



Department of Digital Business

Journal of Artificial Intelligence and Digital Business (RIGGS)

Homepage: <https://journal.ilmudata.co.id/index.php/RIGGS>

Vol. 4 No. 3 (2025) pp: 6116-6121

P-ISSN: 2963-9298, e-ISSN: 2963-914X

Restorative Justice in Contemporary Criminal Law: Comparative Perspectives and Emerging Trends

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Abstract

This study analyzes the concept of restorative justice in contemporary criminal law by highlighting comparative perspectives and current trends that are developing in various jurisdictions. Using a qualitative approach based on literature studies, this study searches academic literature, laws and regulations, and international and national court decisions to identify patterns of policy implementation and innovation. The results of the analysis show that restorative justice is increasingly integrated as an alternative to punishment that emphasizes the recovery of victims' losses, perpetrator participation, and social reconciliation, while challenging the dominant retributive paradigm. A comparison of practices in Europe, North America, and Asia shows significant variations in legal frameworks, mediation mechanisms, and institutional support, influenced by cultural and political contexts. In addition, global trends such as the digitization of the mediation process and the involvement of local communities are expanding the scope of restorative justice implementation, but still face challenges related to procedural standards and the protection of the rights of the parties involved. This study recommends strengthening regulations, enhancing facilitator capacity, and cross-border empirical research to ensure the effectiveness and sustainability of restorative justice implementation in the modern criminal justice system. These findings are expected to make a theoretical and practical contribution for policymakers, academics, and legal practitioners in designing criminal policies that are more humane and responsive to the needs of society.

Keywords: Restorative Justice, Contemporary Crime, Comparative Perspective, Global Trends, Criminal Mediation

1. Introduction

The paradigm shift in criminal law from a retributive approach to a more humanistic and participatory approach is a response to the weaknesses of the traditional penal system that emphasizes retribution (Schmid, 2017). The retributive approach, which is rooted in the principle of *lex talionis*, views crime as a form of commensurate retribution for violations of the law, thus placing the perpetrator as the object of punishment alone (Braithwaite, 2002). In practice, the orientation to retaliation often ignores the victim's need for recovery and overrides the role of the community in the conflict resolution process. On the contrary, the humanist and participatory approach carried by the concept of restorative justice seeks to balance the interests of perpetrators, victims, and society through dialogue, mediation, and restoration of social relations (Zehr, 2015). This shift reflects a new understanding that criminal justice should not only punish, but also recover losses and rehabilitate offenders (Rossner & Taylor, 2024; Daly & Immarigeon, 1998).

The conventional penal system has proven to have limitations in reducing crime rates sustainably and providing substantive justice for all parties (Journal et al., 2022). Research shows that imprisonment-based punishment does not always reduce recidivism, and can even increase the risk of re-offending due to social stigma and lack of reintegration programs (Clear, 2007). In addition, formalistic judicial processes often override the rights and needs of victims, so that justice achieved is purely procedural, not justice that truly restores losses (Daly & Proietti-Scifoni, 2011). This condition underscores the importance of criminal law reform towards a model that emphasizes recovery (Ramizah Wan Muhammad, 2020), active participation of all parties, and crime prevention through rehabilitation and social reintegration of perpetrators (Kumar & Kumar Singh, 2025).

Restorative justice is an approach in the criminal justice system that emphasizes the recovery of victims' losses, perpetrator accountability, and social reconciliation as the core of case resolution (Goodman, 2021). This concept views criminal acts not only as a violation against the state, but also as a conflict between individuals and society that causes real losses (Zehr, 2015). Its basic principles include the active involvement of all parties—victims, perpetrators, and communities—in a dialogue process aimed at reaching a recovery agreement (W. Wood et al., 2022), whether through compensation, apology, or other rehabilitative measures (Braithwaite, 2002). By prioritizing participation, restorative justice creates space for victims to express their emotional and material needs, as well as provide opportunities for perpetrators to admit their mistakes and correct the impact of their actions. This model is in line with the idea of substantive justice that places the restoration of social relations as the ultimate goal (Shapland et al., 2006).

