

Restorative Justice and Recidivism in the Perspective of Islamic Law and Indonesian Positive Law

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ABSTRACT

This study interrogates the legal and normative compatibility of applying restorative justice to repeat offenders within Indonesia's criminal justice framework. Using a normative juridical and qualitative approach, it analyzes statutory provisions, institutional regulations, and a case study of an assault resolved through a restorative mechanism by the Tapa Sector Police in Bone Bolango. The findings reveal a persistent tension between the positivist pursuit of legal certainty and the restorative emphasis on moral rehabilitation and social harmony. Although Police Regulation No. 8 of 2021 explicitly prohibits restorative settlements for recidivists, empirical practice shows that reconciliation can, in certain contexts, produce more equitable and enduring outcomes than punitive sanctions. The study argues that a strict legal exclusion of repeat offenders undermines the humanistic and moral essence of Indonesian law, which aspires to uphold both justice and compassion. It concludes by advocating for the institutionalization of structured discretion, procedural transparency, and inter-agency coordination to harmonize legality with restorative values. Such integration would transform restorative justice from a procedural deviation into a substantive component of Indonesia's evolving pursuit of humane and balanced justice.

1. Introduction

The transformation of Indonesia toward a democratic state governed by the rule of law demands a sustained commitment from both the government and its citizens. Law enforcement, when carried out consistently and fairly, serves not merely as a symbol of good governance but as the foundation for realizing social justice as enshrined in the 1945 Constitution of the Republic of Indonesia.¹ Legal scholars such as Fence M. Wantu emphasize that the reform of the legal system must focus on enhancing legal certainty, improving public awareness of the law, and elevating the quality of legal services that uphold the principles of truth and justice. The success of this reform determines the extent to which the nation can achieve an orderly, just, and prosperous society.²

Criminal law occupies a vital role within this framework, functioning as a mechanism of social control designed to maintain public order and prevent harmful behavior. As human interactions grow increasingly complex, conflicts of interest often emerge from the pursuit of individual needs and desires. Law thus becomes an essential moral and rational boundary, ensuring that human freedom does not harm others.³ Through this lens, criminal law serves not only as an instrument of punishment but also as a guardian of social harmony and ethical responsibility.

Crime itself is not a novel phenomenon born of the modern technological era; rather, it has persisted throughout human civilization. Despite advancements in knowledge, science, and culture, criminal behavior continues to exist as an inherent aspect of social life. Indonesia, as a state based on law (*rechtstaat*),⁴ bears the constitutional responsibility to protect its citizens from all forms of criminal threat. The preamble to the 1945 Constitution outlines the nation's goals protecting its people, advancing public welfare, fostering national education, and contributing to global peace founded on freedom, lasting peace, and social justice. These objectives affirm the moral and juridical duty of the state to ensure the safety and justice of all its citizens.

In Islamic legal philosophy, justice is not limited to retribution but encompasses balance, reconciliation, and the restoration of social harmony. The Qur'an emphasizes the values of forgiveness and fairness, as stated in Surah Al-Ma'idah verse 8: "Be steadfast in justice, witnesses for Allah, even if it be against yourselves." This command underscores that law must aim not only to punish wrongdoing but also to uphold moral equilibrium (*mizan*) and human dignity (*karamah insaniyyah*). Within this framework, criminal law in Islam is both a mechanism of social order and a manifestation of divine justice (*al-'adl al-ilahi*).⁵

The concept of Restorative Justice shares deep resonance with Islamic notions of *ishlah* (reconciliation) and *taubat* (repentance), which prioritize moral rehabilitation over mere punishment. Classical Islamic jurisprudence provides alternatives such as *qishash*, *diyat*, and *afw*, each reflecting a continuum between retributive and restorative values. The granting of forgiveness (*afw*) and the pursuit of peace (*sulh*) between offender and victim are considered meritorious acts that uphold both individual and communal harmony. In this light, the moral underpinnings of

¹ N Achir and M H Muhtar, "Pembangunan Desa Melalui Penguatan Organisasi Karang Taruna Dalam Memaksimalkan Praktik Politik Dan Pemilihan Duta Demokrasi Di Desa Muara Bone Kecamatan Bone," *Community Development Journal: Jurnal Pengabdian Masyarakat* 4, no. 4 (2023): 7581–90, <https://doi.org/https://doi.org/10.31004/cdj.v4i4.19099>.

² Mohamad Hidayat Muhtar et al., *Menimbang Keadilan: Dinamika Hukum Dan Demokrasi Di Persimpangan Zaman* (Sada Kurnia Pustaka, 2024).

³ Novia Grace Lahmado, Mohamad Rusdiyanto U. Puluhlulawa, and Mohamad Hidayat Muhtar, "Tinjauan Viktimologi Terhadap Tindak Pidana Kekerasan Seksual Pada Anak Di Wilayah Hukum Polres Boalemo," *SINERGI: Jurnal Riset Ilmiah* 1, no. 6 (June 2024): 365–75, <https://doi.org/10.62335/m4nerb70>.

