



Restorative Justice: Antithesis or New Face of The Punishment Model?

Erwin Susilo

Pangkalan Balai District Court, Supreme Court of the Republic of Indonesia

Bagus Sujatmiko

Pasuruan District Court, Supreme Court of the Republic of Indonesia

Karell Mawla Ibnu Kamali

University of Oslo, Oslo, Norway

Email: erwinowam@gmail.com

Abstract: *Restorative Justice is increasingly adopted to overcome the limitations of retributive punishment, which emphasizes inflicting suffering on offenders. However, a fundamental theoretical debate remains regarding the ontological status of Restorative Justice: whether it is merely a non-penal mechanism outside the concept of punishment or a transformative form of punishment within the modern penal framework. This research examines this debate by determining the proper positioning of Restorative Justice in modern sentencing policy. The purpose of this study is to reconstruct the penal paradigm by integrating restorative, utilitarian, and moral-communitarian values into a more humane and inclusive system of punishment. Using normative legal research with a conceptual approach, this study analyzes theories, legislation, and judicial practices related to Restorative Justice in Indonesia. The findings suggest that Restorative Justice still retains punitive elements, as offenders are required to acknowledge wrongdoing and repair the harm. Consequently, Restorative Justice ought not to be classified as an exclusively non-penal mechanism but rather as an evolution of punishment that prioritizes reconciliation, moral accountability, and social restoration. This study concludes that Restorative Justice represents the new face of punishment, where the ultimate aim is no longer solely retribution but the restoration of social balance and substantive justice for victims, offenders, and society.*

Keywords: *Restorative Justice, Retributive Justice, Punishment, Rehabilitation*

Abstrak: Keadilan restoratif semakin banyak diterapkan untuk menjawab keterbatasan pemidanaan retributif yang menekankan pemberian penderitaan kepada pelaku. Namun, perdebatan teoritis masih berlangsung mengenai kedudukan ontologis keadilan restoratif: apakah keadilan restoratif hanya merupakan mekanisme non-penal di luar konsep pemidanaan, atau justru merupakan bentuk transformasi dari pemidanaan dalam kerangka pemidanaan modern. Penelitian ini bertujuan menentukan posisi yang tepat bagi keadilan restoratif dalam kebijakan pemidanaan modern dengan merekonstruksi paradigma pemidanaan melalui integrasi nilai-nilai restoratif, utilitarian, dan moral-komunitarian ke dalam sistem pemidanaan yang lebih inklusif dan manusiawi. Metode penelitian hukum normatif dengan pendekatan konseptual digunakan untuk menganalisis teori, regulasi, dan praktik peradilan terkait penerapan keadilan restoratif di Indonesia. Hasil penelitian menunjukkan bahwa keadilan restoratif tetap mengandung unsur pemidanaan karena pelaku diwajibkan mengakui kesalahan dan memulihkan kerugian. Dengan demikian, keadilan restoratif tidak dapat dikategorikan sebagai mekanisme non-penal murni, tetapi sebagai bentuk evolusi pemidanaan yang menekankan rekonsiliasi, pertanggungjawaban moral, dan pemulihan sosial. Penelitian ini menyimpulkan bahwa keadilan restoratif merupakan wajah baru pemidanaan, di mana tujuan akhir pemidanaan bukan semata-mata pembalasan, melainkan pemulihan keseimbangan sosial dan keadilan substantif bagi korban, pelaku, dan masyarakat.

Kata Kunci: Keadilan Restoratif, Keadilan Retributif, Penghukuman, Pemulihan

A. Introduction

Restorative Justice is a progressive approach to assessing and addressing criminal offenses. Its supporters call Restorative Justice a new paradigm in the criminal justice system because it is not oriented toward state revenge against the perpetrator but rather toward repairing damage, fulfilling the interests of the victim, and restoring social relationships damaged by the crime.¹ Restorative Justice is based on the values of peace, reconciliation, and restoring social relationships.² and it opens up space for victims and the community to be involved in resolving crimes, thus reducing state dominance in law enforcement practices.

This approach stems from John Griffiths' critique of the crime control and due process models proposed by Herbert L. Packer, which were deemed too adversarial because they positioned the state and the defendant as opposing parties, thus neglecting the victim-offender relationship and the need for healing that is inherently present in every criminal act.³ Thus, restorative justice philosophically corrects the retributive model, which positions the offender solely as an object of punishment,

¹Daniel Van Ness, Allison Morris, and Gabrielle Maxwell, "Introducing Restorative Justice," in *Restorative Justice for Juveniles Conferencing, Mediation and Circles*, ed. Allison Morris and Gabrielle Maxwell (Oregon: Hart Publishing, 2001).

²Christopher D Marshall, "Restorative Justice," *Religion Matters: The Contemporary Relevance of Religion*, 2020, 101-17.

³Lisa M. Kelly, "Judging Youth Time," *The Supreme Court Law Review: Osgoode's Annual Constitutional Cases Conference* 108, no. 1 (2023): 85-107.

rather than as a moral subject with social responsibility to restore the state they damaged.

