

Restorative Justice Arrangements in Civil Law, Common Law, and Indonesian Legal Systems

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Abstract

Introduction: This article will outline how the application of restorative justice in the civil law system, the common law system, and the Indonesian legal system compares.

Purposes of the Research: This study aims to provide a comprehensive comparison of the regulation and implementation of restorative justice across three legal systems - civil law, common law, and Indonesia's hybrid legal system - and to identify best practices and challenges that can inform the development of restorative justice in diverse legal contexts.

Methods of the Research: The study uses a normative legal method, combining a legal concept approach to examine the philosophical and ethical foundations of restorative justice with a statutory approach to analyze formal legal mechanisms. This methodology links legal theory with practice while highlighting the integration of normative principles within Indonesia's socio-cultural context, including Pancasila and customary law.

Results of the Research: This study compares restorative justice implementation in civil law, common law, and Indonesia's legal system. Civil law is rigid and procedural, while common law allows flexible mechanisms such as victim-offender mediation. In Indonesia, despite Supreme Court Rule Number 1 of 2024, challenges include limited understanding among law enforcement, inconsistent application, and insufficient institutional support. Strengthening implementation requires harmonized regulations, professional training, community-based mechanisms rooted in local wisdom and customary law, and public awareness. Indonesia's model highlights a transformative approach that integrates restorative principles with national values of humanity, justice, and social harmony.

Keywords: Restorative Justice; Civil Law; Common Law; Indonesian Legal System.

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INTRODUCTION

The practice of restorative justice has increasingly gained prominence within Indonesia's law enforcement process. Often described as a movement towards humanist justice, this approach emphasizes respect for human values, highlighting humans as personal and knowledgeable beings capable of shaping themselves and their social environment¹. It seeks to restore both victims and perpetrators to their original conditions following criminal proceedings. In Indonesia, restorative practices are not entirely new; traditional dispute

¹ Lilian Gressthy Florencia Apituley and Sri Wiyanti Eddyono, "Women and Violence In Hibualamo Traditions (An Analysis of Restorative Justice in Resolving Cases of Domestic Violence)," *SASI* 28, no. 3 (2022): 369, <https://doi.org/10.47268/sasi.v28i3.972>.

resolution through customary law has long embodied similar principles, prioritizing reconciliation and justice grounded in family and community values.²

The formal incorporation of restorative justice into Indonesian legislation began with Law Number 11 of 2012 on the Juvenile Criminal Justice System, which explicitly addresses restorative justice in Article 1 (6) and further elaborates in Articles 5 (1), 8 (1), and 93 (d). The law defines restorative justice as: “the resolution of criminal cases by involving the perpetrator, victim, families, and other related parties to seek a fair resolution emphasizing restoration rather than retaliation jointly. This framework aligns with the United Nations’ 2005 Bangkok Declaration, which encourages states to adopt restorative mechanisms as part of their criminal justice systems, aiming to respect victims’ rights and facilitate offender rehabilitation as an alternative to imprisonment.”³

Globally, restorative justice has garnered attention as an alternative to retributive approaches, focusing on the recovery of victims, the accountability of offenders, and community involvement. In Common Law jurisdictions, such as the United States, Canada, and Australia, restorative justice is integrated through flexible, precedent-based mechanisms, including Victim-Offender Mediation (VOM) and Family Group Conferencing (FGC).⁴ Civil Law systems, including those in France, Germany, and the Netherlands, have begun incorporating restorative practices through formal mediation and rehabilitation programs.⁵ Indonesia, with its hybrid legal system influenced by colonial heritage, customary law, and Islamic law, has implemented restorative justice through regulations such as Supreme Court Regulation Number 1 of 2024, which provides guidelines for criminal cases, including those involving violence against women and children. The growing global interest in restorative justice reflects recognition of the limitations of retributive models, which often exacerbate social stigma, offer limited solutions for victims, and fail to support offender reintegration.

Despite these developments, challenges remain in each country due to differences in legal structures, cultural norms, and political contexts. In Indonesia, additional obstacles include limited understanding among law enforcement officers, inconsistent application across regions, inadequate institutional support, and diverse societal perceptions of justice. Comparative study across Civil Law, Common Law, and Indonesian legal systems is essential to identify best practices, opportunities, and innovations that can strengthen the implementation of restorative justice.

Scholarly research emphasizes the need for legal reform to accommodate restorative principles. Joseph Dainow highlights that legal systems aim to regulate and harmonize human activities within their cultural and historical contexts.⁶ Indonesia’s legal system is unique, shaped by a long historical trajectory, and benefits from comparative analysis with Civil Law and Common Law systems to examine the regulation and application of restorative justice. Prior studies, including Eva Achjani Zulfa’s dissertation, indicate that Indonesian courts have begun considering principles of peace and forgiveness in

² Joseph Dainow, “The Civil Law and the Common Law: Some Points of Comparison,” *The American Journal of Comparative Law* 15, no. 3 (1966): 419, <https://doi.org/10.2307/838275>.

³ United Nations, *The Bangkok Rules - Unodc*, 2025.

⁴ Tony Marshall, *Restorative Justice: An Overview* (London: Home Office Research, Development and Statistics Directorate, 1999).

⁵ Andrew von Hirsch, Andrew Ashworth, and Clifford Shearing, “Specifying Aims and Limits for Restorative Justice: A ‘Making Amends’ Model?,” *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?*, 2003, 21–41, <https://doi.org/10.2139/ssrn.2799216>.

