

Philosophical Foundations of Restorative Justice: Between the Retributive Paradigm and The Restorative Paradigm

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ABSTRACT: *The criminal justice system in Indonesia has historically been dominated by retributive justice, which focuses on punishing perpetrators and ignoring the central role of victims. This paradigm, rooted in the philosophies of Immanuel Kant and G.W.F. Hegel, views punishment as a proportionate retribution to restore a disturbed legal order. In response, restorative justice emerged as an alternative approach, initiated by Howard Zehr, and based on the recovery of losses and relationships damaged by criminal acts. This research aims to examine the philosophical foundations of the two paradigms and analyze the convergence and challenges of their implementation in the criminal law system in Indonesia. Using normative legal research methods, the results show that although restorative justice has been accommodated in various institutional regulations and the new Criminal Code, it still functions as a subsystem that complements the dominant retributive model. Restorative justice tends to be applied to a limited extent to minor or child-related cases. This implementation faces a range of significant challenges, including a lack of a unified legal umbrella, misalignment between law enforcement agencies, and the risk of abuse of authority. This study concludes that a paradigm shift towards a more humanistic and participatory justice requires a more cohesive legal framework, increased institutional synergy, and strengthening professional ethics to ensure restorative justice does not become a loophole, but rather a fair and effective solution.*

KEYWORDS: *Philosophical, Restorative Justice, Retributive*

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I. INTRODUCTION

The criminal justice system in Indonesia has historically and practically been dominated by the paradigm of retributive justice[1]. The national criminal law framework, which is rooted in the legal traditions of the European continent and inherited from the old Criminal Code (a translation of the Dutch Criminal Code of 1881), is strongly *daad-strafrecht*, which focuses on the punishment of criminal acts that have been committed[2]. In this paradigm, punishment, especially the deprivation of liberty through imprisonment, is seen as a fair mechanism to provide commensurate retribution for violations of public norms. Justice is interpreted as a disturbed moral balance, and punishment is a means to restore that balance[3]. However, this retaliation-focused orientation has created a variety of crises. The retributive system often ignores the most disadvantaged parties, namely the victims. Victims are often only positioned as witnesses or instruments for law enforcement officials to impose criminal penalties on perpetrators, without getting adequate attention to the physical, mental, or economic suffering they experience[4]. Worse, material sanctions such as fines do not flow to the victim, but become state revenue. This approach is inherently centralistic and top-down, placing the state as the party that "owns" the criminal conflict, while the victim and the community are marginalized.

In response to this weakness, restorative justice emerged as an alternative approach. This concept has evolved over the past four decades and offers a reform of the criminal law system in a more positive direction. In contrast to the retributive paradigm, restorative justice emphasizes the restoration of social relations damaged by criminal acts through a participatory and cooperative dialogue process[5]. The main focus is to repair the losses caused, not solely punish the perpetrators. This paradigm shift is not just about retaliation versus restoration, but also about the deconstruction of ownership of the conflict itself. The retributive paradigm fundamentally views criminal acts as violations of public norms whose authority is monopolized by the state[6].

This system assumes that the state, through its apparatus, is the most interested party in re-establishing the broken order[7]. Instead, restorative justice seeks to restore ownership of conflict to the individuals and communities directly affected. This approach changes the decision-making flow from the original top-down (relying on state authority) to bottom-up (accommodating the roles and interests of the parties). This is a fundamental philosophical change that challenges the state's hegemony in law enforcement and demands active collaboration from victims, perpetrators, and society[8]. This ontological change in defining who is harmed and who is entitled to justice is at the heart of the tensions and challenges in the implementation of restorative justice. Based on this background, this study aims to analyze the philosophical foundations of the two justice paradigms, compare the essential differences between the two, and examine the dynamics, challenges, and prospects of restorative justice implementation in the criminal justice system in Indonesia.

