

# Restorative Justice and the Principle of Proportionality in Handling Criminal Acts of Assault

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## Abstract

The handling of criminal acts of assault often sparks debate regarding the balance between legal certainty, justice, and expediency. Restorative justice is needed as an alternative solution that emphasizes restoration of the situation and protection of the rights of both victims and perpetrators. The application of restorative justice should not be carried out haphazardly. There must be clear criteria, for example, related to the severity of the crime, the victim's willingness, and the good faith of the perpetrator. This is where the principle of proportionality plays a role because it can be used as a measure to determine whether a restorative resolution is effective and fair in a particular case. This study aims to analyze the relationship between the concept of restorative justice and the principle of proportionality in handling cases of assault. The method used is normative legal research with a statutory approach and case studies of several court decisions. The results of the study indicate that the application of the principle of proportionality can provide an objective basis for determining the amount of punishment, while also opening up space for the application of restorative justice principles. Thus, the combination of these two concepts is expected to create law enforcement that is not only repressive, but also prioritizes the restoration of social relations, protection of victims' rights, and reintegration of perpetrators into society.

**Keywords:** Restorative Justice, Proportionality, Crime and Abuse

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## Introduction

From a social science perspective, crime is defined as a social phenomenon arising from structural injustice or a manifestation of diverse human behavior, which is a reaction to the socioeconomic conditions of an individual or social group. Regardless of their origin, people in economically disadvantaged circumstances and facing pressing needs, coupled with a lack of faith, tend to think short-term. They might even justify any means necessary to meet their needs [1].

In criminal law, criminalization addresses part of criminal policy. Criminal policy, which is an effort undertaken by the state to combat crime, is essentially an integral part of community protection efforts aimed at achieving social well-being [2].

The crime of assault is a common form of crime in society and has serious impacts on both victims and perpetrators. Assault not only causes physical injury but also has psychological, social, and economic consequences for victims. Therefore, handling the crime of assault requires a fair and balanced legal approach that provides a sense of justice for both victims, perpetrators, and society at large.

The criminal justice system still tends to emphasize a retributive paradigm that focuses on retribution against the perpetrator. This approach often leads to dissatisfaction because it does not fully accommodate the interests of the victim and actually contributes to social stigma against the perpetrator. Along with the development of modern legal thought, the idea of restorative justice has emerged, emphasizing restoration and conflict resolution.

Restorative justice is a resolution process carried out outside the criminal justice system, involving the victim, the perpetrator, the victim's family, the perpetrator, the community, and other parties with a stake in the crime to reach an agreement and resolution. Restorative justice is a fair resolution involving the perpetrator, the victim, their family, and other non-criminal parties, who work together to seek a resolution to the crime and its consequences, prioritizing restoration over retribution [3]. Restorative justice prioritizes deliberation.

The reasons for the parties to resolve their disputes through deliberation or non-litigation are as a means or alternative to reaching consensus or deliberation, which is considered effective and efficient and produces a win-win solution for all parties. Whereas litigation or court resolution involves both winners and losers, resulting in unsatisfactory decisions for the losing party [4].

The reasons and necessity for implementing alternative dispute resolution include guilt and remorse on the part of the perpetrator, followed by an agreement to reach a settlement between the perpetrator and the victim. Therefore, reasons for expungement of criminal penalties can generally be divided into two types: justification, which relates to the act, and forgiveness, which relates to the individual or perpetrator's mental state [5].

Restorative justice in cases of assault provides an opportunity for the parties to resolve the issue through dialogue, mediation, and mutual agreement. This mechanism is believed to better address the victim's need for reparation and provide the perpetrator with the opportunity to take proportionate responsibility. This concept also aligns with Indonesian cultural values, which prioritize deliberation and peaceful conflict resolution.

On the other hand, the principle of proportionality is an important principle in criminal law enforcement, requiring that punishment be commensurate with the offense. This principle serves to prevent disparities in sentencing and ensures that sanctions imposed are commensurate with the level of culpability, the consequences, and the perpetrator's condition [6].

The integration of restorative justice with the principle of proportionality in handling crimes of assault is relevant because the two complement each other. While restorative justice emphasizes restoration, the principle of proportionality emphasizes balance in sentencing. This is expected to create a criminal justice system that is not merely repressive but also responsive to the needs of the community.

Restorative justice has begun to be incorporated into various legal instruments, such as National Police Chief Regulation Number 8 of 2021 concerning Handling Criminal Acts Based

on Restorative Justice and Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. These regulations demonstrate an awareness of integrating a restorative approach into the criminal legal system.

The urgency of research on restorative justice and the principle of proportionality in criminal acts of assault also relates to the protection of human rights. The criminal justice system should not solely punish, but must also ensure the recovery of victims, prevent perpetrators from excessive punishment, and maintain a balance between societal interests.

Building on the above description, these proceedings focus on key questions to be answered in detail in the following section: Restorative Justice and the Principle of Proportionality in Handling Criminal Acts of Assault.

## **Research Methodology**

This study uses normative legal research, which aims to examine the legal principles, norms, and regulations related to the application of restorative justice and the principle of proportionality in criminal acts of assault. The focus of normative legal research is to analyze law as a positive norm, not its empirical implementation [7].

Normative research is conducted by examining primary, secondary, and tertiary legal sources to identify legal arguments that can be used to explain the relevance of the principle of proportionality to restorative justice in the criminal law system [8].

