

# RESTORATIVE JUSTICE PARADIGM AS A COMPLEMENT TO RETRIBUTIVE JUSTICE: A REVIEW FROM THE PERSPECTIVE OF PANCASILA PHILOSOPHY

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## Abstract

This study employs a normative juridical approach. Following the enactment of the new Indonesian Criminal Code (Kitab Undang-Undang Hukum Pidana/KUHP) through Law Number 1 of 2023 concerning the Criminal Code and the new Indonesian Code of Criminal Procedure (Kitab Undang-Undang Hukum Acara Pidana/KUHAP) through Law Number 20 of 2025 concerning the Code of Criminal Procedure, both of which came into effect on 2 January 2026, there has been a paradigm shift in the focus of criminal punishment from a retributive justice approach to restorative justice. This paradigm shift arose because retributive justice has been unable to resolve the root causes of crime, has failed to provide adequate space for victim recovery, and has negatively affected social interactions within society. The restorative justice approach offers the concept that punishment should not merely be oriented toward retaliation, but should also take into account the rights and losses suffered by victims, while simultaneously seeking the restoration of social relations within the community. The paradigm of restorative justice is reflected in the minutes of the first session of the Investigating Committee for Preparatory Work for Indonesian Independence (Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan/BPUPK) held from 29 May to 1 June 1945, which became the embryo for the birth of Pancasila, stating that: "...so that in this era the State of Indonesia may be established, where people can live safely and prosperously, moving toward the attainment of perfect humanity. Therefore, the foremost legal requirement must be respect for human rights and obligations in the deepest sense." Law enforcement cannot be separated from respect for humanitarian values, both from the perspective of perpetrators and victims, in order to realize a safe and prosperous society in accordance with the philosophy of Pancasila.

**Keywords:** Law Enforcement, Concept of Justice, Pancasila Philosophy

## INTRODUCTION

From the perspective of law enforcement, justice constitutes one of the primary objectives of law, alongside two other legal objectives. The German philosopher and legal scholar Gustav Radbruch outlined three objectives of law in his work *Einführung in die Rechtswissenschaften*, namely justice (*Gerechtigkeit*), utility (*Zweckmäßigkeit*), and legal certainty (*Rechtssicherheit*) (Rahardjo, 2012). According to Radbruch, justice occupies the highest priority among the three, considering humanity's need for law as a means of preserving the diversity of interests within society. Through the concept of justice, a balance between the rights and obligations of citizens within a state may be achieved. Subsequently, law provides authority and mechanisms for dispute resolution (utility), thereby creating legal certainty.

Discussions concerning the concept of justice represent a classical discourse dating back to the emergence of Greek philosophy (Dwisvimiari, 2011). According to Aristotle, justice consists of distributive justice and commutative justice. Distributive justice focuses on the proportional allocation of resources, honors, or social benefits. This concept differs from equal distribution, as it is based upon individual contributions, capabilities, and social value. Under distributive justice, each individual is regarded as possessing different roles and capacities within society. Individual contributions refer to significant roles that deserve rewards commensurate with the effort or labor expended. For example, within a production process, a factory supervisor or manager may receive a higher salary than a factory operator assigned to specific tasks.

Aristotle's concept of commutative justice refers to justice granted equally to every individual without considering personal circumstances. Commutative justice aims to restore interactions among individuals within a legal context, particularly the balance between rights and obligations. The purpose of commutative justice is to

restore equilibrium arising from acts that create injustice, regardless of the status or services of the individuals concerned. For instance, within a sale and purchase transaction, any individual may obtain goods of equivalent value at a specified price. In the development of justice theory, the concept of retributive justice emerged, namely a theory that imposes punishment upon offenders as a consequence proportional to their wrongdoing or criminal acts. Prominent proponents of this theory include Immanuel Kant and Georg Wilhelm Friedrich Hegel. Kant categorized criminal law as a categorical imperative, meaning that punishment must be proportionate to the offender's conduct or guilt. Meanwhile, Hegel viewed crime as a threat to the equilibrium of rights (law), such that punishment serves to eliminate such threats or disturbances and to restore the violated rights.

