

Study of the Implementation Restoration Concept in the Criminal Justice System in Indonesia

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Abstract

Introduction: The Indonesian Criminal Justice System does not recognize concepts related to restoration, such as restorative justice, alternative conflict resolution, circular punishment, or *ishlah*. The idea of restoration is generally not recognized by the Criminal Procedure Code (KUHAP), which is based on the concept of legality.

Purposes of the Research: To study and discuss the actual existence of the function and impact of the concept of restoration (restorative justice, alternative dispute resolution, circular punishment, and circular punishment or *Ishlah*) in the development of the Indonesian Criminal Justice System.

Methods of the Research: This research uses a normative research methodology with a qualitative approach to investigate the concept of restoration and its consequences for various applicable laws and principles.

Results of the Research: The findings of this research show that the concepts of recovery and restoration, such as alternative dispute resolution and punishment, are concepts that prioritize the interests of the parties involved, especially the principles of win-win solutions and recovery. This has been used to resolve criminal cases that meet standards at both the investigation and prosecution levels as one way to resolve criminal cases. The application of these ideas in the Indonesian Criminal Justice System is a deviation from the basic principles of the Criminal Procedure Code, namely the principle of legality which must be observed at all times. It is recommended that methods for implementing restorative ideas be included in the Draft Criminal Procedure Code (RKUHAP). Some examples of this mechanism are alternative dispute resolution, circular punishment, and *ishlah*. Thus, the concept of restoration can be legally and formally recognized as a principle in the Indonesian Criminal Justice System when put into practice.

Keywords: Implementation; Restoration Concept; Indonesian Criminal Justice System.

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INTRODUCTION

Restorative justice is a reaction to crime that is victim-centered and offers opportunities for those most directly impacted by crime, including victims, perpetrators, their families, and communities, to be directly involved in responding to the harm caused by the offense. This type of response to crime can be described as victim-centered. Marshall's classic definition of restorative justice describes it as "a process in which all parties with an interest in a particular offense come together to resolve collectively how to deal with the consequences of that offense and its future implications."¹ Restorative justice is a process in

¹ Tony F. Marshall, "The Evolution of Restorative Justice in Britain," *European Journal on Criminal Policy and Research* 4, no. 4 (1996): 21-43, <https://doi.org/10.1007/BF02736712>.

which all parties with an interest in a particular offense come together. In its most basic form, the Indonesian criminal justice system is based on the idea that all actions must be legal. Therefore, it is very important that every criminal matter must be resolved through legal channels of the Criminal Justice System that have been established by law.

Additionally, the United Nations (UN) recently adopted an all-encompassing definition of restorative justice. According to this definition, restorative justice is "any process in which victims and perpetrators and, when appropriate, any individuals or members of the community affected by a crime participate together actively in the resolution of problems arising from the crime, generally with the help of a facilitator." This definition was recently adopted by the UN²By bringing victims and perpetrators together in a way that provides opportunities for victims to obtain explanations and reparations and for perpetrators of crimes to be accountable to victims and society, restorative justice is often seen as a way to humanize the legal system. Restorative justice refers to an ideology that prioritizes reconciliation and restoration for victims over punishment and vengeance against criminals; community and wholeness rather than isolation; forgiveness and compassion rather than negativity and violence; etc. Community justice is another name for the transition from a concept of justice that focuses on retribution or punishment³.

The United States and Australia are responsible for the development of one of the most widely used models of restorative justice, commonly referred to as the script model. This model has been distributed in various countries. Tomkins' psychological theory of emotion scripts (ASP) that he developed serves as the basis for this approach⁴. The Affect Systems Paradigm (ASP) is based on a biological understanding of the differences that exist between emotions, sensory systems and affect systems. This paradigm provides practitioners with the ability to carefully use a 'restorative healing blueprint' to produce restorative justice outcomes⁵. The primary method is known as scripting, and consists of each party being asked a series of carefully crafted and prepared questions. In a well-managed conference, biologically, undesirable negative feelings will inevitably begin to diminish as each individual is motivated to minimize negative influences. In a well-managed conference, biologically speaking, unwanted negative feelings are inevitable⁶As a result, facilitators will ask themselves, "What emotions create the need to forgive?" when planning the restorative process⁷in the context of this discussion, the desire to forgive stems from the desire to be free from the impact of destructive emotions such as anger, fear and humiliation.

The Indonesian Criminal Justice System does not recognize this fact in this case. Existence that is decisively independent of processes. This concept is only known in the realm of civil law. The idea of law enforcement that focuses only on legal certainty is no longer able to limit the number of crimes committed, and often weakens people's sense of justice. The evidence shows that cases involving frivolous matters are not worthy of trial in court. The same thing also happened to Samirin's grandmother who was found guilty of taking the remaining rubber tree sap from a plantation owned by PT Bridgestone. The Simalungun

² Yvon Dandurand and Curt Taylor Griffiths, *Handbook on Restorative Justice Programs* (UN, 2006).

