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The Shift in Penal Paradigm: The Implementation of Restorative Justice in Resolving Minor Theft Cases in Indonesia

Ramandha Mudest 

Faculty of Law, Universitas Islam Jakarta, Indonesia

E-mail: mundestiamanda@gmail.com

Mimin Mintarsih 

Faculty of Law, Universitas Islam Jakarta, Indonesia

E-mail: miensh66@gmail.com

ABSTRACT

The Indonesian criminal justice system has traditionally relied on retributive paradigms that often marginalize the needs of victims, particularly in minor theft cases. In such instances, formal legal proceedings frequently fail to facilitate direct restitution and can inadvertently exacerbate social friction. Addressing this gap, this study analyzes the implementation of restorative justice in petty theft cases, evaluating its efficacy through a victimological lens. Employing a normative legal framework with a descriptive-analytical methodology, the research utilizes statutory, conceptual, and case approaches grounded in comprehensive library research. The findings reveal that restorative justice introduces a crucial paradigm shift—humanizing the legal process by prioritizing loss recovery and the restoration of social harmony over punitive measures. Legally underpinned by Attorney General Regulation No. 15 of 2020 and Police Regulation No. 8 of 2021, this framework successfully fosters peaceful dispute resolution, direct offender accountability, and tangible restitution. Ultimately, the study concludes that restorative justice constitutes an effective, victim-centric alternative that resonates with modern victimological principles, provided it consistently balances restorative goals with stringent legal certainty and victim protection.

KEYWORDS

Restorative Justice; Minor Theft; Victimology; Criminal Justice System



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INTRODUCTION

As a nation governed by the rule of law, Indonesia regards the law as the primary instrument for regulating social, national, and state affairs.¹ This affirmation is explicitly stated in Article 1, paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which declares that “Indonesia is a state governed by the rule of law.” This provision indicates that all aspects of state administration must be carried out in accordance with the law and uphold the principle of the rule of law. Thus, every action taken by the government or the public must comply with applicable laws to foster order, justice, and legal certainty in the life of the nation.

The concept of the rule of law not only views the law as a tool for social control, but also as a means of protecting human rights and achieving social justice.² In a modern state governed by the rule of law, law enforcement cannot be understood narrowly as merely an effort to impose sanctions for legal violations; rather, it must take into account humanitarian considerations, the protection of victims’ rights, and the restoration of social relations within society.³ Therefore, the criminal justice system must be able to strike a balance between legal certainty, justice, and the public interest.

The implication of the principle of the rule of law is that the criminal justice system cannot be understood solely as a repressive instrument aimed at imposing sanctions on perpetrators of criminal acts. A paradigm that places too much emphasis on retribution risks neglecting the dimensions of human rights protection and the goal of social restoration. Therefore, the administration of criminal justice must be directed toward the realization of substantive justice—that is, justice that not only formally upholds legal norms but also takes into account the social, moral, and humanitarian impacts of every legal decision.

Furthermore, within the framework of a modern rule-of-law state, the protection of human rights is an integral element of the law enforcement process. The criminal justice system is required to guarantee the rights of suspects and defendants through the principle of presumption of innocence, the right to legal counsel, and protection from torture or treatment that degrades human dignity. On the other hand, the rights of victims of criminal offenses must also receive balanced attention, including the right to justice, redress, and restitution. Thus, the orientation of the criminal justice system focuses not only on punishment but also on the protection and rehabilitation of all parties affected by criminal offenses.

From this perspective, the principle of the rule of law demands a system of law enforcement that is fair, transparent, accountable, and respectful of human values. Criminal law enforcement must be viewed as a means to achieve social order and sustainable justice, not merely as an instrument of state power. Therefore, the reform and development of policies in the field of criminal justice should always be

¹ Ana Fauzia, Fathul Hamdani & Deva Gama Rizky Octavia, “The Revitalization of the Indonesian Legal System in the Order of Realizing the Ideal State Law” (2021) 3:1 Progress Law Rev 12–25.

² Haposan Siallagan, “Penerapan Prinsip Negara Hukum Di Indonesia” (2016) 18:2 Sosiohumaniora 131–137.

