

THE NATURE OF THE APPLICATION OF CRIMINAL ACTS OF FRAUD AND/OR EMBEZZLEMENT WITH A RESTORATIVE JUSTICE APPROACH IN SOUTH SULAWESI PROVINCIAL POLICE

A NATUREZA DA APLICAÇÃO DE ATOS CRIMINAIS DE FRAUDE E/OU DESVIO DE FUNDOS COM UMA ABORDAGEM DE JUSTIÇA RESTAURATIVA NA POLÍCIA PROVINCIAL DE SULAWESI DO SUL

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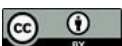
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Abstract

This research explores the concept and implementation of Restorative Justice as an alternative approach to criminal law enforcement in Indonesia, particularly in cases of fraud and embezzlement as regulated under Articles 378 and 372 of the Indonesian Criminal Code (KUHP). The study highlights the philosophical shift from a retributive justice system, which focuses on punishment, toward a restorative model that prioritizes repairing harm, restoring relationships, and achieving substantive justice. Restorative Justice emphasizes dialogue and reconciliation between the offender, the victim, and the community as an effort to restore social balance rather than impose retribution. Through a normative juridical approach, this study examines various legal instruments such as National Police Regulation No. 8 of 2021, Attorney General Regulation No. 15 of 2020, and Supreme Court Regulation No. 1 of 2016, which serve as the legal foundation for the application of Restorative Justice in Indonesia. The findings show that the implementation of Restorative Justice has provided positive impacts, including faster case resolution, reduced judicial caseloads, lower legal costs, and improved victim recovery. Furthermore, the cultural values of South

Resumo

Esta pesquisa explora o conceito e a implementação da Justiça Restaurativa como uma abordagem alternativa à aplicação da lei penal na Indonésia, particularmente em casos de fraude e peculato, conforme regulamentado nos artigos 378 e 372 do Código Penal Indonésio (KUHP). O estudo destaca a mudança filosófica de um sistema de justiça retributiva, que se concentra na punição, para um modelo restaurativo que prioriza a reparação dos danos, a restauração das relações e a obtenção de justiça substantiva. A Justiça Restaurativa enfatiza o diálogo e a reconciliação entre o infrator, a vítima e a comunidade como um esforço para restaurar o equilíbrio social, em vez de impor retribuição. Por meio de uma abordagem jurídica normativa, este estudo examina vários instrumentos legais, como o Regulamento da Polícia Nacional nº 8 de 2021, o Regulamento do Procurador-Geral nº 15 de 2020 e o Regulamento da Suprema Corte nº 1 de 2016, que servem como base legal para a aplicação da Justiça Restaurativa na Indonésia. Os resultados mostram que a implementação da Justiça Restaurativa proporcionou impactos positivos, incluindo resolução mais rápida de casos, redução do número de processos



Sulawesi, such as sipakatau, sipakainge, and sipakalebbi, align closely with the principles of Restorative Justice, reinforcing community-based dispute resolution. However, challenges remain in the form of limited public understanding, inconsistent application among law enforcement institutions, and weak supervision mechanisms. Therefore, strengthening the professionalism and legal awareness of law enforcement officers, particularly the police, is crucial to ensuring that the implementation of Restorative Justice upholds fairness, humanity, and the ideals of the Pancasila-based rule of law.

Keywords: Restorative Justice. Fraud. Embezzlement. Law Enforcement. Indonesian Criminal Law. Pancasila-based Justice.

judiciais, menores custos legais e melhor recuperação das vítimas. Além disso, os valores culturais de Sulawesi do Sul, como sipakatau, sipakainge e sipakalebbi, estão em estreita consonância com os princípios da Justiça Restaurativa, reforçando a resolução de disputas com base na comunidade. No entanto, ainda existem desafios na forma de compreensão pública limitada, aplicação inconsistente entre as instituições de aplicação da lei e mecanismos de supervisão fracos. Portanto, o fortalecimento do profissionalismo e da consciência jurídica dos agentes da lei, particularmente da polícia, é crucial para garantir que a implementação da Justiça Restaurativa defenda a justiça, a humanidade e os ideais do Estado de Direito baseado na Pancasila.

Palavras-chave: Justiça Restaurativa. Fraude. Desvio de Fundos. Aplicação da Lei. Direito Penal Indonésio. Justiça Baseada na Pancasila.

