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## A Comparative Study of Restorative Justice in Criminal Law Enforcement in Common Law and Civil Law Countries and Its Implications for Indonesian Legal Reform

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**Abstract:** This study aims to analyze and compare the application of restorative justice in the criminal legal systems of Common Law and Civil Law countries, and examine its implications for criminal law reform in Indonesia. The restorative justice paradigm emerged as an alternative to the retributive justice system, which has focused on punishing the perpetrator rather than restoring the victim and the community. Using a normative-comparative juridical approach, this study examines various restorative justice practices in the United Kingdom, Canada, and New Zealand, representing Common Law, and the Netherlands, France, and Indonesia, representing Civil Law. The analysis shows that the Common Law system is more adaptive and provides broad discretion to law enforcement officials to implement restorative-based solutions, while the Civil Law system tends to be more bound by a legalistic framework and requires firm legal regulations before implementation. Nevertheless, both systems show the same direction towards a more humanistic and participatory law enforcement. In the Indonesian context, the application of restorative justice needs to be strengthened through the harmonization of laws and regulations, increasing the capacity of law enforcement officials, and establishing an integrated penal mediation institution. These findings confirm that national criminal law reform should adopt a hybrid approach that combines the flexibility of Common Law with the legal certainty of Civil Law to create a criminal justice system that is socially just and restorative.

**Keyword:** Restorative Justice, Criminal Legal System, Common Law, Civil Law.

### INTRODUCTION

The criminal law system in various developing countries has the primary objective of upholding justice, maintaining order, and providing a deterrent effect for perpetrators of criminal acts. Traditionally, the criminal law system, both in Common Law and Civil Law countries, tends to emphasize the retributive principle, namely the punishment of the perpetrator as a form of accountability for the actions committed, so that attention to the

recovery of victims and the rehabilitation of perpetrators often does not receive optimal attention. (Karjono, et al., 2024) In Indonesia, this retributive approach is also still dominant, as seen from the formalistic criminal justice procedures and focus on legal processes that emphasize sanctions, while the needs of victims and the social impact on society are sometimes less considered. (Hakim, et al., 2025) Along with the development of the global justice paradigm, a restorative justice approach has emerged that emphasizes the restoration of harmony between victims, perpetrators, and society through mechanisms of mediation, reconciliation, and the active participation of all parties involved. (Hikmah & Agustian, 2023) This approach not only offers a more humane alternative solution but also encourages a balance between perpetrator rehabilitation, victim recovery, and broader social interests. This ensures that the criminal justice system not only formally enforces the law but also serves as an instrument for the restoration and reconstruction of social relations damaged by criminal acts. (Nur, 2024)

The conventional criminal justice system, which has traditionally prioritized a retributive approach, has limitations in addressing criminal conflicts comprehensively. The primary focus of this approach is the punishment of the perpetrator, so the judicial process emphasizes formalities and legal procedures rather than victim recovery and the reconstruction of social relations. (Tomakati, 2023) As a result, victims often do not receive substantive justice, either in the form of restitution for material losses or psychological support, while perpetrators also do not receive optimal opportunities for rehabilitation. Furthermore, the community, as the party affected by the crime, is rarely actively involved in the case resolution process, resulting in a low sense of justice and public trust in the criminal justice system. (Prameswari, 2024)

In Indonesia, this problem is increasingly evident, with law enforcement still not fully effective and equitable. Prison overcrowding, disparities in legal enforcement, and limited formal mediation mechanisms are clear indications that the current criminal justice system is unable to address the need for comprehensive recovery and reconciliation. (Situmeang, 2025) Many cases end in prison sentences alone, without any dialogue between the victim and the perpetrator, leaving the social conflicts underlying the crime unresolved. Public dissatisfaction with this judicial process reflects the inadequacy of a retributive approach to creating socially just and restorative justice. (Fardha, 2023)