The perspectives of Kant and Hegel concerning retributive justice greatly influenced the formulation of the *Wetboek van Strafrecht* or the Indonesian Criminal Code (KUHP) of 1915, which became effectively enforceable on 1 January 1918. Retributive justice emphasizes punishment as a concrete consequence of retaliation against criminal offenders and primarily focuses on offenders through the imposition of suffering, as well as on society through protection from crime. However, law enforcement based on retributive justice has been unable to adequately address at least three fundamental questions: whether the root causes of crime within society can be resolved; whether sufficient space exists for the recovery of crime victims; and how social relations within society, which are damaged or rendered imbalanced by retributive justice, may be restored.

In response to these issues, restorative justice emerged as an alternative to the outdated theory of punishment represented by retributive justice. One of the most influential thinkers in restorative justice theory is Howard Zehr, widely recognized as the "father of restorative justice." Restorative justice seeks to challenge the understanding of retributive justice that limits crime merely to a legal violation between offender and victim. Rather, it regards crime as a violation of human relationships, thereby requiring the involvement of all affected parties (Zehr, 2002). In line with the concepts of justice advanced by philosophers and legal scholars, law enforcement in Indonesia has experienced a paradigm shift from retributive justice toward restorative justice. This shift was marked by the enactment of the new Indonesian Criminal Code (KUHP) through Law Number 1 of 2023 concerning the Criminal Code and the new Indonesian Code of Criminal Procedure (KUHAP) through Law Number 20 of 2025 concerning the Code of Criminal Procedure, both of which came into force on 2 January 2026.

The dynamics underlying the transformation from retributive justice to restorative justice within the KUHP and KUHAP are also closely related to the values of Pancasila as the fundamental norm of the Indonesian state (Latif, 2026). Interpreting Pancasila solely through the values contained within a particular principle would not provide a sufficiently comprehensive understanding of restorative justice. Instead, an interrelated value-based approach is required, particularly concerning the second principle, which embodies universal humanitarian values, and the fifth principle, which embodies social justice based upon balanced social relations and the restorative impact of law enforcement upon criminal offenders.

According to the philosophy of Pancasila, law enforcement represents the convergence of legal certainty, utility, and justice, while simultaneously integrating the values of divinity, humanity, unity, democracy through deliberation, and social justice (Suhaeni et al., 2022). This perspective requires law enforcement not to stop at a dry legalistic-formalistic approach devoid of values or meaning, but rather to reach substantive dimensions such as the public sense of justice and orientation toward the common good (*bonum commune*). Law enforcement under the philosophy of Pancasila also prioritizes the protection of human rights, in line with the Principle of Humanity, which upholds human dignity (Tambunan et al., 2025).

## **METHOD**

As part of the endeavor to discover academic truth, systematic planning and a theoretical framework in the form of an appropriate methodological approach are required to ensure that the research implementation complies with scientific principles and standards. The methodology in question constitutes the procedures employed to obtain data and information for subsequent analysis using analytical frameworks or instruments, thereby producing research outputs capable of addressing existing legal issues. Method serves as an essential component of research by establishing boundaries and procedures that guide the research process in order to provide answers to the issues being examined, while also ensuring that the research procedures remain relevant to the objectives of the study. Furthermore, research represents an effort to obtain and collect evidence or facts, as well as to identify the interrelationships between such evidence or facts (Soemitro, 1994). The research method employed in this study is legal research conducted through the examination of facts and the formulation of primary legal sources in the form of statutory regulations, as well as secondary legal sources including books, academic manuscripts, and other scholarly references relevant to this research. This study also adopts an approach based on legal doctrines or

principles, as well as the opinions and perspectives of legal scholars (*the conceptual approach*), in order to derive adequate conclusions that may serve as solutions to legal issues arising within society.