³ John Braithwaite, "Setting Standards for Restorative Justice," *British Journal of Criminology* 42, no. 3 (2002): 563-77.

⁴ Silvan Tomkins, *Affect Imagery Consciousness: Volume I: The Positive Affects* (Springer publishing company, 1962).

⁵ William Hansberry et al., *The Psychology of Emotion in Restorative Practice: How Affect Script Psychology Explains How and Why Restorative Practice Works* (Jessica Kingsley Publishers, 2014).

⁶ Vernon C Kelly, "Interpersonal Caring, Social Discipline and a Blueprint for Restorative Healing," *The Psychology of Emotion in Restorative Practice: How Affect Script Psychology Explains How and Why Restorative Practice Works*, 2014, 54-83.

⁷ Kelly.

Court fined Samirin's grandmother Rp. 17,000 and sentenced him to prison for two months and four days for the crime he committed. There was also the case of Grandma Saulina, who was sentenced to one month and fourteen days in prison by the judge at the Balige District Court, the defendant was accused of cutting down a five inch diameter durian tree belonging to her brother to make a burial for his ancestor. Grandma Saulina's intention was to make a grave for her ancestors. Apart from that, there is also a situation involving Anjol Hasim and Jamilu Nani. They took a total of six bamboo sticks. The latest incident involved Grandma Minah, who was accused of stealing three cocoa bars from PT RSA, each worth Rp. 2,000⁸.

The previous scenarios are reviewed from a legal perspective. Because they have carried out legal orders, the entire judicial process must be considered valid. On the other hand, this erodes society's sense of justice and the legal expediency of the situation, which is a matter of conscience. This has shown, albeit indirectly, that the law is only being enforced more strictly against vulnerable and ill-informed individuals. These incidents demonstrate that the law enforcement mechanism itself has become indifferent in achieving its legitimate objectives. This is because law enforcers only analyze the legal aspects, and do not pay attention to the laws that already apply in society, so that the aim of punishment which only focuses on retribution cannot restore social harmony if it is only applied alone. As a result of the continued increase in crime, more and more people are being imprisoned, in his confession about Corruption, Bureaucratic Reform, and the Future of the Indonesian Economy is the title of a book written by Didin S. Damanhuri. According to Jimly Asshiddiqie, there is still a tendency that all problems can only be resolved by law. However, laws will only be meaningful if they are practiced and enforced in real life. Jimly stated this as a form of appreciation for the publication of Didin S. Damanhuri's book⁹.

In the process of developing the Indonesian Criminal Justice System, as well as a form of response to the laws that exist in society, the idea of resolving cases through a restorative approach, such as the concept of restorative justice, alternative conflict resolution, circular punishment, and *Islah* are some of the newer methods that have emerged as a potential replacement for more conventional approaches to resolving legal disputes caused by criminal activity. However, the execution process has not been officially regulated in the criminal law. The ideas of diversion and restorative justice are not new or unknown to society as a whole. This is because so far local wisdom, with its rich traditional history and diverse cultural background, has proven to be an effective means of finding solutions to problems involving children who are in conflict with the law due to committing acts that violate norms or being accused of violating regulatory norms. applicable law¹⁰. Restorative justice is not a new idea at all. It is possible that this has existed since the beginning of criminal law. In practice, dispute resolution efforts in accordance with the principles of restorative justice are prioritized as the main tool in dealing with criminal acts¹¹. As Mark Levin's Johlar Purba quote states, "Approaches that were once declared outdated, archaic,

⁸ Luthfiya Ayu Azanella, "Apart from Grandpa Samirin, These are 4 Legal Cases That Affected the Elderly," Kompasiana.Com, 2020, <https://www.kompas.com/tren/read/2020/01/18/213315465/selain-kakek-samirin-these-4-legal-cases-that-happened-to-elderly?page=all>

⁹ Fuzy Narin Drani, "Resolving Corruption Using Restorative Justice," *Journal of De Jure Legal Research* 20, no. 4 (2020): 605, <https://doi.org/10.30641/dejure.2020.v20.605-617>.

¹⁰ Asmadi Syam, "Measuring the Concept of Restoration in the Criminal Justice System," *Legal Policy Scientific Journal* 16, no. 2 (2022): 363, <https://doi.org/10.30641/politik.2022.v16.363-376>.

¹¹ Sham.

and traditional are now declared progressive¹²." As previously stated, the concepts of restorative justice, alternative conflict resolution, circular punishment, and *Islah* are not covered by the provisions of the Indonesian Criminal Justice System. On the other hand, *Islah* is a concept included in the system. On the other hand, these ideas are believed to be able to provide genuine benefits and a sense of justice for society. Therefore, it is interesting to study and discuss the actual existence of the function and impact of the concept of restoration (restorative justice, alternative dispute resolution, circular punishment, and circular punishment or *Ishlah*) in the development of the Indonesian Criminal Justice System. This can be done through a combination of reading, research and conversation.