1 INTRODUCTION

Law enforcement in Indonesia is an inseparable part of the nation's ideals as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia, which aspires to protect all Indonesians, promote general welfare, enlighten the life of the nation, and realize social justice for all citizens. Within the framework of a state governed by law based on Pancasila, law is not merely understood as a set of norms regulating social behavior, but also as an instrument to achieve balance, order, and justice in national life. Law serves a dual function — as a means of social control to maintain public order, and as a means of social engineering aimed at fostering a just and civilized society.

However, in practice, the Indonesian criminal justice system remains largely dominated by a retributive approach, which emphasizes punishment and retribution toward offenders. While this approach aims to create deterrence and maintain security, it often fails to provide real recovery for victims. Victims are frequently positioned merely as witnesses in legal proceedings, receiving little to no attention for their material or psychological losses. Meanwhile, offenders who have served their sentences often face social stigma, making it difficult for them to reintegrate into society and rebuild their lives.

This situation has led to the emergence of a new paradigm in criminal justice

known as Restorative Justice, which emphasizes the restoration of social relationships rather than mere punishment. This approach views crime not only as a violation of state law but also as a violation of individuals and social relationships. According to Howard Zehr, a leading figure in this field, Restorative Justice highlights the offender's responsibility to repair the harm caused by their actions while encouraging active participation from victims and the community in resolving the issue. Its ultimate goal is to rebuild social harmony, provide recovery for victims, and foster moral awareness and accountability in offenders to prevent recidivism.

Globally, the concept of Restorative Justice began to develop in the 1960s and has been implemented in countries such as Canada, New Zealand, Australia, and South Africa. Mechanisms such as victim-offender mediation, family group conferences, and community reparation programs have proven effective in reducing recidivism, improving social relationships, and increasing victim satisfaction with the justice process. Moreover, this approach is considered more efficient as it reduces the workload of law enforcement institutions and lowers judicial process costs.

In Indonesia, the spirit of Restorative Justice has been incorporated into several key regulations, including National Police Regulation No. 8 of 2021 on the Handling of Criminal Acts Based on Restorative Justice, Attorney General Regulation No. 15 of 2020 on the Termination of Prosecution Based on Restorative Justice, and Supreme Court Regulation No. 1 of 2016 on Mediation Procedures in Court. These regulations mark a significant shift in the national legal system—from a punitive and retributive model toward one that is humanistic, participatory, and oriented toward substantive justice.

The application of Restorative Justice is particularly relevant in resolving fraud and/or embezzlement cases. These crimes, as regulated in Articles 378 and 372 of the Indonesian Criminal Code (KUHP), are forms of property-related offenses rooted in breach of trust. The key element in both crimes is the offender's bad faith in obtaining unlawful gain by manipulating or misusing the victim's trust. In many cases, the offender and victim share close personal or professional relationships — such as coworkers, business partners, or even family members — making formal criminal proceedings potentially harmful to their social ties and recovery process. In this context, Restorative Justice offers a more appropriate approach by facilitating open dialogue between offender and victim, achieving peaceful settlements, and restoring social relationships without undermining justice.

In law enforcement practice across Indonesia, including within the jurisdiction of South Sulawesi Regional Police (Polda Sulawesi Selatan), the implementation of Restorative Justice in fraud and embezzlement cases has shown positive progress. Law enforcement officers now prioritize peaceful settlements when both parties reach an agreement, restitution has been made, and the offense has limited social impact. This approach not only expedites case resolution but also fosters a greater sense of justice within the community.

Nevertheless, the implementation of Restorative Justice still faces several challenges. First, the lack of public understanding about the concept often leads to the perception that peaceful settlements weaken the law. Second, inconsistent interpretations among law enforcement institutions—police, prosecutors, and judges—create disparities in its application. Third, the absence of a comprehensive monitoring and evaluation system raises concerns about potential misuse or deviation from justice principles.

Moreover, Indonesia's criminal law system, which follows the civil law (continental European) tradition, places statutory law as the primary source of law. This often binds law enforcement to normative legal texts, limiting consideration of substantive justice. However, with the rise of progressive legal theory introduced by Satjipto Rahardjo, Indonesia's legal paradigm has gradually evolved. Law is no longer seen as a rigid set of rules but as a living instrument aimed at achieving justice within society (law in action). This principle aligns closely with the spirit of Restorative Justice, which places human values at the center of the legal system.

