Criminal Policy as an Instrument for Controlling Criminal Acts Based on Restorative Justice

Shulhan Iqbal Nasution

University of Medan Area, Indonesia; shulhaniqbal@staff.uma.ac.id

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ABSTRACT

Criminal policy in Indonesia plays an important role in crime control efforts, but the dominant approach, namely retributive, has not been able to resolve the roots of social problems and restore victims' rights comprehensively. The research method used is normative juridical or library research, by analyzing library materials or secondary data that are relevant to the topic. This research is descriptive analytical, namely the data obtained and processed and analyzed to provide a comprehensive picture of criminal policy functioning as an instrument for controlling criminal acts based on restorative justice with data collection methods through document studies and interviews. Research Results Show that Criminal Policy in Indonesia has not been able to resolve the root of social problems and restore victims' rights Therefore, comprehensively. a more humanistic participatory policy reformulation is needed through a restorative justice approach. Restorative justice offers a resolution mechanism that actively involves perpetrators, victims, and the community with the main goal of recovery and reconciliation. Although its implementation has begun through a number of internal policies of law enforcement institutions, its implementation still faces structural and normative challenges. Optimizing this approach requires strengthening regulations, increasing the capacity of officers, and shifting the legal culture from an orientation towards revenge towards just social recovery.

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Corresponding Author:

Shulhan Iqbal Nasution

University of Medan Area, Indonesia; shulhaniqbal@staff.uma.ac.id

1. INTRODUCTION

Criminal policy is one of the fundamental elements in the criminal law system that has a strategic role in efforts to prevent and overcome crime. This policy is not only limited to imposing sanctions on perpetrators, but also covers the entire process of the criminal law system, starting from the stage of formulating laws and regulations (legislative) that determine criminal norms, the process of law enforcement by the judicial institution (judicial), to the implementation of criminal law by correctional

institutions or the executive, which serves to realize the objectives of criminal law in real terms.(Harahap et al., 2023)

In practice, criminal policy has tended to be oriented towards a retributive approach, namely an approach that focuses on revenge against perpetrators of crimes through appropriate punishment. This approach views punishment as a tool to repay crimes committed, without paying close attention to the factors that cause crime, the rights of victims, or efforts for social recovery after the crime. This retributive policy model often produces a false deterrent effect, and contributes to further problems such as overcrowding in correctional institutions, repeated criminal acts (recidivism), and minimal efforts for social rehabilitation of perpetrators.(Hattu, 2014)

However, the orientation of criminal policy that has developed so far still tends to be retributive, namely emphasizing the imposition of punishment on perpetrators as a form of retribution for their actions. In this approach, criminal law is seen as an instrument of retribution that prioritizes legal certainty and deterrence, but often forgets the more substantive goals of justice, especially for victims and society. This model also provides little space for constructive resolution of social conflicts, resulting in long-term negative effects, such as overcapacity of correctional institutions, stigmatization of former prisoners, and high recidivism rates.(Yanto, 2021)

Based on this reality, there is an awareness that the criminal justice system needs to be reformulated with a more just, humanistic, and responsive approach to social needs. In this context, the concept of restorative justice is an alternative that is starting to find a place in modern criminal policy. Restorative justice prioritizes the process of resolving criminal cases involving perpetrators, victims, and the community in order to restore losses and improve social relations. This approach is not only aimed at punishment, but also restoration.

By integrating the principles of restorative justice into criminal policy, the state can create a criminal justice system that is not only repressive, but also preventive, restorative, and transformational. The implementation of such a policy will encourage a criminal law system that is more just, participatory, and adaptive to the dynamics of society. Therefore, the reorientation of criminal policy that is not solely based on retaliation, but also on recovery, is an urgent need in the renewal of Indonesia's national criminal law.(Noor et al., 2024)

The implementation of the principle of restorative justice in criminal policy in Indonesia still faces various serious challenges, both in terms of regulation, institutions, and practice in the field. Until now, there has been no national legal umbrella that comprehensively regulates the principles and procedures of restorative justice. Existing regulations are sectoral and limited to certain cases such as juvenile justice, so they have not yet reached the criminal system widely and sustainably.(Giosefi & Hosnah, 2025)

On the implementation side, its implementation is highly dependent on the discretion of law enforcement officers without uniform standard operating procedures. This creates legal uncertainty and opens up space for abuse of power. The limited understanding of officers regarding the concept and objectives of restorative justice also hinders effective and integrated implementation. In addition, the minimal involvement of victims and the community often causes the restorative justice process to become a formality, not a true recovery. In some cases, this approach is even misused to avoid formal legal processes, potentially violating victims' rights and reducing public trust. Furthermore, the unavailability of supporting institutions such as professional mediators, victim advocates, or post-restoration evaluation mechanisms means that the implementation of restorative justice in Indonesia cannot be carried out optimally, systematically, and sustainably.