³ Fathul Hamdani et al, “Fiksi Hukum: Idealita, Realita, dan Problematikanya di Masyarakat” (2023) 1:2 Primagraha Law Rev 71–83, online: <<https://jurnal.upg.ac.id/index.php/primagrahalawreview/article/view/364/373>>.



grounded in constitutional principles, human rights values, and comprehensive and balanced legal objectives.

In practice, Indonesia's criminal justice system has largely adhered to a retributive approach—one that emphasizes punishment of the perpetrator through criminal sentencing. This paradigm views crime as a violation against the state, so its resolution is carried out through formal court proceedings with the aim of imposing sanctions. However, this approach often marginalizes victims. Victims are treated merely as witnesses to prove the perpetrator's guilt, while their need for compensation for losses and psychological recovery receives insufficient attention.⁴

One of the most common criminal offenses in society is petty theft. Provisions regarding theft are outlined in Article 362 of the Criminal Code, while petty theft is addressed in Article 364 of the Criminal Code, which classifies this offense based on the relatively small value of the loss. Although the value of the loss is not significant, petty theft still has a tangible impact on the victim. These losses are not only material in nature but can also lead to feelings of insecurity, trauma, and distrust toward one's social environment. In law enforcement practice, petty theft cases are often prosecuted all the way to trial and result in the conviction of the perpetrator. Yet, in many cases, the perpetrator and the victim remain part of the same social circle—such as neighbors or relatives. The lengthy and formal judicial process often exacerbates social conflict and does not directly restore the victim's losses. This situation creates a need for an alternative approach that is more humane and focused on restoration.

Current developments in the criminal law paradigm indicate a shift in orientation from an approach that emphasizes retribution alone toward a more humane and restorative model of case resolution. This shift is closely tied to criticism of the conventional criminal justice system, which is seen as focusing too heavily on punishing offenders while failing to provide adequate consideration for the interests and recovery of victims. It is in this context that the concept of restorative justice has gained relevance as both an alternative to and a complement for the existing criminal justice system.

Conceptually, restorative justice can be understood as an approach to resolving criminal offenses that emphasizes the restoration of the consequences caused by an unlawful act, whether to the victim, the offender, or society. This approach views criminal offenses not merely as violations against the state or legal norms, but also as social conflicts that cause concrete harm and disrupt relationships within the community. Therefore, its resolution is directed toward efforts to remedy such harm through dialogue, deliberation, and a mutual agreement that is fair to all parties.⁵

Unlike the retributive paradigm, which focuses on retribution and the imposition of criminal penalties as a form of suffering for the perpetrator, restorative justice emphasizes the perpetrator's active responsibility to acknowledge their wrongdoing, apologize, and make amends for the harm caused.

⁴ Barda Nawawi Arief, *Teori-teori dan Kebijakan Pidana: Masalah Pemidanaan Sehubungan dengan Perkembangan Delik-delik Khusus dalam Masyarakat Modern* (Bandung: Alumnus, 1992).

⁵ Tony F Marshall, "Relevansi Konseptual Dikembangkan Kembali dalam Berbagai Kajian Mutakhir"; Eva Achjani Zulfa, *Keadilan Restoratif di Indonesia: Perkembangan dan Tantangan Implementasi* (Jakarta: Rajawali Pers, 2022).



In this process, victims are no longer treated merely as witnesses in criminal cases, but as individuals with the right to be heard, to describe the impact they have experienced, and to receive tangible restitution.⁶ Consequently, the victim's role becomes more central and significant in the case resolution process.

