miranda A. H. Horvath, Cambridge Handbooks in Psychology (Cambridge University Press, 2021), Cambridge Core, <https://doi.org/10.1017/9781108848916.032>.

³⁹ Jize Jiang and Zhifeng Chen, 'Victim Welfare, Social Harmony, and State Interests: Implementing Restorative Justice in Chinese Environmental Criminal Justice', *Asian Journal of Criminology* 18, no. 2 (2023): 171–88, <https://doi.org/10.1007/s11417-022-09376-5>; John Braithwaite, 'Setting Standards for Restorative Justice', *The British Journal of Criminology* 42, no. 3 (2002): 563–77, <https://doi.org/10.1093/bjc/42.3.563>.

⁴⁰ Braithwaite, 'Restorative Justice and a Better Future'; Braithwaite, 'Principles of Restorative Justice'.

⁴¹ Judith Lewis Herman, 'Justice From the Victim's Perspective', *Violence Against Women* 11, no. 5 (2005): 571–602, <https://doi.org/10.1177/1077801205274450>.

⁴² Theo Gavrielides and Vasso Artinopoulou, *Reconstructing Restorative Justice Philosophy* (Routledge, 2016); Vasso Artinopoulou and Theo Gavrielides, 'Aristotle on Restorative Justice: Where the Restorative Justice and Human Rights Movements Meet (Κοινὸί Τόποι)', in *Reconstructing Restorative Justice Philosophy* (Routledge, 2016).

is part of collective responsibility.⁴³ In this context, restorative justice provides space for victims to express their interests and for perpetrators to demonstrate remorse directly. On the other hand, Parsons views law as a mechanism for maintaining the balance of the social system, and restorative justice is an important tool for restoring that balance after a violation.⁴⁴ The application of restorative justice should also be seen as an effort to strengthen victim protection within the framework of human rights.⁴⁵ The Universal Declaration of Human Rights states that everyone is entitled to effective legal protection. In this context, restorative justice serves to ensure that victims' rights are respected and restored, while avoiding legal practices that can exacerbate victims' suffering, such as the repetition of trauma through lengthy legal processes.⁴⁶ However, it is important to recognise that integrating restorative justice into the legal system also poses challenges, particularly in harmonising it with existing principles of positive law. In some cases, restorative processes may not be entirely appropriate for serious offences, which require more severe sanctions to ensure public justice. Therefore, the restorative justice approach needs to be carefully combined with conventional legal principles so that protection for victims can be optimised without compromising the integrity of the legal system as a whole.

The enactment of the new Criminal Code in Indonesia marks a new chapter in the history of law enforcement in the country, with a clearer recognition of the principles of restorative justice. The new Criminal Code, which reflects the need to reform criminal law to be more responsive to Indonesia's social and cultural dynamics, includes provisions that support the integration of restorative justice into the national legal system. One important innovation in the new Criminal Code is the inclusion of provisions allowing criminal cases to be resolved through mechanisms outside the court, such as mediation and restorative justice, particularly for cases involving

⁴³ Francis J. Schweigert, 'Learning the Common Good: Principles of Community-Based Moral Education in Restorative Justice', *Journal of Moral Education* 28, no. 2 (1999): 163–83, <https://doi.org/10.1080/030572499103197>; Jean Chrysostome K. Kiyala, 'Restorative Justice in Theory', in *Child Soldiers and Restorative Justice: Participatory Action Research in the Eastern Democratic Republic of Congo*, ed. Jean Chrysostome K. Kiyala (Springer International Publishing, 2019), https://doi.org/10.1007/978-3-319-90071-1_6.

⁴⁴ Emmilia Rusdiana et al., 'The Adverse Effects of Incentives on Parties Engaged in Theft Within the Context of Indonesian Local Wisdom', *Cogent Social Sciences* 10, no. 1 (2024): 2400608, <https://doi.org/10.1080/23311886.2024.2400608>; Susan M. Olson and Albert W. Dzur, 'Revisiting Informal Justice: Restorative Justice and Democratic Professionalism', *Law & Society Review* 38, no. 1 (2004): 139–76, Cambridge Core, <https://doi.org/10.1111/j.0023-9216.2004.03801005.x>.

⁴⁵ Daniel W. Van Ness, 'Restorative Justice and International Human Rights', in *Restorative Justice* (Routledge, 2017); Ann Skelton and Makubetse Sekhonyane, 'Human Rights and Restorative Justice', in *Handbook of Restorative Justice* (Willan, 2013).