⁴ M Mustofa, 'Rechtstaat Dan Konstitusionalisme Dalam Pemikiran Abdurrahman Wahid (1940-2009) Dan Hasyim Muzadi (1944-2017)', *Madania Jurnal Kajian Keislaman*, 22.1 (2018), p. 83, doi:10.29300/madania.v22i1.916.

⁵ M Kusuma And Rosida Diani, 'Qishash Diyat Dalam Hukum Pidana Islam Lebih Mencerminkan Keadilan Dari Sisi Korban', *Jurnal Dinamika*, 2022, doi:10.54895/dinamika.v2i2.1829.

Restorative Justice align closely with the ethical objectives of *maqasid al-shari'ah*, particularly the preservation of life (*hifz al-nafs*) and the maintenance of social peace (*hifz al-'ird*).⁶

Accordingly, integrating Restorative Justice with Islamic legal principles offers an opportunity to construct a hybrid model of justice that harmonizes positive law with religious morality. Indonesia, as a nation with a predominantly Muslim population and a pluralistic legal system, stands at a unique intersection where the spirit of *rahmatan lil 'alamin* (mercy to all creation) can enrich the positivist approach to justice. This synthesis does not undermine the rule of law; rather, it deepens it by embedding legal practice within the moral consciousness of society, fostering justice that is both lawful and compassionate.

The principle of equality before the law, as stated in Article 27 paragraph (1) of the 1945 Constitution, positions all citizens as equal before the law without exception. This concept is the heart of a democratic legal system and the ultimate measure of substantive justice. Yet, the practical realization of this ideal remains fraught with obstacles. Socioeconomic disparities, abuse of authority, and weak legal awareness often blur the true meaning of justice.

Indonesia's criminal justice system operates as the principal mechanism for imposing sanctions on offenders. Litigation through the courts is regarded as the formal channel for ensuring legal certainty and deterring crime. However, this punitive approach has often failed to deliver comprehensive justice. Excessive reliance on retribution overlooks the rights and well-being of victims. Lengthy proceedings, high litigation costs, overburdened correctional institutions, and inconsistent application of justice reflect systemic weaknesses within the conventional judicial process.⁷ These conditions have inspired the search for alternative models of justice that focus more on reconciliation and moral restoration than on punishment alone.

Restorative Justice emerges as a transformative paradigm that redefines the goals of criminal justice. Rather than emphasizing retribution, it seeks to restore balance by repairing the harm caused by crime. This approach prioritizes dialogue, deliberation, and mutual understanding among offenders, victims, and society at large. Its ultimate goal is to restore relationships and prevent future offenses through empathy and accountability.⁸ Restorative Justice reframes the central question of justice from "who is guilty and how should they be punished" to "how can the harm be repaired."

The principle of restorative justice has gained legal recognition through several statutory and institutional frameworks. These include Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, the Regulation of the Attorney General of the Republic of Indonesia No. 15 of 2020 on the Termination of Prosecution Based on Restorative Justice, and the Regulation of the Indonesian National Police No. 8 of 2021 on the Implementation of Restorative Justice in Criminal Cases. These legal instruments collectively embody a shift toward a justice system that balances legal formalism with humanistic values.

Despite these formal regulations, the implementation of Restorative Justice in Indonesia has yet to achieve its ideal form. Many victims still perceive that justice has not been fully realized, particularly because criminal proceedings often prioritize the rights of suspects over those of victims. A truly just process should ensure fairness and inclusion for all parties involved. Restorative Justice provides a pathway toward this balance, involving victims, offenders, and the community in identifying harm, understanding accountability, and fostering reconciliation.

⁶ Z Zainuddin, 'Restorative Justice Concept On Jarimah Qishas In Islamic Criminal Law', 17 (2017), pp. 335–41, doi:10.20884/1.jdh.2017.17.3.826.

⁷ Robiatul Adawiyah and Umi Rozah, 'Indonesia's Criminal Justice System with Pancasila Perspective as an Open Justice System', *Law Reform*, 16.2 (2020), pp. 149–62, doi:10.14710/lr.v16i2.33783.

⁸ Hanafi Arief and Ningrum Ambarsari, 'Penerapan Prinsip Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia', *Al-Adl: Jurnal Hukum*, 10.2 (2018), p. 173, doi:10.31602/al-adl.v10i2.1362.

In practice, Restorative Justice has been widely applied in cases such as defamation, theft, and assault. Assault, as stipulated in Article 351 of the Indonesian Criminal Code, constitutes a deliberate act of physical harm that may result in injury, pain, or even death. A notable instance involves an assault case in Bone Bolango, where a repeat offender or recidivist was resolved through a restorative justice approach despite prior convictions. The police exercised their discretionary authority under Article 16 letter H of Law No. 2 of 2002 on the Indonesian National Police, which allows investigators to discontinue an investigation under certain conditions. However, this raises a critical question, as Article 5 letter e of Police Regulation No. 8 of 2021 explicitly excludes repeat offenders from eligibility for restorative settlement.

