



Progressive Law Perspective: Analysis of Restorative Justice in National Criminal Code

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ABSTRACT

Progressive law demands more open-mindedness to the possibility of alternative solutions in solving legal problems. In this case, the application of restorative justice is expected to have a positive impact on justice, not only in the formal legal context, but also in a broader social context. The purpose of this paper is to analyze the changes to criminal law in Law Number 1 of 2023 (later referred to as the National Criminal Law). How the application of restorative justice in the National Criminal Law is viewed from the perspective of progressive law. The method used is descriptive-normative, by collecting normative legal data, such as laws or regulations, to identify and understand its application in practice. The results show that Restorative justice offers a more humanist approach in resolving criminal cases, which focuses not only on punishment, but also on restoring the relationship between the perpetrator, the victim, and the community. Articles in the National Criminal Law indicate the existence of restorative justice in Article 54, Article 132 Paragraph 1 Letter g, Article 82, Articles 76, 77, and 80 (Reason for Termination of Prosecution), 132 Paragraph 1 Letters d and e. Restorative Justice in the National Criminal Law with a progressive legal approach provides opportunities for non-criminal settlements (diversion), recognition of victims, restorative justice, settlement with a substantive justice approach, alternative criminal sanctions. Through the application of restorative justice, the Indonesian criminal justice system has the potential to focus more on recovery and rehabilitation, reduce the burden on the courts, and support the social reintegration of offenders, which will create a more harmonious and just society.

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1. Introduction

The amendment of criminal law in Indonesia, particularly through the enactment of Law Number 1 Year 2023 on the Criminal Code (KUHP) or can be termed as the National Criminal Law⁵, is an important milestone in national legal reform. The Criminal Code, which

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⁵ Purwanda, S., Jabar, N. A. B. A., Rado, R. H., & Miqat, N. (2024). The Fate of Indigenous Peoples' Rights Recognition After the Enactment of the National Criminal Code. *IJCLS (Indonesian Journal of Criminal Law Studies)*, 9(2). <https://doi.org/10.15294/ijcls.v9i2.50321>

was previously a Dutch colonial legacy⁶, is now replaced with a legal system that is more contextual to the needs of Indonesian society. One of the main innovations in this National Criminal Law is the application of restorative justice principles which aims to strengthen a more humanist and recovery-oriented legal approach.⁷

However, the application of restorative justice in Indonesia also raises various debates among academics, legal practitioners⁸, and policy makers⁹. Some argue that this approach brings a breath of fresh air to the criminal justice system¹⁰ by prioritizing dispute resolution through dialogue, mediation, and social restoration. This approach is considered capable of reducing the overpopulation of correctional institutions, accelerating case resolution, and providing a more substantial sense of justice to victims.¹¹

On the other hand, criticism of restorative justice is also significant. Some academics have questioned the effectiveness of this principle, especially in cases of serious crimes such as murder, corruption, or sexual crimes. It is feared that the orientation towards mediation and restoration may weaken the deterrent effect, obscure the principle of retributive justice¹², and potentially provide room for impunity for perpetrators of serious crimes. In addition, there are concerns regarding the inequality of bargaining power between victims and perpetrators, especially in cases involving power imbalances or social pressure.¹³

The importance of a progressive legal approach in the context of changes to the Criminal Code is becoming increasingly relevant.¹⁴ Progressive law¹⁵, proclaimed by several legal experts, emphasizes the application of law that is more adaptive and responsive to the needs of society and focuses on recovery and rehabilitation.¹⁶ This law does not only focus on the punishment aspect, but also on problem solving in a more constructive and humanist manner. Therefore, the progressive law approach is a relevant basis for analysing changes in the Criminal Code, particularly in relation to the application of restorative justice principles.

Restorative justice as a concept in the criminal justice system offers an alternative to the retributive or retaliatory legal model¹⁷. This approach emphasizes the restoration of