Furthermore, restorative justice also involves community participation as part of the conflict resolution mechanism. The community is viewed as playing a strategic role in restoring the social balance disrupted by criminal acts. This involvement can take the form of penal mediation, family group conferences, or other deliberative forums facilitated by law enforcement officials. Through these mechanisms, it is hoped that an agreement can be reached that not only satisfies the sense of justice but also strengthens social cohesion and prevents the recurrence of criminal acts in the future.⁷

As regulations in Indonesia have evolved, the concept of restorative justice has also gained increasing normative legitimacy. Various laws and regulations, as well as policies of law enforcement agencies, have adopted this approach as part of the reform of the criminal justice system. This indicates that restorative justice is no longer merely an academic discourse but has become part of national legal policy oriented toward the protection of human rights, the efficiency of law enforcement, and the achievement of more substantive justice.⁸ Thus, restorative justice can be viewed as a response to the limitations of the retributive approach, as well as an effort to build a criminal justice system that is more inclusive, participatory, and just. This approach seeks to strike a balance between the interests of victims, the responsibility of offenders, and the interests of society at large in maintaining social harmony.

More specifically, the implementation of restorative justice encompasses several key elements. First, the perpetrator's acknowledgment of wrongdoing as a form of moral and legal responsibility. Second, dialogue or mediation between the perpetrator and the victim, facilitated by law enforcement officials or a neutral party. Third, a mutual agreement focused on restoration, such as restitution, an apology, or community service. Fourth, a guarantee that the resolution is reached voluntarily, without coercion from any party.

Within the context of Indonesian positive law, the implementation of restorative justice has gained normative legitimacy, including through Attorney General Regulation No. 15 of 2020 on the Discontinuation of Prosecution Based on Restorative Justice and Indonesian National Police Regulation No. 8 of 2021 on the Handling of Criminal Offenses Based on Restorative Justice. These regulations provide a framework for resolving certain criminal cases—including petty theft—through reconciliation mechanisms, provided that the offender is a first-time offender, the potential criminal penalty does not exceed a certain threshold, and there is an agreement between the offender and the victim.

⁶ Marlina, *Restorative Justice dalam Sistem Peradilan Pidana Indonesia* (Bandung: Refika Aditama, 2023).

⁷ United Nations Office on Drugs and Crime (UNODC), *Handbook on Restorative Justice Programmes* (Vienna: United Nations, 2022).

⁸ Regulation of the Indonesian National Police No. 8 of 2021 on the Handling of Criminal Offenses Based on Restorative Justice; and Regulation of the Attorney General's Office of the Republic of Indonesia No. 15 of 2020, which remain the implementing guidelines for the 2022–2025 policy.



When viewed from a victimology perspective, the implementation of restorative justice is highly relevant. Victimology, as a branch of criminology, studies victims of crime, including their status, rights, and protection within the criminal justice system. In the modern victimological approach, victims are no longer viewed as passive objects but as subjects entitled to protection, restitution, compensation, and rehabilitation. In cases of petty theft, the victim's primary need is often prompt compensation for losses and a sense of justice. A punishment-oriented justice system is not always capable of meeting these needs. The offender may be punished, but the victim's losses are not necessarily compensated directly. Conversely, through restorative justice mechanisms, victims have the opportunity to directly convey the impact they have experienced, while also receiving more concrete forms of restoration.

Although restorative justice has many advantages, its implementation still faces challenges. In practice, an imbalance of power between the offender and the victim may arise, which can affect the agreement process. Furthermore, if not implemented carefully, this approach could potentially give the impression that criminal offenses are not taken seriously. Therefore, its implementation must continue to prioritize victim protection and take the public interest into account. Based on the above discussion, it is clear that the implementation of restorative justice for minor theft offenses is part of an effort to reform criminal law to be more humane and victim-oriented. This approach aims not only to reduce the burden on the judicial system and alleviate overcrowding in correctional facilities but also to ensure that victims receive fair and proportionate redress.

Thus, it is important to conduct an in-depth study of how restorative justice is implemented in practice in cases of petty theft, to what extent this approach aligns with the principles of victimology, and what its implications are for the protection of victims' rights within the Indonesian criminal justice system. Based on this discussion, it is clear that the implementation of restorative justice in cases of petty theft is part of an effort to reform criminal law to make it more humane and victim-centered. This approach aims not only to reduce the burden on the courts and alleviate overcrowding in correctional facilities but also to create a more just, effective, and socially restorative resolution of cases.