In the cultural context of South Sulawesi, the principles of Restorative Justice resonate deeply with local wisdom values such as sipakatau (mutual respect), sipakainge (mutual reminder), and sipakalebbi (mutual appreciation). These cultural values serve as a strong social foundation for promoting peaceful resolution through dialogue and reconciliation rather than hostility or revenge.

The implementation of Restorative Justice carries not only profound humanistic values but also practical benefits for the legal system, such as faster case resolution, reduced caseloads for judicial institutions, lower legal costs, and the restoration of social harmony. However, its success largely depends on the professionalism of law enforcement officers, particularly the police, who serve as the first gateway in the criminal justice process. Therefore, strengthening the understanding and application of Restorative Justice among law enforcement institutions is crucial to realizing a more effective,

humane, and just criminal justice system in Indonesia, in line with the ideals of the Pancasila-based rule of law.

2 THEORETICAL FRAMEWORK

The theoretical framework of this study is built upon several core legal and criminological theories that support the implementation of Restorative Justice in Indonesia's criminal law system, particularly in cases of fraud and embezzlement. First, Criminal Law Theory explains that law functions to protect legal interests and maintain order. However, the traditional retributive system focuses on punishment rather than restoring harm, leading to the need for a restorative approach. Second, the Theory of Punishment (Treatment Theory) emphasizes rehabilitation and reintegration rather than retaliation. Restorative Justice aligns with this by encouraging offenders to recognize and repair the harm caused, creating moral and social accountability. Third, the Theory of Law Enforcement by Soerjono Soekanto highlights five key factors—law, law enforcers, facilities, community, and legal culture—that determine the success of legal implementation. The effectiveness of Restorative Justice depends on harmony among these factors. Next, Howard Zehr's Restorative Justice Theory views crime as harm to relationships, not just a legal violation. Justice, therefore, should focus on repairing harm and involving victims, offenders, and the community in achieving reconciliation. Additionally, Satjipto Rahardjo's Progressive Law Theory supports the idea that law must serve human needs and uphold substantive justice, aligning closely with the humanistic spirit of Restorative Justice. Finally, Cultural Law Theory—especially local wisdom in South Sulawesi such as *sipakatau*, *sipakainge*, and *sipakalebbi*—reflects restorative values rooted in Indonesian culture that emphasize reconciliation and respect. In sum, this framework integrates normative, restorative, progressive, and cultural legal theories to provide a holistic foundation for applying Restorative Justice that balances legal certainty, fairness, and social harmony.

3 RESULTS AND DISCUSSIONS

3.1 The essence of the state's right to control land to realize the people's prosperity based on Article 33 of the 1945 Constitution

The implementation of the Restorative Justice approach in addressing fraud and embezzlement crimes within the jurisdiction of Polda South Sulawesi has demonstrated significant progress, representing a transformative shift in the Indonesian criminal justice system toward a more humanistic, participatory, and substantively just framework. This approach moves away from a purely punitive orientation and emphasizes the restoration of social relationships, the repair of harm suffered by victims, and the cultivation of moral responsibility among offenders. One illustrative case highlighting the practical application of Restorative Justice involves a fraud case between business partners. In this instance, an offender, who was a business associate of the victim, manipulated financial records and misappropriated company funds for personal gain without the victim's consent. Upon discovering the misconduct, the victim reported the case to the local police. Instead of immediately pursuing formal legal prosecution, law enforcement facilitated a mediation process grounded in restorative principles, aiming to achieve a fair and amicable resolution for both parties.

During the mediation, the offender formally acknowledged the wrongdoing, issued a direct apology to the victim, and agreed to compensate the financial losses incurred. Additionally, the offender committed to refraining from repeating such acts and pledged to restore the professional and social relationship with the victim. This approach enabled the resolution of the case without resorting to a prolonged and costly formal trial. As a result, the victim received tangible restitution, while the offender gained an opportunity for rehabilitation and social reintegration. Both parties expressed satisfaction with the resolution, and their relationship was restored without lingering animosity or social stigma. The case exemplifies the broader effectiveness of Restorative Justice in resolving crimes of fraud and embezzlement, particularly where there exists a pre-existing personal or professional relationship between offender and victim. The approach prioritizes not only accountability through tangible reparations but also restoration of trust and social harmony, thereby enhancing the overall efficacy of the criminal justice process. From a theoretical perspective, the case aligns with Criminal Law Theory, demonstrating