In Indonesia, the concept of restorative justice has not only developed in the academic realm but has also been institutionalized through the Indonesian National Police Regulation No. 8 of 2021, the Indonesian Attorney General Regulation No. 15 of 2020, and the Indonesian Supreme Court Regulation No. 1 of 2024. In fact, its implementation has gained judicial legitimacy through court decisions, such as Mukomuko District Court Decision Number 1/Pid.C/2021, Liwa District Court Decision Number 1/Pid.C/2022, Tanjung Selor District Court Decision Number 39/Pid.B/2022, Banten High Court Decision Number 137/Pid/2021/PT Btn, and Banda Aceh High Court Decision Number 193/Pid/2023/PT BNA, which emphasize that the success of resolving cases through restorative justice is measured by the restoration of the victim's losses, not solely by the severity of the punishment. This legal fact indicates that restorative justice is charting a new direction in the national sentencing system that is more responsive to the needs of victims and substantive justice. However, despite its normative recognition and increasing judicial application, the adoption of restorative justice has not yet resolved the conceptual uncertainty regarding its true penal nature, as this process still involves accountability and consequences imposed on offenders.

However, theoretical debates persist regarding the ontological status of restorative justice: is restorative justice the antithesis of punishment in a retributive system, or is restorative justice a transformation of the very concept of punishment toward a more humanistic model? Theoretical perspectives are also diverse. Some scholars, such as Theo van Willigenburg and Eduardus van der Borcht, believe that restorative justice is better able to achieve the goals of criminal justice because it restores human relationships rather than simply inflicting suffering on the offender.⁴ Other studies position restorative justice as an alternative to retributive criminal law,⁵ affirm the offender's moral accountability,⁶ and confirm a paradigm shift in the juvenile justice system toward a restorative justice approach.⁷ However, Maglione shows that integrating restorative justice into the sentencing system is not always free from conceptual tension with retributive principles, while Nortje and Nanyunja even state

⁴Theo Van Willigenburg and Eduardus Van Der Borcht, "Attacking Punitive Retribution at Its Heart - A Restorative Justice Thrust," *International Journal of Public Theology* 15, no. 3 (2021): 401–25.

⁵Giuseppe Maglione, Jamie Buchan, and Laura Robertson, "The Local Provision of Restorative Justice in Scotland: An Exploratory Empirical Study," *European Journal on Criminal Policy and Research* 28, no. 4 (2022): 617–40.

⁶Dian Ekawaty Ismail et al., "Collocation of Restorative Justice with Human Rights in Indonesia," *Legality: Jurnal Ilmiah Hukum* 32, no. 2 (2024): 394–417.

⁷Rizanizarli Rizanizarli et al., "The Application of Restorative Justice for Children as Criminal Offenders in the Perspective of National Law and Qanun Jināyat," *Samarah* 7, no. 1 (2023); Dedy Sumardi, Mansari Mansari, and Maulana Fickry Albaba, "Restoratif Justice, Diversi Dan Peradilan Anak Pasca Putusan Mahkamah Konstitusi Nomor 110/Puu-X/2012," *Legitimasi: Jurnal Hukum Pidana Dan Politik Hukum* 11, no. 2 (2022): 248–65.

that restorative justice is philosophically opposed to retributivism.⁸ These fragmented perspectives suggest that there is no unified scholarly understanding of whether restorative justice is entirely non-penal or still retains essential punitive characteristics, resulting in a clear gap in the literature regarding its precise conceptual placement within modern penal systems.

This difference in perspective confirms that there is an unresolved literature gap regarding whether restorative justice should be understood as a completely non-penal mechanism separate from punishment or rather as a form of punishment reconstruction with a more consensual, participatory, and restorative face. Therefore, it is essential to critically and thoroughly reexamine the conceptual relationship between retributivism and restorative justice to avoid falling into the simplistic dichotomy of punishment versus restoration, and instead to explore the potential for uniting the values of both in modern penal systems.

Based on this need, the urgent purpose of this research is to affirm the ontological position of restorative justice in the contemporary penal system. This study employs a normative legal research method with a conceptual approach, examining theories, legal doctrines, statutory regulations, and court decisions relevant to the conceptual status of restorative justice within the modern penal system. Data are collected through library research by reviewing authoritative academic sources—particularly Scopus-indexed journal articles—to ensure accuracy, validity, and currency of the analysis. The analytical technique used is qualitative prescriptive reasoning, which aims to provide a theoretical construction that positions restorative justice as a transformative model of punishment, emphasizing moral accountability, reparation, and social restoration within the Indonesian criminal justice system. With this approach, this paper attempts to answer: what are the conceptual differences between retributivism and restorative justice, and is restorative justice an antithesis to retributivism, or does it represent a new face of punishment in the modern criminal justice system?

The novelty of this research is explicitly formulated: this article positions restorative justice not as an opposition to retributivism, but rather as a reconstruction of the sentencing paradigm that unites retributive values (moral responsibility), utilitarian values (crime prevention and social reintegration), and communitarian moral values (restoring social relations and justice balance). Through this understanding, restorative justice is affirmed as the new face of punishment, placing rehabilitation as the primary goal of sentencing to achieve substantive justice for victims, perpetrators, and society. Therefore, the findings in this paper firmly demonstrate that restorative justice continues to embody penal elements through moral accountability, feelings of guilt, and obligations for reparation, meaning that restorative justice cannot be categorized as a non-penal mechanism entirely separate

⁸Windell Nortje and Brenda Nanyunja, "An Appraisal of the Kwoyelo Judgment at the International Crimes Division in Uganda: A Tale of Retribution or Restoration?," *Journal of International Criminal Justice* 0, no. 0 (2025): 1–17.

from punishment. Thus, this research offers a clear theoretical stance that restorative justice represents an evolved form of punishment aimed at “healing” rather than “hurting.”