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- ⁶ Fillah, M. A. (2023). Politik Hukum dalam Pembaruan Kitab Undang-Undang Hukum Pidana (KUHP) di Indonesia. *Varia Hukum*, 5(1), 52-64. <https://doi.org/10.15575/vh.v5i1.23230>
- ⁷ Mubarak, N. (2024). Sejarah Perkembangan Hukum Pidana di Indonesia: Menyongsong Kehadiran KUHP 2023 dengan Memahami dari Aspek Kesejarahan. *Al-Qanun: Jurnal Pemikiran dan Pembaharuan Hukum Islam*, 27(1), 15-31. <https://doi.org/10.15642/alqanun.2024.27.1.15-31>
- ⁸ Reeves, E. (2020). Family violence, protection orders and systems abuse: views of legal practitioners. *Current issues in criminal justice*, 32(1), 91-110. <https://doi.org/10.1080/10345329.2019.1665816>
- ⁹ Janssen, M., & Helbig, N. (2018). Innovating and changing the policy-cycle: Policy-makers be prepared!. *Government Information Quarterly*, 35(4), S99-S105. <https://doi.org/10.1016/j.giq.2015.11.009>
- ¹⁰ Purwanda, S., Bakhtiar, H. S., Miqat, N., Nur, R., & Patila, M. (2022). Formal Procedure Versus Victim's Interest: Antinomy of Handling Sexual Violence Cases in East Luwu. *Jurnal Hukum Volkgeist*, 6(2), 116-122. <https://doi.org/10.35326/volkgeist.v6i2.2041>
- ¹¹ Nafid, Y., Haidass, M. A., & Joraiche, S. (2024). The Role of Criminal Alternatives as a Future Challenge in Achieving Security. *International Journal of Criminal Justice Sciences*, 19(1), 552-586. <https://doi.org/10.5281/zenodo.19130>
- ¹² Carlsmith, K. M., & Darley, J. M. (2008). Psychological aspects of retributive justice. *Advances in experimental social psychology*, 40, 193-236. [https://doi.org/10.1016/S0065-2601\(07\)00004-4](https://doi.org/10.1016/S0065-2601(07)00004-4)
- ¹³ Afifah, H. (2024). Keadilan Restoratif dalam Dinamika Pembaruan Hukum Pidana Indonesia. *Jurnal Syntax Admiration*, 5(8), 3007-3015. <https://doi.org/10.46799/jsa.v5i8.1392>
- ¹⁴ Wijaya, I. M. O. (2022). Restorative Justice dalam Tinjauan Hukum Progresif: Eksistensi dan Implikasi. *Indonesia Berdaya*, 3(3), 707-718. <https://doi.org/10.47679/ib.2022297>
- ¹⁵ Abdurrahman, H., Hamzani, A. I., Sudewo, F. A., Aravik, H., & Khasanah, N. (2021). Application of Ultimum Remedium Principles in Progressive Law Perspective. *International Journal of Criminology and Sociology*, 10, 1012-1022. <https://doi.org/10.6000/1929-4409.2021.10.119>
- ¹⁶ Agusta, D., Madjid, A., & Aprilianda, N. (2025). Reforming Indonesian Criminal Law: Integrating Supervision, Punishment, and Rehabilitation for Restorative Justice. *International Journal of Islamic Education, Research and Multiculturalism (IJIERM)*, 7(1), 54-68. <https://doi.org/10.47006/ijierm.v7i1.434>
- ¹⁷ Wenzel, M., Okimoto, T. G., Feather, N. T., & Platow, M. J. (2008). Retributive and restorative justice. *Law and human behavior*, 32, 375-389. <https://doi.org/10.1007/s10979-007-9116-6>

relationships between perpetrators, victims, and the community through dialogue, mediation, and efforts to repair the losses suffered by victims.¹⁸ By prioritizing solutions that involve all affected parties, restorative justice is expected to bring long-term benefits to the community, improve the cycle of violence, and reduce social stigma against criminal offenders. Therefore, the application of restorative justice in the National Criminal Law needs to be understood and studied in depth, especially from the perspective of progressive law.

The purpose of this analysis is to examine how the application of restorative justice in the National Criminal Law can be seen from the perspective of progressive law. Progressive law demands a more open mind towards the possibility of alternative solutions in solving legal problems. In this case, the application of restorative justice is expected to have a positive impact on justice¹⁹, not only in the formal legal context, but also in a broader social context. Therefore, this analysis is important to evaluate the extent to which the National Criminal Law accommodates restorative principles in the judicial process.

One aspect that is the focus of this study is the extent to which restorative justice can be applied to various types of criminal offenses, both minor and more serious. The application of this principle must be able to distinguish between cases that allow for mediation and resolution through dialogue, and cases that require more strict and restrictive handling. This is a challenge for the Indonesian legal system in formulating rules that can bridge the need to maintain public order with efforts to restore social relations damaged by criminal acts.

In addition, the amendment to the Criminal Code also leaves a number of questions related to the sustainability and effectiveness of the application of restorative justice in practice. Although on paper the concept of restorative justice has been included in the law, its implementation in criminal justice practice requires strong support from various parties, including law enforcement officials, judicial institutions, and the community. In this context, a progressive legal perspective that encourages flexibility and innovation²⁰ in the application of law becomes very important to ensure that the principle of restorative justice does not only become a theory, but can also be applied effectively in various cases.

With the amendment of the Criminal Code and the wider application of the concept of restorative justice, it is hoped that a more humane and recovery-oriented justice system²¹ will be created. The application of progressive law in this context provides an opportunity for the state to be more responsive to changes in social and legal dynamics that occur. Therefore, this study is not only important to understand the implementation of restorative justice in the National Criminal Law, but also to see how Indonesian law can develop to be more progressive and adaptive to the increasingly complex needs of society.