⁴⁶ Dian Ekawaty Ismail et al., 'Collocation of Restorative Justice with Human Rights in Indonesia', *Legality: Jurnal Ilmiah Hukum* 32, no. 2 (2024): 394–417, <https://doi.org/10.22219/ljih.v32i2.35374>.

relatively minor damage or no significant social impact. This is a step forward in victim protection, as it allows for a faster, cheaper, and more humane resolution than conventional court proceedings.

In the context of restorative justice, the new Criminal Code also incorporates important principles, including compensation for victims, conflict resolution, and social reintegration for perpetrators.⁴⁷ The articles in the new Criminal Code that allow for suspending charges based on restorative justice provide a clear legal basis for law enforcement officials to apply this approach. This integration is in line with the philosophy of Pancasila, which emphasises social justice and fair and civilised humanity. From a theoretical perspective, the integration of restorative justice into the new Criminal Code can be linked to Talcott Parsons' Theory of the Function of Law, which views law as a mechanism for maintaining social balance. The new Criminal Code, by paving the way for more flexible and inclusive solutions, allows the law to function not only as a tool for enforcing norms but also as a means of strengthening social harmony. John Rawls'⁴⁸ theory of distributive justice is also relevant here, in that the new Criminal Code can be seen as an effort to distribute justice more fairly, with particular attention to victim recovery.

Philosophically, the new Criminal Code, which incorporates elements of restorative justice, reflects a shift from retributive law to a more humanistic, victim-centred approach.⁴⁹ This is consistent with John Braithwaite's⁵⁰ thinking on restorative justice as a tool for achieving fairer and more sustainable outcomes in the application of the law. This philosophy emphasises that the ultimate goal of the law is reconciliation and restoration, not merely punishment. However, although this integration brings many benefits, challenges remain. One of these is how to ensure that the application of restorative justice does not compromise substantive justice, particularly in cases involving serious offences. In this regard, law enforcement officials must be careful to balance the need to protect victims with the need to maintain the integrity of criminal law.

With the new Criminal Code, Indonesia has a significant opportunity to strengthen victim protection through restorative justice. However, the success of its implementation depends heavily on how these provisions are applied in practice and how law enforcement officials and the public adopt this new paradigm. With a more inclusive and responsive legal framework, Indonesia can

⁴⁷ Indriati Amarini et al., 'Social Reintegration After the Implementation of Restorative Justice in the Indonesian Criminal Code', *Media Hukum* 31, no. 1 (2024): 115–33, <https://doi.org/10.18196/jmh.v31i1.20655>.

⁴⁸ John Rawls, *A Theory of Justice: Revised Edition* (Harvard University Press, 1971).

⁴⁹ Achmad Irwan Hamzani et al., 'Restorative Justice and Legal Pluralism in Indonesia: Implications for Atrocity Crimes and Global Criminal Justice Reform', *International Criminal Law Review* (Leiden, The Netherlands), 13 January 2026, 1–33, <https://doi.org/10.1163/15718123-bja10257>.

⁵⁰ Braithwaite, 'Principles of Restorative Justice'.

move towards a criminal justice system that not only punishes but also restores and rebuilds a more just and harmonious social order.

Several articles in the Indonesian Criminal Code, as stipulated in Law No. 1 of 2023, address the concept of restorative justice and emphasise the recovery and resolution of conflicts caused by criminal acts, as well as the protection of victims. Article 51, for example, states that the purpose of punishment is to resolve conflicts arising from crime, restore balance, and create a sense of security and peace in society. Article 54 requires consideration of the crime's impact on the victim or their family, as well as the victim's or their family's forgiveness during sentencing. Article 103 allows for the application of measures such as counselling, rehabilitation, skills training, institutional care, and compensation for losses caused by the crime as part of the main sentence. Article 107 stipulates that institutional care must be applied in accordance with the defendant's personal circumstances and the interests of both the defendant and society. Article 108 states that measures to recover losses caused by crime aim to restore or repair the losses to their original state. In addition, Article 112 requires the application of diversion for children who commit crimes with sentences of less than 7 years in prison and who are not repeat offenders, while Article 113 regulates various measures that can be applied to children, including returning them to their parents, treatment in a mental hospital, or the obligation to attend formal education. These articles reflect the application of restorative justice principles, which focus on the recovery of both victims and perpetrators, as well as the resolution of conflicts arising from crime.