Based on the background above, the problem is how the concept of criminal policy as an instrument for controlling criminal acts in the Indonesian criminal law system; and how to apply the principle of restorative justice in criminal policy in Indonesia.?

2. METHODS

The research method used is normative juridical. Normative juridical legal research is conducted by examining primary and secondary legal materials relevant to the object of study. This research is descriptive-analytical, which aims to systematically describe how criminal policy functions as an instrument for controlling criminal acts based on restorative justice.(Mahmud, 2005)According to Soerjono Soekanto, Normative legal research consists of: legal principles; legal systematics; Research on the level of legal synchronization; on legal history; comparative law. This normative legal research uses the following approaches: Statute Approach, Conceptual Approach, Case Approach. The technique of collecting legal materials is carried out through library research, namely by collecting and reviewing various legal literature, laws and regulations, court decisions, and relevant policy documents.(Sukanto, 2009)

3. FINDINGS AND DISCUSSION

The Concept of Criminal Policy as an Instrument for Controlling Criminal Acts

Criminal policy is a strategic effort designed by the state to prevent and combat crime. In the context of Indonesian criminal law, criminal policy not only covers the aspect of law formation (penal policy), but also the implementation and supervision of the effective application of criminal law. Its main objectives are to create social order, guarantee legal protection for the community, and ensure that substantive justice can be realized.(Ichsandi et al., 2025)

In the classical concept, criminal policy tends to be retributive, namely emphasizing punishment as a form of retaliation against perpetrators of crimes. However, this approach often ignores victims and does not always resolve the root of social problems that underlie criminal acts. Therefore, in modern developments, the criminal policy approach needs to be directed towards a more preventive and corrective model, one of which is through the restorative justice approach. (Sulisrudatin, 2014)

According to Barda Nawawi Arief, rational efforts to control or overcome crime (criminal politics) are certainly not only by using penal means (criminal law), but can also use non-penal means. Non-penal efforts include, for example, social assistance and education in order to develop social responsibility of community members, the cultivation of community mental health through moral and religious education and so on. Increasing child and adolescent welfare efforts, patrol activities and other continuous supervision by the police and other security forces and so on. These non-penal efforts can cover a very broad field in all sectors of social policy. The main objective of these non-penal efforts is to improve certain social conditions, but indirectly have a preventive effect on crime. (Fitri Setiyani, 2015)

Meanwhile, G. Peter Hoefnagels calls non-penal efforts with the term "Perfention Without Punishment." According to him, efforts included in this term are social policy, Community Planning and Child Welfare as well as the application of administrative law and civil law. Crime prevention efforts can be taken by: (Peter, 2012)

- a. Criminal Law Application
- b. Prevention without punishment (Frequantio Without Punishment)
- c. Influencing society's views on crime and punishment in the mass media (Influencing Views of Society on Crime and Punishment).

Thus, crime prevention efforts can be broadly divided into two, namely through penal or criminal law channels and non-penal or non-criminal law or outside criminal law. In this division, the efforts mentioned in points 2 and 3 can be included in the group of "non-penal" efforts. That crime prevention efforts through penal channels focus more on the repressive nature, namely suppression/eradication/suppression after the crime has occurred.(Sihombing, 2020)

According to Barda Nawawi Arief, the main problem in dealing with crime isis to integrate and harmonize non-penal (non-criminal law) and penal (criminal law) activities or policies, namely towards suppressing or reducing potential factors for the growth of crime. With this integral policy approach,

it is hoped that "Social Defense Planning" can truly succeed.

Considering that efforts to combat crime through non-penal channels are more of a preventive measure for the occurrence of crime, the main target is the conducive factors that cause crime. These conducive factors include, among others, social problems that can directly or indirectly cause or foster crime. Thus, from a macro and global criminal policy perspective, non-penal efforts occupy a key and strategic position in the overall criminal policy efforts. A key and strategic position in overcoming the causes and conditions that give rise to crime. (Euis Sopiah, 2024)

One aspect of social policy that deserves attention is the development of community mental health issues (social hygiene), both individually as members of society and family welfare including the welfare of children and adolescents and the wider community in general. In the consideration of UN resolution Number 3 of the 6th Congress in 1980, concerning "Effective Measure to Prevent Crime" among others stated:

- a. That Crime Prevention is Dependent on Man Himself
- b. That crime prevention strategies should be based on efforts to raise the spirit or soul of man and efforts to strengthen his faith in his ability to do good (That Crime Prevention Strategies Should be Based on Exalting the Spirit of Man and Reinforcing his Faith in his Ability to do Good).