2. Method

This research uses descriptive normative method²², which is an approach that aims to

¹⁸ Afifah, H. (2024). *Op.Cit.*

¹⁹ Braithwaite, J. (1996). Restorative justice and a better future. *The Dalhousie Review*, 76(1), 9-32. <http://hdl.handle.net/10222/63177>

²⁰ Gann, D. M., Wang, Y., & Hawkins, R. (1998). Do regulations encourage innovation?-the case of energy efficiency in housing. *Building Research & Information*, 26(5), 280-296. <https://doi.org/10.1080/096132198369760>

²¹ McKenna, B., Oakes, J., Fourniotis, N., Toomey, N., & Furness, T. (2016). Recovery-oriented mental health practice in a community care unit: An exploratory study. *Journal of Forensic Nursing*, 12(4), 167-175. <https://doi.org/10.1097/JFN.0000000000000127>

²² Lewin, A. Y., & Shakun, M. F. (1976). Situational Normativism: A descriptive-normative approach to decision making and policy sciences. *Policy Sciences*, 7(1), 1-10. <https://doi.org/10.1007/BF00146017>

describe and analyse legal norms based²³ on legislation, legal doctrine, and court decisions. Researchers collected normative secondary legal data²⁴, such as the text of laws, government regulations, academic literature, and jurisprudence, to identify and understand the application of restorative justice in the Indonesian legal system.

The descriptive normative method was chosen by considering the characteristics of this study which focuses on theoretical and conceptual analysis²⁵ of regulative changes in the National Criminal Law, rather than testing cause-and-effect relationships through experiments or field studies. Therefore, the main focus is on the interpretation and interpretation of the applicable legal norms.

In order for this study to remain replicable and verifiable by other researchers, it relies on clearly documented legal sources and transparent analytical principles. The researcher also used a complementary qualitative analysis approach (library research)²⁶, by reviewing previous studies on the application of restorative justice in the Indonesian legal context. This allows other researchers to replicate the analytical process by referring to the same legal sources and theoretical framework, thus maintaining aspects of academic validity.

3. Analysis of Discussion Results

3.1. Restorative Justice Concept

According to Bagir Manan in his writing on the substance of restorative justice, this approach focuses on building joint participation between perpetrators, victims, and community groups in resolving an event or criminal offense. In this case, the perpetrator, victim, and community are positioned as parties who have an active and equal role, working together to find a solution that is considered fair for all parties, known as a win-win solution.²⁷

Thus, as explained by Bagir Manan, restorative justice does not only change the perspective on criminal offenses, but also involves all parties related to offenders, victims, and the community in a more collaborative and fair resolution process. This approach, which emphasizes active participation and mutually beneficial solutions, provides a more humane alternative to the conventional criminal justice system²⁸ that often focuses on punishment alone.

Restorative justice is a way of resolving criminal cases that differs from the approach used in the conventional criminal justice system. This approach emphasizes the importance of direct involvement of perpetrators, victims, and the community in the process of resolving criminal cases. Handling criminal cases using the principles of restorative justice provides a different perspective in understanding and overcoming criminal acts.²⁹ In the restorative

²³ Walzl, B., Bonczek, G., Scepankova, E., & Matthes, F. (2019). Semantic types of legal norms in German laws: classification and analysis using local linear explanations. *Artificial Intelligence and Law*, 27(1), 43-71. <https://doi.org/10.1007/s10506-018-9228-y>

²⁴ Purwanda, S., & Wulandari, A. S. R. (2023). Socio-Legal Studies: Methodical Implications of Legal Development in Indonesia. *Al-'Adl*, 16(2), 152-163. <http://dx.doi.org/10.31332/aladl.v16i2.6129>

²⁵ Rohman, M. M., Mu'minin, N., Masuud, M., & Elihami, E. (2024). Methodological Reasoning Finds Law Using Normative Studies (Theory, Approach and Analysis of Legal Materials). *MAQASIDI: Jurnal Syariah dan Hukum*, 204-221. <https://doi.org/10.47498/maqasidi.v4i2.3379>

²⁶ Jones, P., Bauder, J., & Engel, K. (2016). Mixed or complementary messages: making the most of unexpected assessment results. *College & Research Libraries*, 77(2), 197-211. <https://doi.org/10.5860/crl.77.2.197>

²⁷ Lazuardi, G. (2020). Pendekatan Restorative Justice Dalam Tindak Pelaku Penyebaran Hoaks. *Jurnal Kertha Semaya*, 8(9), 1301-1312. <https://doi.org/10.24843/KS.2020.v08.i09.p01>

²⁸ Richards, K. (2014). A promise and a possibility: the limitations of the traditional criminal justice system as an explanation for the emergence of restorative justice. *Restorative Justice*, 2(2), 124-141. <https://doi.org/10.5235/20504721.2.2.124>

²⁹ Sarbon, U. (2020). Required perspectives for investigation of crimes in the field of information technology and overcoming crime. *Review of law sciences*, (4), 81-84. <https://doi.org/10.24412/2181-1148-2020-4-81-84>

justice framework, the meaning of crime is basically similar to the view of criminal law in general, namely as a form of violation of individuals, society, and social relations.³⁰