METHOD

This study is a descriptive-analytical normative legal study. It examines legal norms related to restorative justice in cases of petty theft and analyzes them from a victimological perspective.⁹ The approaches used include:

1. A legal approach, by examining the regulations governing petty theft and restorative justice.
2. A conceptual approach to understanding the concepts of restorative justice and victimology.
3. A case-based approach, examining the application of restorative justice in misdemeanor cases.

⁹ Mukti Fajar ND & Yulianto Achmad, *Dualisme Penelitian Hukum Normatif Dan Empiris* (Yogyakarta: Pustaka Pelajar., 2010).



Legal materials were collected through a literature review, which involved examining laws and regulations, literature, and journals relevant to the research topic.¹⁰ The analysis was conducted qualitatively by cataloging, interpreting, and reviewing legal materials to draw conclusions regarding the effectiveness of implementing restorative justice for petty theft from the perspective of criminal law.

RESULT & DISCUSSION

I. The Application of Restorative Justice in Handling Cases of Petty Theft

In the development of modern criminal law thought, there has been a trend toward evaluating the effectiveness of the conventional criminal justice system, which has traditionally emphasized a punitive or retributive approach. This retributive system views criminal acts as violations of state legal norms, thereby positioning the state as the party most harmed and granting it full authority to impose sanctions on offenders. As a result, criminal proceedings often focus solely on proving the offender's guilt and imposing a punishment commensurate with the offense. In practice, this model of justice tends to marginalize victims, as their role is limited to that of a witness or a piece of evidence in the court's fact-finding process.¹¹

This situation has subsequently drawn criticism from legal scholars, criminologists, and human rights advocates. This criticism stems from the view that a criminal justice system that is overly focused on the perpetrator and the state often neglects the victims' need for redress, both material and psychological. In many cases, victims actually experience secondary victimization—a situation in which they suffer further distress due to a judicial process that does not provide them with sufficient opportunities to obtain substantive justice.¹² Consequently, there is a growing view that the criminal justice system needs to adopt a more humane approach and take into account the interests of all parties affected by criminal acts, particularly victims and the community.

In line with these developments, the concept of restorative justice has begun to emerge as a new paradigm in the modern criminal justice system.¹³ This approach emphasizes that criminal acts are not merely violations of state law, but also social conflicts that cause harm to individuals, families, and society at large. Therefore, the resolution of criminal cases aims not only to punish the perpetrator, but also to compensate the victims for their losses and to restore social relationships that have been disrupted as a result of the criminal act.

Within the framework of restorative justice, the case resolution process is conducted through dialogue or deliberation involving the perpetrator, the victim, and the community as the affected parties. Through this mechanism, the parties are given the opportunity to openly express their views, feelings, and interests in order to reach a fair and balanced agreement. The outcome of this process may take the form of an apology, restitution, community service, or other mutually agreed-upon

¹⁰ Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020).

¹¹ M Sholehuddin, "Perlindungan Korban dalam Sistem Peradilan Pidana Berbasis Restorative Justice" (2023) 12:1 J Huk dan Peradil.

¹² *Restorative Justice: An Overview*, by Tony F Marshall (London, 1999); Lilik Mulyadi, *Restorative Justice dalam Praktik Peradilan Pidana di Indonesia* (Jakarta: Kencana, 2022).

¹³ Nurul Putri Awaliah Nasution, Jubair & Abdul Wahid, "The Concept of Restorative Justice in Handling Crimes in the Criminal Justice System" (2022) 1:5 Eur J Law Polit Sci 32–41.



forms of redress. This approach not only focuses on peaceful conflict resolution but also encourages the perpetrator to take direct responsibility for their actions and to work to remedy the harm caused.