B. The Concepts of Retributive Justice and Restorative Justice

1. The Concept of Retributive Justice

The concept of just deserts as the primary basis of retributive justice continues to undergo critical examination in contemporary legal philosophical discourse. David O. Brink divides deserts into two types: aretaic deserts and accountability deserts. "Aretaic desert" refers to a person's worthiness based on their overall moral character—for example, someone is considered worthy of happiness because their life is filled with virtue. Conversely, accountability desert focuses on one's moral responsibility for specific actions taken consciously and intentionally. Regarding criminal law, the concept of retributive justice bases punishment on desert of accountability, not on desert of merit. The urgency of this distinction is to ensure that punishment is only given to individuals who are truly responsible for their actions, namely those who had a fair opportunity to choose the right action but deliberately chose the wrong one. Although aretaic desert can be an additional consideration in determining the severity or leniency of punishment, retributive justice remains based on the specific actions worthy of punishment.⁹

The concept of just desert has been criticized by Christopher Bennett as inadequate in explaining moral responses to wrongdoing. Bennett argues that instead of adhering to the basic idea that the perpetrator deserves to suffer for their wrongdoing (basic desert), moral responses should be understood as expressive acts of dissociation or moral separation from the perpetrator. In this view, blaming someone is not a form of deserved suffering but an expression of societal attitudes that indicate disapproval of the action.¹⁰ Thus, Bennett asserts that the moral reaction to wrongdoing is more fundamentally about distancing or separation than the concept of retribution based on just desert.

Gregg D. Caruso also highlighted the epistemic weaknesses in the basic concept of just deserts, which serves as the main foundation of retributive justice. According to Caruso, retributive justice views punishment as justified solely because the offender deserves suffering for their actions, without any need to connect it to social benefits such as rehabilitation or crime prevention. He criticized the assumption underlying this view, which is that someone is truly morally free (or has a basic desert) when committing a criminal act. Caruso considers this view of moral freedom difficult to prove epistemically and therefore views the justification of punishment based on the

⁹David O. Brink, "Two Kinds of Desert," *SSRN Electronic Journal*, 2023, 1–22.

¹⁰Christopher Bennett, "Desert and Dissociation," *Journal of the American Philosophical Association* 10, no. 1 (2024): 116–34.

concept of just deserts as philosophically and ethically vulnerable.¹¹ On the other hand, Göran Duus Otterström defends the concept of just deserts through a proportionalism approach. He rejected the whole-life theory of desert, which judges punishment based on a person's overall morality throughout their life. Conversely, Otterström proposed a local theory of desert, which posits that the justifiability of punishment is assessed solely on the basis of specific criminal acts. According to him, this approach is more proportional and fair, allowing the concept of just deserts to remain relevant in providing punishment commensurate with the severity of the crime, without requiring consideration of a person's overall moral record.¹²

The concept of just deserts is the motivation for punishment that stems from the belief that the offender deserves suffering for their wrongdoing.¹³ In the study of legal philosophy, just deserts, or retributive justice, is defined as the perception that the punishment imposed on the perpetrator must be proportionate to the level of wrongdoing committed. This concept emphasizes the importance of imposing sanctions as a fitting (deserved) form of punishment for legal violations, without considering instrumental benefits such as rehabilitation or crime prevention.¹⁴

Retributive justice is an approach to justice that emphasizes giving proportionate punishment to criminal offenders, based on the principle that everyone should receive the appropriate consequences for their actions, whether it be a reward for good deeds or punishment for criminal offenses. In the classical view, as proposed by Immanuel Kant, the perpetrator is considered to be unfairly taking advantage of the legal system; thus, the state is obligated to impose punishment as a form of just retribution while also maintaining the authority of the law. This punishment is understood as a moral "debt" that the perpetrator must pay to restore social balance. However, this approach carries risks if not implemented proportionally and professionally, as it can turn into emotional revenge, potentially prolonging the conflict and sparking a new cycle of violence. Therefore, it is essential to distinguish between retributive justice and revenge. True retributive justice must be fair, proportional, and imposed by the state through legitimate legal processes, whereas revenge tends to be personal and often perpetuates new injustices.¹⁵

Historically, retributive justice is one of the oldest concepts in legal history, appearing in many religious traditions and ancient legal systems. Its philosophical basis can be traced back to the principle of "lex talionis," or the law of equal retaliation, as in the saying "an eye for an eye." In ancient Mesopotamian legal systems, such as the Code of Hammurabi, the Code of Ur-Nammu, and the Laws of Eshnunna, crimes were

¹¹Gregg D. Caruso, "Justice without Retribution: An Epistemic Argument against Retributive Criminal Punishment," *Neuroethics* 13, no. 1 (2020).

¹²Göran Duus-Otterström, "Do Offenders Deserve Proportionate Punishments?," *Criminal Law and Philosophy* 15, no. 3 (2021): 463–80.

¹³Julia Marshall, Anton Gollwitzer, and Paul Bloom, "Why Do Children and Adults Think Other People Punish?," *Developmental Psychology* 58, no. 9 (2022): 1–23.

¹⁴Oliver Nnamdi Okafor, "Shaming of Tax Evaders: Empirical Evidence on Perceptions of Retributive Justice and Tax Compliance Intentions," *Journal of Business Ethics* 182, no. 2 (2023): 377–95.