METHODS OF THE RESEARCH

The research method used in this research is normative legal research, namely legal research that considers law as a set of standards is called normative legal research. The normative system that is built mostly focuses on discussing principles, norms, statutory rules, court decisions, agreements, and doctrine (beliefs). a conceptual approach was chosen as the investigation method. Legislative techniques and conceptual approaches are used in this research because both are necessary to investigate how the idea that there are requirements in modern law to achieve certain goals. The data used in this research is secondary data obtained by conducting library research to obtain theoretical conceptions as well as doctrines, opinions or conceptual thoughts from materials in the form of books, regulations, legislation, and scientific works related to related research. The aim of this research is to obtain theoretical conceptions as well as doctrines, opinions or conceptual thoughts from these materials. In this research, the data analysis method used is prescriptive. This shows that all data that has been collected from studies conducted in the library will then be analyzed by providing perspectives, concepts, and then providing conclusions that provide answers to the problems that have been discussed.

RESULTS AND DISCUSSION

A. The Idea of Restoration (Also Known As Restorative Justice, Alternative Dispute Resolution, Circle Punishment, and *Islah*), In Addition To Its Objectives In The Indonesian Criminal Justice System

Restorative justice is no longer just a topic of discussion among academics and criminologists in industrialized countries, from the investigative stage to the court process, restorative justice has been integrated into the legal system in several countries in Europe, the United States and Australia¹³In carrying out criminal case resolution procedures, criminal cases resolved using an approach known as restorative justice have different paradigms and strategies from more conventional approaches.¹⁴ The state is not considered a victim in criminal cases under the restorative justice paradigm, in contrast to traditional criminal justice system models. As a result, perpetrators of criminal acts have an obligation to improve the situation and eliminate the impact of the criminal act. In addition, justice is the process of finding answers to questions that have been asked. This indicates that the participation of all parties, including victims, perpetrators, and community members, is

¹² Mukti Fajar and Yulianto Achmad, *Dualism of Empirical & Normative Legal Research*, Yogyakarta: Student Library (Student Library, 2010).

¹³ Erliyantouw Wahid, "Restorative Justice and Conventional Justice in Criminal Law," Lecturer Book-2009 IX (2011): 96.

¹⁴ SD Octaviani, "Implementation of Law Enforcement Against Lightly Motivated Crimes Using Restorative Justice at the Gayamsari City Police..." (Sultan Agung Islamic University, 2019), <http://repository.unissula.ac.id/15757/>.

very important to find solutions that will repair, restore, and guarantee resolution of the problem.

Ideas The ongoing expansion of the traditional criminal justice system prompted the development of a reaction known as restorative justice. The needs of the community as well as victims who are made to feel like outsiders by the current Criminal Justice System are prioritized here¹⁵. In the context of overcoming criminal acts or crimes, punishment as a model or strategy for dealing with them, restorative justice is becoming increasingly trendy and widespread, especially among academics, the law enforcement community and the professional legal community. This is because restorative justice is seen as a more effective method. In the context of handling crime or criminal acts which prioritizes the restoration of balance in the relationship between the perpetrator of the crime and the victim, it is anticipated that restorative justice, in dealing with criminal acts or crimes, as a paradigm or approach to punishment, would be one of the possibilities or alternatives available, said the professor¹⁶.

The community will play an important role in encouraging and supporting the resolution of problems by prioritizing recovery or correction of criminal acts committed by perpetrators. In this way, the community will play an important role in encouraging and supporting problem solving¹⁷. The primary goal of restorative justice is to reduce the burden on law enforcement, prosecutors, detention facilities, courts, and correctional institutions; reducing the number of people in prison; restore offenders to normal human status; reduce the likelihood of violators committing similar offenses in the future; and save state money by preventing victims from holding grudges against offenders because they have been forgiven by the victim¹⁸. The quantitative findings indicate that approximately 90% of the participants in the study were unfamiliar with both terms. Only 4% of the community acknowledged retributive justice, while 2% acknowledged restorative justice. Only 4% of the community comprehended the concepts of restorative justice and retributive justice. The graph below demonstrates that the two categories of individuals who were aware of restorative justice recognized restorative principles, including victims' recovery, rehabilitation, family resolution, and reconciliation with the perpetrator.

Chart 1
Public Understanding Of Restorative Justice



¹⁵ Octaviani.

¹⁶ Repeat Mangun Sosiawan, "Perspective of Restorative Justice as a Form of Protection for Children in Conflict with the Law (Perspective of Restorative Justice as a Children Protection Against the Law)," *Journal of De Jure Legal Research* 16, no. 4 (2017): 425, <https://doi.org/10.30641/dejure.2016.v16.425-438>.