⁶ Dainow, “The Civil Law and the Common Law: Some Points of Comparison.”

sanctioning, signaling early reform.⁷ This study aims to provide a comprehensive comparative analysis of the regulation and implementation of restorative justice across three legal systems: Civil Law, Common Law, and the Indonesian legal system. Beyond identifying best practices and challenges, the study seeks to address a knowledge gap regarding how differences in legal philosophy, regulatory mechanisms, and socio-cultural contexts influence the effectiveness of restorative justice. The findings are expected to inform the development and enhancement of contextually grounded and adaptive restorative justice practices across diverse legal systems.

METHODS OF THE RESEARCH

This study employs a normative legal research method complemented by a legal concept approach and a statutory approach. The normative method provides the foundation for analyzing legal principles, doctrines, and norms governing restorative justice in each jurisdiction.⁸ The legal concept approach examines the philosophical, ethical, and moral underpinnings of restorative justice, including its alignment with socio-cultural values such as Pancasila and customary law in Indonesia.⁹ The statutory approach entails a thorough examination of relevant legislation, regulations, and court guidelines that govern the application of restorative justice. In the context of comparative analysis, these approaches are integrated to identify similarities, differences, and contextual adaptations of restorative justice across Civil Law, Common Law, and the Indonesian legal system.¹⁰ For instance, the study analyzes the degree of judicial discretion permitted, procedural flexibility, and societal engagement mechanisms in each system.¹¹ This combined methodology ensures that the research not only captures theoretical principles but also evaluates practical applications and challenges, enabling a comprehensive comparison that informs the development of restorative justice practices suitable for diverse legal contexts.¹²

RESULTS AND DISCUSSION

A. Arrangement Restorative Justice in the Criminal Law System, Civil Law and Common Law, and the Indonesian Legal System

The Continental European legal system, commonly known as the Civil Law system, originates from the Latin *ius civile*, the law that governed Roman society. During the reign of Emperor Justinian in the 6th century, the *Corpus Iuris Civilis* was codified into four parts: *Instituti*, *Digesta/Pandectae*, *Codex*, and *Novellae*. This compilation later became the foundation for legal codifications in many countries, such as Germany, the Netherlands, Italy, France, and several Asian nations, including Indonesia.¹³ In this system, legislation serves as the primary source of law. As noted by Joseph Dainow, Civil Law relies mainly on

⁷ Eva Achjani Zulfa, "Restorative Justice in Indonesia: Traditional Value," *Indonesia Law Review* 1, no. 2 (2011): 33, <https://doi.org/10.15742/ilrev.v1n2.81>.

⁸ Dainow, "The Civil Law and the Common Law: Some Points of Comparison."

⁹ Fauziah Hamid Wada, YosebFerdinan Pertiwi, AnnaHasiolan, Mara Imbang SatriawanLestari, SriSudipa, I Gede IwanPatalatu, Jonherz StenllyBoari, and ErlinAbd. Rahman Puspitaningrum, Jayantilfadah, *Buku Ajar Metodologi Penelitian, Co Science Techno Direct*, 2024.

¹⁰ Von Hirsch, et al, *Restorative Justice and Criminal Justice*. Andrew von Hirsch et al., *Restorative Justice in Comparative Perspective* (Oxford: Oxford University Press, 2003), 78–80.

¹¹ Tony Marshall, *Restorative Justice: An Overview* (London: Home Office Research, Development and Statistics Directorate, 1999).

¹² "European University Institute, Florence Department of Law Eui Working Paper Law Number 2002/13 Deep Level Comparative Law," *Comparative and General Pharmacology*, 2002.

¹³ Mark Van Hoecke, "Methodology of Comparative Legal Research," *Recht En Methode in Onderzoek En Onderwijs*, 2016, 279–301, <https://doi.org/10.5553/rem/.000010>.

written and systematically structured statutes, while Vincy Fon and Fransisco Parisi emphasize that written law is the primary source, and judicial decisions function as secondary sources. Law in this system is binding because it is codified, systematic, and designed to ensure legal certainty through clarity of language and meaning. Although traditionally rigid, the Civil Law system has begun to integrate restorative justice principles within its legal framework. This approach seeks not merely to punish offenders but to restore victims and affected communities. However, its implementation remains relatively new and continues to evolve.¹⁴

Table 1 Restorative Justice Regulations in the Civil Law and Criminal Law System

Country: <i>Civil Law</i> <i>Criminal Law System</i>	Forms of <i>Restorative Justice</i>
France	Mediation is known as victim-offender mediation (VOM) or, in French terms, “de mediation penale” also referred to as penal mediation. This VOM was born based on the results of amendments to Law No. 147/174 of 1945 concerning the French Criminal Code. ¹⁵ France introduced penal mediation on January 4, 1993, when Article 41 of the French Code of <i>Criminal Procedure (CCP)</i> was amended.
German	Mediation between victims and perpetrators of crime through a criminal mediation mechanism called <i>Täter-Opfer-Ausgleich (TOA)</i> , or <i>Victim-Offender Mediation</i> . Mediation based on the provisions of Article 46a of the Criminal Code, Article 153a of the Criminal Procedure Code, and the <i>Juvenile Justice Act 1953</i> has been amended to the <i>Youth Court Law Amendment Act 1990</i> (Article 10, Article 15, Article 45, and Article 47). ¹⁶
Dutch	Criminal Mediation Program (<i>Herstelrecht</i>) Mediation with models <i>conferencing</i> (Halt Program) based on Article 77 e of the Dutch Criminal Code (the Dutch criminal law system does not yet regulate the institution of a restorative approach, only a provision in the Dutch criminal law system is regulated regarding the resolution of criminal cases for juveniles). ¹⁷