¹⁵Michelle Maiese, "Retributive Justice," *Beyond Intractability Essay*, 2020.

viewed as violations of individual rights, requiring the perpetrator to be punished and the victim to be compensated. This principle also appears in some religious traditions that emphasize divine punishment for moral transgressions.¹⁶

In ancient Roman times, the Law of the Twelve Tables (450 BC) marked a shift from personal retribution (family revenge) toward a system of restitution and state involvement in resolving conflicts. However, after the fall of the Roman Empire, the practice of private justice reemerged until England introduced regulations, such as the *Leges Henrici* in the 12th century, which shifted the focus of criminal acts from being offenses against the victim to offenses against the "king's peace." This marks a shift from a victim-oriented approach toward state dominance in the criminal justice system.¹⁷ From the Middle Ages to the early modern era, the retributive system grew increasingly stronger, particularly as the state sought to monopolize punishment and fines.

This system marginalizes the rights of victims, who can then only seek compensation through civil courts. It wasn't until the mid-20th century that the victims' rights movement and restorative justice approaches began to emerge as a response to the dominance of retributive approaches, which were seen as neglecting the recovery of victims.¹⁸ Thus, the retributive conception of justice, based on the principle of just deserts, serves as the conceptual foundation for punishing guilty offenders, with punishment being administered fairly and proportionately. Despite facing criticism from epistemic, moral, and psychological perspectives—as articulated by Bennett and Caruso—this concept is still maintained through alternative approaches such as the local theory of desert proposed by Duus-Otterström.

2. The Concept of Restorative Justice

Restorative justice stems from an ancient mindset that views criminal acts not merely as violations against the state, but also as violations against the victim and the community. In the Code of Hammurabi, Roman law, and customary law, crimes are understood as a form of damage to social relationships within society. Therefore, recovery is achieved through restitution and reconciliation mechanisms to restore social harmony. This concept persisted for centuries, ultimately shifting, due to the consolidation of state power and the development of modern criminal justice systems, from the victim's position at the center of the judicial process to being replaced by the state as the "primary victim" within the criminal justice system.¹⁹

Entering the 20th century, especially since the 1970s, various criticisms of the modern criminal justice system emerged—from the perspectives of informal justice, justice abolition, and the victims' rights movement—which led to the revival of

¹⁶Jon'a F. Meyer, "Retributive Justice," *Britannica*, 2025.

¹⁷Meyer.

¹⁸Meyer.

¹⁹Daniel W. Van Ness and Karen Heetderks Strong, *Restoring Justice: An Introduction to Restorative Justice: Fifth Edition*, *Restoring Justice: An Introduction to Restorative Justice: Fifth Edition*, 2014.

restorative justice principles. The idea of restorative justice was first articulated in modern terms by Albert Eglash in 1958 and later popularized by figures such as Howard Zehr. They view criminal acts as violations of interpersonal relationships, rather than merely as violations of state law. By involving victims, perpetrators, and the community in the healing and recovery process, restorative justice aims to create a restorative justice approach, not just a punitive one.²⁰ However, the historical narrative of restorative justice has also been criticized for simplifying and romanticizing the past through what is called an origin myth—namely, the claim that restorative justice is entirely derived from indigenous judicial practices and was the dominant form before the modern era. Suzuki, citing Kathleen Daly's (2002) critique, asserts that pre-modern justice systems were not purely restorative but also contained elements of retribution. He believes that modern restorative justice practices like those in New Zealand are essentially a product of state bureaucracy that adopts elements of indigenous culture without truly representing the epistemologies of indigenous justice systems. Post-2002 studies show that restorative justice implemented by the state can even create new losses for indigenous communities because it risks reproducing colonial logic in a new form. Therefore, Suzuki emphasizes the importance of a decolonial approach in reading history and developing restorative justice so that this approach does not become an instrument of the state that ignores the uniqueness of the indigenous community justice system.²¹

Tony Foley also emphasized that the origins of restorative justice cannot be separated from the broader historical context. According to him, restorative justice is a response to the conventional criminal justice system. Although restorative justice is relatively new within the framework of modern Western law, similar practices have long existed in various traditional societies. Referring to John Braithwaite's thinking, Foley states that restorative justice reclaims the community's conflict resolution traditions that existed long before the birth of modern state legal systems. Concrete examples can be found in the form of family conferences or community consultations involving perpetrators, victims, and the surrounding community, as seen in the traditions of indigenous communities in New Zealand and Canada.²² Next, Foley noted that by the end of the 20th century, restorative justice began to be adopted more systematically in formal criminal justice systems in several countries. In New Zealand, RJ was first institutionalized within the youth justice system, which was strengthened by the landmark Clotworthy ruling from the Court of Appeal. In Canada, the integration of restorative justice is strengthened by the Supreme Court's decision in *R. v. Gladue*, which requires courts to consider restorative justice approaches, particularly for offenders from Indigenous communities. This development marks a shift from a

²⁰Van Ness and Strong.

²¹Masahiro Suzuki, "Revisiting the Real Story of Restorative Justice in the Criminal Justice System: 20 Years On," *Canadian Journal of Criminology and Criminal Justice* 65, no. 2 (2023): 1–34.