¹⁷ Hariman Satria, "Restorative Justice: A New Paradigm for Criminal Justice," *Legal Media Journal* 25, no. 1 (2018): 111-23, <https://doi.org/10.18196/jmh.2018.0107.111-123>.

¹⁸ Susana Andi Meyrina, "Restorative Justice in Juvenile Justice Based on Law No. 11 of 2012," *Journal of De Jure Legal Research* 17, no. 1 (2017): 92, <https://doi.org/10.30641/dejure.2017.v17.92-107>.

The respondents' responses suggest a connection between the community's existing values and restorative justice knowledge, a notion further reinforced by the perspective that the community's living law or values significantly influence case resolution. The community's intrinsic customs and values will not limit restorative justice to formal regulations. On April 21, 2022, a criminal law expert speaker was present at the Focus Group Discussion.

The concept of restorative justice in Canada is commonly referred to as circle punishment. The purpose of circle punishment for crimes committed against Indian communities was to punish the perpetrator and restore the community. In 1991, judges and communities in the Yukon Territory and other communities in northern Canada adopted it. Other cities in northern Canada are doing the same. Thereafter, the circle penalty was implemented in the Canadian provinces of Saskatchewan and Manitoba, and in 1996, it made its debut in the United States with a trial in the state of Minnesota. The goal of circle punishment, which involves the participation of law enforcement authorities, attorneys, judges, victims, offenders, and community members, is to reach an agreement for a peaceful resolution¹⁹

The following is an explanation of the meaning of circle punishment: 1) Provide reparations to all those harmed; 2) Creates "an opportunity for those who have caused harm to others to make amends;" 3) Providing opportunities for victims, communities, families and perpetrators to talk and accept shared responsibility in the process of finding constructive solutions. This will empower all parties involved; 4) Addressing the underlying factors that contribute to criminal behavior; 5) To foster a sense of togetherness and strengthen the community's ability to find peaceful solutions to existing problems; 6) Providing an offer about the values of a community association.

In general, circle sentencing is a method for finding a peaceful resolution to legal disputes involving criminal cases. Parties involved in this unit include members of law enforcement, people who are victims, people who commit crimes, and other stakeholders. Apart from that, the ADR (Alternative Conflict Resolution) approach emphasizes consensual conflict resolution which has been practiced by society for a long time. ADR has a unique appeal because of its harmony with conventional socio-cultural systems that adhere to democracy and consensus deliberation. According to Philip D. Bostwick's definition, alternative dispute resolution (ADR) refers to a combination of legal methods and techniques that seek to:²⁰ a) Allows legal issues to be handled outside of court for the benefit of or in dealing with the parties to the dispute; b) Reduces costs or delays if disputes are resolved through conventional court processes, thereby preventing legal disputes from being taken to court.

The following are the various forms that ADR can take²¹: a) The art of the deal²²: is a means for disputing parties to resolve disputes without involving an unauthorized third party (mediation) or an authorized third party (arbitration) to make a decision, according

¹⁹ Ali Abubakar Sharia Faculty IAIN Ar-Raniry Darussalam Banda Aceh Jl Nuruddin Ar-Raniry Kopelma Darussalam, "The Urgency of Resolving Criminal Cases Using Customary Law," *Madania: Journal of Islamic Studies* 18, no. 1 (2014): 57-66, <https://www.mendeley.com/viewer/?fileId=04544138-77db-c0b3-2e9a-53ae5a14aea7&documentId=9bf6594e-fa30-3803-938e-112b445889a6>.

²⁰ Eva Achjani Zulfa, "Restorative Justice in Indonesia: Study of the Possibility of Implementing a Restorative Justice Approach in Criminal Law Enforcement Practices," University of Indonesia Library, 2009, 420, <https://lib.ui.ac.id/detail?id=20278559>.

²¹ RF Saragih, "Functionalization of ADR and Environmental Dispute Resolution," *IUS QUIA IUSTUM Law Journal* 7, no. 13 (2000): 138-47, <https://doi.org/10.20885/iustum.vol7.iss13.art11>.