Source: Table by the author based on analysis of several studies/research, 2024

The general characteristics of restorative justice in the civil law system are that this approach must be clearly regulated in laws or legal codes, which means that every procedure, principle, and mechanism of restorative justice must be structured and regulated by formal law.¹⁸ Mediation or recovery efforts can only be carried out if they have been regulated in formal legal provisions, in contrast to the Common Law system, which is more flexible and precedent-based. Restorative justice in the Civil Law system tends to be used in cases of minor crimes or crimes that do not involve serious violence, and in cases of serious crimes, the formal court process is still the main route. In the Civil Law system, judges often act as mediation facilitators, where they can propose or facilitate the mediation process between the victim and the perpetrator, but the final decision must still be in accordance

¹⁴ Pablo Romero-Seseña, “Framing European National Policies on Restorative Justice: A Frame Analysis Approach,” *International Criminology* 5, no. 1 (2025): 115–27, <https://doi.org/10.1007/s43576-025-00161-9>.

¹⁵ “European University Institute, Florence Department of Law Eui Working Paper Law Number 2002/13 Deep Level Comparative Law.”

¹⁶ Thomas Trenczek, “Victim-Offender Mediation in Germany – ADR Under the Shadow of the Criminal Law?,” *Bond Law Review* 13, no. 2 (2001), <https://doi.org/10.53300/001c.5377>.

¹⁷ Trenczek.

¹⁸ Carrie Menkel-Meadow, “Restorative Justice: What Is It and Does It Work?” *Annual Review of Law and Social Science* 3 (2007): 161–187, accessed June 25, 2024.

with applicable legal provisions. The principle of restorative justice in the Civil Law system emphasizes the importance of rehabilitating the perpetrator and restoring the victim, thereby creating balance and repairing the impact of the crime for all parties involved, including the community.¹⁹

One of the core challenges in institutionalizing restorative justice within civil law systems is their inherent structural rigidity. This rigidity stems from the primacy of codified statutes as the highest legal authority, which dominates the hierarchy over judicial precedents or case law.²⁰ Under the principle of *lex scripta*, judges are generally constrained to apply the law as written, with minimal discretion for interpretative or creative reasoning.²¹ These structural constraints significantly limit judicial flexibility, hindering the application of restorative justice principles, which emphasize mediation, dialogue, reconciliation, and the restoration of social harmony. Legislative processes are often lengthy, centralized, and bureaucratically complex, requiring formal procedures involving multiple political institutions.²² In contrast to common law jurisdictions, where judges actively shape the law through precedents and jurisprudential innovation, civil law judges primarily function as the “mouthpiece of the law” (*la bouche de la loi*), tasked with strict statutory implementation.²³ Consequently, rigid codification, limited judicial discretion, and protracted legislative procedures constitute major barriers to embedding restorative justice within civil law frameworks.²⁴

B. Restorative Justice Arrangements in the Common Law Criminal Justice System

The Anglo-Saxon system, also known as the *common law system*, was originally developed in England around the 11th century. This system began to develop since the establishment of the king's position in the royal court. This system originates from customary law found in court decisions, so it is an unwritten rule. The Anglo-American system is one variant of the *common law system*. In this system, the law made by the court or judge through its decision is the main source of law. In the continental European system, law is enforced through the legislative process.²⁵ The following will describe the practice of *restorative justice in several common law countries*.

Table 2. Restorative Justice Regulations in the Common Law Criminal Law System

Country: Common Law Criminal Law System	Forms of Restorative Justice
United States of America	Through <i>Victim-Offender Mediation (VOM)</i> , <i>Family Group Conferencing (FGC)</i> , and <i>Community Restorative Board</i> , based on referrals from the Police, Prosecutor's Office, and the Judiciary in each state, which have

¹⁹ European Forum for Restorative Justice (EFRJ), *Restorative Justice in Civil Law Systems* (2022), <https://www.euforumrj.org>, accessed September 10, 2024.

²⁰ John Henry Merryman, David Scott Clark, and John Owen Haley, *The Contemporary Civil Law Tradition: Europe, Latin America, and East Asia, (No Title)*, 2015.

²¹ Merryman, Clark, and Haley.

²² “Universidade do Estado do Rio de Janeiro Centro de Ciências Sociais Faculdade de Direito Antonio do Passo Cabral Coisa Julgada Dinâmica: Limites Objetivos e Temporais. Entre Continuidade, Mudança e Transição de Posições Processuais Estáveis Rio de Jane,” 2012.

²³ René David and John E.C. Brierley, *Major Legal Systems in the World Today* (London: Stevens & Sons, 1985), 114.

²⁴ Bona Fernandez et al., “Juridical Review of Comparative Prosecution Systems in Indonesia and the United States of Prosecutors Based on Restorative Justice” 642, no. Icoposdev 2021 (2022): 85–91.