D. Harmonisation of Restorative Justice with the Constitution: Philosophical Foundations, Legal Practice, and Relevance in the Indonesian Legal System

Law is a tool used to maintain order in society.⁵¹ As the foundation for harmonious coexistence, law plays a very important role in ensuring that every individual exercises their rights and obligations in accordance with applicable norms. One concept in law that has been widely discussed recently is restorative justice. This approach focuses on restoring relationships between the parties involved in a criminal act, namely the perpetrator, the victim, and the community. In this approach, justice is not only viewed in terms of the punishment given to the perpetrator of the crime, but also in efforts to restore relationships between the parties involved to achieve a more comprehensive recovery.

⁵¹ Bauman, 'Social Issues of Law and Order'; William J. Chambliss and Robert B. Seidman, *Law, Order, and Power* (Addison-Wesley Pub. Co, 1971); Roberto Mangabeira Unger, *Law in Modern Society* (Simon and Schuster, 1977).

Restorative justice has a philosophical basis that emphasises justice beyond punishment for the perpetrator, including reconciliation and healing for the victims and the affected community. In this case, the law is not merely a tool for punishment but also a means to build better relationships between the parties involved in the crime. This approach provides space for perpetrators to take responsibility for their actions, while allowing victims to achieve emotional and social recovery. The community, as part of this process, also plays a role in restoring social harmony through understanding, compassion, and joint problem-solving. Restorative justice is more than just a legal mechanism; it is a way to rebuild social relationships disrupted by crime and to create a better future for all parties.

However, in relation to restorative justice, there is also a need to harmonise this concept with a country's constitution, particularly with the basic principles of its law. The Constitution is the main guideline that regulates the structure of the state, individual rights, and the limits of government power.⁵² Therefore, it is important to understand the Constitution as a legal framework that must accommodate various conceptions of justice, including restorative justice, to balance existing legal rules with the need to improve social relations.

Before discussing in more detail the harmonisation between the Constitution and restorative justice, we must first understand what the Constitution itself means. The Constitution, in a broader sense, is a set of rules that governs a country's system of government and the basic rights of its citizens. The Constitution aims to create a clear state structure, establish the division of power between state institutions, and protect the basic rights of individuals from potential abuse of power by the state. The Constitution is the legal basis governing all government policies and actions in running the state, including criminal law, human rights, and the enforcement of justice.

The harmonisation between restorative justice and the Constitution is an important debate in modern law. On the one hand, restorative justice offers a more rehabilitative approach, focusing not solely on punishment but on repairing social relationships and improving victims' socio-economic conditions. On the other hand, the Constitution establishes the basic principles that govern the legal system, in which individual rights and the protection of freedom and security are a top priority. In this case, harmonising the two requires a wise approach acceptable to all parties, including state institutions with the authority to enforce the law.

⁵² John F. Manning, 'Clear Statement Rules and the Constitution', *Columbia Law Review* 110, no. 2 (2010): 399–451, <https://dash.harvard.edu/entities/publication/73120378-b988-6bd4-e053-0100007fdf3b>; G. Alan Tarr, *Understanding State Constitutions* (Princeton University Press, 1998); Anne Peters, 'Compensatory Constitutionalism: The Function and Potential of Fundamental International Norms and Structures', *Leiden Journal of International Law* 19, no. 3 (2006): 579–610, Cambridge Core, <https://doi.org/10.1017/S0922156506003487>.

Specifically, in the Indonesian legal system, the Constitution that serves as the main foundation is the 1945 Constitution of the Republic of Indonesia.⁵³ As a document that regulates the foundations of the state, the 1945 Constitution of the Republic of Indonesia emphasises the importance of protecting human rights, individual freedoms, and social justice. In this case, restorative justice can be integrated with the principles of the 1945 Constitution of the Republic of Indonesia, particularly in resolving criminal disputes involving perpetrators, victims, and the community. The basic principles contained in the 1945 Constitution of the Republic of Indonesia, such as the right to justice, the right to legal protection, and respect for human dignity, all support the sustainability of the concept of restorative justice, which focuses on restoring relationships and reconciliation.⁵⁴

This harmonisation is also related to the development of legal thinking, which increasingly leads to the understanding that law is not only about punishment but also about restoration and social guidance. Legal processes that lead to restorative resolutions will actively involve victims, perpetrators, and the community, aiming to restore social balance and reduce the potential for further conflict. In this case, the application of restorative justice can be an alternative to resolving social problems arising from criminal acts, without the need for a lengthy court process focused solely on punishment.