The development of the concept of restorative justice has also been influenced by the Criminal Code, which emphasizes the importance of protecting and restoring victims' rights within the criminal justice system. From a victimology perspective, victims are no longer viewed as passive participants in the judicial process, but rather as individuals who have the right to be heard, protected, and compensated. Thus, the application of restorative justice provides greater opportunities for victims to actively participate in the case resolution process, while ensuring that the victims' interests are an integral part of the law enforcement process.¹⁴

In the Indonesian legal context, the application of the restorative justice approach has begun to gain recognition and support through various policies issued by law enforcement agencies. One key regulation that serves as the foundation for implementing restorative justice is Regulation of the Attorney General's Office of the Republic of Indonesia No. 15 of 2020 on the Discontinuation of Prosecution Based on Restorative Justice, which grants prosecutors the authority to discontinue prosecution in a criminal case if a reconciliation has been reached between the perpetrator and the victim and certain conditions are met. This policy represents a progressive step in Indonesia's criminal justice system because it allows for more flexible case resolution that is oriented toward restoration.

In addition, during the investigative stage, the application of the principles of restorative justice is also regulated by Indonesian National Police Regulation No. 8 of 2021 on the Handling of Criminal Offenses Based on Restorative Justice. This regulation provides guidelines for investigators to resolve certain criminal cases through a reconciliation mechanism between the perpetrator and the victim, taking into account the interests of the community, a sense of justice, and the principle of the utility of the law. With this regulation in place, law enforcement officials are expected to prioritize a more proportionate and humane approach in handling minor criminal cases or those that can be resolved through a deliberative mechanism.¹⁵

The strengthening of this policy reflects a paradigm shift in Indonesia's criminal justice system—from a punishment-oriented approach to one that focuses more on restoration and reconciliation. The implementation of restorative justice is expected not only to provide more substantive justice for victims but also to reduce excessive sentencing practices and alleviate overcrowding in correctional facilities. Furthermore, resolving cases through restorative mechanisms is also considered more efficient because it can expedite the case resolution process without having to go through lengthy and complex judicial proceedings.¹⁶

Thus, the implementation of the restorative justice approach in Indonesia's criminal justice system is an important step toward establishing a legal system that

¹⁴ Arif Gosita, "Perlindungan Korban dalam Perspektif Hukum Pidana" (2024) 19:2 J Kriminologi Indones.

¹⁵ Mahrus Ali, "Implementasi Restorative Justice dalam Sistem Peradilan Pidana Indonesia" (2024) 31:1 J Huk lus Quia Iustum.

¹⁶ Rena Yulia, *Viktimologi: Perlindungan Hukum terhadap Korban Kejahatan* (Bandung: Refika Aditama, 2025).



is more just, humane, and responsive to the needs of society. This approach not only serves as an alternative means of resolving criminal cases but also as a means of rebuilding social relationships damaged by criminal acts and striking a balance between the interests of the offender, the victim, and society as a whole.

II. Characteristics of the Crime of Petty Theft

The criminal offense of theft is one of the most common property crimes in society. Under Indonesian criminal law, theft is regulated in the Criminal Code (KUHP), specifically in Article 362, which states that anyone who takes an item—whether wholly or partially—belonging to another person with the intent to unlawfully possess it is punishable for theft. This provision indicates that theft is an act that directly violates a person's right to property and disrupts public order and a sense of security in society.

As law enforcement practices have evolved, certain classifications of theft offenses have emerged, one of which is petty theft. Petty theft is essentially a specific form of theft that has certain characteristics, particularly regarding the relatively small amount of loss and the limited social impact. In the Criminal Code (KUHP), provisions regarding petty theft are outlined in Article 364, which establishes specific regulations for acts of theft where the value of the loss falls below a certain threshold as determined by law. In the development of criminal law in Indonesia, the threshold for the value of loss falling under the category of petty theft has been adjusted. These adjustments are regulated, among other things, by Supreme Court Regulation No. 2 of 2012 on the Adjustment of Thresholds for Minor Criminal Offenses and Fine Amounts in the Criminal Code, which aims to align the value of losses with prevailing economic conditions. Through this policy, cases involving losses of a certain value may be processed as minor criminal offenses, allowing for resolution through simpler and faster procedures.

Petty theft has several characteristics that distinguish it from other forms of theft. First, the value of the loss incurred is relatively small, so it does not cause significant economic harm to the victim. Second, this crime is generally committed without careful planning and does not involve violence or the threat of violence against the victim. Third, the social impact tends to be limited and does not cause widespread public concern. These characteristics mean that petty theft is often viewed as a crime best addressed through a restorative approach rather than a punitive one.