In response to these limitations, restorative justice has emerged as an alternative that emphasizes the restoration of social harmony, the active participation of victims, perpetrators, and the community, and a more humane approach to conflict resolution. This concept focuses on reconciliation and recovery from the impact of criminal acts through dialogue, mediation, and mutual agreement between the affected parties. (Harsono & Dewanto, 2025) The principles of restorative justice include the perpetrator's responsibility to repair the harm caused, empowering victims to play a role in the resolution process, and community involvement in supporting the perpetrator's rehabilitation and social reintegration. The ultimate goal is to create a more holistic approach to justice, rather than simply being punitive, thus making the criminal justice process more humane and meaningful. (Redi, 2025)

The benefits of implementing restorative justice have been proven in various countries, both under Common Law and Civil Law, including the UK, Canada, New Zealand, the Netherlands, and France. Globally, this trend demonstrates a growing awareness of the importance of an approach that prioritizes victim recovery, perpetrator reintegration, and community involvement in the conflict resolution process. For victims, this approach provides an opportunity to be heard, receive compensation, and restore psychological harmony. For perpetrators, restorative justice provides an opportunity to take responsibility, learn from mistakes, and be reintegrated into society. For the community, this system

enhances a sense of justice, prevents the recurrence of conflict, and strengthens social cohesion. (Rahmathoni, 2024) Thus, restorative justice offers a relevant and contextual solution for Indonesia in its efforts to reform criminal law for a more humane and effective purpose.

The criminal legal system in Common Law countries is characterized by relative flexibility and adaptability, providing law enforcement officials with ample discretion to implement restorative-based solutions. This approach allows judges, prosecutors, and mediation institutions to tailor the case resolution process to the social context, the extent of the victim's loss, and the perpetrator's readiness to take responsibility. In the UK, Canada, and New Zealand, restorative justice practices have evolved through victim-offender mediation programs, family conferences, and alternative case resolution arrangements, emphasizing dialogue, reconciliation, and social recovery. This flexibility facilitates the integration of restorative mechanisms into judicial procedures, while also allowing for local innovations tailored to community needs and case characteristics. (Khasanofa et al., 2025)

In contrast, civil law systems tend to be more formalistic and tied to a written regulatory framework, requiring a clear legal basis and firm regulations. In countries like the Netherlands and France, although mediation mechanisms and restorative programs exist, their implementation can only occur if explicitly stipulated by law. In Indonesia, as a civil law country, this attachment limits the application of the restorative approach, as many criminal laws do not yet accommodate formal mediation mechanisms and victim recovery procedures. This difference demonstrates that while both systems emphasize justice, common law is more responsive to practical and social needs, while civil law emphasizes legal certainty through standardized regulations. (Rivanie et al., 2022)

The Indonesian context demonstrates a significant gap between the existing legal framework and the societal need for humane criminal resolution. Many laws, such as the Criminal Procedure Code (KUHAP) and the Juvenile Justice Law, contain provisions regarding mediation or out-of-court settlements. However, their implementation remains limited by poor understanding among law enforcement officials, a lack of integrated mediation facilities, and socio-cultural barriers such as stigma against perpetrators and low community participation. Furthermore, the limited capacity of law enforcement officials and lengthy judicial procedures make restorative justice difficult to implement consistently, resulting in unrealized potential for victim recovery and social reconciliation. (Niasa & Faisal, 2024)

Comparative research on the application of restorative justice in criminal legal systems in Common Law and Civil Law countries is crucial for the development of criminal law in Indonesia, as it can provide a deeper understanding of the practices, challenges, and successes of restorative mechanisms across various legal contexts. By analyzing the experiences of countries such as the United Kingdom, Canada, New Zealand, the Netherlands, and France, this study not only highlights the structural and cultural differences between the two legal systems but also emphasizes effective implementation strategies to balance legal certainty and procedural flexibility. The findings of this study are expected to provide a scientific basis for policymakers, academics, and law enforcement officials in formulating policies and regulations that support the more systematic integration of restorative justice in Indonesia, so that national criminal law reform can move towards a more humane, participatory justice system, and one that is oriented towards victim recovery, perpetrator rehabilitation, and sustainable social reconciliation.