The decision to apply Restorative Justice to a recidivist in this context thus poses a significant legal and ethical dilemma. It challenges the boundaries of police discretion and tests the integrity of restorative mechanisms within Indonesia's criminal justice framework. This paradox invites deeper inquiry into whether the application of Restorative Justice in such cases truly aligns with the spirit and substance of the law or whether it represents a pragmatic compromise in pursuit of social harmony. The tension between procedural legality and restorative morality in this context reflects a broader struggle within the nation's evolving pursuit of justice one that seeks not only to punish wrongdoing but also to heal the wounds left behind by crime.

2. Research methods

This study employs a normative juridical research method supported by a comparative and case-based analytical approach. The normative juridical method focuses on examining legal norms, statutory provisions, and institutional regulations governing the implementation of Restorative Justice in Indonesia, particularly those related to Law No. 2 of 2002 on the Indonesian National Police, Police Regulation No. 8 of 2021, and other relevant legal instruments. In parallel, the research also explores Islamic legal principles (*syariah*) relevant to the concept of justice and reconciliation, such as *ishlah* (reconciliation), *taubat* (repentance), and *maqasid al-syari'ah* (the objectives of Islamic law), as contained in the Qur'an, Hadith, and classical works of *fiqh jinayah*.

The analysis emphasizes how these legal and moral frameworks are interpreted and applied in practice, particularly in cases involving recidivists (repeat offenders) in assault offenses. A comparative perspective is used to assess the extent to which Indonesian positive law and Islamic law share common ground in promoting restorative values such as reconciliation, accountability, and social harmony.

A qualitative juridical analysis is conducted by interpreting primary legal materials such as laws, regulations, judicial decisions, and Qur'anic legal principles alongside secondary materials, including scholarly literature, classical Islamic jurisprudence, and contemporary academic commentary. The assault case resolved through a restorative approach by the Tapa Sector Police in Bone Bolango serves as an illustrative study to evaluate the compatibility between normative legal provisions and their practical implementation from both the positive law and Islamic law perspectives.

Through this integrated approach, the research seeks to identify the gaps between *lex lata* (the law as it stands) and *lex ferenda* (the law as it should be) in the context of Restorative Justice, while also exploring how Islamic legal principles can enrich the moral and philosophical dimensions of Indonesia's criminal justice system. This method provides a critical understanding of the challenges and implications of applying Restorative Justice to repeat offenders within a dual legal framework that harmonizes state law and Islamic law in pursuit of substantive justice.

3. Result and discussion

3.1. Implementation of restorative justice for recidivists between legality and morality

Restorative Justice in the context of Indonesia's criminal justice system has developed as a transformative model that attempts to balance the retributive nature of conventional punishment with a moral, social, and humanistic perspective on justice. In cases of assault, which are typically categorized as offenses against individual and bodily integrity, the restorative approach redefines justice not merely as the act of punishing the offender but as the collective effort to restore harmony between the perpetrator, the victim, and the community.⁹ The concept seeks to humanize the process of justice by acknowledging that crime causes harm not only to the state but also to personal and social relationships that must be mended for true peace to emerge. The challenge becomes particularly complex when the offender is a recidivist someone who has repeatedly violated the law. The presence of prior convictions introduces moral and procedural dilemmas regarding whether such offenders remain eligible for restorative mechanisms that are fundamentally grounded in forgiveness, reconciliation, and moral rehabilitation.

The Indonesian police, as the institution endowed with investigative authority, hold a pivotal position in initiating the application of Restorative Justice. Their discretionary power under Law No. 2 of 2002 allows them to assess whether a case is suitable for restorative settlement. In theory, this discretion is guided by principles of proportionality, legal certainty, and social benefit. However, in practice, its exercise depends heavily on contextual understanding, ethical consideration, and community involvement.¹⁰ The Tapa Sector Police in Bone Bolango provides a notable example where a case of aggravated assault involving a repeat offender was resolved through a restorative approach. The offender, who had previously served a sentence for a similar act, committed another assault that resulted in severe injury, requiring seventeen stitches to the victim's head. Despite the legal provision that prohibits restorative settlement for repeat offenders under Article 5 letter (e) of the Indonesian National Police Regulation No. 8 of 2021, the police facilitated mediation between the parties and concluded the case with a reconciliation agreement. This event illustrates a fundamental tension between legal formalism and pragmatic justice in Indonesia's evolving criminal framework.