²⁵ Syofyan Hadi, “Mengkaji Sistem Hukum Indonesia (Kajian Perbandingan Dengan Sistem Hukum Lainnya),” *DiH: Jurnal Ilmu Hukum* 12, no. 24 (2016): 164–72, <https://doi.org/10.30996/dih.v12i24.2244>.

	discretionary rights granted to them by law. ²⁶
Canada	<i>Victim-Offender-Reconciliation Programs (VORP)</i> . Based on <i>section 717</i> of the Criminal Code of Canada and <i>section 4 of the Young Offender Act 1984</i> , however, the implementation of restorative activities is under a commission on referral from the police (authority of the Canadian police, <i>Royal Canadian Mounted Police/RCMP</i>) ²⁷
Australia	Based on the mediation process (<i>conferencing</i>), which is a meeting for the purpose of reaching an agreement that has been agreed and promised by the parties involved in the crime, which is regulated in the Criminal Act, namely the <i>Young Offender Act 1997</i> . The form of criminal settlement in Australia is called the <i>Wagga Wagga Conferencing Scheme (CWW)</i> , where operational authority is regulated by the police or under the police coordinator; however, in 1997, the Attorney General's Department was responsible for the CWW process. ²⁸

Source: Table by the author based on analysis of several studies/research, 2024

Restorative justice arrangements in the criminal law system in countries with a Common Law system, such as the United States, Australia, and Canada, there are varying characteristics based on the policies, history, and needs of the community in each country. The history and application of restorative justice in the United States. Restorative justice emerged as an alternative to the dominant retributive approach in the criminal justice system. Restorative justice programs began to develop in several states in the 1970s and 1980s, especially in juvenile justice and misdemeanor cases. Although many restorative justice programs have been implemented in various jurisdictions, both the United States, Canada, and Australia still face major challenges in expanding these programs, especially in cases of serious or violent crimes. The United States focuses more on victim-offender mediation programs and community councils, although the main challenge is the decentralization of the legal system.²⁹ Australia has a strong community-based approach, with implementation involving indigenous justice and a thriving juvenile justice system³⁰ Canada is prominent in its application of circle sentencing, particularly in the Indigenous context, and has become a model for many other countries in the application of inclusive restorative justice.³¹ All three countries face challenges in terms of resources, resistance to change, and the implementation of restorative justice in cases of violence. However, the successes that have been achieved show that restorative justice can be an effective approach in creating a more inclusive and responsive criminal justice system to the needs of victims and perpetrators.

C. Regulations in the Indonesian Criminal Law System.

The regulation on restorative justice has actually developed in the development of customary law, namely showing that every region in Indonesia supports the

²⁶ Mark Umbreit, "Implications for Crime Victims," *U.S. Department of Justice Office of Justice Programs Office for Victims of Crime*, 2000, 1-23,

https://books.google.co.id/books?id=G7XxKjYqJkC&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false.

²⁷ Sean P Collins et al., "Victims of Crime Research Digest," 2021, 167-86.

²⁸ Kathleen Daly, "Conferencing in Australia and New Zealand: Variations, Research Findings, and Prospects," *Restorative Justice for Juveniles: Conferencing, Mediation and Circles*, 2014, <https://doi.org/10.5040/9781472559111.ch-004>.

²⁹ Self-selection Bias et al., "Victim-Offender Mediation and Reduced Reoffending: Gauging The," 2020, <https://doi.org/10.1177/0011128719854348>.

³⁰ John Braithwaite, "Restorative Justice and a New Criminal Law of Substance Abuse," *Youth and Society* 33, no. 2 (2001): 227-48, <https://doi.org/10.1177/0044118X01033002005>.

³¹ Jennifer J. Llewellyn, "New Directions in Restorative Justice," *New Directions in Restorative Justice*, 2013, <https://doi.org/10.4324/9781843926429>.

implementation of restorative justice, namely against customary violations and the mechanisms for resolving them. In this regard, Marc Levin stated that the restorative justice approach that was once considered obsolete, old-fashioned, and traditional is now recognized as a progressive approach.³² The progressive approach of restorative justice is based on Pancasila as the pillar/ideology of the state. Pancasila is the source of all sources of Indonesian law; the atmosphere of the philosophical foundation provides a basis for a philosophical justification, so that the reform of the legal order in the implementation of criminal sanctions based on Pancasila must be carried out properly. The philosophical foundation is a justification that bases its legitimacy on considerations of aspects of values and legal principles. Indonesia has a value system that is based on the philosophical foundation of the state, namely Pancasila, as a philosophical value.³³

In customary law, restorative justice is carried out through deliberation with a mechanism involving religious and community leaders without involving law enforcement officers to avoid psychological pressure in resolving cases against children and women. Furthermore, it is necessary to regulate provisions regarding the types of actions to carry out the settlement process through deliberation (*restorative justice*). The law provides general criteria related to the restorative justice process. The position of the victim is to give consent or convey their opinion to reach a consensus so that no party is harmed or pressured to express their opinion. The perpetrator is allowed to express his opinion and his ability to respond to the victim's request. Customary law will certainly be different from the practice of *restorative justice*, which is more legal certainty, justice, and benefits for all parties to resolve cases in society, in order to advance public welfare. Criminal law reform is related to many aspects of policy, such as social policy, criminal policy, and law enforcement.³⁴ Restorative legal arrangements explain that access to legal procedures in resolving criminal cases focuses on punishment which is changed into a dialogue and mediation process involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly create an agreement on a fair and balanced settlement of criminal cases for both the victim and the perpetrator by prioritizing restoration to the original state and restoring good relations in society.