²²Tony Foley, *Developing Restorative Justice Jurisprudence: Rethinking Responses to Criminal Wrongdoing*, *Developing Restorative Justice Jurisprudence: Rethinking Responses to Criminal Wrongdoing*, 2016.

retributive paradigm toward a more relational, transformative, and restorative response that considers the social harm caused by criminal offenses.²³

On the other hand, the history of restorative justice is also studied as a global movement that began to strengthen since 1974. Although restorative justice is often associated with roots in Euro-American thought, several restorative justice practices in various countries were actually developed without the involvement of local or indigenous communities. In Australia and New Zealand, for example, there have been criticisms that restorative justice has become a form of "commodification" of indigenous culture and justice. Academics like Tauri and Blagg argue that state RJ models often fail to reflect the essence of customary justice and can even create new dangers when applied without proper consultation with local communities. In this regard, Asadullah emphasized that the history of restorative justice needs to be read within the framework of decolonization, specifically by returning restorative justice to its local roots, which emphasize relational values, community presence, and tradition-based leadership.²⁴

The history of RJ reveals that this approach has been employed by various societies worldwide for thousands of years, with the primary goal of healing and restoring social relationships. For example, in the Code of Hammurabi (circa 1754 BC), there are provisions regarding compensation for victims. Ancient Athens achieved conflict resolution through citizen mediation rather than criminal sanctions. The Maori people in New Zealand and the Navajo community in the United States also practice restorative justice traditions by involving perpetrators, victims, and the community in the restorative dialogue process. In various regions of Asia, Africa, and Europe, restorative justice principles emphasize the importance of community participation and repairing harm.²⁵ Now, restorative justice is regaining its place as a more humane approach because it places the victim at the center of justice and aims to create more meaningful social harmony.

Restorative justice encompasses a diverse range of practices and originates from various backgrounds, making it difficult to create a single, universal definition. Initially, RJ was considered an alternative to the retributive criminal justice system, where criminal acts were not only viewed as violations of criminal law but also as actions that caused harm to individuals and society.²⁶ Therefore, justice is not only about how the state responds to crimes but also about how to repair the damage caused.

Simply put, restorative justice is an approach within the criminal justice system that emphasizes restoring the harm caused by the crime, rather than solely pursuing retribution. In practice, this approach typically requires the perpetrator to provide

²³Foley.

²⁴Muhammad Asadullah, "Decolonization and Restorative Justice: A Proposed Theoretical Framework," *Decolonization of Criminology and Justice* 3, no. 1 (2021): 27–62.

²⁵Restorative Justice 101, "When Did Restorative Justice Start?," 2023.

²⁶Meredith Rossner and Helen Taylor, "The Transformative Potential of Restorative Justice: What the Mainstream Can Learn from the Margins," *Annual Review of Criminology*, 2024.

restitution or compensation directly to the victim and to repair the social harm experienced by the community. This process requires the perpetrator to take personal responsibility for the impact of their actions, including the possibility of a mediated meeting between the perpetrator and the victim. Additionally, the perpetrator may be required to participate in a rehabilitation program designed to prevent the recurrence of criminal acts.²⁷ According to John Braithwaite, RJ aims to "restore victims, offenders, and affected communities through the active participation of all parties; provide an equal and inclusive space for dialogue; replace punitive approaches with responsibility-based problem-solving; and deliver justice that is more democratic, participatory, and oriented toward sustainable social transformation".²⁸

Restorative justice has many benefits compared to the conventional criminal justice system. It has been proven to reduce recidivism rates, especially when combined with rehabilitation programs, and is capable of handling various types of offenses. Restorative justice also provides higher levels of satisfaction for victims and offenders, encourages community involvement, saves costs, and reduces the burden on courts.²⁹ In Kay Pranis's view, the values in restorative justice are divided into two categories: "process values and individual values." *First*, process values include respect, inclusivity, self-determination, honesty, equality, responsibility, safety, and healing, all of which contribute to creating a safe and just space. *Second*, individual values such as courage, compassion, and open-mindedness reflect the qualities that participants are encouraged to cultivate within themselves. Restorative justice, according to Pranis, is a method of resolving cases, but it is also a collective healing effort that encompasses spiritual, emotional, and social dimensions.³⁰

Restorative Justice Colorado formulated five basic principles of restorative justice: relationship, respect, responsibility, repair, and reintegration. These principles form the philosophical and practical framework for implementing RJ.³¹ Meanwhile, restorative justice has a significant impact on modern criminal justice reform by shifting the focus from punishment toward restoring relationships and moral responsibility. Besides increasing victim satisfaction, restorative justice strengthens the social reintegration of offenders, fosters community solidarity, and enriches responses to crimes with a more humane approach. However, in practice, especially for serious criminal cases, a robust legal framework and trained facilitators are needed to ensure justice is maintained at every stage of the process.³² The concept of

²⁷Oxford Paperback Reference, *Oxford Dictionary of Law, Oxford Paperback Reference*, vol. 20, 2003.

²⁸John Braithwaite, *Restorative Justice & Responsive Regulation* (England: Oxford University Press, 2002).

²⁹United Nations Office on Drugs and Crime, *Handbook on Restorative Justice Programmes, Criminal Justice Handbook Series*, 2006.

³⁰Kay Pranis, "Restorative Values," in *Handbook of Restorative Justice*, ed. Gerry Johnstone and Daniel W. Van Ness (Devon: Willan Publishing Culmcott House Mill Street, Uffculme, 2007).

³¹Restorative Justice Colorado, "Practices & Models," 2025.

³²Park University, "The Role of Restorative Justice in Modern Criminal Justice Administration," 2024.

restorative justice offers an alternative paradigm to the retributive criminal justice system while also restoring the essence of justice that is relational, participatory, and transformative. Through the active involvement of victims, perpetrators, and the community in the healing process, restorative justice emphasizes "humanitarian values, moral responsibility, and sustainable social harmony." Despite facing challenges in its implementation, particularly in serious criminal cases, restorative justice remains a relevant approach that humanizes individuals through more humane laws, brings justice closer to all affected parties, and opens up space for more meaningful reconciliation and social change.