The rationale behind this decision was grounded in the belief that reconciliation could provide a more constructive outcome than imprisonment, both for the offender and the victim. From a sociological perspective, imprisonment for repeat offenders often fails to produce deterrence or moral reformation; instead, it reinforces patterns of marginalization and resentment that perpetuate criminal behavior. The Tapa Police's approach implicitly recognized the limitations of punitive justice, particularly in rural or semi-urban communities where social bonds, kinship, and communal reputation remain significant elements of order. By encouraging mediation, the police sought to address not only the legal consequences but also the social wounds resulting from the assault. The process involved community leaders, religious figures, and local mediators whose presence lent moral legitimacy to the reconciliation effort. Through dialogue and acknowledgment of wrongdoing, both parties agreed to settle the dispute without formal prosecution, signifying a collective effort to restore peace within the local community.

The theoretical foundation for such a decision finds resonance in the philosophical underpinnings of Restorative Justice itself. The concept, rooted in the works of Howard Zehr and John Braithwaite, emphasizes relational justice that is not defined by punishment but by the restoration of human dignity. Zehr's framework advocates a triadic relationship among offender,

⁹ N L Karjoko et al., "The Urgency of Restorative Justice on Medical Dispute Resolution in Indonesia," *AL-IHKAM Jurnal Hukum & Pranata Sosial* 16, no. 2 (2021): 362–92, <https://doi.org/10.19105/al-lhkam.v16i2.5314>.

¹⁰ T Nia, H Haryadi, and A Najemi, "Keadilan Restoratif Sebagai Alternatif Penyelesaian Tindak Pidana Penganiayaan Ringan," *PAMPAS Journal of Criminal Law* 3, no. 2 (2023): 223–39, <https://doi.org/10.22437/pampas.v3i2.19993>.

victim, and society, in which each party plays a role in rebuilding social equilibrium. Under this model, even recidivists are not viewed as irredeemable criminals but as individuals whose moral rehabilitation can be facilitated through sincere acknowledgment, apology, and restitution. In the Indonesian cultural context, this principle aligns with the traditional values of *musyawarah* (deliberation) and *gotong royong* (mutual cooperation), where reconciliation is perceived as a means to preserve social harmony rather than to reinforce isolation through punishment.

In Islamic jurisprudence (*fiqh jinayah*), the philosophy of justice closely aligns with restorative values. Islam views every criminal act not only as a transgression against the law but also as a moral and social disturbance that must be repaired through repentance (*taubat*), forgiveness (*afw*), and reconciliation (*ishlah*). The Qur'an explicitly encourages reconciliation, as in Surah Al-Hujurat (49:10): "Indeed, the believers are but brothers, so make settlement (*ishlah*) between your brothers." This principle implies that justice is fully realized when harmony is restored and relationships between individuals and the community are mended. Hence, in cases of assault (*jarimah al-'udwan*), Islam recognizes not only the right of the victim to seek retribution (*qishash*), but also the higher virtue of forgiveness and compensation (*diyat*), which directly parallels the restorative model of justice.¹¹

The Islamic concept of *taubat nasuha* (sincere repentance) also provides moral legitimacy for granting restorative opportunities to repeat offenders. While positive law may disqualify recidivists from reconciliation, Islamic law maintains that no sinner is beyond redemption as long as repentance is genuine and accompanied by efforts to repair the harm caused. As stated in Surah Az-Zumar (39:53), "O My servants who have transgressed against themselves, do not despair of the mercy of Allah. Indeed, Allah forgives all sins." This theological principle supports the moral foundation of restorative justice by emphasizing transformation and reintegration rather than perpetual condemnation. Thus, from an Islamic perspective, the act of facilitating reconciliation even for a recidivist does not contradict the essence of justice but fulfills its moral purpose.¹²

Furthermore, the *maqasid al-syari'ah* (objectives of Islamic law) reinforce this integrative perspective by emphasizing the preservation of life (*hifz al-nafs*), intellect (*hifz al-'aql*), and social harmony (*hifz al-'ird*). The primary aim of punishment in Islam is not revenge but reform (*islah al-fard*) and social balance (*tahqiq al-'adl*). Therefore, restorative practices that successfully restore peace, prevent revenge, and rehabilitate offenders can be viewed as fulfilling the ultimate goals of Islamic criminal justice. Applying Restorative Justice in such cases harmonizes with the Islamic vision of justice that prioritizes mercy (*rahmah*), fairness (*'adl*), and communal well-being (*maslahah*).¹³

Mediation processes involving community and religious leaders in Indonesia mirror the Islamic method of *sulh*, a legitimate dispute resolution mechanism. This hybrid approach combines formal discretion under state law with informal mediation grounded in Islamic ethics, reflecting Indonesia's living legal pluralism and the coexistence of national and religious legal orders. Islamic law also sets ethical boundaries to ensure that forgiveness does not result in injustice or exploitation. The integration of Islamic principles into the restorative framework enriches the moral dimension of law enforcement in Indonesia, encouraging police discretion as a reflection of compassionate justice that restores human dignity.

¹¹ Ariefulloh Ariefulloh et al., "Restorative Justice-Based Criminal Case Resolution in Salatiga, Indonesia: Islamic Law Perspective and Legal Objectives," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 2023, <https://doi.org/10.18326/ijtihad.v23i1.19-36>.