²² Zairin Harahap, "ADR as an Alternative for Resolving Environmental Disputes Presented in a Seminar on Industrialization and its Impact on the Environment. Organized by LOKTIKX, KN Kimia-FMIPAUGM," Organized by LOKTIKX, KN Kimia-FMIPAUGM. Yogyakarta, 1996.

to the definition of the term provided by the American Bar Association; b) Peace: In the context of resolving a topic or problem that usually has a pejorative connotation, the term "conciliation" alludes to the word "peace" in the context of simplifying the resolution process by breaking through means outside the established protocol by offering a predetermined amount of money to each participant in the procedure. In other words, the purpose of conciliation is to bring about "peace"²³The most important prerequisite for the successful implementation of conciliation is that all parties involved must have an initial understanding of their rights and obligations, as well as empathy for the issues they are disputing with each other; c) Mediation process: The United States, Canada and Japan are some of the advanced industrial countries that have used this process in resolving environmental disputes. According to Grenville-Wood, this approach is a form of conflict resolution that involves the participation of a neutral third party in the negotiation process to find a solution to the conflict at hand. By using strategy The parties collaborate in an effort to identify a representative or team of mediators through the use of attorney selection techniques that are acceptable to all parties²⁴. "The role of the mediator in this conflict resolution approach is to assist the parties in reaching an agreement that meets their needs and is based on a sense of justice. This is the basic premise of this method. Because this is the responsibility of the parties involved in the dispute, the mediator does not have the authority to step in and make decisions or determine the final outcome of the agreement. In mediation, the desire of the disputing parties to negotiate is one of the most important factors to consider. The rights and obligations of the parties come to their attention as a result of this action; d) Arbitration process: A dispute resolution technique that involves the participation of an impartial third party is called arbitration. This impartial third party is given the authority to assess the case and make a decision. Furthermore, the decisions made are final and must be obeyed²⁵.

In addition, the quantitative study's results suggest that, despite the fact that the majority of individuals are not familiar with restorative justice, they exhibit a high level of acceptance of its principles, particularly in instances where victims are able to recover material and moral damages. As demonstrated in the graph below:

Chart 2
Principles Of Restorative Justice



²³ Syam, "Measuring the Concept of Restoration in the Criminal Justice System."

²⁴ Koesnadi Hardjasoemantri, "Environmental Management Law Seventh Edition" (Eighth Edition, Eighteenth Printing, Gajah Mada University Press, Yogyakarta, 2002).

²⁵ Saragih, "ADR Functionalization and Environmental Dispute Resolution."

The intellectual landscape of criminal justice has undergone numerous changes in recent decades, from the emergence of restorative justice to evidence-based approaches to reducing recidivism. As a consequence, an increasing number of nations are undertaking the endeavour to reform their existing political institutions in order to verify these new insights. This is, of course, a challenging endeavour. Willing policymakers are frequently confronted with numerous obstacles, which frequently results in a conflict between philosophy and practicality. Additionally, the process of political transformation is susceptible to the influence of institutional and cultural norms.

Table 1.
Percentage of Decisions that Use Restorative Justice Approach in the Supreme Court

Performance Indicators	Target	Realizations	Achievements				
			2022	2021	2020	2019	2018
Percentage of decisions that use a restorative justice approach in the Supreme Court	4%	1.16%	28,92	166,5	107,5	128,5	79,08

The number of cases that can be resolved with restorative justice is 64,483, and the number of cases that have been resolved with restorative justice is 746. As a result, the realization rate stands at 1.16%, with an achievement rate of 28.92%. The percentage of decisions in the Supreme Court that employ a restorative justice approach is lower than that of the previous year. The 2022 measurement encompassed minor crimes like theft, fraud, embezzlement, and hoarding, regulated by criminal threats in Articles 364, 373, 379, 384, 407, and Article 482 of the Criminal Code, with a maximum loss value of IDR 2,500,000. Despite the fact that the loss is valued at less than IDR 2,500,000, the legal process is still underway in court, utilizing the rapid trial system. Courts can employ restorative justice to resolve actions classified as minor offenses.

Table 2
Criminal Cases That Can Be Resolvet With Restorative Justice

No	Case Classification	Remaining Initial	Go to	Caselo ad	Disconnect	Remaini ng Now
1	Crimes against public order	63	434	497	440	57
2	Crimes against the origin of marriage	4	67	71	67	4

3	Crime of Gambling	438	4,639	5,077	4,254	823
4	Crimes/leaving people who need help	-	4	4	4	-
5	Crime/insult	9	71	80	60	20
6	Crime/persecution	742	5,906	6,648	5,987	661
7	Crime/theft	2,824	24,827	27,651	24,642	3,009
8	Crime of harming a debtor or person with rights	2	4	6	6	-
9	Crime of Property Damage	62	346	408	337	71
10	Occupational crime	5	5	10	7	3
11	Narcotics	3,227	21,628	24,854	21,557	3,297
12	Miscellaneous	300	2,523	2,823	2,320	503
13	Traffic	174	1,372	1,546	1,372	174
14	Domestic Violence	146	1,180	1,326	1,178	148
15	Taking or Possessing Property of Another Unauthorized House Occupancy	3	7	10	8	2
16	Unpleasant Actions	4	3	7	7	-
17	Brawling Causing Minor Injury, Serious Injury	16	99	115	98	17
18	Defamation	194	1,566	1,760	1,558	202
19	General Criminal/performing Illegal Transportation Services	15	55	70	61	9
20	Threatening	-	1	1	-	1
21	Violations	30	220	250	226	24
22	Crime/Fraud	1	3	4	2	2
23	Public Order Violations	45	182	227	191	36
24	Offenses against public authorities	1	14	15	13	2
25	Land, Plant and Yard	-	1	1	1	-
26		13	43	56	45	11