Based on the explanation above, it can be understood that both concepts—retributive and restorative justice—provide different philosophical foundations for interpreting justice in criminal law. Retributive justice emphasizes proportionate retribution for wrongdoing as a means of restoring the normative order, while restorative justice focuses on repairing social relationships and holding individuals accountable for their moral responsibility. The strength of retributivism lies in its emphasis on legal certainty and the proportionality of sanctions; however, it is prone to becoming entangled in a logic of revenge that overlooks the healing dimension for victims and the rehabilitation of offenders. Conversely, restorative justice offers a more participatory and transformative approach.

C. Restorative Justice in Criminal Law: Antithesis or Transformation of the Punitive Model?

Restorative justice views criminal acts not merely as violations of legal norms, but as a form of harm to individuals and social relationships. Therefore, the fundamental goal in restorative justice is to "make things right by addressing the direct impact of the crime." This approach fundamentally differs from the conventional criminal justice system, which tends to focus on three questions: "What law was broken? Who committed the crime?, and what punishment is appropriate?" Conversely, restorative justice shifts the focus by asking three relational and problem-solving questions: "Who was harmed, what were their needs, and who had the obligation to meet them?"³³ Thus, restorative justice represents a paradigm shift from a focus on formal legal violations toward restoring social relationships and strengthening moral responsibility.

In his influential work titled "Retributive Justice, Restorative Justice" (1985), Howard Zehr observed the fundamental differences between these two approaches to justice. In retributive justice, a criminal act is considered an offense against the state, making the legal process confrontational between the state and the offender, with the primary goals of "punishing, preventing criminal acts, and creating a deterrent effect." Justice is measured by procedural fairness and the proportionality of punishment to moral wrongdoing. Meanwhile, restorative justice views criminal acts as violations

³³Anthony Udoka Ezebuoro and Innocent Anthony Uke, "The Moral Limit of Aristotle's Corrective Justice," *SAPIENTIA* 19 (2023): 229.

against fellow human beings, and the handling process is dialogical and participatory, with the primary goal of repairing relationships, healing wounds, and preventing the recurrence of the same mistakes in the future.³⁴

Braithwaite also reinforced this paradigm shift by stating that all cultures in the world essentially contain both restorative and retributive values; however, in the 21st century, retributive values are considered less relevant because they often exacerbate conflict and lead to new violence. He emphasized that restorative justice values, such as restoration, safety, dignity, and empowerment, are universal principles that are more compatible with the needs of contemporary society.³⁵ In his explanation, Braithwaite put forward three core values in restorative justice, namely "restoring relationships, deliberation that includes all parties affected, and freedom from power dominance, which means giving equal space for all involved voices to be heard".³⁶

Nevertheless, it cannot be ignored that RJ still contains punitive aspects, although in a different form and orientation. For example, Martin Wright and John Harding see restorative justice as a form of mediation between victims and offenders that more closely resembles a civil case settlement than a criminal one. Nils Christie even criticized the conventional criminal justice system as one that had "stolen" conflict from the community, calling for conflict to be returned to the parties directly involved for resolution through more humane and reflective mechanisms.³⁷ Although from this perspective the resolution involves both the perpetrator and the victim, the perpetrator is still held accountable for their actions.³⁸

Regarding restorative justice, the perpetrator's responsibility for their actions remains a central aspect. However, this responsibility is not understood as a punitive burden coercively imposed by the state, but rather as a form of mature moral accountability. Wilson explained that the true remorse of the perpetrator—born from a deep awareness of the impact of their actions on the victim and society—is the foundation of the restorative justice process, which is oriented toward healing and self-change, not merely a passive or reactive expression of guilt.³⁹

At this point, it's clear that RJ hasn't completely broken free from the framework of retributive justice. RJ still requires a sense of guilt from the perpetrator. Even when RJ is applied within the formal criminal justice system, the value of punishment remains present, albeit with a more restorative face. The difference lies in the direction of responsibility: in retributive justice, the perpetrator's responsibility is directed

³⁴Hildur Fjóra Antonsdóttir, "Beyond Restorative Justice: Survivors' Calls for Innovative Practices in Iceland," in *Re-Imagining Sexual Harassment*, 2023, 172–92.

³⁵Johnson Ngoba Josephine, "A Kantian Elaboration of Braithwaite's Restorative Justice: Dispelling Illusions" (University of Saskatchewan, 2024).

³⁶Josephine.

³⁷Tony Marshall, "Restorative Justice: An Overview," *Home Office Research Development and Statistics Directorate*, 1999.

³⁸Ernesto Lodi et al., "Use of Restorative Justice and Restorative Practices at School: A Systematic Literature Review," *International Journal of Environmental Research and Public Health*, 2022.

³⁹Amanda Wilson, "What a Shame! Restorative Justice's Guilty Secret," in *Howard Journal of Crime and Justice*, vol. 61, 2022, 39–52.

toward the state to maintain public order, while in RJ, responsibility is directed toward the victim and the community directly affected.