¹² Absar Aftab Absar, "Restorative Justice in Islam with Special Reference to the Concept of *Diyya*," *Journal of Victimology and Victim Justice* 3, no. 1 (April 29, 2020): 38–56, <https://doi.org/10.1177/2516606920927277>.

¹³ Yudhi Permana, Watni Marpaung, and Arifuddin Muda Harahap, "The Role of Restorative Justice in Juvenile Criminal Law Islamic Law Analysis," *JURNAL AKTA*, 2025, <https://doi.org/10.30659/akta.v12i1.43730>.

However, the decision to apply Restorative Justice to a recidivist remains controversial from both legal and ethical standpoints. The regulation explicitly excludes repeat offenders from restorative consideration, implying that prior criminal conduct disqualifies individuals from alternative settlement. This exclusion contradicts the rehabilitative ideals under modern criminal law.

The Tapa case exposes the nuanced tension between normative legality and pragmatic justice, as the police interpret their discretionary authority as an instrument for social peace rather than strict legal compliance. However, excessive reliance on discretion may risk undermining the predictability of law and eroding public confidence in legal equality.¹⁴ Restorative mechanisms in Indonesia require legal reform and a paradigm shift among practitioners to balance compassion with accountability. The Bone Bolango case highlights the fragility of the boundary between discretion and procedural violation. Restorative practices can transform justice into negotiation, subject to local power dynamics. However, the Tapa mediation achieved tangible outcomes, reintegrating offenders into society through reintegrative shaming. The legal debate surrounding Restorative Justice to repeat offenders in Indonesia tests the permissible boundaries of this dualism, forcing a deeper reflection on whether justice should be understood as uniform application or context-sensitive fairness.¹⁵

The Indonesian National Police Regulation No. 8 of 2021 prohibits restorative settlement for repeat offenders, aiming to preserve deterrence and uphold the seriousness of repeated criminal conduct. However, deviating from this provision can undermine public confidence in the law's deterrent power. The interpretation of the regulation reflects the dynamic nature of Indonesian legal culture, which is influenced by living law. The legal compatibility of restorative justice depends on how it is conceptualized within the broader jurisprudential framework. The tension between the letter of the law and the spirit of justice is a familiar theme in Islamic law, where the ruler or state authority exercises moral discretion to achieve social harmony while upholding deterrence and accountability.¹⁶

Islamic jurisprudence allows for proportional mercy and public welfare in Indonesian law. *Maslahah mursalah*, a concept not explicitly regulated in scripture, adapts legal norms to social realities, justifying restorative mechanisms for repeat offenders to prevent cycles of revenge and resentment.¹⁷

Restorative justice, despite departing from procedural rigidity, fulfills Sharia's higher intent of moral rehabilitation and peace. Islamic jurisprudence introduces the doctrine of *istihsan*, allowing judges to choose equitable solutions over literal legal applications. Granting restorative opportunities, especially when genuine repentance is evident, reflects *istihsan bi al-'urf*, guided by local custom and public morality.¹⁸ Indonesia's legal pluralism, influenced by Islamic and customary values, highlights the importance of balancing textual legality and restorative morality. The Qur'an supports this synthesis, stating that justice and compassion are interconnected. Islamic law seeks order through moral transformation, while positive law seeks deterrence. Integrating

¹⁴ Alexandra Chouldechova, "Fair Prediction with Disparate Impact: A Study of Bias in Recidivism Prediction Instruments," *Big Data* 5, no. 2 (June 2017): 153–63, <https://doi.org/10.1089/big.2016.0047>.

¹⁵ S Sukardi and H R Purnama, "Restorative Justice Principles in Law Enforcement and Democracy in Indonesia," *Journal of Indonesian Legal Studies* 7, no. 1 (2022): 155–90, <https://doi.org/10.15294/jils.v7i1.53057>.

¹⁶ A Syarbaini, "KONSEP TA'ZIR MENURUT PERSPEKTIF HUKUM PIDANA ISLAM," *Jurnal Tabqqa : Jurnal Ilmiah Pemikiran Hukum Islam*, 2023, <https://doi.org/10.61393/tahqqa.v17i2.167>.

¹⁷ Muhammad Habibul Amin and Dhiauddin Tanjung, "Maqashid Syariah: Perbandingan Antara Pemikiran Al - Ghazali Dan Najmuddin At - Thufi," *El-Mujtama: Jurnal Pengabdian Masyarakat*, 2024, <https://doi.org/10.47467/elmujtama.v4i5.3497>.

¹⁸ JM Muslimin and M Abdul Kharis, "Istihsan and Istishab in Islamic Legal Reasoning: Towards the Extension of Legal Finding in the Context of Indonesia," *Al-Risalah* 20, no. 2 (December 27, 2020): 163–79, <https://doi.org/10.30631/al-risalah.v20i2.589>.

restorative principles into cases involving recidivists aligns with the Islamic principle of *adl fi al-hukm*, justice through discernment.