Violations						
27	Population Administration	1	26	27	22	5
28	Local Taxes and Retribution	4	17	21	20	1
		8,322	65,242	73,565	64,483	9,082

Based on existing facts, alternative dispute resolution (ADR) is an idea that refers to the process of resolving disputes through non-litigation channels or outside the formal court system. The parties involved seek their own ways to resolve their problems in accordance with the principle of mutual benefit, regardless of whether they ask for help from third parties or not. Apart from the three meanings discussed above, Islam also has a concept known as *ishlah*. *Ishlah* is a method of conflict resolution that is highly recommended for use in conflict resolution situations²⁶. *Ishlah*, if translated literally, can be interpreted as a commendable act or activity related to human behavior. Therefore, in Islamic language, *ishlah* can be considered as an activity that tries to bring about a transition from a bad situation to a good situation. This transformation is intended to be beneficial²⁷. *Ishlah* is a prerogative that can be given to victims or heirs, in accordance with the concept of voluntarism, which states that both parties must voluntarily agree to the terms²⁸. *Ishlah* occurs when victims have a change in their perspective as they try to understand an event that occurred. In this case, everything is determined by the victim's preferences²⁹

Thus, it can be concluded that *ishlah* is a method that allows parties to reach an agreement, which is consistent with the ideas of restorative justice, alternative dispute resolution, and circular punishment. However, the most important thing to remember is that the victim or his heirs have the right to ask for *ishlah*. In the process of developing the Indonesian Criminal Justice System, the concept of restoration has been applied in the process of resolving criminal cases. This concept is also known as restorative justice, alternative case resolution, circular punishment, and *ishlah*. One of them is the implementation of Qanun Number 9 of 2008 concerning the Development of Traditional Life and Customs, which mandates the use of customary law in resolving legal disputes, including criminal disputes.

Community leaders try to solve problems through the application of a family approach known as the kinship approach or better known as *ishlah*.³⁰ In Law no. 11 of 2012 concerning the Juvenile Criminal Justice System, has regulated the resolution of cases of children in conflict with the law by means of diversion.³¹ Diversion is not an attempt to

²⁶ FHUI Public Relations, "Mediation as an Effort to Realize *Ishlah* in Resolving Sharia Banking Disputes," 2022, <https://law.ui.ac.id/mediasi-usaha-mewujudkan-ishlah-dalam-pengelesaian-sengketa-perbankan-syariah/> #:~:text=In Islamic law%2C Islam, both parties are involved in a dispute.

²⁷ Adam Rohili, "The Position of *Ishlah* in Resolving Crimes According to the Perspective of Islamic Criminal Law and Positive Law (Analytical Study of Murder Cases that Killed Dayak Youth)" (Jakarta: Faculty of Sharia and Law, UIN Syarif Hidayatullah, 2018).

²⁸ AM Fatwa, "Tanjung Priok Ad Hoc Human Rights Court: Revealing the Truth for National Reconciliation," 2005, ixix, 320.

²⁹ Annisa Rahmi Faisal, "The Position of *Ishlah* in Resolving Crimes According to the Perspective of Positive Law and Islamic Criminal Law (Analytical Study of Traffic Violations by AQJ)," 2015, 49.

³⁰ Riza Nizarli, "Handling Children in Conflict with the Law Using Diversion and Restorative Justice," *Pledoi of Communication Media and Transformation of Children's Rights*, 2010.

³¹ Renita Ayu Cynthia, "Diversion (Transfer of Settlement of Children's Cases from the Criminal Justice Process to a Process Outside of Criminal Justice) in Cases of Children in Conflict with the Law at the Kuala Kapuas Police Station," nd

reach an agreement between children in conflict with the law and the victim or the victim's family, but rather an informal means of resolving cases involving children in conflict with the law.³².

In the development of law and justice, the operationalization of the concept of restoration (which is also known as Restorative Justice, Alternative Dispute Resolution, Circle Punishment, and *Ishlah*) has its own attraction. This idea has been deeply embedded in Indonesian culture for a long time, especially among indigenous peoples. As a method for resolving legal disputes involving criminal cases, this method is used. Settlement of a case must be able to provide equitable justice for the community, and speed of the process must be achieved, even though in reality this is difficult to do in the current Criminal Justice System. In addition, the operationalization of the restorative concept emphasizes resolving cases involving children in conflict with the law, as well as for certain matters that meet standards, do not cause significant impacts or concerns, and are not rejected by society.