The form of restorative justice in the Indonesian legal system focuses on resolving conflicts between perpetrators, victims, and the community in a more humane way and restoring relationships, compared to retributive prison sentences. The forms of restorative justice applied in Indonesia are as follows: 1) Diversion in juvenile justice. Diversion serves as the primary mechanism in the implementation of restorative justice, as regulated under Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. The purpose of diversion is to shift the resolution of juvenile cases from the formal judicial process to a mediation-based approach. The diversion process involves mediation between the offender (child), the victim, and relevant stakeholders (such as family members or community representatives) to reach a mutually satisfactory agreement. Such an agreement may take the form of an apology, payment of compensation, or other restorative measures agreed upon by the parties; 2) Penal mediation. Penal mediation is a process that brings together the offender and the victim, facilitated by a mediator, to resolve a criminal case outside the

³² Zulfa, "Restorative Justice in Indonesia: Traditional Value."

³³ Anis Widyawati et al., "Urgency of the Legal Structure Reformation for Law in Execution of Criminal Sanctions," *Lex Scientia Law Review* 6, no. 2 (December 2022): 327-58, <https://doi.org/10.15294/lesrev.v6i2.58131>.

³⁴ Nur Rochaeti et al., "A Restorative Justice System in Indonesia: A Close View from the Indigenous Peoples' Practices," *Sriwijaya Law Review* 7, no. 1 (2023): 87, <https://doi.org/10.28946/slrev.vol7.iss1.1919.pp87-104>.

formal court process. In cases involving minor offenses, the public prosecutor or judge may recommend penal mediation as an alternative mechanism to achieve a mutually beneficial settlement between the parties involved; 3) Deliberation. Within Indonesia's legal culture, which places a high value on deliberation (*musyawarah*), restorative justice can also be achieved through community-based conflict resolution mechanisms. The community often acts as a mediator in resolving disputes, aiming to reach a consensus that is acceptable to all parties. This approach is commonly applied in cases involving minor violations or social conflicts within local communities; 4) With the enactment of Supreme Court Regulation Number 1 of 2024 concerning Guidelines for the Implementation of Restorative Justice in Criminal Courts, the scope of restorative justice has been expanded to include the protection of victims of violence, particularly women and children. The approach adopted is gender-sensitive, ensuring that mediation and case settlement processes prioritize the needs and safety of victims to prevent re-traumatization.³⁵

Forms of *restorative* justice in the Indonesian legal system emphasize inclusive resolution, restoring relationships between parties, and paying attention to the needs of victims. Although there are still challenges in its implementation, restorative justice provides a more humane alternative and is in accordance with local cultural values in resolving conflicts. There are concerns in the application of the principle of restorative justice, Romli Atmasasmita stated that the settlement of criminal cases with this principle can be misunderstood by the community, namely that the restorative concept is the restoration of justice for victims and perpetrators, which will have an impact on the law enforcement process which is increasingly biased in the perspective of the community who assume that there is no need to undergo a criminal process if there is already an element of forgiveness in the restorative concept, especially in relation to perpetrators who come from poor families.³⁶

Regarding the above, the author argues that in cases of violence against women, law enforcers must be more objective in implementing the concept of *restorative justice* because it will have an impact on women seeking justice, because if the restoration of justice is only valued with compensation without considering the psychological and traumatic recovery of the victim, the victimization process will still be accepted by the victim. In addition, this principled approach is very vulnerable and cannot be applied in resolving cases related to sexual violence against both children and women.³⁷

In the Indonesian criminal justice system, the interests of crime victims are represented by the Public Prosecutor, who is part of the efforts to protect the legal rights of the community.³⁸ The victim as a witness. Muladi, argues that the criminal justice system must truly protect victims of crime because the criminalization process contains moral demands related to a social context between fellow human beings whose rights deserve to be protected. Furthermore, the purpose of victim protection is to create a sense of peace in society.³⁹

³⁵ Pradana Aditya Anaris and Santoso Bambang, "Peraturan Restorative Justice Dalam Peraturan Mahkamah Agung No.1 Tahun 2024," *Verstek* 13, no. 1 (2025): 272-77, <https://doi.org/10.20961/jv.v13i2.92071>.

³⁶ Frida and Usman, "Keadilan Restoratif (Restoratif Justice) Dalam Sistem Peradilan Pidana," *Jakarta Timur : Sinar Grafika*, 2024.

³⁷ Rochaeti et al., "A Restorative Justice System in Indonesia: A Close View from the Indigenous Peoples' Practices."

³⁸ Apituley and Eddyono, "Women and Violence In Hibualamo Traditions (An Analysis of Restorative Justice in Resolving Cases of Domestic Violence)."

³⁹ Destri Tsurayya Istiqamah, "Analisis Nilai Keadilan Restoratif Pada Penerapan Hukum Adat Di Indonesia," *Veritas et Justitia* 4, no. 1 (2018): 201-26, <https://doi.org/10.25123/vej.2914>.