Institutionally, integrating restorative justice with Islamic ethics requires the inclusion of syariah-based mediation councils or *musyawarah islah* committees alongside formal law enforcement agencies. These bodies provide moral oversight to ensure restorative settlements adhere to principles of sincerity, fairness, and accountability. This would strengthen the legitimacy of restorative justice, ensuring discretion does not devolve into arbitrariness while remaining guided by Islamic law's ethical compass. The constitutional foundation of justice, as guaranteed by Article 28D paragraph (1) of the 1945 Constitution, also plays a role in this approach.¹⁹

The Indonesian legal system faces challenges in balancing restorative justice with constitutional legality due to its fragmented legal enforcement institutions. The absence of a unified interpretive framework results in inconsistent application, leading to innovation and controversy. The Bone Bolango case exposed this institutional gap, raising questions about the legitimacy and sustainability of restorative settlements. To achieve normative compatibility, Restorative Justice must be embedded within a coherent legal structure that ensures transparency, accountability, and oversight. The tension between law and morality reflects two competing legal thought traditions.²⁰

Indonesia's restorative tradition, rooted in natural law and communitarian ethics, views justice as a moral dialogue among community members. The Tapa case exemplifies this pluralistic synthesis. To reconcile normative legality and restorative morality, institutional safeguards are needed. An integrated restorative framework linking police discretion, prosecutorial review, and judicial ratification could ensure lawful and legitimate settlements. Comparative legal systems like New Zealand's Restorative Justice Conferencing model can help Indonesia harmonize restorative practices.²¹

The decision to extend restorative justice to recidivists in Indonesia can be justified through teleological interpretation, which interprets legal norms according to their purpose and societal function. The teleological rationale of restorative justice regulations is to promote rehabilitation, reconciliation, and social peace. However, this flexibility must be bounded by legal safeguards to prevent abuse. The Bone Bolango case serves as a microcosm of Indonesia's ongoing legal evolution, oscillating between positivist legality and restorative morality. The pursuit of Restorative Justice in Indonesia embodies both aspiration and contradiction, with the potential for healing communal wounds and reintegrating offenders but also the risk of blurring legal certainty boundaries. The path forward is to create a legal framework that institutionalizes restorative principles without sacrificing predictability, honoring the dual imperative of justice.

3.2. Restorative justice and recidivism in the perspective of Islamic and positive law

Indonesia's criminal justice system faces a tension between legal certainty and moral flexibility, with law aiming for structure and equality, and justice as a moral aspiration that demands sensitivity and compassion. The rise of Restorative Justice as a principle of criminal reform raises questions about reconciling justice with punishment for repeat offenders. Islamic legal theory addresses this tension through public governance guided by Sharia aims and discretionary sanctions.²² The Indonesian National Police Regulation No. 8 of 2021 prohibits Restorative Justice for repeat

¹⁹ mohamad Hidayat Muhtar et al., "Human Rights Constitution on Health Protection of Indonesian Citizens," *Russian Law Journal* 11, no. 2 (March 31, 2023): 149–60, <https://doi.org/10.52783/rlj.v11i2.520>.

²⁰ Suwito et al., "Contemplating the Morality of Law Enforcement in Indonesia," *Journal of Law and Sustainable Development* 11, no. 10 (October 25, 2023): e1261, <https://doi.org/10.55908/sdgs.v11i10.1261>.

²¹ L W Sherman et al., "Twelve Experiments in Restorative Justice: The Jerry Lee Program of Randomized Trials of Restorative Justice Conferences," *Journal of Experimental Criminology* 11, no. 4 (2015): 501–40, <https://doi.org/10.1007/s11292-015-9247-6>.

²² Zubair Rahman Saende, Lomba Sultan, and Abdul Syatar, 'Ijtihad Ulama Dalam Merumuskan Metode Memahami Maqâsid Al-Syari'ah', *Indonesian Journal of Shariah and Justice*, 3.1 (2023), pp. 73–94, doi:10.46339/ijjs.v3i1.43.

offenders, based on classical criminal law theory. This rule assumes repeat offenders are less deserving of leniency due to their disregard for legal norms and societal values. However, this reasoning may oversimplify the complex social, psychological, and moral dimensions of criminal behavior, as recidivism often arises from structural factors like poverty and stigmatization.²³

Islamic jurisprudence provides a triadic remedial spectrum, including qishash (retribution), diyat (compensation), and afw/sulh (forgiveness/reconciliation), which can be subject to stricter conditions for repeat offenders.²⁴ The Islamic scheme promotes restorative closure without sacrificing accountability, as seen in the Tapa Sector Police case in Bone Bolango District. Despite a regulatory ban, the police facilitated mediation between the offender and victim, focusing on forgiveness and moral accountability. This case demonstrates the blurred line between legality and morality when law clashes with human compassion and social harmony. Instruments like *maslahah mursalah* and *istihsan* help decision-makers prioritize outcomes that achieve justice's ends, such as preventing revenge and rebuilding social ties.²⁵