## **RESULTS AND DISCUSSION**

### **Philosophical Problems of Retributive Justice According to the Philosophy of Pancasila**

Retributive justice was once widely accepted within criminal justice systems in many countries, including Indonesia. From a historical perspective, Indonesia's criminal law system was governed by the Criminal Code (KUHP), a product of Dutch colonial law, for a period of 108 years, from 1 January 1918 until 2 January 2026, which adhered to the concept of retributive justice. Such a lengthy period, according to Lawrence Meir Friedman, whose legal system theory consists of legal structure, legal substance, and legal culture (Friedman, 1975), demonstrates that the concept of retributive justice had become deeply embedded within Indonesia's criminal law system. Through this legal culture, a particular pattern emerged among all stakeholders, including law enforcement officials, victims, and society at large, regarding the operation of a criminal justice system based upon the principles of retributive justice (Muhtarom, 2015).

The traditional criminal law enforcement system possesses philosophical problems because law is merely viewed as an instrument for enforcing morality and the supremacy of law, thereby failing to place victims as a central consideration or to restore social relations through the reintegration of offenders into society after punishment. These philosophical issues were discussed during the meetings of the Investigating Committee for Preparatory Work for Indonesian Independence (BPUPK), based on the minutes of the Great Meeting of the BPUPK (*Dokuritu Zyunbi Tyoosakai*) represented by R.A.A. Wiranatakusumah V, Wurjaningrat, Surjo, Susanto Tirtoprodjo, Sudirman, Surachman, and Dasaad (BPUPK, 2024). According to R.A.A. Wiranatakusumah V, the aspiration behind the establishment of the Indonesian state was to ensure that every citizen could live safely and prosperously while progressing toward the attainment of perfect humanity. Law enforcement must therefore uphold respect for the fundamental rights and obligations of human beings. Furthermore, without disregarding the divine values embodied in the principles of Pancasila, the objective of law is not limited to material or physical aspects, but also encompasses metaphysical dimensions, namely happiness not in the hedonistic sense, but as the attainment of spiritual awareness, self-recognition, and inner harmony (Shapland, 2011).

The values of Pancasila require that law enforcement guarantee every member of society the ability to live safely and peacefully. Consequently, the perspective of punishment must adopt a broader societal viewpoint, rather than focusing solely upon the relationship between offender and victim. Moreover, from the perspective of legal objectives, happiness is achieved through the restoration of balance not only for offenders, but also for the restoration of equilibrium arising from injustice caused by criminal acts. The need for a progressive approach or legal reform from conservative justice (retributive justice) toward restorative justice should not be interpreted as completely abandoning the concept of retributive justice. Empirically, restorative justice cannot be applied to all categories of criminal offenses. The parties involved in a dispute must possess a common willingness to reach resolution so that settlement mechanisms may function effectively. Furthermore, certain criminal offenses cannot be resolved through restorative justice, such as corruption offenses. The widespread impact of corruption upon various aspects of state administration, national economic decline, poor public services, loss of investor confidence, and other implications complicates the application of restorative justice; therefore, the retributive justice approach remains relevant.

### **The Compatibility of the Restorative Justice Paradigm in the New KUHP and KUHAP with the Values of Pancasila**

As a response to law enforcement practices rooted in retributive justice, restorative justice emerged by offering dispute resolution through the involvement of all stakeholders affected by a violation in order to collectively identify solutions and address the consequences arising from such violations (Shapland, 2011). Criminal law enforcement through a restorative justice approach is based upon the essential understanding that law exists for the benefit of human life (Michele et al., 2022). Law is not merely interpreted as an absolute or dogmatic instrument, but rather as a moral source grounded in conscience, enabling law to address the needs of society. The purpose of restorative justice is to restore societal conditions existing prior to the occurrence of a criminal act by discovering equilibrium through bringing together victims and their families, offenders and their families, as well as involving the broader community in efforts to repair unlawful conduct through conscious awareness. Within the new Indonesian Criminal Code (KUHP), enacted through Law Number 1 of 2023 concerning the Criminal Code, the concept of restorative justice can be found in Article 2 paragraph (2), which recognizes living law within society based upon the values contained in Pancasila, the 1945 Constitution, human rights, and general legal principles

recognized by the international community. Accordingly, this provision affirms the principles of humanity, balance, and justice within Indonesia's criminal law enforcement system. The provision explicitly identifies Pancasila as the criterion for living law within society and as the legal foundation for criminal law beyond the KUHP.