B. Implications of the Restoration Concept in the Indonesian Criminal Justice System (Including Restorative Justice, Alternative Dispute Resolution, Circle Punishment, and *Ishlah*)

When discussing implications, we cannot but talk about the effect or impact of some of the ideas presented previously on the legal system. The ideas mentioned above are not the main focus in the process of resolving criminal cases in Indonesia, which has a Criminal Justice System that adheres strictly to norms of legality and juridical procedures. This article stipulates that the resolution of criminal cases must be carried out in a formal court that has been established in accordance with applicable regulations and procedural law. This must continue until a person is declared guilty or not guilty through a court decision based on sufficient evidence. As it has progressed, it has become clear that we cannot ignore the ideas mentioned above. The idea has also developed to the point where it is useful in the Criminal Justice System. This is due to the fact that law enforcement not only evaluates issues of certainty, but also, and more importantly, the justice and benefits of the law in society.

In his publication, Jonlar Purba said John Rawls "Everyone may have a different opinion on this matter because their point of view can be from various points of view, but the most important thing is an understanding of the concept of justice, the balance between rights and obligations." In addition, justice must benefit all parties involved in the problem or conflict. Regarding the topic of justice, John Rawls emphasized that the fundamental structure of a society must be the main focus of the justice system. A large institution serves as the foundation of the basic structure. This institution is responsible for managing the social cooperation system, and the social cooperation system, in turn, regulates the regulation of rights and obligations and the distribution of profits generated³³. Everyone who participates in this social cooperation must be free, rational, and have an equal position. This is one of the basic foundations of justice.

The purpose of law, especially criminal law, is to maintain peace and defend public and private interests. Formal control mechanisms are necessary to protect time-sensitive interests as mandated by society. Therefore, the law needs to provide legal authority to the state to be able to enforce it. Law is a type of social control that can be used in situations where informal social control methods cannot achieve the desired results³⁴. The criminal justice system is not only seen as a means of preventing crime, but is also seen as a social problem similar to crime itself. It is important to

³² Azwad Rachmat Hambali, "Implementation of Diversion for Children in Conflict with the Law in the Criminal Justice System," *Scientific Journal of Legal Policy* 13, no. 1 (2019): 15, <https://doi.org/10.30641/politik.2019.v13.15-30>.

³³ Jonlar Purba, *Law Enforcement Against Lightly Motivated Crimes Using Restorative Justice* (Jala Permata Aksara, 2017).

³⁴ Muhaimin Muhaimin, "Restorative Justice in Resolving Minor Crimes," *Journal of De Jure Legal Research* 19, no. 2 (2019): 185, <https://doi.org/10.30641/dejure.2019.v19.185-206>.

establish a link between the implementation of criminal sanctions and the human development strategies that define Indonesian society. The application of criminal punishment, imposed on criminals, must meet civilized human values in order to be effective³⁵. Retributivists believe that justice can only be achieved if the theological goal is to implement the principles of justice. Muladi notes that the goal of punishment must be a good outcome, and that retributivists state that justice can only be achieved if this occurs³⁶.

The resolution of criminal cases is carried out by prioritizing recovery and this is a legal need that society has, because it emphasizes restoring the situation "back to its original state" and balancing the objectives of protecting victims and protecting criminals who are not driven by revenge; Furthermore, this type of legal need, and mechanisms to address it, are something that need to be developed and are one component of ongoing criminal justice system reform. As part of the response to criminal acts, law enforcement and legal officials in Indonesia have begun to use a new technique known as restorative justice. This strategy is part of that response. In the Explanatory Memorandum to the Council of Europe Recommendation on Mediation in Criminal Matters, Recommendation No. R(99) 19 was adopted by the Frolic Petroleum Council Ministerial Committee in September 1999. According to the information presented here, the criminal mediation process is defined as a method in which the perpetrator and victim work together openly and honestly to find solutions to problems resulting from the crime. crime committed by the perpetrator involving a third party or mediator. This definition was adopted by the Council of Europe³⁷

There are several variables that have contributed to the evolution of criminal mediation, including increasing crime rates and the Criminal Justice System's response to these increases, advances in conflict resolution, public acceptance of restorative values, victim protection movements, and political approaches to crime prevention.³⁸. From several explanations regarding the evolution of criminal law that have been explained above, it can be seen that the idea of restoration has been recognized and put into practice by law enforcers in Indonesia, but its existence is still very incomplete and limited. Regulation of the existence of the idea of restoration in the Indonesian criminal law system is still at the level of regional regulations and internal norms of law enforcement agencies. This happens even though the concept already exists. Regulations relating to children's cases are already at the statutory level, with the exception of cases involving minors who are in conflict with the law. Every step taken by law enforcement must always be within the limits of the law in order to comply with the Indonesian criminal law system, which is based on the concept of legality. In the same case, when discussing the Criminal Justice System, the basis for law enforcement officials is the Criminal Procedure Code (KUHAP) which is the only formal criminal law. This code of law is the only formal criminal law. The practice of moral judgment is the act of allowing the concept of restorative justice to be implemented in criminal justice practice without providing positive support³⁹. The formal legality of the Criminal Procedure Code was violated as a result of structuring the definition of restoration at the level of provisions under statutory regulations which resulted in irregularities. This is because the Criminal Procedure Code mandates that every unlawful act must be resolved through the legal system to implement the judge's decision.