Nevertheless, from a legal standpoint, petty theft remains classified as a criminal offense that can be prosecuted through the criminal justice system. This means that law enforcement officials retain the authority to conduct investigations, prosecutions, and trials against the perpetrators of such crimes. This is based on the principle of legality in criminal law, which stipulates that any act that meets the elements of a criminal offense as defined by law must be prosecuted in accordance with applicable legal provisions.¹⁷

However, in practice, the handling of minor theft cases often presents a dilemma in the law enforcement process. On the one hand, law enforcement officials have a duty to enforce the law consistently to maintain legal certainty and public

¹⁷ Moeljatno, *Asas-Asas Hukum Pidana* (Jakarta: Rineka Cipta, 2021).



order. On the other hand, however, prosecuting minor theft cases through formal judicial mechanisms is often considered disproportionate to the level of loss caused by such acts. The lengthy criminal justice process—from the investigation stage through trial—requires high costs, time, and effort for both law enforcement officials and the parties involved in the case.¹⁸

Furthermore, formal judicial proceedings often fail to provide optimal benefits for victims. In many cases, victims do not receive direct redress for the harm they have suffered because the judicial process focuses more on proving the perpetrator's guilt and imposing criminal penalties. This situation indicates that the conventional criminal justice system still has limitations in delivering substantive justice, particularly for victims of criminal offenses.

Given these circumstances, there is a need to develop a mechanism for resolving criminal cases that is more effective, efficient, and focused on compensating victims for their losses. One approach considered capable of addressing this need is restorative justice. This approach emphasizes the resolution of criminal cases through dialogue, deliberation, and agreement among the offender, the victim, and the community affected by the crime. Through this mechanism, it is hoped that a resolution can be reached that is fairer, more humane, and capable of restoring social relationships disrupted by the crime. In cases of petty theft, the application of restorative justice is considered more proportionate because it can foster reconciliation and provide the offender with an opportunity to take direct responsibility toward the victim.

Prosecution through the formal judicial process. This is because the relatively minor nature of the criminal offense allows for an amicable resolution between the offender and the victim. In addition, a restorative approach also provides the offender with an opportunity to take direct responsibility for their actions by compensating the victim for the losses suffered or by undertaking other mutually agreed-upon forms of restitution.

In practice, resolving cases of petty theft through a restorative justice approach can be achieved through dialogue and mediation facilitated by law enforcement officials, such as police investigators or prosecutors. This process involves the perpetrator, the victim, and other relevant parties, such as community leaders or the families of those involved. Through open and participatory dialogue, the parties are expected to reach an agreement that not only resolves the conflict peacefully but also restores the victim's losses and prevents similar crimes from occurring in the future.¹⁹

The application of the restorative justice approach in resolving cases of petty theft not only provides a faster and more efficient alternative for resolution but also reflects efforts to reform the criminal justice system to make it more humane and oriented toward substantive justice. This approach is expected to strike a balance between the interests of law enforcement, the protection of victims, and the rehabilitation of offenders.

¹⁸ Sholehuddin, *supra* note 11.

¹⁹ R Wiyono, *Penerapan Restorative Justice dalam Sistem Peradilan Pidana Indonesia* (Jakarta: Prenada Media Group, 2025).



CONCLUSION

The application of the restorative justice approach in resolving cases of petty theft provides greater opportunities for victims to participate in the case resolution process. From a victimology perspective, this approach not only focuses on punishing the offender but also addresses the restoration of the victim's losses and the repair of the relationship between the offender and the victim. Through dialogue and mutual agreement, victims can obtain restitution for the losses they have suffered, while offenders are allowed to take responsibility and make amends for their wrongdoing. Legally, the application of restorative justice in resolving minor theft offenses is grounded in various law enforcement policies in Indonesia that provide for case resolution through a peace-based approach. This approach aims to create a more effective resolution of cases that is oriented toward restoring the victims' losses. However, its implementation must still adhere to the principles of justice, legal certainty, and the protection of victims' rights.

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