From the resolution above, it is clear how important and strategic the role of religious education and various forms of religious outreach media is in strengthening human belief and ability to follow the path of truth and goodness. The description above basically wants to emphasize that the most strategic nonpenal efforts are all efforts to make society a healthy social and living environment (materially and immaterially) from criminogenic factors. This means that society with all its potential must be used as a crime prevention factor or anti-criminogenic factor which is an integral part of the entire criminal policy.

Implementation of Restorative Justice in Criminal Policy in Indonesia

Restorative justice is an approach to thinking that aims to develop a criminal justice system by emphasizing the importance of active community and victim involvement, which has so far received little attention in the conventional criminal justice system. This approach has a principal difference compared to retributive justice, which is the basis of the criminal justice system in many countries. In retributive justice, punishment is used as a form of absolute retribution against perpetrators of crimes, with the main focus on the suffering of the perpetrator and the protection of society. (Flora, 2025)

In contrast, restorative justice prioritizes the recovery process involving victims, perpetrators, and the community as a whole. This concept is a method of conflict resolution that includes the active participation of victims, perpetrators, their social environment, judicial institutions, and the community. The basic principle of restorative justice is that a crime is not only a violation of the law, but also creates suffering for victims and the community. Therefore, in resolving the impact of a crime, it is important to involve all related parties, including the perpetrator and the affected parties, and provide the necessary support for both.

Decree of the Director General of the General Courts Number: 1691/DJU/SK/PS.00/12/2020 concerning Guidelines for the Implementation of Restorative Justice in the General Courts (hereinafter referred to as the Decree of the Director General of the Badilum concerning Guidelines for the Implementation of Restorative Justice) states:

Restorative justice is one of the principles of law enforcement in resolving cases that can be used as an instrument of recovery and is an alternative to resolving criminal cases through a dialogue and mediation approach involving the perpetrator, victim, the perpetrator/victim's family, and other related parties in order to jointly make an agreement on a fair and balanced settlement of criminal cases for both the victim and the perpetrator by prioritizing restoration to the original situation and restoring good relations in society.

The main principle in the restorative justice approach is the effort to restore the suffering experienced by victims due to criminal acts, through various forms of resolution such as compensation, peace agreements, implementation of social work by the perpetrator, or other mutually agreed recovery

mechanisms. This approach demands the principles of neutrality and justice, without bias or arbitrary actions, and upholds the principles of applicable law. Restorative justice also emphasizes the importance of a balance of rights between perpetrators and victims, as well as guarantees of equal treatment in every dimension of social life.(Elfin & Fahmiron, 2025)

In this system, the perpetrator is given space to participate in the process of restoring conditions disturbed by his actions; the community is involved in maintaining and creating social harmony; while the court acts as a guardian of stability and public order. This concept has been accommodated in the Indonesian criminal justice system, especially by law enforcement agencies such as the Police, the Prosecutor's Office, and the Supreme Court, each with a legal basis and internal guidelines in its implementation.

Despite differences in the implementation model, mechanisms, classification of criminal acts, and technical procedures between institutions, the essence of restorative justice remains based on the transformation of the repressive criminal justice process into a dialogical and participatory forum. This process involves perpetrators, victims, families, and other relevant parties in order to create a just solution that leads to reconciliation and social reintegration. Although the criminal justice system can operate without the active involvement of victims and witnesses, the restorative approach recognizes the importance of their role, not merely as a tool for law enforcement, but as the main subject in a humane and just recovery process.

Within the philosophical framework of restorative justice, criminal acts are no longer understood as attacks on state authority, but rather as individual behavior that causes direct harm to the victim. This perspective is based on humanitarian values, both from the perspective of the victim and the perpetrator, so that the main goal of this approach is to repair the damage or suffering experienced by the victim due to the perpetrator's actions.