Restorative justice is implemented in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which upholds the dignity of children. The application of restorative justice to the crime of theft by minors is a theory that is very interesting to study and research because in addition to discussing justice, restorative justice also makes a balanced justice system because it can provide protection and respect³¹ and interests between the victim and the perpetrator in conflict. Restorative justice does not merely apply decisions about who wins and who loses in an adversarial criminal justice system, the restorative justice process seeks to facilitate dialog between all parties affected by crime including victims, offenders, their supporters, and society as a whole. It involves a process whereby all parties at risk in a particular crime jointly seek to collectively resolve how to deal with the aftermath of the crime and its future implications.³²

The application of restorative justice in criminal justice, especially in the context of crimes involving children³³, provides a more humane and fairer³⁴ alternative. By involving perpetrators, victims, and the community in the resolution process, this approach does not only prioritize punishment, but also the restoration of relationships and social reintegration. The implementation of restorative justice in Law No. 11 of 2012 on the Juvenile Criminal Justice System is an important step in ensuring the protection of children's rights and prioritizing a rehabilitative approach. This approach provides an opportunity to reduce the negative impact for child offenders, while providing justice for victims, by creating a balance between the interests of all parties involved. Along with the development of understanding and application of this concept, it is expected that the criminal justice system in Indonesia can increasingly focus on recovery, prevention, and social reintegration, as well as prioritizing human values in every legal process undertaken.

In the restorative justice framework, the victim's perspective becomes the fundamental centre of attention. It is not only limited to providing justice in the form of compensation or apologies, but furthermore, restorative justice ensures that victims' voices are heard, their feelings are respected, and their needs are prioritized in the resolution process. Victims have the right to actively participate in determining the form of settlement, expressing the emotional, social, and economic impacts they have experienced, and demanding appropriate forms of reparation, both material and symbolic. Through engagement in a safe and structured dialogue process, victims can gain more meaningful psychological healing³⁵, something that is often overlooked in the conventional criminal justice system. From a progressive legal perspective, strengthening the position of victims is part of an effort to

³⁰ Rich, J. I., & Djaja, B. (2024). Penerapan Prinsip Restoratif Justice Terhadap Pertimbangan Hakim Dalam Putusan Lepas Dari Segala Tuntutan Hukum (Studi Kasus Putusan Nomor: 28/Pid. B/2022/PN. LBB). *Unes Law Review*, 6(4), 9803-9813. <https://doi.org/10.31933/unesrev.v6i4.1927>

³¹ Purwanda, S., Rado, R. H., Susanti, D. S., Zainuddin, A., & Syahril, M. A. F. LEGAL PROTECTION OF YEI PEOPLE'S KNOWLEDGE OF LOCAL MEDICINES AND MEDICINAL PLANTS FROM EXTINCTION. *Masalah-Masalah Hukum*, 53(3), 245-256. <https://doi.org/10.14710/mmh.53.3.2024.245-256>

³² Jankowitz, S. (2018). Intergroup struggles over victimhood in violent conflict: The victim-perpetrator paradigm. *International Review of Victimology*, 24(3), 259-271. <https://doi.org/10.1177/0269758017745617>

³³ Soraya, A., Purwanda, S., & Taufik, M. (2023). Perbandingan Pengaturan Hukum Dalam KUHP Lama dan Baru bagi Anak yang menjadi Korban Perdagangan Orang. *Dinamika Hukum*, 24(2), 250-257. <https://doi.org/10.35315/dh.v24i2.9551>

³⁴ Mustapa, D. I., Purwanda, S., & Ambarwati, A. (2023). Pemenuhan Hak Khusus bagi Narapidana Perempuan Hamil yang Menjalani Masa Tunggu Hukuman Mati Ditinjau dari Undang-Undang Nomor 1 Tahun 2023. *Dinamika Hukum*, 24(2), 258-265. <https://doi.org/10.35315/dh.v24i2.9552>

³⁵ Sun, F. K., Long, A., Chiang, C. Y., Yang, C. J., & Yao, Y. (2023). Four psychological processes navigated by patients during their journey of healing and recovering from depression: a grounded theory study. *Archives of Psychiatric Nursing*, 45, 36-43. <https://doi.org/10.1016/j.apnu.2023.04.017>

build a legal system that is more responsive to human needs, improve social relations, and correct the power imbalances that have occurred in formalistic legal practices.

The fundamental difference between the legal approach in the National Criminal Law and the restorative justice approach contained in the colonial Criminal Code lies in the focus and purpose of law enforcement which pays more attention to local values, Indonesian cultural diversity³⁶ and universal principles of human rights.³⁷ The restorative justice approach promoted by the National Criminal Law emphasizes on the recovery of losses experienced by victims and the reintegration of offenders into the community. This is done through a dialogue process between the offender, the victim, and the community to reach a mutual agreement, so that the main goal is justice that is more humane and prioritizes recovery. In contrast, under the previous Colonial Criminal Code, the emphasis was more on punishment as a form of retaliation against the perpetrator, without providing space for the restoration of relations between the victim and the perpetrator.