Indonesian law's 1945 Constitution emphasizes social justice and equal protection for citizens. However, justice requires contextual discernment and balance. Applying this principle to restorative justice for repeat offenders acknowledges that legal consistency is important but may undermine moral objectives. Islamic law prioritizes preventing harm and securing public interest, supporting structured restorative avenues for recidivists to avoid retaliation, reduce stigma, and promote reintegration over punitive routes.²⁶

Modern criminal jurisprudence acknowledges that punishment alone is insufficient for correcting human behavior. Restorative processes address the relational and emotional dimensions of wrongdoing by fostering dialogue between offender and victim. Islamic law anticipates this concern through *sadd al-dhara'i* (blocking the means to abuse), which requires stricter moral scrutiny and stronger community involvement to prevent forgiveness from sliding into impunity. Indonesia's restorative framework is fragmented, with different institutions exercising overlapping discretionary powers with limited coordination. A Sharia-informed institutional design could mitigate this gap by integrating *majlis islrah* (restorative mediation panels), requiring written *kitabah al-sulh* (settlement records), and channeling every settlement for prosecutorial and judicial noting to ensure legality. Comparative models in New Zealand and Canada demonstrate that restorative justice and deterrence need not be mutually exclusive. Indonesia's legal system could draw lessons from these models, adapting them to the nation's pluralistic legal culture. Islamic ethics also points to rehabilitative tools that complement settlement, such as *ta'zir ta'dibi* (disciplinary community service), mandated counseling and mentorship, skills training, and supervised mosque- or community-based service.²⁷

The normative justification for extending restorative justice to recidivists can be understood through teleological interpretation, a method of legal reasoning that interprets law based on its purpose. The objective of restorative justice provisions in Indonesian law is to promote reconciliation, rehabilitation, and the prevention of further harm. Excluding certain individuals

²³ R A Gani, G N Effendi, and R K Wardani, "Restorative Justice for Settlement of Minor Maltreatment in the Legal Area of the Merangin Police, Jambi Province," *Al-Risalah Forum Kajian Hukum Dan Sosial Kemasyarakatan* 23, no. 1 (2023): 93–107, <https://doi.org/10.30631/alrisalah.v23i1.1333>.

²⁴ Zainuddin, "Restorative Justice Concept On Jarimah Qishas In Islamic Criminal Law".

²⁵ Siti Nurjannah, "Maqaṣid Al-Syari'ah: Teori Dan Aplikasi Dalam Istiḥāṭh Hukum Islam," *Istinbath : Jurnal Hukum* 17, no. 2 (June 30, 2021): 269–90, <https://doi.org/10.32332/istinbath.v17i2.3453>.

²⁶ Sabil Mokodenseho et al., "Analysis of the Influence of Fiqh and Maqaṣid Al-Syariah in the Formation of Islamic Legal Policy in Indonesia," *West Science Islamic Studies* 2, no. 01 (January 2024): 30–37, <https://doi.org/10.58812/wsiss.v2i01.590>.

²⁷ Syed Rambel Shah, Hafiz Inam Ullah, and Ahsan Ur Rehman, "The Need for Social Training of Students on Islamic Ground: A Study of Contemporary Challenges," *Qlantic Journal of Social Sciences and Humanities* 5, no. 1 (March 30, 2024): 15–24, <https://doi.org/10.55737/qjssh.751017275>.

merely because of their criminal history may contradict the law's teleological spirit, as the purpose of the law is not to perpetuate punishment but to restore social order and human dignity. This teleological interpretation is similar to the *maqasid* method of legal reasoning, which focuses on securing higher interests. The principle of proportionality supports this interpretive stance, as sanctions and procedures must be proportionate to the offense and the circumstances of the offender. Critics of applying restorative justice to recidivists often warn that excessive leniency could erode deterrence and public trust. The moral legitimacy of restorative justice hinges on reciprocity between mercy and accountability, and law must serve as the moral mediator between these poles. The Indonesian legal system operates within this interpretive space, reflecting the post-positivist pluralism of legal thought.²⁸

The challenge lies in institutionalizing this moral interpretivism without compromising legal certainty. Legal and normative compatibility requires that moral reasoning be channelled through transparent legal procedures, ensuring that discretion serves justice rather than undermines it. This can be achieved through codified criteria that allow restorative consideration for repeat offenders under specific conditions demonstrated remorse, victim consent, community endorsement, and prior participation in rehabilitation programs. Such structured discretion would align restorative flexibility with constitutional legality, preventing arbitrary or selective application. By transforming moral discretion into legal procedure, Indonesia could embody what Lon Fuller termed “the morality of law a system in which legality and morality reinforce rather than contradict each other.