The urgency of implementing restorative justice is increasingly emerging amid contemporary challenges such as penitentiary overcrowding, high crime rates, and societal demands for a more recovery-oriented justice system (Umbreit et al., 2005). Mass incarceration in various countries has been shown to have far-reaching socio-economic impacts, including prison overcapacity, high public costs, and stigma that magnifies the likelihood of recidivism (Clear, 2007). In addition, conventional criminal justice processes often fail to provide adequate redress for victims, resulting in dissatisfaction with the justice achieved (Daly & Proietti-Scifoni, 2011). In this context, restorative justice offers a more effective and sustainable alternative by emphasizing loss recovery, community strengthening, and crime prevention through offender rehabilitation. The application of these principles is expected to reduce the burden on the criminal justice system, increase victim satisfaction, and create justice that is more inclusive and responsive to the needs of modern society (McAlinden, 2011).

The implementation of restorative justice shows significant variation across jurisdictions, reflecting the diversity of social, cultural, and legal contexts (Beale, 2005). In Europe, criminal mediation has been integrated into national policies and the European Union's legal framework as an alternative to case resolution that emphasizes victim recovery and rehabilitation of offenders (European Union Agency for Fundamental Rights, 2019). Countries such as Finland and Austria have established formal court-recognized criminal mediation procedures, thus providing strong legal legitimacy (Beale, 2005). Meanwhile, North America is developing community-based victim-offender mediation programs that allow victims and perpetrators to engage in direct dialogue to reach a recovery agreement, with broad support from non-governmental agencies and local governments (Umbreit & Armour, 2010). In Asia, the application of restorative justice often utilizes local cultural values such as deliberation and reconciliation, for example in the practice of diversion in Indonesia and community conferencing programs in Japan, which combine customary norms with formal mechanisms (Acharya, 2020). These different approaches show that restorative justice can be tailored to the cultural characteristics and legal systems of each country (W. R. Wood & Suzuki, 2016).

Although the implementation of restorative justice is becoming more widespread, there are variations and challenges that affect the effectiveness of its implementation. Differences in legal frameworks, levels of institutional support, and community acceptance are the main factors that determine the success of the program in each jurisdiction (Daly & Proietti-Scifoni, 2011). Countries with clear regulations and adequate resource support tend to have higher participation rates and more optimal recovery outcomes. On the other hand, in areas that do not have a solid legal foundation, restorative justice is vulnerable to facing harmonization with positive law, including conflicts with formal criminal justice procedures (Hoyle, 2021). In addition, the protection of victims' rights is still a crucial issue, especially related to power inequality in the mediation process and the risk of revitalization. Therefore, the implementation of restorative justice requires strict procedural standards and supervisory mechanisms that ensure a balance of the interests of perpetrators, victims, and society, so that the justice produced is substantive and sustainable (Freiberg, 2011).

Research by Latimer, Dowden, and Muise (2005) found that restorative justice programs consistently produce higher levels of victim satisfaction than conventional criminal justice processes, while reducing the likelihood of offenders repeating crimes. The Braithwaite study (2002) also emphasized that community involvement in the mediation process can encourage the reintegration of perpetrators into society, reduce stigma, and increase the perpetrator's sense of responsibility for their actions. Similar findings were reported by Strang et al. (2013), which showed that victim-perpetrator-based mediation was able to improve social relationships and reduce psychological impact on victims, especially in cases of petty violence and property crimes (King, 2008). These studies confirm the effectiveness of restorative justice as a more humane and participatory alternative to punishment. Based on this, this study aims to analyze the concept of restorative justice in contemporary criminal law by highlighting comparative perspectives and current trends that are developing in various jurisdictions.

2. Research Methods

This research uses a qualitative method with a descriptive-analytical library research design. This approach was chosen to examine the application of restorative justice in contemporary criminal law through an in-depth analysis of academic literature, legal policy, and cross-border empirical reports. Primary data is obtained from secondary sources, including reputable international journals, scientific books, reports of official institutions such as the European Forum for Restorative Justice, as well as relevant national and international legal documents. Data collection techniques are carried out through a process of identification, selection, and critical evaluation of publications published in the period 2000–2024 to ensure the timeliness and relevance of the findings (Creswell & Poth, 2018). This procedure allows researchers to trace patterns of restorative justice implementation, identify global trends, and compare practices in different jurisdictions with a strong theoretical basis.