Furthermore, Article 52 stipulates that punishment must not degrade human dignity, while Article 54 establishes sentencing guidelines through clearer parameters by considering, among other factors, the impact of punishment upon the future of offenders and the impact of criminal acts upon victims or victims' families. Through Articles 52 and 54, legal foundations are established for the resolution of criminal cases through restorative justice.

The new Indonesian Code of Criminal Procedure (KUHAP), under Article 1 point 21, defines restorative justice as a method of resolving criminal offenses through the involvement of stakeholders, including victims, offenders, their respective families, and/or related parties, with a focus upon restoring conditions existing before the criminal offense occurred. Furthermore, the new KUHAP regulates restorative justice in a separate chapter, namely Chapter IV concerning the Restorative Justice Mechanism, encompassing Articles 79 through 88. Prior to its incorporation within the new KUHP and KUHAP, restorative justice had already been recognized in various other legislative instruments, including Supreme Court Regulation Number 2 of 2012 concerning Adjustments to the Limits of Minor Criminal Offenses, Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, and Indonesian National Police Regulation Number 8 of 2021 concerning the Handling of Criminal Offenses Based on Restorative Justice. Through these legislative instruments, the concept of restorative justice has been formally acknowledged as part of Indonesia's positive law system.

The restorative justice approach to law enforcement is also consistent with the values of Pancasila, particularly the fourth principle, which embodies deliberation and consensus in decision-making for the common interest. Decision-making based upon deliberation to achieve consensus is accompanied by a spirit of kinship, reflecting the communal character of Indonesian society. The communal nature of Indonesian society refers to the awareness that every individual constitutes an integral part of society as a whole. Through such awareness, individual interests must be positioned according to their rightful place—recognized and respected without being subordinated by other individuals or the state—while simultaneously maintaining societal interests without mutual negation (Alting, 2010). Indeed, customary law communities in Indonesia have demonstrated restorative justice practices that embody the spirit and identity (*volkgeist*) of Indonesian society. In West Sumatra, the *Kerapatan Adat Nagari* institution functions as a mediator for minor criminal cases, including minor assault, theft, and marital disputes, by involving offenders, victims, families, and community representatives in order to reach agreements that satisfy all parties (Cahyadi, 2026).

Conflict resolution through deliberation contains five basic principles: *conferencing*, namely the meeting of two or more differing interests to exchange aspirations and intentions; *search solution*, namely efforts to identify possible alternative solutions; *reconciliation*, namely the process of resolving the impacts arising from conflict; *repair*, namely the restoration or improvement of conditions affected by conflict; and *circles*, meaning mutual support (Prayitno, 2012). The philosophy of deliberation within Pancasila was also articulated by Soepomo during the BPUPK meeting. The resolution of disputes through deliberation has also been implemented in practice by law enforcement officials, particularly the Indonesian National Police, which applies restorative justice mechanisms consistent with Article 6 paragraph (3) of Indonesian National Police Regulation Number 8 of 2021 through the fulfillment of victims' rights as part of offenders' responsibilities. Such responsibilities include the return of property, compensation for losses, reimbursement of costs arising from criminal acts, and/or repair of damages caused by criminal conduct. Through this approach, law enforcement officials have embodied the principle of criminal law as *ultimum remedium*, positioning criminal sanctions as the final resort after peaceful settlement efforts, mediation, or administrative and civil sanctions have first been pursued to restore conditions.