In addition, the National Criminal Code is designed to be more responsive to the development of modern crimes, such as cybercrime, terrorism, and technology-related crimes. The restorative justice approach allows for a more flexible and adaptive solution to these crimes, by prioritizing peaceful resolution and providing opportunities for offenders to be held accountable in a constructive manner. Meanwhile, the Colonial Criminal Code tends to only regulate traditional criminal offenses³⁸ and focuses more on repressive measures through the imposition of imprisonment or death penalty.

The restorative justice approach in the National Criminal Code also opens up the possibility of settlement through mediation and negotiation between the victim and the perpetrator, which allows an agreement to be reached without always having to go through a formal judicial process. This is different from the Colonial Criminal Code which tends to prioritize more formal and procedural legal mechanisms. Thus, the National Criminal Law is expected to create a criminal law system that is more inclusive and based on recovery, not just punishment. This approach, in addition to providing opportunities for offenders to change, also provides space for victims to feel more comprehensive justice.

The implementation of restorative justice in Indonesia has broad and significant benefits. First, this approach can reduce the workload of the courts by resolving minor cases³⁹ outside of the formal justice process, speeding up resolution and reducing the prison population, which is often ineffective in rehabilitation. Second, restorative justice gives victims the opportunity to actively participate in the dispute resolution process, allowing them to voice their feelings, get explanations from the offender, and receive compensation or restitution, which accelerates emotional recovery and provides a more tangible sense of justice. Third, this approach encourages offenders to take responsibility and make amends, and to understand the impact of their actions on victims and society, which can help with the rehabilitation and reintegration of offenders into society.⁴⁰

³⁶ Fatmawati, E. (2021). Strategies to grow a proud attitude towards Indonesian cultural diversity. *Linguistics and Culture Review*, 810-820. <https://doi.org/10.21744/lingcure.v5nS1.1465>

³⁷ Nafid, Y., Haidass, M. A., & Joraiche, S. (2024). *Op.Cit.*

³⁸ Gillespie, R. W. (1981). Sanctioning traditional crimes with fines: A comparative analysis. *International Journal of Comparative and Applied Criminal Justice*, 5(2), 197-204. <https://doi.org/10.1080/01924036.1981.9688730>

³⁹ Casper, G., & Posner, R. A. (1974). A Study of the Supreme Court's Caseload. *The Journal of Legal Studies*, 3(2), 339-375. <https://www.jstor.org/stable/724018>

⁴⁰ Karjono, A., Malau, P., & Ciptono, C. (2024). Penerapan Keadilan Restoratif Justice Dalam Hukum Pidana Berbasis Kearifan Lokal. *Jurnal Usm Law Review*, 7(2), 1035-1050. <https://doi.org/10.26623/julr.v7i2.9571>

3.2. Application of Progressive Law and Restorative Justice in National Criminal Law

The application of the concept of restorative justice in the Indonesian criminal justice system is getting serious attention, especially with the reform of the National Criminal Code. Restorative justice offers a more humanist approach in resolving criminal cases, which does not only focus on punishment, but also on restoring the relationship between the perpetrator, the victim, and the community. In this context, several articles in the National Criminal Law specifically regulate the procedures and requirements for the application of restorative justice, which aims to realize justice that is more inclusive and takes into account the interests of all parties. Next, let's take a deeper look at the elaboration of articles that regulate the application of restorative justice in the National Criminal Law.

Article 54 of the Criminal Code, specifically regulates the principle of restorative justice in the Indonesian criminal justice system. This article provides space for perpetrators of criminal offenses to settle their cases out of court, by involving the victim in the settlement process. Article 132 Paragraph 1 Letter "g" of the Criminal Code, this article regulates one of the reasons for termination of prosecution, namely when a case has been resolved through settlement outside the judicial process. This is included in the application of *afdoening buiten* process (out of court settlement)⁴¹. Article 82 of the Criminal Code, regulates the authority to prosecute which is terminated if the perpetrator voluntarily pays the maximum fine and costs incurred, after the prosecution has been initiated by the authority of the appointed official. Articles 76, 77 and 80 of the KUHP (grounds for discontinuation of prosecution)⁴², these articles set out several grounds for discontinuation of prosecution, which relate to restorative justice in terms of more flexible resolution and focus on the interests of the victim and the community: Article 76 (*nebis in idem*)⁴³, states that the same case cannot be processed again, if there is already a binding legal decision; Article 77 (death of suspect or defendant): stating that the prosecution is stopped if the suspect or defendant dies; and Article 80 (case expiration): stipulates that cases that have passed a certain time limit will be terminated because they can no longer be processed. Article 132 Paragraph 1 Letter "d" and "e" of the Criminal Code, regulates the causes of the loss of prosecutorial authority, one of which is related to settlements outside the judicial process regulated in the Law.