Data analysis was carried out using the content analysis method with steps including theme categorization, contextual meaning, and comparative interpretation. The data collected are grouped based on the focus of the research, namely the basic concepts and principles of restorative justice, implementation practices in Europe, North America, and Asia, and the trends and challenges of its implementation. Furthermore, the researcher conducted a process of triangulating the sources to improve validity and reliability, including a comparison between academic literature findings and policy reports (Bowen, 2009). The results of the analysis are presented narratively and comparatively to highlight similarities, differences, and contextual factors that influence the success of restorative justice in different countries. This approach provides an in-depth understanding of the dynamics of restorative justice in contemporary criminal law while producing evidence-based policy recommendations.

3. Results and Discussions

Shift from a Tributative Criminal System to a Restorative Approach in Various Jurisdictions

The shift from a retributive criminal justice system to a restorative justice approach reflects a fundamental transformation in global criminal law thinking. The traditional retributive system focuses on providing appropriate punishment to the perpetrators of crimes, with the aim of enforcing norms and providing a deterrent effect (Duff, 2001). However, many studies show that revenge orientation alone does not effectively reduce crime rates and often ignores victim recovery (Zehr, 2015). In response, restorative justice emerged as a new paradigm that placed substantive justice through loss recovery, perpetrator accountability, and social reconciliation as the main focus (Braithwaite, 2002). This shift shows an awareness that criminal justice should focus on restoring relationships and community well-being, not just retaliation (Sivasubramaniam, 2012).

In Europe, the restorative justice approach has been formally integrated into national and EU policies as an alternative to criminal settlement. Countries such as Finland and Austria pioneered court-recognized criminal mediation, allowing victims and perpetrators to engage in a dialogue that emphasizes the recovery of harm (European Union Agency for Fundamental Rights, 2019). This policy is in line with Directive 2012/29/EU which requires member states to provide restorative justice-based mediation services for victims of crime (Liu & Palermo, 2009). The integration strengthens the legitimacy of the law while demonstrating that the restorative model can coexist with the formal justice system without compromising legal certainty (Aertsen et al., 2013). North America is also an important example in the transition from a retributive to a restorative approach. In the United States and Canada, victim-offender mediation and family group conferencing programs have long been applied in case resolution, particularly for non-violent crimes (Umbreit & Armour, 2010). Empirical studies show that these programs reduce recidivism rates and increase victim satisfaction compared to conventional justice processes (Latimer et al., 2005). Success in the region has been largely sustained by local community support, local government funding, and policies that provide flexibility for out-of-court mediation (Agnihotri & Veach, 2016).

In Asia, the restorative justice approach develops by integrating local cultural values such as deliberation, mutual cooperation, and reconciliation. Indonesia, for example, implements a diversion mechanism in the juvenile justice system through Law No. 11 of 2012, which emphasizes the settlement of cases outside the court by involving families, communities, and law enforcement officials (Acharya, 2020). Japan adapted family group conferencing involving extended families and communities to support the restoration of social relationships (Braithwaite, 2002). This culture-based approach strengthens the social legitimacy of restorative justice and facilitates public acceptance, although it still faces challenges in harmonization with the law. Although the adoption of restorative justice is becoming more widespread, differences in legal frameworks, institutional support, and community acceptance cause variations in implementation (Luna, 2003). Some countries face obstacles in harmonizing with formal legal procedures, especially related to the protection of victims' rights and

the risk of power imbalances in the mediation process (Daly & Proietti-Scifoni, 2011). In some jurisdictions, limited resources, lack of mediator training, and stigma against offenders are also significant barriers (Hoyle, 2021). Therefore, the successful transition to a restorative approach demands clear regulation, evidence-based training, and rigorous oversight to ensure substantive justice for all parties.