According to data from the Directorate General of Corrections of the Ministry of Immigration and Corrections of the Republic of Indonesia as of 24 February 2025, the total capacity of correctional institutions (*Lapas*) and detention centers (*Rutan*) throughout Indonesia amounted to 99,749 and 36,999 persons respectively, while the actual number of inmates reached 189,414 and 75,124 persons respectively. Consequently, correctional institutions and detention centers experienced overcrowding rates of 189.89% and 203.04% respectively. Through the optimization of non-penal dispute resolution approaches, the burden borne by the state in administering criminal justice—from investigation and prosecution to trial proceedings as well as inmate maintenance costs, may be reduced and redirected toward broader public welfare.

## **The Ideal Concept of Restorative Justice According to the Philosophy of Pancasila**

Pancasila constitutes the philosophical foundation of the Republic of Indonesia, officially ratified by the Preparatory Committee for Indonesian Independence (PPKI) on 18 August 1945 and incorporated within the Preamble to the 1945 Constitution, promulgated in the State Gazette of the Republic of Indonesia Year II Number 7 together with the body of the Constitution. Under Article 2 of Law Number 12 of 2011 concerning the Formation of Laws and Regulations, as amended several times and most recently by Law Number 13 of 2022, Pancasila serves as the source of all sources of state law. In addition to functioning as the source of state law, Pancasila also serves as the nation's worldview (*Weltanschauung*) or way of life, meaning that it provides guidance through values representing the aspirations and ideals of the Indonesian people (Jazuli et al., 2025). As an ideal value system, Pancasila is utilized as a criterion or indicator for determining a restorative justice concept consistent with the identity and worldview of the Indonesian nation.

The concept of restorative justice within the legal ideals of Pancasila refers to the postulate articulated by Eddy Hiariej in his work *Principles of Criminal Law*, namely *le salut du peuple est la suprême loi*, meaning that the highest law is the protection of society (Hiariej, 2014). Positioning the protection of society as the highest law signifies respect for humanitarian values in the form of human rights, not only for offenders and victims, but also for society as a whole. Criminal law enforcement cannot serve as justification for violating such protections, and the state is obligated to uphold human rights. The second principle of Pancasila, namely "Just and Civilized Humanity," places all citizens on equal footing before the law while simultaneously granting equal obligations, guarantees, and legal protections. This principle is also reflected in Article 7 of the Universal Declaration of Human Rights, which prohibits discriminatory practices by affirming equality in status, rights, and obligations among all human beings.

Another restorative justice concept within the philosophy of Pancasila is embodied in the fourth principle, namely "Democracy Guided by the Inner Wisdom of Deliberation Among Representatives." Alternative restorative justice mechanisms are implemented through Victim Offender Conferencing (VOC), a voluntary restorative justice process that provides opportunities for reconciliation and mutual agreement regarding reparative measures. Through VOC mechanisms, victims are invited to express their perspectives concerning the impacts or consequences arising from criminal acts, while efforts are undertaken to resolve conflicts among offenders, victims, and society. Furthermore, reconciliation processes are pursued to address the consequences caused by criminal conduct.

Through the realization of justice for all parties—victims, offenders, and society alike—the objectives of punishment may be achieved by repairing both individual and social harm resulting from criminal acts. Moreover, the protection of victims, who possess human rights to obtain restitution, recovery, and justice for harms caused by offenders, constitutes a central concern of restorative justice according to Pancasila. When examined through the traditions of Indonesian society, the Australian restorative justice scholar John Braithwaite acknowledged the Indonesian practice of consensus-based deliberation as a form of restorative justice in criminal dispute resolution. According to Braithwaite, Indonesia possesses extraordinary cultural resources that shape restorative justice values. Traditions of *musyawarah* (deliberation) and cooperative decision-making exist throughout the Indonesian archipelago, while customary law accommodates diversity in criminal law enforcement across different regions to complement universal national law (Hutauruk, 2013).