The tension between deterrence and restoration also calls for a re-examination of criminal policy. Empirical studies from multiple jurisdictions indicate that punitive measures alone fail to reduce recidivism rates. Offenders who experience reintegrative restorative processes exhibit higher rates of behavioral change and lower rates of reoffending. The moral psychology underlying this phenomenon lies in the transformation of shame into responsibility. When offenders are publicly condemned but privately supported, as Braithwaite argues, they internalize moral accountability rather than externalize blame. The Tapa case, though small in scale, exemplifies this dynamic: the offender’s acknowledgment of guilt and the community’s willingness to reintegrate him created a moral closure that no formal sentence could replicate.

The future of Restorative Justice in Indonesia thus depends on reconciling three imperatives: legality, morality, and social functionality. Legality demands adherence to the rule of law and the principle of equality before it. Morality insists on the humane treatment of all individuals, including those who err repeatedly. Social functionality requires that justice systems maintain public order while fostering social cohesion. A sustainable model of restorative justice must therefore integrate these dimensions within a coherent institutional design. This integration could take the form of a Restorative Justice Council that oversees inter-agency coordination, standardizes restorative procedures, and ensures compliance with constitutional guarantees. Such an institution would not replace judicial authority but complement it, embedding restorative principles within the fabric of formal legality.

The jurisprudential implications of this debate extend beyond the Indonesian context. The issue of legal and normative compatibility between restorative justice and recidivism reflects a universal dilemma confronting modern legal systems the struggle to humanize law without diluting its authority. In societies undergoing rapid social transformation, where law must mediate between tradition, morality, and modernity, restorative approaches offer a pathway toward integrative justice. Yet they require disciplined interpretation, not improvisation. The challenge is to design a legal order flexible enough to embrace compassion yet firm enough to resist arbitrariness.

²⁸ H Khuan et al., “Customary Law in Modern Legal Systems: Lessons from Indonesia and South Africa,” *Novum Jus* 19, no. 2 (September 2025): 77–103, <https://doi.org/10.14718/NovumJus.2025.19.2.3>.

The ultimate measure of legal and normative compatibility lies in the law's capacity to balance its dual identity as both instrument and ethos. Restorative Justice, when properly integrated, can enhance this balance by restoring the moral legitimacy of legal institutions that have long been perceived as punitive and distant. For Indonesia, embracing restorative principles for repeat offenders under regulated conditions could signal a maturation of its legal culture a movement from punishment-centered legality toward justice-centered legality. This evolution would not weaken the rule of law; it would refine it, aligning it with the nation's constitutional vision of a just and civilized humanity (*kemanusiaan yang adil dan beradab*).

The Bone Bolango case remains a poignant reflection of this transition. It exposes the imperfections of Indonesia's legal system yet also its moral vitality. The willingness of law enforcement to mediate, the participation of the community, and the acceptance of reconciliation by both victim and offender testify to a living law that breathes through the conscience of society. Legal scholars may debate the procedural propriety of such actions, but the moral intuition driving them cannot be dismissed. Justice, as the philosopher Gustav Radbruch once argued, must prevail over legality when law becomes intolerably unjust. The challenge is not to choose between law and morality but to construct a system where both converge.

In conclusion, the application of Restorative Justice to repeat offenders occupies a delicate intersection between the rigidity of codified law and the fluidity of moral reasoning. Legal and normative compatibility demands a synthesis rather than a choice an acknowledgment that law must remain both certain and humane. The path forward for Indonesia lies in codifying restorative flexibility within clear procedural boundaries, ensuring that compassion does not erode consistency and that legality does not extinguish humanity. Such a synthesis would honor the deepest calling of law: not merely to punish, but to heal; not merely to control, but to cultivate the moral conscience of the nation.

4. Conclusion

The implementation of Restorative Justice for repeat offenders within Indonesia's legal system reflects an ongoing effort to balance legal certainty with the humanity of justice. Although, normatively, Police Regulation No. 8 of 2021 prohibits restorative settlements for recidivists, practical experience, such as the assault case handled by the Tapa Sector Police in Bone Bolango, demonstrates that a reconciliatory approach is often more effective in restoring social relations and preventing recurring conflict than punitive measures alone. From the perspective of Islamic law, this application of restorative justice aligns with the principles of *ishlah* (reconciliation), *taubat* (repentance), and *afw* (forgiveness), which emphasize moral rehabilitation and the pursuit of communal welfare as central goals of justice. Guided by the *maqasid al-shari'ah* values, particularly the protection of life (*hifz al-nafs*) and dignity (*hifz al-'ird*), the application of restorative justice for recidivists can be viewed not as a weakening of law, but as an embodiment of substantive justice that harmonizes legality and morality. Thus, the integration of positive law and Islamic legal principles provides a strong foundation for implementing restorative justice that not only restores victims and offenders but also reaffirms the role of law as an instrument of social healing, fairness, and humanity.

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