II. RESEARCH METHODS

This study uses a type of normative legal research. This approach is oriented towards the study of relevant literature materials to answer the legal issues analyzed[9]. The main data sources of this study are primary and secondary legal materials, which are collected through literature studies. The approaches used in this study include:

1. Statute Approach: Conducting an analysis of the laws and regulations that are the formal basis for restorative justice in Indonesia. This includes the Regulation of the National Police of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice, the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Prosecutions Based on Restorative Justice, Supreme Court Regulation Number 1 of 2024 concerning Guidelines for Prosecuting Criminal Cases Based on Restorative Justice, and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Law Number 1 of 2023 about the Criminal Code (new Criminal Code).
2. Theoretical Approach: Examines and explores the concepts and philosophical theories behind the two paradigms. This research traces the thought of Immanuel Kant and Georg Wilhelm Friedrich Hegel as the foundation of retributive justice, as well as Howard Zehr's theory as the main foundation of restorative justice.
3. Case Approach: Examine case studies of restorative justice applications that have been implemented by law enforcement institutions (Police, Prosecutor's Office, and Courts) to see the compatibility between theoretical idealism and practice in the field.

Data analysis is carried out qualitatively-normatively by interpreting, comparing, and synthesizing various data and concepts to draw comprehensive conclusions.

III. RESULTS AND DISCUSSION

3.1. The Philosophical Foundations of Retributive Justice: Punishment as an Absolute Goal

Retributive justice is an approach in criminal law that emphasizes commensurate retribution for crimes committed[10]. This paradigm does not see punishment as a tool to achieve other goals, but rather as an end itself. The punishment was imposed because the perpetrator deserved to be punished for his actions[11]. In Immanuel Kant's view, punishment is an absolute moral imperative. Punishment is not an instrument to achieve the purpose of utility, such as deterrence or rehabilitating the perpetrator, but rather as a proportionate moral response to the crime that has been committed[12]. Kant rejected the view that punishment should be beneficial. For him, punishment can only be justified if it is an absolute moral "necessity." This concept is known as the absolute theory or the theory of retribution (*Vergeldings Theorien*). However, it should be understood that revenge in Kant's thought has a different feel than pure revenge. Revenge is a personal desire driven by emotions. Instead, the punishment that Kant conceived was rational, proportionate, and imposed retribution by public authority. This punishment is intended to uphold the universal moral order that has been violated. Moreover, by punishing the perpetrator, the state actually respects the perpetrator as a rational and free subject, capable of taking full responsibility for his choice of actions. Punishment, in this context, is an acknowledgment of the rationality of the perpetrator, not simply the imposition of suffering.

Georg Wilhelm Friedrich Hegel, although also a retributivist, offered a slightly different foundation. Hegel viewed crime as a "negation" of the law itself. Crime is not just a violation, but an act that negates the reality of the law[13]. Within the framework of Hegelian dialectics, punishment is a "negation of negation" that serves to reaffirm the validity and authority of law. Sentences are imposed to undo the crime and restore the disturbed legal order. Hegel's theory is more flexible than Kant's theory. According to Hegel, punishment does not have to be exactly equal to crime, but rather must be proportional in value. This concept allows for a variation of punishment tailored to the relative value of the crime, providing a wider range of interpretation in the imposition of sanctions compared to the strict principle of equality proposed by Kant. Nonetheless, both Kant and Hegel agree that punishment is an intrinsic response to past crimes, not a tool to achieve future goals.

3.2. The Philosophical Foundations of Restorative Justice: Restoration of Relationships as a Primary Goal

Restorative justice is a legal philosophy that emphasizes the recovery of losses and relationships damaged by criminal acts[14]. This paradigm rejects the idea of crime as a violation of the state alone, and instead, defines it as a violation of people and human relations:

a. Howard Zehr's Restorative Justice Theory: Crime as a Relationship Violation

Howard Zehr was one of the key figures in the development of restorative justice theory. He shifted the main focus from "what laws are broken" to "who is injured and what is the need"[15]. Zehr asks three central questions in restorative justice: 1) Who has been injured, 2) What are their needs, 3) Who has an obligation to meet those needs and repair the damage. In Zehr's framework, criminal offenses create losses, which in turn give birth to the need and obligation to remedy them[16]. The three main pillars in the restorative process are restoration, accountability, and engagement. The perpetrator is encouraged to take responsibility for his actions in a meaningful way, while the victim is given the opportunity to get recovery and be actively involved in the settlement of the case.

b. The Relevance of the Restoration Philosophy with Pancasila Values.