According to Tony F. Marshall and Adrianus Meliala (quoted by Iba Nurkasihani), restorative justice is understood as a process that brings together all parties involved in the violation to jointly seek solutions to the impacts that arise, for the good of the future. This means that this approach prioritizes reaching an agreement between the perpetrator and the victim as a form of forward-looking case resolution.

This idea emerged as a response to the weaknesses of the conventional criminal justice system that emphasizes aspects of retaliation, deterrence, and suffering as a form of consequence for crime. In the current correctional system, the effectiveness of punishment is often measured by the level of inmate compliance with prison rules, which shows an approach that is more oriented towards security aspects than recovery.

Restorative justice itself has been known since the 1960s as an alternative approach to resolving criminal cases, by prioritizing the active participation of perpetrators, victims, and the community. Unlike the traditional criminal justice system which tends to be procedural and formalistic, this approach places dialogue, participation, and recovery at the core of its process. Although still a matter of theoretical debate, this model has undergone significant development and has begun to influence the direction of legal policy in various countries, including Indonesia. Its implementation can be seen in various internal policies of law enforcement agencies such as the Police, Prosecutors, and Courts, as a form of adaptation to the new paradigm in resolving criminal cases.

Optimization of Criminal Policy Based on Restorative Justice

Criminal policy as part of the state's efforts in dealing with crime, is not only oriented towards imposing sanctions, but must also reflect substantive and sustainable justice. One alternative approach that continues to develop in the realm of criminal policy is the concept of restorative justice, which emphasizes the restoration of losses experienced by victims, the active participation of all parties involved, and efforts for social reintegration for perpetrators.

Optimizing criminal policies based on restorative justice suggests a paradigm shift from the conventional criminal justice system that is retributive, coercive, and punitive to a more dialogical,

inclusive approach that focuses on healing and balancing social relations. In this approach, crime is understood not only as a violation of the law against the state, but also as an act that injures the victim and the community. Therefore, recovery, reconciliation, and participatory justice are the main goals to be achieved.

This optimization requires reforms in various legal sectors, starting from substance (legal rules that accommodate settlements outside of litigation), structure (the role of law enforcement institutions such as the police, prosecutors, and courts in facilitating a restorative approach), to legal culture (the mindset of law enforcement officers who are more humanistic and responsive to the needs of victims). The implementation of restorative justice in Indonesia has begun through a number of internal regulations, such as Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice and guidelines from the Prosecutor's Office and the Supreme Court.

However, optimization efforts still face a number of challenges, including limited understanding of the concept of restorative justice by law enforcement officers, the lack of uniform procedural standards, and resistance to non-punitive approaches. In addition, protection of victims' rights must be a priority so that there is no inequality in the case resolution process.

In this context, optimizing criminal policies based on restorative justice is not only an alternative choice, but also a modern legal need that is adaptive, responsive, and based on humanitarian values. This approach has great potential to create a more just, efficient, and peaceful justice system, as well as support the creation of long-term social stability. Therefore, a strong legal political commitment and synergy between institutions are needed to encourage the mainstreaming of restorative justice principles in the national criminal law system.

Restorative Justice Theory in Criminal Policy

Theoretically, the restorative justice approach is the antithesis of the retributive justice theory that has long been the foundation of the criminal justice system. In retributive theory, justice is realized through proportional retribution against perpetrators of crimes. Punishment is used as a form of punishment for violations of state legal norms. However, this approach often ignores the needs of victims and does not touch on the roots of social problems that underlie criminal acts.

In contrast, restorative justice theory views crime as a violation of relationships between individuals and communities, rather than simply a violation of the state. Therefore, this approach emphasizes healing, reconciliation, and social responsibility. This theory places the victim at the center of attention, not just as a witness, and provides a space for participation for the perpetrator to admit mistakes and repair the consequences of their actions. This process also involves the community as part of the solution, not merely as a spectator. The basic principles of this theory include: Voluntary involvement of the perpetrator and victim, Open and honest dialogue between parties, Search for mutually agreed solutions, Focus on recovery rather than retaliation, Efforts for the perpetrator's social reintegration and the victim's psychological recovery.

In the context of criminal policy, restorative justice offers a more humane, adaptive, and comprehensive framework. It opens up space to repair social relations damaged by crime, and reduces reliance on imprisonment as the sole form of case resolution.