that the law functions not only as a tool for social control but also as a mechanism for repairing social disruption caused by criminal behavior. In fraud and embezzlement cases, the law serves to protect the interests of victims while offering offenders a structured avenue for acknowledging wrongdoing and contributing to societal restoration. Punishment or Treatment Theory is also reflected in this application, emphasizing rehabilitation over mere retribution. Offenders are encouraged to understand the social and moral implications of their actions and engage in constructive behaviors to correct their mistakes. This reduces the likelihood of recidivism while promoting moral development and accountability. For victims, restorative processes provide an opportunity to articulate the material and psychological harm they have suffered, creating a more holistic and empathetic resolution than traditional retributive procedures. The principles of Criminal Responsibility Theory are equally evident, as offenders remain legally and morally accountable for their actions.

Responsibility is manifested through direct compensation, acknowledgment of wrongdoing, and active participation in repairing social damage. This ensures that justice is educational, constructive, and rehabilitative rather than solely punitive. Soerjono Soekanto's Law Enforcement Theory underscores the importance of synergy between law, law enforcement personnel, facilities, the community, and legal culture. The successful application of restorative practices in South Sulawesi demonstrates that harmonization of these factors is critical. The police, as the first point of contact in the criminal justice system, play a pivotal role in assessing cases suitable for restorative resolution, facilitating mediation, and ensuring compliance with agreements. Active community participation, along with the reinforcement of local cultural wisdom—such as *sipakatau* (mutual respect), *sipakainge* (mutual guidance), and *sipakalebbi* (mutual appreciation)—provides strong social legitimacy to restorative processes. Furthermore, the case reflects the principles of Progressive Law Theory by Satjipto Rahardjo, which views law as a living instrument (law in action) rather than a rigid set of formal rules. Law enforcement officers in South Sulawesi adapt their application of the law to social and human contexts, prioritizing substantive justice, empathy, and the restoration of social order. This approach demonstrates that legal norms are not only formalistic obligations but also instruments for achieving socially and morally meaningful outcomes. Culturally, restorative practices resonate strongly with the social norms of South Sulawesi, emphasizing dialogue, reconciliation, and respect. The alignment of

Restorative Justice with local wisdom ensures that conflict resolution is not adversarial but instead cooperative, fostering communal harmony and social cohesion. The practical implications of applying Restorative Justice in this case are substantial. It expedites case resolution, reduces the burden on law enforcement and the judiciary, lowers the costs associated with formal legal proceedings, and restores social trust. Public confidence in the police increases as the community observes law enforcement functioning not merely as an instrument of coercion but as a facilitator of equitable and humane justice. In conclusion, the implementation of Restorative Justice in cases of fraud and embezzlement within Polda South Sulawesi demonstrates a strong correlation between theory and practice. The approach integrates modern criminal law theory, treatment and accountability perspectives, progressive legal thought, and local cultural values. This convergence produces a criminal justice model that is human-centered, socially constructive, and substantively just, effectively bridging the gap between formal legal frameworks and the social realities of the community.

Building upon the previous discussion, the continued implementation of Restorative Justice in Polda South Sulawesi reflects an evolving paradigm that increasingly prioritizes social repair, community involvement, and the moral rehabilitation of offenders. Beyond the illustrative case of business-partner fraud, broader patterns indicate that mediation, victim-offender dialogue, and community participation are becoming central components of law enforcement strategy in handling fraud and embezzlement cases. These practices reveal a deliberate shift from rigid proceduralism to a more nuanced, context-sensitive approach that recognizes the interpersonal and societal dimensions of crime. Empirical observations show that offenders engaging in restorative processes often demonstrate heightened awareness of the consequences of their actions, not only in legal terms but also in relational and ethical dimensions. By actively participating in the restitution of financial losses, apologizing, and rebuilding trust with victims, offenders acquire practical lessons in accountability that extend beyond punitive deterrence. This aligns with rehabilitative and treatment-oriented theories of punishment, which emphasize the transformation of the offender rather than mere retribution. Victims, in turn, experience a greater sense of agency and empowerment through direct involvement in resolving the harm done to them. Unlike conventional adversarial proceedings, restorative mechanisms allow victims to articulate psychological and material impacts, negotiate reparations, and witness genuine acknowledgment of

wrongdoing. This process not only enhances victim satisfaction but also reduces long-term psychological distress and fosters a sense of closure that traditional punitive systems often fail to provide.