D. Comparison of Restorative Justice Practices in the Civil Law, Common Law, and Indonesian Legal Systems

As the author has explained previously, in the development of the criminal law system adopted by various countries, both civil law and common law, the concept of restorative justice has become a concept adopted in resolving criminal acts. This concept is a process of restoring it to its original state, as stated by Marshal in his book on the description of the concept of restorative justice, which the author has also explained previously. The author in this paper will try to describe the comparison of the application of *restorative justice* practices from several aspects of the *civil law system*, *common law*, and the Indonesian criminal system, namely as follows:

Table 3. Comparison of Civil Law, Common Law, and Legal Systems: Indonesian Law in Restorative Justice Practice

Aspect	Common Law	Civil Law	Indonesian Legal System
Legal basis	Varies, depending on the country; for example, the Restorative Justice Act in Australia and the policy in Canada.	Reinforced by the criminal code and national regulations	Law Number 11 of 2012 (Juvenile Criminal Justice System), Supreme Court Regulation Number 1 of 2024
Settlement Process	Mediation, restorative conferencing, and victim-offender dialogue	Mediation and alternative resolution, depending on national law	Diversion, penal mediation, and community consultation
Participation of Parties	Involving the perpetrator, victim, and mediator	Perpetrators, victims, and authorized third parties	Perpetrators, victims, families, and communities
Main Focus	Restoring the relationship between the perpetrator and the victim, paying attention to the needs of both parties	Recovering losses for victims; safeguarding social interests	Recovering losses for victims and rehabilitating perpetrators
Implementation in Child Cases	There are restorative justice programs for children in several countries	Some countries have special laws for children, such as juvenile laws.	Diversion is the main mechanism in juvenile justice
Approach to Victims	Victims are given the right to be involved in the process; focus on recovery	Victims involved in mediation; focus on compensation and restitution	Attention to victims' needs and safety; gender-sensitive approach
Approach to Victims	Victims are given the right to be involved in the process; focus on recovery	Victims involved in mediation; focus on	Attention to victims' needs and safety; gender-sensitive approach

		compensation and restitution
Challenge	Variation in implementation; stigma against perpetrators	in social application; rigid laws
		Retributive legal culture; limited resources

Source: Table by the author based on analysis of several studies/research, 2024

Table 3 provides a comprehensive overview of how restorative justice is implemented in various legal systems. Despite differences in approach, the main goal of all systems is to restore relationships, provide more humane solutions, and support victims and perpetrators in the conflict resolution process. By understanding this comparison, the potential for further development of restorative justice in Indonesia and other countries can be identified. Regarding public participation, in the *Common Law system* s all parties, including perpetrators, victims, and mediators, play an active role in the resolution process. This encourages greater involvement of all parties involved in the conflict, thus creating a sense of shared responsibility. In the *Civil Law system*, perpetrators and victims are involved in the mediation process, with a third party (mediator) having an important role in directing the dialogue. The involvement of this third party aims to maintain neutrality and ensure the process runs fairly. Indonesian Legal System, perpetrators, victims, families, and communities are involved in the resolution process. Community involvement in deliberation is an integral part of Indonesian legal culture, which prioritizes collective solutions.

Based on the description of this article, the author gets the idea that there are several similarities and differences related to the regulation of restorative justice in the legal system, both civil law, common law, and the Indonesian criminal law system. In the table description, it can be found that the legal basis for the implementation of restorative justice for the civil law system has more structured characteristics, because it refers to the applicable criminal code. One of the main advantages of the Civil Law system is the certainty of the law.⁴⁰ Restorative justice procedures are clearly regulated in law, so that the parties involved have clear guidelines regarding their rights and obligations in the mediation or conflict resolution process, and the state has greater control in monitoring and supervising the progress of the restorative justice process. This ensures that mediation is carried out according to the rules and ensures protection for victims and perpetrators, thus avoiding potential abuse.⁴¹ Flexibility in the implementation of restorative justice is achieved through judicial discretion, policy-level arrangements, and, in common law systems, the evolving development of precedents. In civil law jurisdictions, judges exercise limited discretion, primarily allowing minor interpretative adjustments or procedural alternatives to accommodate restorative practices.⁴² This flexibility is complemented by legislative or administrative frameworks that explicitly enable mediation, diversion programs, or alternative dispute resolution, providing formal mechanisms for context-sensitive outcomes.⁴³ In common law systems, flexibility is further reinforced through the

⁴⁰ I Made Artana et al., "Pena Justitia: Restorative Justice Approaches in Criminal Law: Effectiveness and Societal Perceptions in Contemporary Legal Systems" 22, no. 1 (2025): 885-99.

⁴¹ Dewi Muti'ah, Firda Laily Mufid, and Erma Rusdiana, "Legal Certainty in Settlement of Criminal Cases through Restorative Justice," *SHS Web of Conferences* 149 (2022): 03019, <https://doi.org/10.1051/shsconf/202214903019>.

⁴² Kathleen Daly, "Restorative Justice: The Real Story," *Punishment & Society* 4, no. 1 (2002): 55-79, <https://doi.org/10.1177/1462474022228464>.