## **METHOD**

This study uses a normative juridical method with two main approaches, namely the statutory approach and the conceptual approach, to analyze the implementation of restorative

justice in the criminal law system in Indonesia and compare it with practices in Common Law and Civil Law countries. The statutory approach is carried out by examining relevant regulations, such as the Criminal Procedure Code, the Juvenile Criminal Justice System Law, and the Witness and Victim Protection Law, as well as international regulations or legal practices of other countries as comparative material. The conceptual approach is used to understand the theory, principles, and concepts of restorative justice, including the differences between retributive and restorative systems, and their implications for criminal law reform in Indonesia. Data sources in this study are secondary, including laws and regulations, legal literature, scientific journals, reference books, policy documents, and previous research publications. Data collection techniques are carried out through document studies and systematic literature reviews, while data analysis techniques use qualitative analysis with a descriptive-comparative approach, namely examining, comparing, and interpreting legal provisions and international practices to draw conclusions regarding the implementation, challenges, and strategies for integrating restorative justice in Indonesia.

## **RESULTS AND DISCUSSION**

### **Implementation of Restorative Justice in Common Law and Civil Law Countries**

Restorative justice is an approach in the criminal justice system that emphasizes the restoration of harm and reconciliation between victims, perpetrators, and the community, in contrast to the retributive system, which focuses more on punishment alone. (Rahadian, et al., 2024) The main principles of restorative justice include victim recovery, where victims are given the opportunity to be heard, receive compensation, or social and psychological recovery; perpetrator responsibility, which encourages perpetrators to admit mistakes, repair harm, and be reintegrated into society; and community involvement, which plays a role in supporting the reconciliation process and maintaining social harmony. (Firdaus & Koswara, 2024) In Indonesia, this principle has been accommodated in several laws and regulations, including Article 59 and Article 71 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which regulates the resolution of juvenile cases through mediation and a restorative approach; Article 4 paragraph (1) of Law Number 8 of 1981 concerning Criminal Procedure Code (KUHAP), which emphasizes the principle of legal certainty while also providing space for out-of-court settlements; and Article 45 paragraph (1) of Law Number 13 of 2006 concerning Witness and Victim Protection, which grants victims the right to protection and restitution. Thus, restorative justice offers a more humane paradigm, focusing on reparation for harm and social reconciliation, while also serving as an alternative to the retributive system, which emphasizes punishment and sanctions alone. (Zainuddin, et al., 2022)

The Common Law system is known for its flexibility and provides law enforcement officials with broad discretion to adapt the judicial process to the social context and characteristics of the case. This flexibility allows judges, prosecutors, and mediation institutions to utilize more adaptive reparation mechanisms, such as victim-offender mediation, family conferences, and diversion programs, without being rigidly tied to formal procedures. This approach emphasizes dialogue, reconciliation, and perpetrator accountability, giving victims the opportunity to be heard and receive fair redress, while perpetrators are guided toward accountability and reintegration into society.

In the UK, victim-offender mediation programs and family group conferencing have been widely implemented, particularly in cases of minor violence and juvenile crime, with results showing increased victim satisfaction and reduced recidivism. Canada implements restorative justice circles involving victims, offenders, families, and communities, providing firsthand experience for all parties to engage in dialogue and agree on a form of redress. Meanwhile, New Zealand, through its Youth Justice Conferences, has demonstrated that

restorative-based case resolution can reduce the burden on formal courts and enhance the social reintegration of offenders. This mechanism indicates that the Common Law system is more responsive to the practical needs of society and emphasizes the active participation of all stakeholders.

The strength of restorative justice implementation under Common Law lies in its ability to adapt to diverse social and cultural conditions and encourage community participation in the justice process. This approach allows for local innovations, such as programs based in schools, community organizations, or non-governmental organizations, so that redress practices are not merely formalities but have a genuine impact on victims, offenders, and the community. However, emerging challenges include consistent implementation across jurisdictions, protecting the rights of all parties, and the potential for bias by law enforcement officials in exercising overly broad discretion without adequate oversight.