The formal legality of the Criminal Procedure Code is considered to be contrary to restorative ideas, which involve resolving cases outside the justice system. This is one idea that continues to be practiced by law enforcement officials as a way to resolve certain criminal cases in a way that is able to create a sense of justice and the benefit of the law in society. Its existence continues to be practiced by law enforcement officials. Because the idea of law enforcement is desired by society, the concept

³⁵ Muhaimin.

³⁶ Putu Eva Ditayani Antari, "Fulfilling the Rights of Children Who Experience Sexual Violence Based on Restorative Justice in the Tenganan Pegringsingan Community, Karangasem, Bali," *Human Rights Journal* 12, no. 1 (2021): 75, <https://doi.org/10.30641/ham.2021.12.75-94>.

³⁷ Fuzi Narindrani, "Resolving Corruption Using Restorative Justice," *De Jure Legal Research* 20 (2020): 606-7.

³⁸ UU Mangapol, "Application of Restorative Justice in the Criminal Justice Process in Indonesia," UNISBA, Bandung, 2012.

³⁹ Purba, Law Enforcement Against Lightly Motivated Crimes Using Restorative Justice.

of restorative functionalism cannot be accepted because it is not a theory that is without basis and cannot be accepted as mentioned above. The purpose of punishment as an institution can be equated, conceptually, with the application of the concept of recovery in handling criminal cases. In the RKUHP and Criminal Code, recognition of this idea already exists. According to paragraph one of article 55 of the 2010 RKUHP, the objectives of punishment are as follows: 1) Avoid criminal acts by enforcing legal norms for the protection of society; 2) Civilize the defendant by providing guidance so that he becomes a good and useful person; 3) Resolving conflicts resulting from criminal acts, restoring balance, and creating a sense of peace in society; 4) Eliminates guilt on the part of the defendant.⁴⁰

When the RKUHP is finally enacted in the future, the restorative justice approach will take a more important role in the law enforcement process, especially in resolving criminal cases. As can be seen from the advice provided by the United Nations (UN) regarding criminal mediation, there is much to note regarding this practice. Treatment of Criminal Perpetrators, as well as International Conferences Concerning Crime Prevention⁴¹. It is very important for those tasked with enforcing the law, especially in prosecuting criminal cases, to have the ability to fully realize the objectives of the law, expediency, justice and certainty. In dealing with all forms of criminal acts, no matter how serious, light, or not serious, the law must always come first, and the rights of suspects, defendants, and convicts must be respected. The application of legal rules and prioritization of the principle of priority, as explained by Gustav Radbruch in his combination theory, are two ways that can be used to achieve this. Specifically, justice must come first, profit must come first, and certainty must come first⁴². Prosecutors now have the authority to participate in prison mediation following the enactment of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Judicial Powers of the Republic of Indonesia. ⁴¹ As a result, restorative ideas such as restorative justice, alternative dispute resolution, circle punishment, and *ishlah* can be recognized as legitimate options among other alternatives to traditional methods of dealing with legal conflicts⁴³.

CONCLUSION

The interests of the parties involved in the case are prioritized under restorative ideas (also known as restorative justice, alternative dispute resolution, circle punishment, and *ishlah*). This ensures that the victims, suspects or defendants, and other related parties, all have their interests protected. This is a conflict recovery strategy that has been used for a long time by society, especially by indigenous peoples, and is a solution that benefits all parties involved. Even the legal system incorporates restorative practices and ideas into its operations. As an alternative method for resolving criminal cases, these ideas can be used to produce conclusions from criminal processes that comply with standards, starting from the level of investigation and prosecution. The formal legality of the KUHP is considered to be in conflict with the implications of the concept of functionalism for the Indonesian Criminal Justice System. However, from a rational perspective, these implications are supported by evidence and can be accepted by society in order to enforce fair laws and guarantee certain benefits.

⁴⁰ Antari, "Fulfilling the Rights of Children Who Experience Sexual Violence Based on Restorative Justice in the Tenganan Pegringsingan Community, Karangasem, Bali."

⁴¹ Narindrani, "Resolving Corruption Using Restorative Justice."

⁴² Muhaimin, "Restorative Justice in Resolving Minor Crimes."

⁴³ Anggih Romadhon, "Security Protection for Prosecutors and Their Families After the Ratification of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia," *Journal of Law and Economic Development* 10, no. 2(nd): 176-90.

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