An independent and sovereign state has a very important foundation for its system of government and state affairs: the constitution. Without a mutually agreed-upon constitution, the state would lack clear guidelines for governing and achieving its goals. As the foundation of the state, the constitution serves as the legal basis for the regulation of national and state affairs. The constitution also serves as the basic principle of the state, regulating the rights and obligations of all citizens, state institutions, and the relationship between the state and the people. Without a constitution, it would be difficult for a country to maintain its sustainability and stability, as there would be no clear rules governing its operations and the resolution of issues arising in state affairs.

A good constitution will create an effective, transparent, and fair system of government, as well as guarantee the basic rights of the people and realise the objectives of the state. In Indonesia, the constitution that forms the basis of the state is the 1945 Constitution of the Republic of Indonesia. The 1945 Constitution of the Republic of Indonesia is a constitution that regulates the

⁵³ Lita Tyesta Addy Listya Wardhani et al., 'The Adoption of Various Legal Systems in Indonesia: An Effort to Initiate the Prismatic Mixed Legal Systems', *Cogent Social Sciences* 8, no. 1 (2022): 2104710, <https://doi.org/10.1080/23311886.2022.2104710>.

⁵⁴ Philona and Awaludin, 'Constitutional Values and Restorative Justice: A Critical Analysis in the Indonesian Context'; Agustina et al., 'Restorative Justice as an Effort to Fulfill the Constitutional Rights of Citizens: Restorative Justice Sebagai Upaya Pemenuhan Hak Konstitusional Warga Negara'.

foundations of the state, the structure of government, the basic rights of citizens, and various matters related to the life of the nation and state. The 1945 Constitution of the Republic of Indonesia contains the basic principles of the state that all state institutions and citizens must obey in their daily lives. This Indonesian constitution also derives from Pancasila, the state ideology that serves as the basis for all sources of law in Indonesia.

Pancasila, as the foundation of the state, embodies noble values that must be applied in the life of the nation and the state. Pancasila is not only the ideology that underpins the Indonesian state but also the fundamental norm (*staatsfundamentalnorm*) and highest norm (*grundnorm*) that governs all aspects of life in Indonesia. Pancasila encompasses five principles containing important values that must be applied in social and governmental life, namely: Belief in One God, Just and Civilised Humanity, Indonesian Unity, Democracy Guided by the Wisdom of Deliberation/Representation, and Social Justice for all Indonesian people. The values contained in Pancasila are highly relevant to the life of the nation and state in Indonesia, as they prioritise justice, humanity, and national unity.⁵⁵

The 1945 Constitution of the Republic of Indonesia, as Indonesia's constitution, has a clear objective: to establish an independent, sovereign state and to protect all Indonesian people. As the legal basis of the state, the 1945 Constitution of the Republic of Indonesia serves as a guideline for running the government at both the central and regional levels, as well as for regulating the relationship between the state and its citizens. One of the main objectives stated in the fourth paragraph of the 1945 Constitution of the Republic of Indonesia is to create general welfare, educate the nation, and realise social justice for all Indonesian people. In achieving these objectives, the Indonesian constitution regulates the basic rights of citizens, the obligations of the state, and the division of power between state institutions that mutually supervise and balance each other. Thus, the Indonesian constitution plays a very important role in maintaining political, social, and economic stability in Indonesia.

In addition, in governing and regulating the life of the nation and state, the Indonesian constitution must also uphold principles of justice in line with the values of Indonesian society. One principle that is highly relevant to the life of the nation and state in Indonesia is the concept of restorative justice. Restorative justice is a legal concept that prioritises resolving problems in ways that restore relationships among the parties involved in a violation, whether between the

⁵⁵ Joko Setiyono and Aga Natalis, 'Universal Values of Pancasila in Managing the Crime of Terrorism', *Cosmopolitan Civil Societies: An Interdisciplinary Journal* 15, no. 2 (2023): 48–63, <https://doi.org/10.5130/ccs.v15.i2.8084>.

perpetrator and the victim or between the perpetrator and the community. Restorative justice focuses on repairing social relationships disrupted by criminal acts, enabling all parties involved to reach a mutually beneficial agreement and restore peace in the community.