## CONCLUSION

Based on the foregoing discussion in addressing the previously formulated research problems, several conclusions may be drawn as follows.

- a. Criticism of the concept of retributive justice arises from the fact that the implementation of law enforcement is often limited to functioning merely as an instrument for enforcing morality and the supremacy of law, while frequently neglecting the protection and position of victims and their humanitarian rights. Furthermore, the conservative approach of retributive justice tends to disregard the restoration of social interaction following the resolution of criminal cases, whereas the objectives of law encompass not only justice and legal certainty, but also social utility, which should constitute an important consideration within the law enforcement process. In response to such criticism, restorative justice emerged as an approach that seeks to protect the interests of victims by upholding their human dignity and involving the parties concerned in restoring social relationships affected by criminal acts. The humanitarian values embodied within restorative justice are also consistent with the second principle of Pancasila, as well as the discussions during the meetings of the Investigating Committee for Preparatory Work for Indonesian Independence (BPUPK), which emphasized that the existence of law and government (the state) is intended to ensure that citizens may attain the highest degree of humanity. The second principle of Pancasila further signifies equality of rights for every citizen before the

law, accompanied by equal obligations and equal guarantees and protection under the law without discrimination.

b. The principles underlying the resolution of criminal cases through restorative justice share the same essence as the fifth principle of Pancasila. The method of problem-solving through deliberation (*musyawarah*), which is characteristic of Indonesian society, has long been reflected in various customary law practices by positioning offenders, victims, and their respective families on equal footing, while prioritizing the protection of violated victims' rights. In addition, the deliberative approach enables the parties involved to formulate diverse and context-specific solutions tailored to the needs of each party, based upon free will and without coercion, with the ultimate objective of restoring conditions to those existing prior to the commission of the criminal act.

c. Interpreting Pancasila within the framework of restorative justice requires an interrelated value-based approach, particularly concerning the second and fifth principles of Pancasila. This includes respect for universal humanitarian values, alongside recognition of the existence of values that grow and develop within society in the form of local wisdom, particularly the tradition of deliberation, which constitutes a distinctive characteristic of the Indonesian nation. Criminal law enforcement through deliberation within customary law communities has also received formal legal recognition in Indonesia through the provisions of Article 2 paragraph (2) of the new Indonesian Criminal Code (KUHP), provided that such practices remain consistent with the values of Pancasila, the 1945 Constitution, human rights, and general principles recognized by the international community.

## RECOMMENDATIONS

In an effort to contribute to the discourse on restorative justice through the philosophical perspective of Pancasila, this study proposes the following recommendations:

a. The restorative justice approach should not be understood merely as a substitute for retributive justice; rather, it should function as a complementary mechanism alongside retributive justice and other conventional concepts of justice, such as commutative and distributive justice. Restorative justice cannot be applied to all categories of criminal offenses, particularly crimes that have broad societal impacts, such as corruption. Likewise, it is not appropriate for cases involving human rights violations committed by the state, or offenses in which perpetrators exhibit neither remorse nor guilt and instead perceive themselves as morally justified. Therefore, prudence and careful consideration by law enforcement officials in applying restorative justice are essential to ensure that the objectives of law can be effectively achieved.

b. Research employing a core value approach grounded in Indonesian societal values and the philosophy of Pancasila should be further enhanced, considering that theories originating from foreign contexts may still hold relevance in addressing contemporary issues, including the enforcement of criminal law through the concept of restorative justice.

c. All stakeholders, particularly law enforcement officials in handling criminal cases, are encouraged to apply an appropriate perspective of retributive justice while also considering dispute resolution through deliberation (*musyawarah*), which reflects the characteristics of Indonesian society. Through such a deliberative approach, greater emphasis can be placed on the interests of victims as well as the restoration of social relations by reintegrating offenders into society following punishment. In this manner, the objectives of law based on Pancasila may be realized, namely the establishment of social order, social justice, and public welfare in harmony with the values of Divinity, Humanity, Unity, Democracy, and Justice.

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