⁴³ Howard Zehr, "The Little Book of Restorative Justice," *The Little Book of Restorative Justice*, 2003.

progressive evolution of case law, whereby courts integrate restorative principles into precedents, guiding subsequent applications. Together, these mechanisms create space for restorative justice within legal frameworks that are otherwise rigid and codified.⁴⁴

This is also different from the common law system; in countries with a *common law legal system*, such as the United States, Canada, and Australia, restorative justice arrangements are not regulated in a single law, but through various local policies and practices. For example, in Canada, *the Restorative Justice Act* provides a framework for the application of restorative justice in a criminal context. Court decisions and policies can also serve as a legal basis that supports this practice. In Common Law systems, restorative justice procedures are regulated flexibly through policies, guidelines, and precedents adopted by law enforcement agencies, courts, and communities. Restorative justice processes typically involve mediation, dialogue between the offender and victim, and community involvement, to repair damaged relationships and redress the harms suffered. Common Law systems are more flexible because they allow judges and authorities to tailor the process to the circumstances of a particular case. Judges have the freedom to refer cases to restorative channels if they deem them more appropriate than formal justice.⁴⁵ However, while flexibility is an advantage, it also presents challenges in the form of a lack of standardization. Restorative justice processes can vary across jurisdictions or regions, sometimes creating legal uncertainty and inconsistency. There is scepticism by law enforcement, with both legal practitioners and judges in Common Law systems hesitant to refer cases to restorative pathways, particularly when they are deemed inappropriate for serious crimes. In addition, they may rely more on formal punishment than restorative solutions, limited resources for mediators, facilities, and training are barriers, and the difficulty of measuring the efficacy of restorative justice quantitatively compared to formal punishment, such as imprisonment or fines, makes it difficult for justice systems accustomed to formal punishment to evaluate objectively.

The implementation of restorative justice in Indonesia is not merely a procedural innovation but a reflection of the nation's philosophical and cultural foundations, deeply rooted in Pancasila and customary law. Both serve as moral compasses shaping Indonesia's distinctive conception of justice, one that emphasizes social harmony, collective responsibility, and the restoration of human dignity over retribution.⁴⁶ Pancasila provides the ethical basis for the national legal system, particularly through its core precepts of Just and Civilized Humanity and Social Justice for All the People of Indonesia, which align closely with restorative justice principles.⁴⁷ These values guide the Indonesian legal system to perceive justice not merely as punishment but as the restoration of moral and social balance.⁴⁸ As Notonagoro argues, Pancasila offers a philosophical foundation that integrates moral ideals with the pursuit of social harmony, thereby positioning restorative justice as a realization of humanistic justice within Indonesia's ideological framework.⁴⁹ Meanwhile, customary law has long embodied restorative elements through traditional practices such

⁴⁴ Braithwaite, "Restorative Justice and a New Criminal Law of Substance Abuse."

⁴⁵ William R. Wood, Masahiro Suzuki, and Hennessey Hayes, *Restorative Justice in Youth and Adult Criminal Justice*, *Oxford Research Encyclopedia of Criminology and Criminal Justice*, 2022, <https://doi.org/10.1093/acrefore/9780190264079.013.658>.

⁴⁶ Riama Manuella Sitanggang, "Pancasila Sebagai Ideologi Negara Landasan Implementasi Dan Relevansi Di Era Modern," *Jurnal Ilmiah Kutei* 23, no. 2 (2024): 277–86.

⁴⁷ Ganjar Razuni, "Studi Kritis Atas Pemikiran Notonagoro Tentang Pancasila Sebagai Dasar Negara," *Populis : Jurnal Sosial Dan Humaniora* 9, no. 1 (2024): 62–78, <https://doi.org/10.47313/pjsh.v9i1.3663>.

⁴⁸ Braithwaite, "Restorative Justice and a New Criminal Law of Substance Abuse."

⁴⁹ Aloysius R. Entah, "Indonesia : Negara Hukum Yang Berdasarkan Pancasila," *Seminar Nasional Hukum*, 2016.

as deliberation, customary reconciliation, and compensation.⁵⁰ These mechanisms emphasize healing, reintegration, and consensus, positioning justice as a communal process rather than a state-centric procedure. In many indigenous communities, justice is achieved when social relationships are restored and moral order is reaffirmed, an orientation that existed long before restorative justice theories emerged in Western criminology. By integrating the moral philosophy of Pancasila and the relational principles of customary law, Indonesia's restorative justice framework becomes normative, cultural, and spiritual, rather than merely procedural.⁵¹ This dual foundation distinguishes Indonesia from civil law systems, which rely heavily on codified mechanisms for legal legitimacy, and from common law systems, where restorative justice often emerges as a pragmatic alternative to adversarial litigation.⁵² In contrast, Indonesia's model carries inherent moral legitimacy rooted in local wisdom and philosophical values. It reflects a revitalization of indigenous traditions and ethical ideals that enrich the global restorative justice discourse with a model grounded in humanity, deliberation, and social harmony, the essence of Indonesia's legal identity.⁵³ Restorative justice in Indonesia has been normatively recognized through several key legal instruments. Its foundation is established in Law Number 11 of 2012 on the Juvenile Criminal Justice System, which institutionalizes restorative approaches for children in conflict with the law. This framework is reinforced by the Guidelines for the Implementation of Restorative Justice in General Courts (Decree Number 1691/DJU/SK/PS.00/12/2020) and a Joint Memorandum of Understanding between the Supreme Court, the Ministry of Law and Human Rights, the Attorney General's Office, and the National Police (Number 131/KMA/SKB/X/2012, et al., dated October 17, 2012).⁵⁴ The most recent and comprehensive regulation, Supreme Court Regulation Number 1 of 2024, provides unified guidelines for restorative justice within Indonesia's criminal justice system.⁵⁵