The data used in this study is secondary, as normative legal research does not involve direct observation of the object in the field, but rather through legislation such as the Criminal Code (KUHP), the Criminal Procedure Code (KUHAP), doctrine, expert opinions, literature, and research findings contained in books and legal journals [9].

## **Results**

### **3.1 Restorative Justice and the Principle of Proportionality in Handling Crimes of Assault**

The Draft Criminal Code (RUU KUHP) represents a material reform of criminal law. This reform is an effort to realize legal ideals. Therefore, it can be said that the Draft Criminal Code is a manifestation of the Indonesian character. The orientation of legal reform is not merely to improve the law, but to replace it with a better one. Therefore, the Draft Criminal Code does not merely introduce changes deemed necessary to break away from the legal paradigm inherited from colonial times. Legal reform can serve as a basis for determining the direction of national character formation. The form of legal reform represents a real condition moving towards an ideal state. Therefore, the Draft Criminal Code is a method for carrying out planned social and cultural transformation in society. The principles of restorative justice incorporated in the Draft Criminal Code are evident in the provisions of several articles, including Articles 2, 12, 54, and 55 [10].

The Indonesian Criminal Law System is entering a new phase in its development. One form of reform within Indonesian criminal law is the regulation of criminal law from the perspective and achievement of justice, focusing on improving and restoring conditions after an incident and the criminal justice process. This is known as restorative justice, which differs from retributive justice (which emphasizes justice in retribution) and retributive justice (which emphasizes justice in compensation) [11].

Assault remains one of the most frequently prosecuted cases. Assault cases generally utilize a retributive criminal law paradigm, which emphasizes retribution against the perpetrator. However, an overly repressive system often neglects the interests of victims and fails to address the community's need for recovery. This is where the concept of restorative justice becomes crucial in addressing assault cases.

Restorative justice is a criminal case resolution mechanism that focuses on dialogue between the perpetrator, the victim, and the community to reach a fair agreement. This approach allows victims to receive compensation, psychological recovery, and a direct apology from the

perpetrator. On the other hand, perpetrators are also given space to take responsibility without having to fully undergo punishment that will impact their future.

The application of the principle of proportionality in sentencing is an important tool to ensure that restorative justice is not perceived as a form of impunity. With this principle, judges can ensure that the punishment imposed remains commensurate with the severity of the offense and the impact of the act [12]. For example, in cases of minor assault, an alternative out-of-court resolution using a restorative approach is more proportional than imposing a lengthy prison sentence.

In cases of assault, which often involve close parties, such as neighbors or relatives, a restorative approach to resolving the case will be more effective than imprisonment, which can escalate conflict and worsen social relations. However, the application of restorative justice should not be carried out haphazardly. Clear criteria are needed, for example, regarding the severity of the crime, the victim's willingness, and the perpetrator's good faith. This is where the principle of proportionality comes into play, as it can be used as a measure to determine whether a restorative resolution is effective and just in a particular case.

In human rights, the integration of restorative justice and the principle of proportionality aligns with the principles of victim protection and the prevention of overcriminalization of perpetrators. This concept ensures that the legal system does not solely punish but also balances the interests of victims, perpetrators, and society. Thus, criminal law truly functions as a means of social protection and development, not simply a tool of retribution.

Restorative justice is an alternative approach to resolving cases of assault, with legal regulations, including Police Regulation No. 8 of 2021 and Prosecutor's Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, encouraging resolution based on victim recovery, perpetrator accountability, and the restoration of social relationships.

Several district court decisions demonstrate the practice of restorative justice in assault cases. For example, the Amuntai District Court implemented a restorative approach, resulting in short sentences and the provision that no criminal sentence be served, thus prioritizing the restoration of the victim-perpetrator relationship. This decision demonstrates how judges can prioritize reconciliation in cases with relatively limited impact.

The Amuntai District Court sentenced Norifansyah to probation for the misdemeanor assault case against Abdul Mukito. The verdict, read by the panel of judges, considered restorative justice, prioritizing the restoration of the relationship between the defendant and the victim.

During the trial, the trial court sought a reconciliation to restore the relationship between Norifansyah, the defendant, and Abdul Mukito, the victim. The trial judge facilitated a reconciliation agreement between the defendant and the victim, prioritizing future restoration of the relationship, especially as the defendant and victim were neighbors. The defendant and victim then agreed to resolve the matter amicably, forgiving and respecting each other.

The verdict stipulates that the defendant will not be required to serve a one-month prison sentence unless a later judge orders otherwise due to the defendant committing a crime before the end of the three-month probation period.

The restorative justice approach is carried out as a real legal effort by the Court to prioritize the alignment of the interests of victim recovery and the accountability of the Defendant and to ensure that the law enforcement process is not only a form of punishment in the form of imprisonment for the Defendant.

## Conclusion

Restorative justice and the principle of proportionality in handling crimes of assault play a crucial role in creating a more restorative, balanced, and equitable legal system. Restorative justice provides space for the restoration of social relations through dialogue and agreement between victims and perpetrators, while the principle of proportionality ensures that punishment is commensurate with the severity of the offense and the consequences of the act.

The application of restorative justice should not be arbitrary. Clear criteria are needed, for example, regarding the severity of the crime, the victim's willingness, and the perpetrator's good faith. This is where the principle of proportionality comes into play, as it can be used as a measure to determine whether restorative resolution is effective and just in a particular case. The relationship between these two concepts not only reduces disparities in sentencing but also strengthens the protection of victims' rights, prevents excessive punishment for perpetrators, and provides legitimacy for strengthening the criminal justice system to uphold the law while prioritizing humanitarian values and substantive justice.

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