Overall, the global shift towards restorative justice shows that contemporary criminal justice increasingly emphasizes restoration, participation, and social dialogue. Cross-jurisdictional experience confirms that successful implementation depends on cultural context, policy support, and institutional readiness (Strang & Braithwaite, 2015). While not intended to completely replace the retributive system, restorative approaches make an important contribution to reducing prison overcrowding, improving victim satisfaction, and strengthening social cohesion. This trend reflects a fundamental shift in the way society interprets justice—from punitive to restorative (International et al., 2025).

Differences in Legal Framework and Institutional Support

Differences in legal frameworks are a major factor influencing the level of legitimacy and success of restorative justice implementation in various countries (O'Mahony & Doak, 2017). Countries with strong legal foundations, such as New Zealand through the Children, Young Persons, and Their Families Act 1989, have successfully incorporated the principles of restorative justice into national legislation, thereby gaining a high degree of formal legitimacy (McCold & Wachtel, 2003). Conversely, in countries that still treat restorative justice as a non-binding alternative policy, the effectiveness of programs is often hampered by legal uncertainty and resistance from law enforcement officials (Daly & Proietti-Scifoni, 2011). This shows that regulatory clarity is an important prerequisite for ensuring that mediation and restoration processes are recognized as equivalent to formal judicial mechanisms (Schmid, 2017).

Varied legal frameworks also determine the extent to which the rights of victims and perpetrators are protected during the restorative process. In Europe, Directive 2012/29/EU requires member states to guarantee standards for the protection of victims' rights, including the right to information, participation, and safety during mediation (European Union Agency for Fundamental Rights, 2019). Meanwhile, in some developing countries, legal limitations often raise concerns about potential power imbalances between victims and perpetrators, as well as a lack of oversight mechanisms (Hoyle, 2021). Without adequate protection, restorative justice processes risk becoming unequal forums, which can be detrimental to vulnerable parties. In addition to legal legitimacy, institutional support is an important pillar for the success of restorative justice programs (Rossner & Taylor, 2024). Judicial institutions, police, and civil society organizations need to have a shared commitment for the restorative process to be effective. Canada, for example, established a Restorative Justice Secretariat that specifically coordinates policy, training, and funding for criminal mediation programs (Department of Justice Canada, 2020). Support such as this (Omale & Omale, 2006).

The availability of trained human resources is an important aspect in supporting the success of restorative justice. The mediation process demands specialized skills such as communication skills, legal understanding, and cultural sensitivity. Braithwaite's (2002) research shows that trained mediators can reduce the risk of conflict escalation and increase the satisfaction of all parties involved (Daly & Immarigeon, 1998). Without adequate training, the mediation process is prone to fail to achieve the goal of recovery and instead increase the dissatisfaction of victims and perpetrators. Therefore, investing in professional mediator training is crucial.

Funding is also a determining factor in the success of restorative justice programs. Countries with special budget allocations, such as Norway and the Netherlands, are able to provide adequate facilities, including mediation centers, counseling services, and post-mediation monitoring programs (Aertsen et al., 2013). On the other hand, budget constraints in developing countries often result in a reliance on the support of donor agencies or non-governmental organizations, which can pose sustainability issues (Acharya, 2020). Funding instability can hinder the implementation of long-term programs and reduce public confidence in the effectiveness of restorative justice. Thus, the success of restorative justice implementation is highly determined by the alignment between the legal framework, institutional support, the quality of human resources, and funding. Countries that are able to provide clear legal legitimacy, train professional mediators, and allocate sustainable budgets tend to achieve more effective outcomes in victim recovery, reduction of recidivism, and increased public trust (Strang & Braithwaite, 2015). The differences in these aspects explain why the effectiveness of restorative justice varies significantly between jurisdictions, as well as emphasizing the importance of a comprehensive approach in policy formulation.

Obstacles to Harmonization and Protection of Victims' Rights

The harmonization of restorative justice with positive law faces fundamental challenges due to the paradigm difference between the restorative approach and the retributive criminal system. Conventional criminal

law focuses on retaliation and deterrence, while restorative justice focuses on victim recovery, perpetrator participation, and social reconciliation (Braithwaite, 2002). This difference in orientation causes resistance from law enforcement officials who are used to formal procedures, so that the implementation of restorative justice is often marginalized as an alternative non-mandatory policy (Daly & Proietti-Scifoni, 2011). As a result, the process of integration with the national legal system is slow and uneven in various jurisdictions (Ramizah Wan Muhammad, 2020).