The application of restorative justice in Indonesia finds a strong philosophical footing in the noble values of the nation, especially Pancasila. This concept is in line with the tradition of deliberation for consensus which is the core of the fourth precept of Pancasila[17]. This approach reflects the local wisdom that has long lived in Indonesia's customary law societies, where dispute resolution is prioritized through peace and consensus rather than through repressive litigation. In the legal context, restorative justice serves as a theoretical and philosophical bridge between the formal criminal justice system inherited from colonial traditions and the legal values that are alive and developing in society. This is part of a broader legal reform agenda to create a more inclusive, humane, and sustainable system. Thus, the adoption of restorative justice in Indonesia can be seen as a historical reconciliation between two different legal traditions: the state-oriented criminal justice system and the communal-rooted tradition of conflict resolution.

3.3. Comparison and Dynamics Between Retributive and Restoration Paradigms

The criminal justice system in Indonesia currently adopts these two paradigms in a convergence, where restorative justice exists as a complement, not a substitute, for retributive justice[18]. Nonetheless, the fundamental differences between the two remain the cornerstone of the analysis.

Table 1: Comparison of Paradigms of Retributive Justice and Restorative Justice

Comparative Aspects	Retributive Justice	Restorative Justice
Definition of Crime	Violations of law and the state	Breakdown of relationships between individuals and communities
Main Objectives	A just punishment (retribution)	Recovery of loss and damaged relationships
Focus	Perpetrators and their deeds (<i>daad- strafrecht</i>)	Perpetrators, victims, and the community
The Role of the Victim	Passive, as a witness to prove guilt	Active, as central to the completion process
The Role of the Actor	Punished and served sanctions	Responsible, repair losses, and reintegrate
The Role of the State	Conflict owners, law enforcement in power	Facilitator of the mediation and peace process
Procedural System	Formal, litigation, adversial	Dialog, mediation, deliberation

Source: Data processed by the author, 2025

The implementation of restorative justice in Indonesia is not a dichotomous transition, but a convergence that is manifested in the legal framework in various institutions. Today, the principle of restorative justice has been accommodated in every subsystem of criminal justice:

a. Police: Through Police Regulation Number 8 of 2021, the Police are given guidelines to stop the investigation of certain criminal cases based on restorative justice. The conditions include peace, fulfillment of victims' rights, and not causing public unrest.

- b. Prosecutor's Office: The Attorney General's Office implements this approach through Prosecutor's Regulation Number 15 of 2020. This regulation gives the Public Prosecutor the authority to stop prosecutions based on restorative justice, where the prosecutor acts as a facilitator between the perpetrator and the victim.
- c. Court: The Supreme Court issued Supreme Court Regulation Number 1 of 2024 which provides guidelines for judges in prosecuting criminal cases with a restorative justice approach. This regulation regulates specific conditions, such as minor crimes or the threat of a maximum sentence of 5 years, as well as the existence of a peace agreement between the parties. Especially for children, restorative justice is the main goal in the implementation of diversion, as regulated in the Law on the Juvenile Criminal Justice System.
- d. New Criminal Code (Law No. 1 of 2023): Restorative justice has been codified nationally in the new Criminal Code as part of holistic and integrative legal reform.

