

Conceptualizing Restorative Justice Based on Progressive Law: A Philosophical Contribution Towards Strengthening Human Security Guarantee in the National Legal System

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ABSTRAK

This article addresses the rigidity of the positive legal system, which tends to be positivistic and is deemed less adaptive in responding to complex humanitarian issues and concerns regarding Human Security. The primary goal is to analyze and philosophically elaborate the concept of Restorative Justice imbued with the spirit of Progressive Law as a theoretical framework to strengthen the guarantee of Human Security within the national legal system. The method employed is normative-constructive legal philosophy analysis through an in-depth review of Satjipto Rahardjo's thoughts and Restorative Justice literature. The practical contribution of this study lies in offering a transformative framework for Indonesia's legal system, shifting from punitive-formalism to substantive-humanist enforcement. The analysis reveals that Restorative Justice, from the perspective of Progressive Law, transforms from merely an alternative mechanism into a critical paradigm. This paradigm shifts the legal focus from offender punishment (retributive justice) towards restoration of social relations, victim healing, and conflict prevention rooted in humanitarian values. This philosophical contribution provides an essential foundation for criminal justice reform oriented toward substantive justice and fulfillment of human dignity. In conclusion, the implementation of Restorative Justice based on Progressive Law is crucial for transforming the national legal system, not only to ensure order but, fundamentally, to strengthen Human Security by placing restoration and humanity at the core of all law enforcement processes.

Keywords: Legal Philosophy, Restorative Justice, Progressive Law, Human Security, National Legal System.

A. INTRODUCTION

The national legal system is often faced with criticism for its rigidity stemming from the dominance of positivistic approaches (Islamiyati, 2018). This approach, which places too much emphasis on formality, legal certainty, and the rigid application of written rules, gives birth to criminal law enforcement practices that are highly oriented towards Retributive Justice (Hasibuan et al., 2024). In the retributive model, the main focus is placed on the identification of faults, the imposition of criminal sanctions, and punishment of the perpetrators, considering that proportionate retribution is perfect justice (Manurung, 2025). In the Indonesian context, this rigid focus often results in "procedural justice" that ignores the sense of community justice, as seen in various "small cases" that achieve legal certainty but fail to achieve social peace.

The discourse of contemporary legal philosophy shows that the rigidity of this positive legal system has proven to be less adaptive and inadequate in responding to the complexity of profound humanitarian and social issues. Approaches that focus only on punishment often fail to achieve the higher goals of law, namely substantive justice and social restoration (Arief, 2018). The limitations of this retributive model have a significant impact on Human Security (Hidayat, 2017). Empirically, this impact is observable in the chronic overcrowding of Indonesian correctional facilities often exceeding 100% capacity and high recidivism rates, which indicate that a purely punitive approach does not address the root causes of crime or provide a sense of security to the victims.

Human Security, which places the protection and dignity of the individual at the center of security, demands a legal system capable of addressing trauma, preventing cycles of violence, and restoring social relationships damaged by crime (Zehr, 2020). A rigid system that is only oriented towards prison sentences is not effective in achieving victim healing, restoration of social relations, let alone the prevention of conflicts rooted in human values (Flora, 2018). To overcome the limitations of the existing system and strengthen Human Security, there is a need to adopt a different model of justice. Restorative Justice (RJ) offers a fundamental shift in focus: from "who should be punished?" to "what harm is caused, and how can those harm be remedied?" (Asa, et al., 2025).

However, in order for Restorative Justice to be able to transform the system as a whole and not stop at mechanistic alternatives, it must be imbued with a strong philosophical framework. This is the central role of Progressive Law. Satjipto Rahardjo's thought on Progressive Law that

law must always be on the side of justice, humanity, and welfare, even if it has to go beyond formal rules, provides a much-needed philosophical foundation (Rahardjo, 2010). From a progressive legal perspective, restorative justice transforms from merely an alternative mechanism into a critical paradigm. This paradigm demands that the current legal approach which fails to place restoration and humanity at the core of law enforcement be reconsidered, as it ultimately weakens the guarantee of Human Security.

To address the limitations of the existing system and to strengthen Human Security, it is necessary to adopt a different model of justice. Restorative Justice (RJ) offers a fundamental shift in focus: from asking 'who should be punished?' to 'what harm has been caused, and how can that harm be repaired?' (Asa et al., 2025). However, for Restorative Justice to truly transform the entire system rather than remain a merely mechanistic alternative, it must be grounded in a strong philosophical framework. This is where Progressive Law plays a central role. Satjipto Rahardjo's ideas on Progressive Law provide the essential philosophical foundation for such transformation (Rahardjo, 2010). With a progressive legal perspective, restorative justice transforms from just an alternative mechanism to a critical paradigm (Asa et al., 2025). This transformation is not only procedural, but fundamental, providing an essential foundation for criminal justice reform oriented towards substantive justice and the fulfillment of human dignity.