In addition to paradigm differences, the inconsistency of regulations between countries and even between regions within one country makes it difficult to harmonize policies. In the European Union, for example, although Directive 2012/29/EU sets minimum standards for victims' rights, their implementation varies depending on each member's national legal framework (European Union Agency for Fundamental Rights, 2019). Differences in definitions, mediation procedures, and case feasibility criteria create legal uncertainty that can reduce the effectiveness of restorative justice. This indicates the need for a regulatory harmonization mechanism that is able to bridge diverse legal and cultural contexts (Kumar & Kumar Singh, 2025).

The protection of victims' rights is often a weak point in the implementation of restorative justice. Victims can experience victimization when they are involved in the mediation process without adequate assistance or when the perpetrator shows manipulative behavior (Hoyle, 2021). The lack of clear guidelines regarding victims' rights, such as the right to refuse mediation or the right to security, can result in a power imbalance that harms the more vulnerable parties (Daly, 2016). Thus, procedural guarantees and strong victim protection standards are essential requirements to prevent human rights abuses. Another obstacle is the limited institutional capacity to provide psychological and legal support for victims. The study of Aertsen et al. (2013) shows that countries with limited resource support are less likely to fail to provide counseling, legal assistance, or post-mediation monitoring mechanisms. The absence of such support can weaken the victim's bargaining position, affect the quality of the deal, and reduce the sense of security during the restorative process. Adequate institutional support is essential so that restorative justice is not only a formalistic procedure, but a means of equitable recovery (Goodman, 2021).

The cultural aspect is also a significant challenge in protecting the rights of victims. In some societies, social norms that emphasize harmony and peaceful settlement can pressure victims to accept mediation even if they feel unprepared (Acharya, 2020). This social pressure can reduce the victim's freedom to make decisions and potentially lead to substantive injustice. Therefore, there is a need for a culturally sensitive approach that still prioritizes the autonomy and safety of the victim over customary norms or community pressure. Inadequate funding also hinders efforts to harmonize and protect victims' rights (Santosa et al., 2025; Zulkifli et al., 2022). Restorative justice programs require adequate resources for mediator training, provision of safe mediation facilities, and monitoring of the outcome of agreements. In developing countries, dependence on donor assistance or non-governmental organizations often creates uncertainty about program sustainability (Acharya, 2020). Without long-term funding, the implementation of victim protection standards and legal harmonization mechanisms will be difficult to realize consistently. Thus, obstacles to harmonization and protection of victims' rights in restorative justice are multidimensional issues that include legal, institutional, cultural, and funding aspects. Overcoming these barriers requires a comprehensive approach, such as strengthening national legal frameworks, providing institutional support, training professional mediators, and sustainable budget allocation (Strang & Braithwaite, 2015). Only through these integrated efforts can restorative justice be harmonized with a positive legal system while ensuring maximum protection for victims' rights (W. Wood et al., 2022).

4. Conclusion

The results of this study conclude that restorative justice increasingly occupies a strategic position in contemporary criminal law in response to the limitations of the retributive penal system. Approaches oriented towards victim recovery, perpetrator accountability, and social reconciliation have proven to be able to provide substantive justice while strengthening social cohesion. Cross-jurisdictional comparative analysis shows that restorative justice integration runs with varying degrees of success, influenced by national legal frameworks, institutional support, availability of human resources, and cultural sensitivities. Practices in Europe stand out through criminal mediation regulated in national policies and the European Union, North America promotes community-based victim-offender mediation programs, while Asia adapts local values such as deliberation and indigenous peace. Nevertheless, the study found that harmonization with positive laws and protection of victims' rights are still major challenges. Differences in regulations, limited funding, and inequality in protection for victims can reduce the effectiveness of the implementation of restorative justice. Innovations such as the digitization of mediation processes and multi-sector collaboration show great potential to expand access and improve efficiency, but still require strict procedural standards and oversight. Therefore, strengthening

regulations, increasing the capacity of mediators, and cross-border empirical research are essential to ensure the sustainability and effectiveness of restorative justice.

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