The concept of restorative justice already exists in Indonesia's legal culture, especially in the customary laws applied by Indonesian communities.⁵⁶ Indonesian customary law has long prioritised the principles of fair and balanced dispute resolution, involving all parties to the conflict. In many cases, indigenous communities in Indonesia prefer to resolve problems through deliberation or dialogue, rather than by punishing the party deemed guilty. The dispute resolution process carried out through deliberation prioritises the balance between the rights of the victim and the rights of the perpetrator. It seeks solutions that restore social relations disrupted by the act. Thus, the concept of restorative justice is ingrained in Indonesian legal culture and is part of the living law system that governs society.

Therefore, the application of restorative justice in Indonesia should not conflict with the applicable constitution, namely the 1945 Constitution of the Republic of Indonesia and Pancasila. On the contrary, the application of restorative justice aligns with the principles contained in Pancasila, particularly the second principle, which prioritises just and civilised humanity, and the fifth principle, which emphasises the importance of social justice for all Indonesian people. The application of restorative justice within the Indonesian judicial system can serve as a viable alternative for resolving various disputes and conflicts that arise in society, especially those related to minor crimes or less serious violations of the law. The concept of restorative justice prioritises the restoration of the relationship between the perpetrator and the victim, as well as providing the perpetrator with an opportunity to improve themselves and take responsibility for their actions.

In Indonesia, restorative justice can also be applied in various cases, including those involving indigenous communities, domestic violence, and other legal violations. In these cases, restorative justice can offer a more effective and humane solution to problems, as it not only demands that perpetrators be punished but also provides an opportunity for reconciliation and the correction of mistakes. Thus, restorative justice becomes a fairer and more humane option because it focuses not only on punishment but also on restoring social relationships damaged by the act.

However, for restorative justice to run smoothly, harmonisation between state law and customary law is needed, as well as the full support of judicial institutions and the community.

⁵⁶ Rahmi Dwi Sutanti et al., 'Customary Law as an Instrument of Restorative Justice: An Alternative Approach to Criminal Conflict Resolution in Plural Legal Systems', *Clio. Revista de Historia, Ciencias Humanas y Pensamiento Crítico*, no. 10 (2025): 1348–81, <https://doi.org/10.5281/zenodo.15453907>.

The government must formulate regulations that support the implementation of restorative justice in Indonesia, so that this concept can be accepted and properly implemented by all parties. Additionally, education on the concept of restorative justice should be provided to the community to ensure a better understanding of its benefits when applied to resolve disputes or conflicts. Thus, restorative justice can become part of a fair, transparent, and socially oriented judicial system, in line with the spirit of the 1945 Constitution of the Republic of Indonesia and Pancasila.

As a country based on Pancasila, Indonesia has great potential to develop a judicial system that prioritises social justice and humanity. The application of restorative justice, in line with the values of Pancasila and Indonesian customary law, can strengthen Indonesia's legal system and foster a more peaceful, harmonious society. The application of restorative justice will not only provide justice for victims and perpetrators but also promote healing and reconciliation. Moreover, it will help strengthen the unity and integrity of the Indonesian nation, which is the main objective of the Indonesian state. Thus, restorative justice can be an important part of efforts to realise the ideals of Indonesian independence, namely creating general welfare, educating the nation, and achieving social justice for all Indonesian people.

E. Constitutional Analysis of the Six Principles of Restorative Justice from a Human Rights Perspective in Indonesia

The six principles that form the basis of the concept of restorative justice in the mandate of the Constitution and Human Rights in Indonesia cannot be understood separately from the philosophical and juridical framework of the state. Restorative justice is not merely a technique for resolving criminal cases, but a normative approach that places humans, social relations, and restoration at the core of the legal system.⁵⁷ In the Indonesian context, this foundation is rooted in the 1945 Constitution of the Republic of Indonesia and Pancasila as the basis of the state. Both affirm that the law not only serves to maintain order, but also to protect human dignity, preserve unity, and realise social justice. Therefore, the six principles of restorative justice must be analysed as a coherent system of values that aligns with the constitutional mandate.