Although these principles have been adopted, in legal practice in Indonesia, restorative justice tends to be positioned as an "*ultimum remedium*" or exception [19]. Each institution places its mechanism at a different stage, starting from the termination of the investigation (the National Police of the Republic of Indonesia), the prosecution (the Prosecutor's Office), to the consideration of the verdict (Court). This shows that the retributive paradigm still dominates as the main path, while restorative justice functions as a subsystem that is activated under certain conditions. This approach has not been integrated as a uniform and cohesive system, which can be seen as a challenge to synergy between law enforcement agencies.

3.4. Challenges, Criticisms, and Prospects for the Implementation of Restorative Justice in Indonesia

The implementation of restorative justice in Indonesia, although it shows progress, is not free from challenges and criticism. Some cases have been successfully resolved through this mechanism, such as cases of theft and persecution, leading to the termination of prosecution or parole. However, there are also cases where mediation fails because an agreement between the victim and the perpetrator is not reached.

Table 2: Challenges of Restorative Justice Implementation in Indonesia

Challenge Categories	Description
Legal Framework	There is no comprehensive single legal umbrella, so the rules are still fragmented at the level of law enforcement institutions.
Institutional Synergy	Rules and understandings that are not synchronized between law enforcement officials (the National Police of the Republic of Indonesia, the Prosecutor's Office, the Supreme Court) cause potential conflicts and differences in treatment.
Human Resources	Lack of adequate training and understanding among the authorities, which leads to communication and mediation barriers.
Abuse of Authority	The risk of transactional practices and judicial corruption, especially if there is no transparent and accountable oversight mechanism.
Community Understanding	Lack of public education leads to rejection or preference for retributive punishment that is considered more "fair".
Technical Difficulties	The perpetrator cannot fulfill the obligation of material compensation requested by the victim.
Case Limitations	Restorative justice cannot be applied to serious crimes such as corruption, crimes against life, or cases with power relations.

Source: Data by author, 2025

Academic criticism highlights that imperfections and inconsistencies in the legal framework provide enormous discretion for law enforcers. On the one hand, this discretion allows for flexibility to achieve humanistic substantive justice. However, on the other hand, discretion that is not strictly supervised is particularly vulnerable to abuse, transactional practices, and judicial corruption. Restorative justice, which is supposed to be a tool to achieve true justice, can turn into loopholes to avoid punishment that should be received, especially in serious cases. Therefore, the real battle in the application of restorative justice in Indonesia is no longer at the philosophical level, but at the level of ethics and supervision of institutional integrity.

To encourage more effective implementation of restorative justice, strategic steps are needed. The establishment of a comprehensive single legal umbrella (e.g., through the revision of the Criminal Procedure Code) can harmonize inter-institutional rules and provide legal certainty. In addition, increasing inter-agency synergy through synchronization teams and continuous training for law enforcement officials is crucial. Massive and sensitive public education of cultural values is also needed to change people's views from revenge-oriented to recovery-oriented.

IV. CONCLUSION

This research shows that there is a fundamental philosophical difference between the paradigm of retributive justice and restorative justice. Retributive justice, with the foundation of the thought of Immanuel Kant and G.W.F. Hegel, centered on punishment as the absolute goal of restoring a disturbed legal order. Meanwhile, restorative justice, spearheaded by Howard Zehr, focuses on restoring damaged relationships through perpetrator accountability and victim empowerment, in line with the values of Pancasila deliberation.

In practice, Indonesia does not adhere to one of the paradigms in a dichotomous manner, but is on a convergence path where restorative justice complements the dominant retributive system. Although it has been accommodated in various institutional regulations (the National Police of the Republic of Indonesia, the Prosecutor's Office, the Supreme Court) and codified in the new Criminal Code, restorative justice still functions as a subsystem limited to minor or juvenile cases.

The success of the implementation of restorative justice in the future is highly dependent on efforts to overcome existing challenges, especially related to institutional synergy, apparatus integrity, and public understanding. Without a strong legal framework and transparent oversight, the discretion afforded by restorative justice has the potential to be abused. Therefore, strengthening the foundation of ethics and professionalism is the main key so that restorative justice can truly be a humane, inclusive, and fair solution for all parties.

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