Overall, the application of the concept of restorative justice in the National Criminal Law provides a breath of fresh air for the Indonesian criminal justice system, by emphasizing on a more humane settlement of cases and focusing on restoring relationships between the parties involved. Through the existing articles, we can see an effort to prioritize justice that is more inclusive, by providing space for perpetrators, victims, and the community to jointly resolve problems peacefully. Although further evaluation and socialization of this concept is still needed, the steps taken in the National Criminal Law show a commitment to creating a fairer justice system that favours the common good⁴⁴, not just the imposition of punishment.

In this context, the expression "progressive law" is a concept that was first initiated by Satjipto Rahardjo. He departed from the premise that law should function as a protector of human interests. Rahardjo expressed his disappointment with the minimal participation of legal science in enlightening Indonesian society, as well as in overcoming various crises,

⁴¹ Handoko, P. (2020). Pembaharuan Hukum Acara Pidana Melalui Mekanisme Afdoening Buiten Process. *Al-Jinayah: Jurnal Hukum Pidana Islam*, 6(2), 317-343. <https://doi.org/10.15642/aj.2020.6.2.317-343>

⁴² Ahyad, R. The Essence of Discontinuing Prosecution by the Prosecutor's Office to Achieve Restorative Justice. *Ratio Legis Journal*, 3(1), 1083-1091. <http://dx.doi.org/10.30659/rli.3.1.821-830>

⁴³ Vervaele, J. A. (2013). Ne bis in idem: towards a transnational constitutional principle in the EU?. *Utrecht Law Review*, 211-229. <https://doi.org/10.18352/ulr.251>

⁴⁴ Deneulin, S., & Townsend, N. (2007). Public goods, global public goods and the common good. *International journal of social economics*, 34(1/2), 19-36. <https://doi.org/10.1108/03068290710723345>

including those that occurred in the legal sector itself. He offers a solution through the concept of law.⁴⁵

Progressive law in criminal law can actually be implemented through restorative justice policies. The existence of restorative justice is emphasized in the Regulation of the Attorney General of the Republic of Indonesia No. 15 of 2020. The existence of this regulation is actually a progressive step because as previously stated, criminal law always emphasizes the role of the state and its apparatus. In this case, minimizing the role of the state in criminal law is impossible but what is possible is to carry out “progressivity of law enforcement officials”, especially in the context of criminal law. The progressivity of law enforcement officials, especially in implementing restorative justice policies, can actually be optimized by referring to the enforceability of the legal system. The enforceability of a legal system in Lawrence M. Friedman’s view rests on three aspects, namely: legal substance, legal structure, and legal culture. In the case of this restorative justice policy, which tries to resolve criminal cases not always through the judicial process, a clear understanding and boundaries are needed regarding its application. In this case, in the author’s opinion, the Regulation of the Prosecutor’s Office of the Republic of Indonesia No. 15 of 2020 is sufficient to provide understanding and limits regarding the application of restorative justice.⁴⁶

In the application of restorative justice, law enforcement officers have a very crucial and more complex role than their role in the conventional criminal justice system. Police are tasked not only as investigators, but also as facilitators of dialogue between offenders, victims and communities⁴⁷. They must be able to objectively assess whether a case qualifies for restorative resolution, and promote solutions that prioritize healing over retribution.⁴⁸ Prosecutors have the role of overseeing that restorative justice processes are fair, voluntary and impartial, and ensuring that agreements are not contrary to the principles of justice and the public interest. Judges, in this context, are tasked with validating restorative agreements and providing oversight of their implementation, as well as intervening if there are indications of injustice or violations of victims’ rights. This transformation of the role of law enforcement officials reflects the principles of progressive law that demand a humanistic approach, flexible, and oriented towards solving substantive problems, not just applying formal procedures.

Aspects of the legal system as proposed by Lawrence M. Friedman in the context of restorative justice require three aspects, namely legal substance, legal structure, and legal culture. In the aspect of legal substance, the existence of the Regulation of the Attorney General of the Republic of Indonesia No. 15 of 2020 has actually become the basis for efforts to implement restorative justice as a praxis dimension of progressive law. The legal structure aspect certainly needs training and professional development for law enforcement⁴⁹ officials. In this case, progressive law deserves to be part of the curriculum in training and professional development for law enforcement officials. Furthermore, what needs to be built is a legal culture within law enforcement officials. This is actually the most difficult thing in the

⁴⁵ Sarumpaet, M. I., Harahap, H. H., & Lubis, F. (2024). Peran Politik Hukum dalam Pembangunan Hukum Progresif di Indonesia. *Innovative: Journal of Social Science Research*, 4(4), 3991-4003. <https://doi.org/10.31004/innovative.v4i4.12848>

⁴⁶ Wijaya, I. M. O. (2022). *Op.Cit.*

⁴⁷ Koss, M. P., Bachar, K. J., & Hopkins, C. Q. (2003). Restorative justice for sexual violence: Repairing victims, building community, and holding offenders accountable. *Annals of the New York Academy of Sciences*, 989(1), 384-396. <https://doi.org/10.1111/j.1749-6632.2003.tb07320.x>