Christian B. N. Gade offers a comprehensive analytical framework for the concept of punishment, encompassing nine dimensions that conceptually distinguish between minimalist and maximalist approaches. The minimalist approach requires that essential elements be present for an action to be considered a form of punishment, whereas the maximalist approach adopts a more inclusive definition, encompassing a wider variety of punishment forms, even extending beyond the formal structures of criminal law. The nine dimensions include:⁴⁰

1. The Guilt Dimension, where the minimalist approach demands that punishment should only be imposed on individuals who are truly proven guilty, while the maximalist approach acknowledges that punishment is still possible even if the individual is not guilty, such as in cases of wrongful arrest.
2. The Type-of-Offense Dimension: In the minimalist approach, only formal legal violations can be the basis for punishment, while the maximalist approach expands this scope to include violations of social or organizational norms.
3. The Experience Dimension requires that punishment, in its minimalist version, must cause suffering, while the maximalist approach acknowledges punishment even if the perpetrator does not subjectively experience suffering.
4. The Voluntariness Dimension: The minimalist approach rejects the validity of voluntarily accepted punishment, while the maximalist view holds that punishment remains valid even if the perpetrator accepts it voluntarily as a form of repentance.
5. The Authority Dimension, according to minimalists, is only a formal institution authorized to impose punishment, whereas maximalists open up the possibility for society or informal groups to impose certain forms of punishment.
6. The Perception-of-Guilt Dimension: Minimalists emphasize the belief in the perpetrator's guilt, while maximalists still allow for punishment even if that belief is incomplete or even absent.
7. The Blame Dimension asserts that in a minimalist approach, moral blame must be assigned to the actor, unlike the maximalist view, which still accepts punishment even for subjects who cannot be held morally accountable, such as young children.
8. The Intention Dimension, which in the minimalist approach requires the intention to cause suffering, while the maximalist approach acknowledges punishment even without explicit intent, as long as the resulting consequence is still suffering.
9. The Self-Punishment Dimension, which is rejected in the minimalist approach but accepted in the maximalist approach, where a person can punish themselves through guilt, regret, or acts of atonement.

⁴⁰Christian B.N. Gade, "Is Restorative Justice Punishment?," *Conflict Resolution Quarterly* 38, no. 3 (2021).

Based on this framework, restorative justice can be positioned as a model of punishment in the maximalist sense. In restorative justice, the offender is still required to take responsibility for their actions and bear the moral and social consequences of those actions, even though it is not a coercive suffering imposed by the state. Restorative justice requires a sense of guilt from the offender, which essentially demonstrates that the "guilt" aspect remains a core element in punishing offenders within a retributive approach.

Meanwhile, Anna Meléndez emphasized that guilt is the psychological and moral foundation of the success of the restorative justice process. Guilt enables the perpetrator to internalize the impact of their actions, foster empathy toward the victim, and motivate the perpetrator to take active efforts to repair the damage caused. Guilt is also often accompanied by remorse and shame, which together form a strong emotional basis for driving behavioral change and ethical transformation toward a more prosocial life.⁴¹ From this perspective, guilt is not only a moral validation for initiating restorative justice but also affirms that restorative justice, despite being non-retributive, still fulfills one of the classic dimensions of punishment.

Furthermore, guilt in restorative justice can be interpreted as a result of moral proof, where the perpetrator realizes and acknowledges that they have made a mistake. However, what's interesting is that in RJ, the "judge" who determines guilt is not solely the state or a formal court, but rather the perpetrator and victim directly within a dialogic space. Andrea Goldblum explains that responsibility in restorative justice is no longer monopolized by the state as the sole authority but is transferred directly to the perpetrators. The perpetrator is asked to take responsibility toward the victims, society, and the social networks that are concretely and personally affected.⁴²

Goldblum also emphasized that responsibility in restorative justice is transformational—it not only demands acknowledgment of wrongdoing but also active involvement in the process of healing and preventing the repetition of mistakes. Models such as community group conferences, accountability boards, and reentry circles demonstrate that the accountability process in restorative justice requires offenders to voluntarily listen to victims, understand the impact of their actions, and actively contribute to developing forms of reparation. In other words, responsibility in restorative justice reflects a participatory and reconciliatory approach to punishment.⁴³ These conditions support the thesis that restorative justice is not a form of "total forgiveness," but rather remains a mechanism of punishment that acknowledges guilt and assigns responsibility. This aligns with the fundamental principle in retributive justice, which holds that only the guilty deserve punishment.

⁴¹Anna Meléndez, "The Role of Criminogenic Needs and Emotions in Restorative Justice: Offenders' Experiences in Victim-Offender Mediation," *European Journal of Probation* 13, no. 1 (2021): 21-40.

⁴²Andrea Goldblum, "Restorative Justice From Theory To Practice," in *Reframing Campus Conflict: Student Conduct Practice through the Lens of Inclusive Excellence, Second Edition*, 2023, 209-27.

⁴³Goldblum.

However, in RJ, the form of punishment is not coercive suffering but rather the repair of relationships and a commitment to restore the situation.

The "Giving, Taking, and Making of Accountability" model proposed by William R. Wood and Masahiro Suzuki systematically represents the stages of punishment in restorative justice. First, the perpetrator is asked to provide an explanation (giving of account), which means honestly explaining the motives and reasons for their actions. Second, the perpetrator is encouraged to take responsibility, which means understanding the impact caused and showing genuine remorse. Third, the perpetrator and the victim establish concrete forms of accountability (Making of Accountability), such as by providing compensation, offering an apology, or engaging in social work.⁴⁴ This model emphasizes that punishment in restorative justice is not about inflicting suffering but rather about promoting moral accountability and constructive action.