Based on this philosophical and practical background, this article aims to analyze and philosophically elaborate the concept of Restorative Justice imbued with the spirit of progressive law as a theoretical framework. Through the analysis of normative-constructive legal philosophy, it is hoped that contributions can be made that show that the implementation of restorative justice based on progressive law is crucial to transform the national legal system. Its main objective is not only to guarantee formal order, but, more fundamentally, to strengthen the Guarantee of Human Security by placing restoration and humanity at the heart of all law enforcement processes.

The research method used in this article is normative-constructive legal philosophy analysis. This research is juridical-philosophical, focusing on the analysis of legal texts and philosophical concepts. The main source of data was obtained through an in-depth review of key ideas in the literature, especially Satjipto Rahardjo's thoughts on Progressive Law, as well as various primary and secondary literature on Restorative Justice and the concept of Human Security.

To ensure depth of analysis, the analytical procedure was divided into three stages: first, a critical-philosophical deconstruction of legal positivism to identify its failure in addressing Human

Security; second, a conceptual synthesis that integrates Progressive Law principles "law is for humans" into the restorative framework; and third, a normative-constructive formulation of how this paradigm can be integrated into the Indonesian legal reform agenda. A constructive approach is applied to build a new theoretical framework, namely Restorative Justice imbued with Progressive Law as a philosophical contribution to reform the national legal system. The analysis was carried out logically-systematically to elaborate the conceptual transformation of RJ from an alternative mechanism to a critical paradigm, ensuring a rigorous interpretative (Asa, 2025), process that moves beyond mere legal description toward a prescriptive philosophical vision.

B. DISCUSSION

1. Critical Analysis of Positive Legal Rigidity and Its Implications

The national legal system, in its development, cannot be separated from the paradigm of legal positivism. This philosophy, which emphasizes the strict separation between law (*ius constitutum*) and morality, views law as a set of formal rules made by the competent authority (Maulana, 2020). This rigidity is manifested in an overemphasis on formal legality and procedure (Asa and Shidarta, 2025), where justice is often reduced to compliance with the rules, rather than substantive justice. This tendency makes the criminal justice system often lose the ability to touch the personal and contextual dimensions of a crime case.

While legal positivism offers procedural certainty, it often creates "substantive blind spots" where the human dimension is sacrificed for the sake of administrative efficiency. In many cases, judges and law enforcers are bound by rigid "syllogistic reasoning", in which facts are only matched to articles, without deeply considering the socio-psychological impact (Béla, 2008). Retributive Justice operates on the logic of proportional retribution, where crime is a violation of state rules and the appropriate response is punishment (Khaerunessa, et al., 2025). This focus systematically ignores humanist questions: What harm does it cause to victims? What does the victim need to recover?

The retributive model, with an emphasis on imprisonment, ultimately only succeeds in stigmatizing perpetrators and handing conflict resolution to state authorities, without empowering victims and communities to participate in recovery, triggering high rates of recidivism (Sihombing, 2024). The social and economic burdens are enormous, including prison

overcapacity which compromises human dignity. This issue of high recidivism is clear evidence that prisons can actually become a "school of crime" (Situmeang, 2021).

The limitations of Retributive Justice have a crucial impact on Human Security (Fristikawati, 2023). Human Security demands protection from trauma and effective recovery. A rigid legal system weakens Human Security for three reasons: first, victim neglect, where victims are reduced to witnesses (Rasiawan, 2024); second, the failure of social restoration, because crime is seen only as a debt to be paid to the state, not as a wound that must be healed (Hafrida, 2024; Purba, et al., 2017); and third, the reduction of Human Dignity, because prisons are often inhumane. Thus, it is evident that the rigidity of positive law creates a serious gap between order and dignity, confirming the need for a paradigm shift a revisiting of justice through a lens that favors humanity, namely Progressive Law.

2. The Philosophical Transformation of Restorative Justice

Initially, Restorative Justice was often seen as an alternative mechanism, such as diversion or mediation, aimed at reducing the burden on the courts. In this view, RJ remains under the shadow of the retributive system, functioning as a safety valve, not as a new foundation of justice (Anwar, 2025). To elevate RJ from a mere procedural tool to a critical paradigm, radical philosophical intervention is needed through Progressive Law developed by Satjipto Rahardjo.