The first principle concerning the nature of crime demands a change in perspective towards criminal acts. In the retributive paradigm, crime is understood as a violation against the state, so that the state becomes the aggrieved party and has the legitimacy to punish. Restorative justice

⁵⁷ Kirkwood, 'A Practice Framework for Restorative Justice'; Barb Toews, 'Prioritizing Accountability and Reparations: Restorative Justice Design and Infrastructure', in *The Palgrave Handbook of Prison Design*, ed. Dominique Moran et al. (Springer International Publishing, 2023), https://doi.org/10.1007/978-3-031-11972-9_25.

offers a different analysis, framing crime as a violation of human relationships. Criminal acts are seen as a social process in which a person damages the personal and communal relationships that underpin social life. Thus, it is not only written legal norms that are destroyed, but also trust, a sense of security, and social cohesion. This approach has a strong foundation in the Pancasila value structure, which views humans as beings of divine nature and dignity. Violating the law means denying the values of Godliness, Humanity, and Unity that bind communal life. From a constitutional perspective, the 1945 Constitution of the Republic of Indonesia guarantees the right to security and self-protection, so that every crime must be understood as a violation of these rights. By understanding crime as a rupture in social relations, the legal response must not be limited to retribution, but must be directed towards repairing the damaged relationship.

The second principle regarding the purpose of justice emphasises restoration as the core of the restorative system. If crime is understood as a breakdown in relationships, then the purpose of justice is to repair that damage and restore social balance. In the retributive system, the success of justice is often measured by the severity of the punishment imposed. In a restorative system, success is measured by the extent to which the victim's losses are repaired, the perpetrator is held accountable, and social relationships are restored. This analysis is relevant to the constitutional mandate that emphasises the protection of the entire nation and the promotion of general welfare. Justice cannot be reduced to punishment, because punishment without restoration does not always resolve social conflicts. Pancasila, the foundation of the state, emphasises social justice that encompasses moral and relational aspects. Therefore, the goal of restorative justice is to restore conditions as close to normal as possible before the crime occurred, both in material and psychological dimensions. This process requires a dialogical, participatory, and proportionate approach, so that justice becomes a means of social reconstruction, not merely a legitimisation of state power.

The third principle regarding the role of victims places victims as the main subjects in the justice process. In conventional judicial practice, victims are often marginalised because the system focuses on proving the perpetrator's guilt. Victims are present to strengthen the prosecution's case, not to obtain comprehensive recovery. Restorative justice corrects this imbalance by providing space for victims' active participation. Victim recovery can only occur if they have the opportunity to express their experiences, needs, and expectations freely. This process includes providing transparent information, opportunities for dialogue with perpetrators in a safe forum, and fair restitution or compensation. In addition to material aspects, recovery also touches on psychological dimensions such as reducing fear, increasing a sense of security, and

reconstructing the meaning of traumatic experiences. From a human rights perspective, this approach aligns with the principle of recognising and protecting human dignity. The 1945 Constitution of the Republic of Indonesia guarantees the right to self-protection and fair legal certainty. Therefore, a legal system that fails to address victims' needs does not fully comply with the constitutional mandate. By actively involving victims, the justice process becomes more substantive and responsive to the reality of the suffering experienced.

The fourth principle regarding the role of perpetrators holds that restorative justice does not view perpetrators solely as objects of punishment, but as individuals capable of taking responsibility and changing. This approach does not mean ignoring wrongdoing, but rather emphasising responsibility more profoundly. In the retributive system, responsibility is often understood as serving a sentence. In a restorative system, responsibility means acknowledging mistakes, understanding the impact of one's actions, and actively repairing the harm caused.⁵⁸ This process may include mediated face-to-face meetings with victims, drafting restoration agreements, and implementing restitution or relevant community service. In addition, perpetrators are encouraged to reflect on the factors that influenced their behaviour and to seek constructive solutions to prevent recurrence. This analysis aligns with the principles of fair and civilised humanity in Pancasila. The state has an obligation to treat everyone as subjects of law with dignity, while also enforcing violated norms. By providing offenders with the opportunity to reform, the legal system not only punishes but also nurtures and prevents recidivism.

The fifth principle regarding the role of society emphasises that crime and its restoration have a collective dimension. Society is not merely the backdrop for crime, but also an important actor in the restoration process. Within a restorative framework, the community can provide a space for dialogue, support the reintegration of perpetrators, and help victims obtain social support. Community involvement reflects the values of deliberation and cooperation that are part of Indonesian legal culture. Pancasila emphasises unity and democracy, which means that conflict resolution ideally involves collective participation. This analysis shows that restorative justice is not a foreign concept but aligns with social practices that have long developed across various indigenous communities in Indonesia. The community also plays a role in prevention by strengthening social norms and values education. Thus, justice is not only produced by formal institutions, but also by healthy social dynamics.