Implementation of Restorative Justice in the Criminal Justice System in Indonesia

The implementation of restorative justice in Indonesia has begun to be seen in the policies and practices of law enforcement officers. However, this process is still in its development stage and faces various challenges. Institutions such as the Police, the Prosecutor's Office, and the Supreme Court have issued internal regulations to accommodate this approach in resolving minor criminal cases or certain cases that meet the requirements.

a. Police

The Indonesian National Police issued Regulation of the Chief of Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice. This regulation allows for the resolution of

cases outside of litigation if the perpetrator and victim agree to reconcile, the perpetrator admits guilt, and there is no sense of revenge or potential for further conflict. Cases that can be resolved through this approach include minor assault, defamation, minor theft, and non-serious domestic violence.

b. Prosecutor's Office

The Attorney General's Office also issued Attorney General Regulation (Perja) Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. This regulation gives prosecutors the authority to stop the prosecution process if a settlement has been reached and there is a greater interest in recovery than in punishment.

c. Supreme Court

Through the Decree of the Director General of Badilum Number 1691/DJU/SK/PS.00/12/2020, the Supreme Court has also begun to regulate the mechanism for integrating the principle of restorative justice in the judicial process, especially in the context of diversion for children in conflict with the law (ABH) and criminal cases that allow for recovery without a formal criminal process.

d. Comparison of Restorative Justice with Criminal Policy

The comparison between the conventional criminal justice system and the restorative justice approach is important in assessing the effectiveness and direction of criminal policy reform in Indonesia. These two approaches have significantly different philosophical bases, objectives, and implementation mechanisms, based on the table below:

	Aspect	Conventional (Retributive) Justice	Restorative Justice
1.	Basic Philosophy	Crime = violation against the state	Crime = harm to individuals & society
2.	Center of attention	State and actors	Victims, perpetrators and society
3.	The main purpose	Vengeance, deterrence, protection	Recovery, reconciliation, social reintegration
4.	The Role of the Victim	Passive (witness)	Active (involved in the settlement process)
5.	Role of the Actor	Sentenced to	Involved to be responsible
6.	Settlement Process	Formal, litigation, procedural	Dialogue, mediation, mutual agreement
7.	Expected results	Verdict and sentence	Peace, compensation, social work
8.	Long Term Effectiveness	Lack of resolving the root of the conflict	More comprehensive and sustainable
9.	Cost Burden and System	High (court costs, prison overcapacity)	More economical, efficient, does not burden the system
10.	Local Cultural Compatibility	Less appropriate (legalistic)	Appropriate (values of mutual cooperation, deliberation, local wisdom)

From the table above, it can be concluded that the restorative justice approach offers a more inclusive and humanistic alternative compared to the retributive system that has been the main foundation of criminal policy. Although the conventional system has advantages in strict law enforcement and provides a deterrent effect, it often fails to answer the needs of victims and repair social damage.

Meanwhile, the restorative approach is more able to accommodate local Indonesian values that uphold peace, deliberation, and dispute resolution in a family manner. This makes restorative justice not only theoretically relevant, but also contextually in social and legal practices in Indonesia.

However, it is important to understand that restorative justice is not an absolute substitute, but rather a complement to the criminal law system. For certain cases, especially serious crimes or crimes against humanity, the conventional system is still needed to maintain legal certainty and public order.

4. CONCLUSION

In the Indonesian criminal law system, criminal policy has an important position as a strategic tool in efforts to control crime. In the early stages, this approach was more inclined towards a retributive orientation, namely giving punishment as a form of revenge against the perpetrator. However, this approach has proven to be ineffective in addressing the roots of social problems that underlie crime, and still pays little attention to the protection of victims' rights and efforts to restore them. Therefore, it is necessary to update the direction of criminal policy to be more corrective and just, through the adoption of the principles of restorative justice. Restorative justice offers an alternative approach that involves a dialogical and participatory process, in which perpetrators, victims, and communities play a role together in resolving criminal cases. This approach has begun to be implemented in Indonesia, especially through internal policies issued by institutions such as the Police, Prosecutors, and Courts. However, its implementation still faces serious obstacles, including the absence of comprehensive national regulations, low understanding of this concept by law enforcement officers, and minimal supporting infrastructure such as the presence of professional mediators and facilitators. In order for restorative justice-based criminal policies to be optimized, improvements need to be made in terms of regulatory substance, law enforcement institutions, and the developing legal culture. Regulation strengthening, increasing the capacity of legal apparatus resources, and a paradigm transformation from a revenge approach to a recovery orientation are needed. Restorative justice is not intended to replace the existing criminal law system, but rather as a complementary approach that is in line with local values and is able to encourage the birth of a more just, inclusive, and sustainable criminal justice system.

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