Meanwhile, civil law countries such as the Netherlands, France, and Indonesia are more formalistic and bound by written rules, requiring a clear legal basis for restorative justice implementation. Rigid procedures limit the discretion of law enforcement officials, so mediation and recovery programs can only be implemented if explicitly regulated by law. This approach emphasizes legal certainty and standard procedures, ensuring that every recovery mechanism adheres to formal regulations and is implemented through designated institutions.

In the Netherlands, mediation programs and restorative conferences are mandated through formal regulations that outline procedures and implementation standards, while France has developed criminal diversion and mediation programs through clear legislation, allowing eligible offenders to resolve cases outside of formal court. In Indonesia, restorative justice mechanisms have begun to be incorporated into regulations, such as Articles 59 and 71 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. However, implementation remains limited because law enforcement sometimes struggles to align formal procedures with the needs of mediation and victim recovery.

The advantages of the Civil Law approach are legal certainty and clear procedures, which minimize the risk of abuse of restorative mechanisms. However, challenges include a lack of system flexibility, limited discretion by law enforcement, and a complete reliance on existing regulations. This has slowed the development of restorative justice in Civil Law countries compared to Common Law countries, requiring systematic regulatory adjustments for effective restorative mechanisms. Nevertheless, both systems share a common goal: to create a more humane justice system with a focus on victim recovery, perpetrator rehabilitation, and social reconciliation.

A comparison of the implementation of restorative justice between the Common Law and Civil Law systems reveals significant differences in flexibility, discretionary authority for law enforcement, and community participation. The Common Law system emphasizes procedural adaptability, providing ample room for judges, prosecutors, and mediation institutions to tailor restorative mechanisms to the social context and characteristics of the case, and encouraging the active involvement of victims, perpetrators, and the community. In contrast, the Civil Law system tends to be formalistic and bound by written regulations, requiring the implementation of restorative justice to follow standard procedures and limiting discretionary authority for law enforcement. Nevertheless, both systems share a common goal: ensuring victim recovery, perpetrator rehabilitation, and sustainable social reconciliation.

An analysis of best practices from both systems reveals strategies that can be adapted in Indonesia. Within the Common Law system, practices such as victim-offender mediation, family conferences, and diversion programs can serve as models for increasing community

participation and procedural flexibility. Meanwhile, within the Civil Law system, clear regulations and formal procedures can serve as a basis for ensuring legal certainty and protecting the rights of all parties. The combination of these two approaches suggests that Indonesia can develop a hybrid model that combines flexibility in practice with formal legal certainty, enabling restorative mechanisms to operate effectively and fairly.

The success of restorative justice implementation is influenced by various social, cultural, and legal factors. Social factors include the level of public awareness of victims' rights and the importance of reconciliation, while cultural factors include public attitudes toward perpetrators and norms that support deliberative conflict resolution. Legal factors include regulations governing mediation and recovery mechanisms, as well as the capacity of judicial institutions to implement these programs. The synergy of these three factors determines whether restorative justice implementation can run smoothly and provide optimal benefits for victims, perpetrators, and the community.

However, there are internal and external barriers that need to be addressed. Internal barriers include limited legal apparatus capacity, a lack of understanding of restorative justice principles, and sometimes rigid formal procedures. External barriers include low public awareness, social stigma against perpetrators, and the limited availability of mediation institutions to support the resolution process. Overcoming these barriers requires a concerted effort, including training law enforcement officials, public outreach, the development of integrated mediation institutions, and regulatory adjustments to ensure the flexibility of restorative justice practices aligns with the required legal certainty.

### **Implications and Strategies for Integrating Restorative Justice in Indonesian Criminal Law Reform**

Indonesia has begun to incorporate the concept of restorative justice in several regulations, such as Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (Articles 59 and 71), the Criminal Procedure Code (KUHAP), and Law Number 13 of 2006 concerning Witness and Victim Protection (Article 45). However, the implementation of this concept faces various challenges. Limited legal apparatus capacity, rigid formalistic procedures, and a poor understanding of restorative justice principles are key obstacles. Furthermore, socio-cultural barriers, such as stigma against perpetrators, low community participation, and resistance to approaches that differ from formalistic legal culture, further complicate the implementation of victim recovery and social reconciliation mechanisms.