⁵⁸ Jeffrey M. Pavlacic et al., 'Advocating for the Use of Restorative Justice Practices: Examining the Overlap between Restorative Justice and Behavior Analysis', *Behavior Analysis in Practice* 15, no. 4 (2022): 1237–46, <https://doi.org/10.1007/s40617-021-00632-1>.

The sixth principle regarding the role of the formal criminal justice system indicates that restorative justice must be integrated into a legal framework that guarantees certainty and protection of rights. The justice system has a responsibility to ensure that every restorative process takes place without coercion, respects the rights of victims and perpetrators, and is monitored in an accountable manner. Restorative justice should not be a tool to pressure victims into forgiving, nor should it be a tool for perpetrators to avoid responsibility. Therefore, the principles of voluntariness, transparency, and proportionality must be upheld. The justice system also needs to apply the least restrictive interventions before imposing prison sentences. This approach is in line with developments in modern criminal law that emphasise the principle of *ultimum remedium*, namely imprisonment as a last resort.⁵⁹ In a constitutional context, the state has an obligation to protect the human rights of every citizen, including the right to liberty and humane treatment. The integration of restorative justice into the formal system can strengthen the law's legitimacy by demonstrating a commitment to substantive justice.

Overall, these six principles form a coherent analytical framework. The nature of crime as a violation of relationships demands a restorative approach to justice. This goal can only be achieved through the active participation of victims and the accountability of perpetrators, with the support of the community and oversight by the formal justice system. This framework reflects the synergy between the philosophical values of Pancasila and the constitutional norms of the 1945 Constitution of the Republic of Indonesia. Restorative justice does not negate the function of punishment but places it in a broader context: social reconstruction and the protection of human dignity. In practice, applying these principles requires clear regulations, adequate resources, and a paradigm shift among law enforcement officials. However, conceptually, restorative justice offers a model that is more in line with Indonesia's social character, which emphasises togetherness and balance.

With a systematic, constitutionally based approach, restorative justice has the potential to strengthen the national legal system. It presents a model for resolving cases that not only enforces norms but also repairs damaged social relations. In the long term, applying these six principles can increase public trust in the law, reduce recidivism, and strengthen social cohesion. Therefore, restorative justice is not merely an alternative, but an integral part of efforts to realise justice that

⁵⁹ Kuku Subyakto, 'Azas Ultimum Remedium Ataupun Azas Primum Remedium Yang Dianut Dalam Penegakan Hukum Pidana Pada Tindak Pidana Lingkungan Hidup Pada Uu Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup', *Jurnal Pembaharuan Hukum* 2, no. 2 (2015): 201–13; Lies Sulistiani and Efa Fakhriah, 'The Effect of Extra Judicial Settlement in Criminal Cases Based on the Principle of Ultimum Remedium', *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 10, no. 3 (2023): 300–320, <https://doi.org/10.22304/pjih.v10n3.a1>.

is humane, proportional, and in line with the mandate of the Constitution and Human Rights in Indonesia.

The Constitution itself is like the spirit of a country or nation. When a rule or concept is applied to regulate a country's order without being based on a Constitution agreed upon by an independent and sovereign nation and state, chaos will ensue, potentially undermining that country's stability. Restorative justice, as mentioned earlier, is based on six principles that ensure it aligns with human rights and the noble ideals of the nation and state, as stated in the Constitution of the Republic of Indonesia, which respects the noble values of Divinity, Humanity, Unity, and Justice, all reflected in the Indonesian Constitution. However, more specifically, the restorative justice to be integrated into existing laws and regulations in Indonesia must be adapted to current regulatory conditions, law enforcement agencies, and society. Thus, restorative justice can achieve its objectives and fulfil its functions to the fullest extent possible within the context of legal justice, legal certainty, and legal benefits amidst the chaotic laws that exist in society. Therefore, this concept is expected to be quickly integrated into Indonesian society and replace outdated concepts that may no longer be relevant.

In resolving criminal cases or violations through the concept of restorative justice, it is important to note that justice must arise from standards and processes that foster mutual respect among the parties involved, thereby giving the process meaning and purpose. True restorative justice must be applied without violating human rights, without discrimination based on race, ethnicity, religion, tribe, or interracial groups, in accordance with the meaning of the Constitution, which was born and lives in Indonesia. For humans not to view laws or regulations merely as products of human thought, these laws must be seen more broadly as relevant to noble values or the foundations of citizenship, capable of realising a civilised sense of justice. This is because the function of law, according to the existing literary concept, is to protect humans, and restorative justice has the task of seeking balance in the social order, ensuring its objectives are achieved by considering legal justice (*gerechtigheit*), legal certainty (*rechtssicherheit*), and legal utility (*zweckmassigkeit*).