Progressive Law is an anti-positivistic movement adhering to the adage that law is for human beings. Critics of Progressive Law often raise concerns regarding legal certainty (*rechtzekerheid*). However, from a restorative perspective, "certainty" is not found in the rigidity of the text, but in the certainty of achieving recovery and social harmony. Progressive Law demands that RJ be applied because it is needed by humanity. When Restorative Justice is infused with the spirit of Progressive Law, it undergoes a transformation involving three fundamental shifts:

- a. Shift in Focus from Guilt to Harm: Measured by recovering losses, not the length of the sentence.
- b. Shift of Actors from State to Community: Restoring the moral autonomy of the community in the process of justice (Rahardjo, 2006).
- c. Shift in Goals from Retribution to Reparation: Rejection of imprisonment as the sole solution.

Thus, Restorative Justice based on Progressive Law is an affirmation that the law must not lose its human touch, allowing criminal justice to not only guarantee order but simultaneously strengthen Human Security by placing dialogue and dignity at the center.

3. The Philosophical Contribution of Progressive Restorative Justice

This sub-chapter is a synthesis of a critical analysis of retributive positivism and the philosophical construction of RJ liberated by Progressive Law. The main contribution is to provide a theoretical foundation for the transformation of the national criminal law system focusing on human dignity. While the current retributive model remains idealistic in its pursuit of "perfect retribution," empirical data from jurisdictions like New Zealand and Japan suggest that restorative practices provide higher victim satisfaction and lower recidivism, proving that restorative ideals are indeed achievable.

Progressive Restorative Justice offers a contribution by shifting the evaluation of the legal system. The measure of success is no longer formal certainty, but the extent to which the system achieves Full Victim Recovery, Social Reconciliation, and Active Responsibility of the Perpetrator. This contribution directly responds to criticism of positivism. If positivism demands that law enforcement be the machinery for the application of rules, Progressive Law demands they be the guardians of substantive justice.

The concept strengthens Human Security through three pillars. First, Strengthening Personal Security (Victim Healing): facilitating dialogue restoration of self-control and dignity. Second, Strengthening Social Cohesion: moving from 'crime is state business' to 'communal responsibility'. Third, Prevention and Reintegration: rejecting punishment that does not produce good (Rahardjo, 2006). This philosophical contribution has implications for the demand for comprehensive criminal justice reform in Indonesia, ensuring the judiciary creates justice that humanizes and empowers.

4. Institutional Preconditions and Structural Barriers

While the philosophical framework offers a transformative paradigm, its effectiveness depends on the readiness of legal institutions. A key gap is the limited attention to institutional preconditions and structural barriers (Naufal Hibatullah et al., 2024; Prayoga, 2025; Raharja & Saptomo, 2024). One major barrier is the deep entrenchment of bureaucratic formalism; police and prosecutors operate in a hierarchical system prioritizing quantitative performance indicators (conviction rates) over substantive justice.

Another obstacle is the absence of a unified restorative framework within statutory regulations, which remains fragmented and limited in scope. This structural fragmentation undermines the potential of Progressive RJ. Furthermore, there is a risk of institutional resistance and inconsistent application if RJ is not supported by robust legal grounding.

To overcome these, several preconditions must be fulfilled. First, legal reforms to embed Progressive RJ principles into national legislation. Second, capacity-building programs to develop restorative competencies (Braithwaite, 2004; Nahor, 2025a, 2025b). Third, the development of community-based restorative infrastructures like local peacemaking councils. Finally, institutional transformation requires a cultural shift from bureaucratic detachment to human-centered legal reasoning the essence of the Progressive Law movement.

C. CONCLUSION

The philosophical analysis shows that the rigidity of the positive legal system creates a serious gap with the demands of Human Security. Positivist rigidity systematically ignores substantive harm and weakens human dignity. To overcome this, Restorative Justice (RJ) must be raised to a critical paradigm through Progressive Law. This transformation frees RJ from procedural entanglements, shifting the focus to communal responsibility for the repair of losses.

The main philosophical contribution of Progressive Restorative Justice is to provide a theoretical framework that strengthens Human Security. This conclusion suggests that future criminal law reform in Indonesia should not only aim for "re-codification" but a "re-philosophizing" of the justice process. Strengthening Human Security is manifested through personal security, social cohesion, and prevention of conflict. Therefore, Progressive Law-based Restorative Justice is crucial to transform the system, ensuring that the judiciary fundamentally places restoration and humanity at the core of humanizing substantive justice. Future interdisciplinary research involving legal sociology and psychology is highly encouraged to bridge the gap between this philosophical foundation and its practical implementation.

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