In practice, restorative justice in Indonesia promotes a humanistic and recovery-oriented model, encouraging participation of victims, offenders, and communities in reconciliation rather than punishment.⁵⁶ Mechanisms such as diversion in juvenile cases prevent further trauma and support rehabilitation, while supervised mediation in minor domestic violence cases facilitates reconciliation when both parties consent.⁵⁷ Despite these developments, feminist legal scholars have raised concerns regarding potential re-victimization in cases involving women victims, emphasizing the importance of a gender-sensitive approach consistent with human rights standards.⁵⁸ Overall, Indonesia has demonstrated a strong legal commitment to restorative justice through progressive regulations. However, overlapping and fragmented rules continue to hinder effective implementation, highlighting the need for regulatory harmonization and institutional capacity-building.⁵⁹ The implementation of restorative justice in rural and remote areas raises further concerns

⁵⁰ Widyawati et al., "Urgency of the Legal Structure Reformation for Law in Execution of Criminal Sanctions."

⁵¹ Hadi, "Mengkaji Sistem Hukum Indonesia (Kajian Perbandingan Dengan Sistem Hukum Lainnya)."

⁵² Sitanggang, "Pancasila Sebagai Ideologi Negara Landasan Implementasi Dan Relevansi Di Era Modern."

⁵³ Frida and Usman, "Keadilan Restoratif (Restoratif Justice) Dalam Sistem Peradilan Pidana."

⁵⁴ Hotma Situmorang Sinaga, "Implementation of Restorative Justice in Indonesian General Courts (Based on the Decree of the Director-General of the Supreme Court of the Republic of Indonesia)," *International Journal of Research - Granthaalayah* 9, no. 7 (2021): 1-8, <https://doi.org/10.7821/granthaalayah.v9.i4.2021.3886>.

⁵⁵ Anaris and Bambang, "Peraturan Restorative Justice Dalam Peraturan Mahkamah Agung No.1 Tahun 2024."

⁵⁶ Sitanggang, "Pancasila Sebagai Ideologi Negara Landasan Implementasi Dan Relevansi Di Era Modern."

⁵⁷ Zulfa, "Restorative Justice in Indonesia: Traditional Value."

⁵⁸ Kathleen Daly, "Conferencing in Australia and New Zealand: Variations, Research Findings, and Prospects," in *Restorative Justice for Juveniles: Conferencing, Mediation and Circles*, ed. Allison Morris and Gabrielle Maxwell (Oxford: Hart Publishing, 2001), 59-84.

⁵⁹ Razuni, "Studi Kritis Atas Pemikiran Notonagoro Tentang Pancasila Sebagai Dasar Negara."

regarding flexibility and the potential reliance on customary law mechanisms. ⁶⁰Limited infrastructure, the scarcity of trained mediators, and insufficient institutional support often hinder access to restorative processes in these communities.⁶¹

Moreover, Supreme Court Regulation Number 1 of 2024 and related instruments have not yet provided clear procedures for evaluation and post-agreement supervision, particularly in cases involving children and women. Therefore, reform is required not only in regulatory aspects but also in the capacity of law enforcement officials, through continuous education, certification, and professional training on restorative justice principles. Strengthening competence and awareness among law enforcers represents an essential step toward harmonizing restorative practices within both civil law and common law systems globally.

CONCLUSION

The comparative analysis reveals both differences and challenges in the regulation and implementation of restorative justice within civil law, common law, and the Indonesian legal system. The civil law system tends to be more rigid and formal due to its codified structure, which often hampers the practical application of restorative justice because of its lengthy and procedural mechanisms. In contrast, the common law system provides greater flexibility in adopting restorative justice, allowing for various models, such as victim-offender mediation and community conferencing, to be integrated into its judicial framework. Meanwhile, the Indonesian legal system, although supported by progressive initiatives such as Supreme Court Regulation Number 1 of 2024 on Guidelines for the Implementation of Restorative Justice in Criminal Courts, still faces significant challenges. These challenges include limited understanding among law enforcement officers, inconsistencies in interpretation and application across regions, and inadequate institutional and infrastructural support. At the societal level, cultural diversity and differing perceptions of justice also affect the uniform implementation of restorative justice principles. To strengthen the implementation of restorative justice, Indonesia should not only adopt the best practices from common law jurisdictions but also align them with its socio-cultural context and philosophical foundations based on Pancasila. This can be achieved through: a) The simplification and harmonization of regulations to avoid overlaps between restorative justice mechanisms and existing procedural law; b) The institutionalization of education and professional training for judges, prosecutors, police, and mediators to enhance their competence and sensitivity, particularly in cases involving women and children; c) The development of community-based restorative mechanisms, integrating local wisdom and customary law (to ensure that restorative practices are culturally grounded and socially acceptable; and d) The promotion of public awareness and participation to build a shared understanding of restorative justice as a humane, inclusive, and rehabilitative approach to criminal resolution. In conclusion, restorative justice in Indonesia should not merely serve as an alternative to punitive measures. Still, it should evolve into a transformative legal framework that reflects the nation's values of humanity, justice, and social harmony. The success of its implementation depends on coherent regulation, institutional commitment, and the alignment of restorative principles with Indonesia's legal culture and moral foundations.

⁶⁰ Widyawati et al., "Urgency of the Legal Structure Reformation for Law in Execution of Criminal Sanctions."

⁶¹ Rochaeti et al., "A Restorative Justice System in Indonesia: A Close View from the Indigenous Peoples' Practices."

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