⁴⁸ Strelan, P., & van Prooijen, J. W. (2013). Retribution and forgiveness: The healing effects of punishing for just deserts. *European Journal of Social Psychology*, 43(6), 544-553. <https://doi.org/10.1002/ejsp.1964>

⁴⁹ Sereni-Massinger, C., & Wood, N. (2016). Improving Law Enforcement Cross Cultural Competencies through Continued Education. *Journal of Education and Learning*, 5(2), 258-264. <https://eric.ed.gov/?id=EJ1097444>

development of a legal system. Without a good legal culture, the idea of restorative justice can become a disaster that distances the values of progressive law that is pro-people.⁵⁰

The integration of restorative justice in progressive law reflects a more humanist and rehabilitative approach to justice, in contrast to traditional approaches that focus more on punishment. In progressive law, the concept of restorative justice provides space for victims and offenders to engage in a more constructive problem-solving process, with the aim of restoring relationships and providing opportunities for offenders to take responsibility and improve themselves.

Restorative justice focuses on three main elements: the victim, the offender, and the community.⁵¹ The process invites all three to dialogue, find solutions, and reach mutual agreements that support the psychological and social recovery of victims, as well as provide opportunities for perpetrators to learn from mistakes and prevent the occurrence of violence or similar crimes in the future.⁵² In the context of progressive law, the integration of restorative justice also prioritizes the principles of social justice⁵³, including attention to inequalities that may exist in the legal system. This leads to a fairer and more proportional settlement, taking into account the socio-economic background of the perpetrator and victim, as well as the impact of their actions on the wider community.

The implementation of a progressive legal approach through restorative justice in the National Criminal Law, which was passed in 2023, demonstrates an attempt to adapt the legal system to the development of social values that prioritize recovery and rehabilitation, rather than just punishment.⁵⁴ This approach is very relevant to the philosophy of progressive law which aims to involve all parties in the process of resolving cases, especially victims and offenders, with the main objective of restoring social harmony. The following are some of the ways in which the National Criminal Law supports the progressive legal approach through restorative justice:

- 1) Providing opportunities for non-criminal settlement (diversion). One of the main features of the National Criminal Law is the concept of diversion, which is closely related to the principle of restorative justice. Diversion allows offenders, especially juveniles or low-intent offenders, to resolve issues amicably and without bringing the case to court, provided there is an agreement between the offender and victim, and guidance. This provides an opportunity to make amends without imprisonment which may cause more suffering for the offender.⁵⁵
- 2) Recognition of victims. In the National Criminal Law, the victim is not only seen as a party who suffers from the actions of the perpetrator, but also as an active party in the case resolution process. Through restorative justice, victims are given space to participate in the legal process, where they can obtain appropriate compensation or redress. This is a progressive step to ensure that redress for victims is not just

⁵⁰ Wijaya, I. M. O. (2022). *Op.Cit.*

⁵¹ Garbett, C. (2016). "And focused upon victims' needs": towards an assessment of the victim-friendly principles of restorative justice practice. *Contemporary justice review*, 19(3), 307-324. <https://doi.org/10.1080/10282580.2016.1185948>

⁵² Agustina, V., Tisnanta, H. S., & Muhtadi, M. (2024). Restorative Justice as an Effort to Fulfill the Constitutional Rights of Citizens: Restorative Justice sebagai Upaya Pemenuhan Hak Konstitusional Warga Negara. *Jurnal Konstitusi*, 21(2), 244-257. <https://doi.org/10.31078/jk2125>

⁵³ Crocker, D. (2016). Balancing justice goals: Restorative justice practitioners' views. *Contemporary justice review*, 19(4), 462-478. <https://doi.org/10.1080/10282580.2016.1226815>

⁵⁴ Zanubiya, S. S. A., & Syahuri, T. (2024). Aktualisasi Teori Hukum Progresif dari Aspek Hukum Pidana: Peninjauan Restorative Justice. *Journal Evidence Of Law*, 3(2), 164-171. <https://doi.org/10.59066/jel.v3i2.637>

⁵⁵ Tjhia, K. M., & Suparno, S. (2024). Dynamics of Non-Litigation Law Resolution in the Juvenile Criminal Justice System. *Edunty Kajian Ilmu Sosial dan Pendidikan*, 3(11), 1111-1128. <https://doi.org/10.57096/edunty.v3i11.332>

punishment of the perpetrator, but also reparation for the harm suffered by the victim.⁵⁶