F. Conclusion

Restorative justice in Indonesia has become an important evolutionary step in the country's legal system, now widely accepted as an alternative, or even a complement, to more traditional approaches to criminal law. Restorative justice emphasises the principles of restoring losses, reconciliation, and social harmony, rather than focusing solely on punishing perpetrators of crime.

This approach, which is regulated in various legal provisions such as Attorney General Regulation No. 15 of 2020, Police Chief Regulation No. 8 of 2021, and further in Law No. 1 of 2023 concerning the Indonesian Criminal Code, represents a major shift in the philosophy of the country's legal system, which focuses on restoration rather than retribution.

One reason restorative justice is considered relevant and acceptable in Indonesia is that its principles align closely with the basic values of Pancasila and the 1945 Constitution. Pancasila, as the foundation of the state, teaches the importance of unity, justice, and fair and civilised humanity. This concept is also reflected in the 1945 Constitution, which emphasises human rights, equality before the law, and social justice for all Indonesian people. Therefore, the application of restorative justice in Indonesia is not merely a forced modern innovation, but rather a reutilisation of values already present in Indonesian culture and in the more traditional legal system rooted in local wisdom, namely customary justice.

For a long time, customary law in Indonesia has prioritised the principles of peace and reconciliation in resolving disputes and conflicts. Customary law does not focus solely on punishment as retribution, but rather on restoring relationships between disputing parties through mediation and deliberation. In practice, the parties to the conflict are expected to reach a mutually beneficial agreement and to restore the losses incurred. This concept of justice based on restoration is now being rediscovered in the Indonesian legal system through the application of restorative justice, which allows perpetrators and victims to engage in dialogue and reach a more peaceful resolution, rather than simply imposing punishment.

The presence of restorative justice in Indonesian law provides space for law enforcement officials, who were previously more accustomed to a retributive criminal law approach that emphasised revenge, to consider more humane alternatives for resolution. Law enforcement officials now have the opportunity to promote reconciliation between perpetrators and victims, focusing on restoration rather than punishment. For example, in cases of minor offences or crimes that do not significantly harm society, restorative justice provides opportunities for perpetrators to make amends through rehabilitation programmes or restitution to victims, thereby repairing the social damage caused.

The importance of implementing restorative justice is not limited to its impact on perpetrators and victims, but also on society at large. By repairing social relationships damaged by crime and providing opportunities for perpetrators to express remorse and correct their mistakes, restorative justice helps strengthen social cohesion. Communities that may have previously been divided or felt threatened by crime can now reunite in a more peaceful and

harmonious atmosphere. This approach focuses not only on reducing crime rates but also on restoring harmony in social life.

Harmonising the concept of restorative justice with the principles contained in the Constitution and Pancasila is crucial to ensuring that its application is not merely a trend, but also in line with the basic values that underpin the state. The six main principles that underpin this harmonisation include the nature of crimes that can be restored, the goal of justice focused on restoration, and the roles of victims, perpetrators, communities, and the formal criminal justice system. These principles ensure that restorative justice not only considers the rights of victims and perpetrators but also upholds human rights principles and does not conflict with the ideals contained in the Constitution.

The implementation of restorative justice in Indonesia is not only a step forward for the criminal justice system but also brings the nation closer to the humanistic values contained in its philosophy of life. It paves the way for a legal system that not only demands accountability through punishment but also seeks to heal the wounds caused by crime. Therefore, restorative justice can be seen as a step relevant to the socio-cultural context and conditions of Indonesia's diverse society, which is based on values of social harmony. With this approach, Indonesia can develop a legal system that is not only culturally relevant but also robust in upholding human justice, restoring relationships between parties, and maintaining social balance.

On the other hand, the main challenge in implementing restorative justice is ensuring that these principles are applied fairly and do not create disparities across groups. Some parties may feel that restorative justice only benefits perpetrators, while victims may feel that they are not receiving enough justice. Therefore, there needs to be strict supervision and a transparent system to ensure that this process truly considers the interests of both parties and does not sacrifice either one.

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