Learning from international practice is crucial to bridging this gap. Common law countries, such as the United Kingdom, Canada, and New Zealand, demonstrate flexibility in the application of restorative justice, with victim-offender mediation mechanisms, family conferences, and diversion programs that emphasize the active participation of victims, perpetrators, and the community. On the other hand, civil law countries such as the Netherlands and France emphasize legal certainty through clear written regulations, formal procedures, and protection of the rights of all parties involved. An analysis of best practices from these two systems suggests that the combination of practical flexibility and formal legal certainty could be an adaptive model for implementation in Indonesia.

The strategy for integrating restorative justice into the Indonesian criminal law system must begin with the harmonization of legislation. This includes aligning the Criminal Procedure Code (KUHAP), the Criminal Code, the Juvenile Justice System (SPPA) Law, and the Witness and Victim Protection Law to provide a strong legal basis for the implementation of recovery and mediation mechanisms. This harmonization aims to eliminate overlapping regulations, ensure clear procedures, and simultaneously provide space for law enforcement officials to implement adaptive approaches tailored to the characteristics of the case.

Furthermore, increasing the capacity of law enforcement officials is key to the successful integration of restorative justice. Intensive training, implementation guidelines, and ongoing education are needed to ensure law enforcement understands the principles of victim recovery, perpetrator responsibility, and community involvement in the resolution process. Competent officials will be able to accurately assess cases, adjust mediation procedures, and ensure the rights of all parties are protected, ensuring the effectiveness of restorative justice mechanisms.

The establishment of integrated mediation institutions, both formal and informal, is also an important strategy. These institutions can take the form of specialized units within the police, prosecutors, courts, or community organizations and non-governmental organizations with the capacity to facilitate dialogue between victims, perpetrators, and the community. Integrating mediation institutions allows for a more expeditious, transparent, and participatory resolution process, and supports the social reintegration of perpetrators and the psychological and social recovery of victims.

The integration of restorative justice into Indonesian criminal law reform has broad implications for the justice system. By shifting the paradigm from a retributive system to an approach that emphasizes victim recovery, perpetrator rehabilitation, and social reconciliation, public trust in criminal justice can be increased. This reform also has the potential to improve the effectiveness of law enforcement, reduce recidivism, and create greater social harmony. Therefore, policy recommendations include the development of monitoring and evaluation mechanisms for implementation, strategies for public outreach and education to ensure the public understands their rights and roles, and legislative and executive support to ensure the sustainability of restorative justice practices at all levels of the Indonesian criminal justice system.

## CONCLUSION

Based on a comparative analysis of the implementation of restorative justice in Common Law and Civil Law countries, it can be concluded that Common Law systems tend to be more flexible, provide broad discretion for law enforcement officials, and encourage active participation of victims, perpetrators, and the community through mediation mechanisms, family conferences, and diversion programs. Conversely, Civil Law systems emphasize legal certainty through formal procedures and clear written regulations, therefore the implementation of restorative justice requires a strong legal basis. Despite differences in implementation methods, both systems share the same goals: victim recovery, perpetrator rehabilitation, and social reconciliation. In Indonesia, although the concept of restorative justice has been incorporated into several regulations, its practice remains limited due to limited legal capacity, formalistic procedures, socio-cultural barriers, and low public understanding of the principles of restoration and reconciliation.

Based on these findings, the following recommendations are provided: First, Indonesia needs to develop a hybrid approach that combines the flexibility of Common Law practices with the legal certainty of Civil Law through harmonization of legislation, capacity building of law enforcement officials, and the establishment of effective integrated mediation institutions. Second, public outreach and education are needed to raise public awareness about victims' rights, perpetrators' responsibilities, and the community's role in the restorative justice process. Third, the government and legislature need to establish a systematic monitoring and evaluation mechanism to ensure consistency, transparency, and sustainability of restorative justice implementation at all levels of the criminal justice system. With these steps, Indonesia's criminal justice system can transform to become more humane, participatory, and oriented toward social recovery and justice for all parties involved.

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