However, it is worth noting that, in practice, restorative justice is also not immune to issues of power imbalance. In this regard, the just desert view, which emphasizes proportionality between moral culpability and the severity of punishment, raises the criticism that restorative justice is potentially imbalanced. Kim warned that restorative justice can result in disproportionate forms of "punishment" if the power dynamic between the victim and the offender is unequal. The victim, who holds a more dominant position, can set excessively harsh terms, while the perpetrator, in order to be accepted into the restorative justice process, is forced to agree to them to avoid the formal criminal justice system. Therefore, in a just society, it is essential to strike a balance between moral responsibility and procedural justice.⁴⁵ Joanna Shapland et al. observed a similar issue, pointing out that although the restorative justice process is claimed to be voluntary, the potential for coercion remains, both explicitly and implicitly. This can manifest as emotional pressure, verbal dominance, or a hidden desire to control the process. Victim dominance can hinder the perpetrator's sincerity in being honest and participating.⁴⁶

Thus, it can be understood that restorative justice is not an absolute antithesis of the retributive punishment model, but rather a transformation of the concept of punishment itself—shifting the orientation from coercive revenge toward moral responsibility and relationship restoration. Through an approach that emphasizes acknowledging mistakes, voluntary participation, and the active involvement of perpetrators in repairing the harm caused by their actions, restorative justice retains the essence of punishment within a more humane, reflective, and contextual framework. Its presence challenges the traditional boundaries between punishment and healing, expanding the horizons of justice to be oriented not only toward the perpetrator but also toward the victim and society. Therefore, restorative justice can

⁴⁴William R. Wood and Masahiro Suzuki, "Getting to Accountability in Restorative Justice," *Victims and Offenders* 19, no. 7 (2024): 1400–1423.

⁴⁵Matthew D Kim, "Redesigning Restorative Justice for Criminal Justice Reform," *6th Edition* 88, no. 4 (2021): 947–1010.

⁴⁶Joanna Shapland et al., "Creating a People-Centred View of Risk and Restorative Justice," *Criminology and Criminal Justice* 24, no. 5 (2024): 1047–68.

be seen not as a replacement but as an innovation in the evolution of more humane sentencing practices.

Thus, the findings of this study confirm that the shift in the paradigm of punishment through restorative justice is not only conceptual but has also operated as a normative framework in Indonesian judicial practice. Regulations such as Attorney General Regulation Number 15 of 2020 and Supreme Court Regulation Number 1 of 2024 reposition the measure of success in law enforcement, shifting the focus from the severity of the punishment to the successful restoration of social relations and victim losses. This orientation aligns with Braithwaite's idea of community-based legal responsiveness and also reinforces Gade's concept of maximalist punishment, which states that punishment cannot be reduced solely to the infliction of suffering but also aims for just healing and reconciliation.

This approach found empirical grounding in judicial practice. In Mukomuko District Court Decision Number 1/Pid.C/2021, the judge determined that RJ was the most effective way to resolve the case, as it was more likely to achieve a greater justice goal than formal punishment. The Liwa District Court Decision Number 1/Pid.C/2022 and the Tanjung Selor District Court Decision Number 39/Pid.B/2022 show similar patterns of assessment. In both cases, the interests of the victim and public acceptance are key factors in deciding whether the decision is valid. At the appellate level, the Banten High Court, through Decision Number 137/Pid/2021/PT Btn, affirmed that the success of RJ is not measured by deterrence or incapacitation, but by healing the social rift caused by the criminal act.

The consistency of this judicial acceptance demonstrates the existence of internal normative convergence between the moral-responsibility theory, which forms the foundation of RJ, and the operation of Indonesian positive law. Guilt, confession, and a commitment to rehabilitation become the source of a new, more legitimate form of punishment that is oriented toward the moral renewal of the offender and the restoration of social balance. Therefore, this research confirms that RJ is not the antithesis of retributive punishment but rather a transformative penal paradigm that synthesizes the principles of retributive accountability, preventive-utilitarian goals, and moral-communitarian values to present a form of punishment that is relational, humanistic, and restorative. This approach breaks down the classic dichotomy between punishment and restoration, providing direction for 21st-century sentencing reform that aligns with the goals of substantive justice for victims, offenders, and society.

D. Conclusion

This research concludes that restorative justice cannot be understood as the antithesis of the retributive model of punishment but rather as a new face of modern punishment that is more inclusive, humanistic, and oriented toward social restoration. Restorative justice does not eliminate punishment, but it shifts the orientation of punishment from simply inflicting suffering on the perpetrator to an effort to repair

damage, restore the victim's losses, and restore the social balance and relationships disrupted by the crime. Within this framework, the perpetrator still bears moral and legal responsibility, but in a form that is more meaningful for the victims and society. The findings of this study indicate that restorative justice presents a harmonious synthesis between retributive accountability principles, utilitarian prevention goals, and moral-communitarian values. This synthesis confirms that the ultimate goal of punishment is not retribution but the achievement of substantive justice that ensures complete restoration for all parties affected. In the Indonesian context, judicial support through various court decisions and regulatory strengthening proves that restorative justice has been accepted as a legitimate and effective model of punishment in achieving more humane and responsive justice. Thus, restorative justice needs to be viewed as a transformative sentencing paradigm that strengthens the legitimacy, human values, and effectiveness of the criminal justice system. By prioritizing the restoration of social relationships, victim participation, and offender rehabilitation as its main goals, restorative justice offers a vision of punishment that not only resolves cases but also restores human dignity and social harmony within the community.

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