- 3) Restorative justice, the concept of restorative justice in the National Criminal Law provides space for efforts to restore relations between offenders and victims. Offenders who are confronted with the legal system can go through programs such as mediation or direct apology to the victim, and try to restore the situation as before (as a form of relationship restoration). This approach is not only punitive, but also provides an opportunity for offenders to take responsibility for their actions, change their behaviour, and avoid recurrence.⁵⁷
- 4) Settlement with substantive justice approach, the National Criminal Law tries to focus less on punishment and more on achieving substantive justice. This can be seen in the application of restorative justice which focuses more on recovery rather than repressive punishment. This process involves dialogue between offenders, victims and the community, leading to a more constructive and reconciliation-oriented resolution.⁵⁸
- 5) Alternative criminal sanctions, in the National Criminal Law, there are efforts to provide alternative criminal sanctions that are not limited to imprisonment, such as the provision of social punishment or rehabilitation that is more in line with the principles of restorative justice. These alternative sanctions allow offenders to improve themselves through more productive means, such as social work or rehabilitation programs, which can contribute to the recovery of society as a whole.⁵⁹

Overall, the application of restorative justice principles in the National Criminal Law leads to a progressive legal approach, which assesses the law not only in terms of formalistic theory, but also in terms of humanity and social justice. This approach supports the integration between perpetrators, victims, and the community in solving legal problems in a more holistic and humane manner. The National Criminal Law tries to align the objectives of criminal law with the social and moral development of a more progressive society, where not only punishment is considered, but also the restoration of social relations, fair settlement, and behavioural improvement. Restorative justice is a bridge between rigid legal theory and practice that is more based on the interests of all parties, especially victims and offenders who have the potential to change.

Although the application of restorative justice in Criminal Code shows a progressive direction in Indonesia's criminal law reform, it is necessary to realize that there are potential biases that may affect the effectiveness of its implementation. This bias can come from both law enforcement officials and the community itself. Law enforcement officials have a central role in determining whether a case is appropriate to be resolved through restorative justice mechanisms.⁶⁰ However, the presence of personal biases, stereotypes, or particular interests may influence the decision. For example, officers may be more likely to offer restorative

⁵⁶ Bassiouni, M. C. (2006). International recognition of victims' rights. *Human Rights Law Review*, 6(2), 203-279. <https://doi.org/10.1093/hrlr/nhl009>

⁵⁷ Daly, K. (2016). What is restorative justice? Fresh answers to a vexed question. *Victims & offenders*, 11(1), 9-29. <https://doi.org/10.1080/15564886.2015.1107797>

⁵⁸ Wang, S. (2023). Exploring Paths for Substantive Settlement of Administrative Disputes: An Empirical Analysis Based on Practice in Weiyuan County, Sichuan Province. *Contemporary Social Sciences*, 8(6), 33-52. <https://doi.org/10.19873/j.cnki.2096-0212.2023.06.003>

⁵⁹ Kahan, D. M. (1996). What do alternative sanctions mean?. *The University of Chicago Law Review*, 63(2), 591-653. <https://www.jstor.org/stable/1600237>

⁶⁰ Menkel-Meadow, C. (2007). Restorative justice: What is it and does it work?. *Annu. Rev. Law Soc. Sci.*, 3(1), 161-187. <https://doi.org/10.1146/annurev.lawsocsci.2.081805.110005>

justice to perpetrators from certain socio-economic backgrounds, or ignore victims from marital groups.

In addition, a lack of training on restorative justice principles can inconsistent or even manipulative application, leading to new injustices. Society can also be a source of bias in application of restorative justice.⁶¹ Social norms, prejudice against certain types of certain types of crimes, or community pressure can affect the success of mediation and dialogue between offenders and victims. In some cases, victims may be pressured to accept an amicable settlement despite feeling personally dissatisfied or aggrieved. Power imbalances between perpetrators and victims, especially in the context of gender-based violence or domestic violence, can exacerbate injustice if there is no strict supervision.

In a progressive legal framework, the existence of this bias becomes a serious challenge. Progressive law emphasizes the importance of equality, substantive justice, and the protection of vulnerable groups. Therefore, a strong monitoring and evaluation mechanism is needed to identify and minimize potential bias in the application of restorative justice. This includes training of officials, active participation of civil society, as well as strengthening procedures that ensure that restorative processes are truly voluntary, transparent and fair to all parties.

4. Closing

The implementation of restorative justice in the National Criminal Law provides a more humanist approach with a focus on restoring relationships between offenders, victims and the community. This system allows for out-of-court settlements, takes into account the interests of all parties, and reduces the emphasis on repressive punishment. Through progressive law, the concept of restorative justice provides space for victims and offenders to engage in a more constructive problem-solving process, with the aim of restoring relationships and providing opportunities for offenders to take responsibility and improve themselves.

In order to develop restorative justice with a progressive legal approach, the researcher believes that there is a need for training for law enforcement officials, strengthening mediation infrastructure, and protecting victims' rights with a clear compensation system. Through the application of restorative justice with a progressive legal approach, the Indonesian criminal justice system has the potential to focus more on recovery and rehabilitation, reduce the burden on the courts, and support the social reintegration of offenders, which will create a more harmonious and just society.

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Conflict of Interest Statement:

The author declares that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

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