The institutionalization of restorative practices requires coordination and professionalism among law enforcement, prosecutors, and the judiciary. Officers must evaluate the suitability of cases for restorative resolution, facilitate effective mediation, and monitor the implementation of agreements. The successful application of these practices in South Sulawesi underscores the importance of synergy between legal norms, law enforcement capacity, community participation, and cultural context, as articulated in Soerjono Soekanto's framework on law enforcement. The integration of local cultural values, such as sipakatau (mutual respect), sipakainge (mutual guidance), and sipakalebbi (mutual appreciation), provides a socially embedded mechanism that legitimizes restorative interventions and encourages voluntary compliance. From a theoretical standpoint, the adoption of Restorative Justice in this regional context exemplifies the principles of Progressive Law Theory, in which law functions as a dynamic instrument for achieving justice in real-world social settings. Legal norms are applied flexibly, guided by ethical considerations and social realities rather than rigid formalism. This approach allows criminal justice in South Sulawesi to operate not only as an instrument of state authority but as a vehicle for social cohesion, moral education, and community resilience. The practical benefits of restorative interventions are multifaceted. Resolution timelines are shortened, judicial and investigative resources are conserved, and financial costs associated with prolonged trials are minimized. Importantly, public confidence in law enforcement is strengthened, as communities observe justice being administered fairly, empathetically, and efficiently. Offenders who complete restorative processes successfully are more likely to reintegrate into society, thereby reducing recidivism rates and promoting social stability. In summary, the continued implementation of Restorative Justice within Polda South Sulawesi demonstrates an effective synthesis of criminological theory, rehabilitative practice, cultural sensitivity, and procedural innovation. By bridging formal legal structures with community-based, human-centered solutions, this approach creates a criminal justice system that is responsive, morally grounded, and socially constructive, particularly in the context of fraud and embezzlement. It reflects a comprehensive model in which law functions not merely to punish but to restore, reconcile, and rebuild the social fabric disrupted by crime.

The implementation of Restorative Justice in Polda South Sulawesi also highlights the importance of systematic frameworks and policy support to ensure consistency and effectiveness across cases. While individual mediations and reconciliations demonstrate practical success, the sustainability of this approach depends on formalizing protocols, providing officer training, and developing mechanisms for monitoring and evaluation. Standardized guidelines help ensure that restorative interventions maintain fairness, transparency, and accountability, preventing potential misuse or perceptions of partiality. Analyses of multiple cases reveal that fraud and embezzlement often occur in contexts of trust-based relationships, such as within families, business partnerships, or community organizations. The social proximity between offender and victim makes punitive approaches less effective, as formal trials can exacerbate relational conflicts, erode trust, and prolong social disruption. Restorative Justice, by contrast, emphasizes dialogue, mutual understanding, and negotiated settlements, creating outcomes that address both material and relational harms. In practice, victims report higher satisfaction and a stronger sense of justice when their voices are actively heard and acknowledged during the restorative process. From a broader criminological perspective, these outcomes align with rehabilitative and accountability-oriented theories, which argue that sustainable crime prevention requires engaging offenders in ethical reflection and social responsibility. Offenders who participate in mediation and restitution processes demonstrate reduced likelihood of reoffending and develop a deeper awareness of the social consequences of their actions. This reinforces the argument that Restorative Justice not only addresses immediate harm but also contributes to long-term crime reduction and social cohesion. Cultural compatibility further strengthens the effectiveness of restorative practices. In South Sulawesi, traditional norms such as *sipakatau*, *sipakainge*, and *sipakalebbi* encourage respect, mutual guidance, and social harmony. By integrating these cultural values into formal law enforcement practices, restorative processes gain community legitimacy, ensuring that resolutions are not merely procedural but socially meaningful.

This alignment between law and local norms fosters public trust in the police and strengthens communal adherence to agreements reached through mediation. Institutionally, police officers act as primary facilitators of restorative processes. Their roles include evaluating the appropriateness of cases, guiding mediation sessions, ensuring compensation agreements are met, and coordinating with community leaders when necessary. The professionalization of these roles is crucial; officers require both

legal expertise and interpersonal skills to balance procedural justice with empathetic engagement. When executed effectively, this model exemplifies a progressive and human-centered approach to criminal justice, bridging the gap between formal law and societal realities. In conclusion, the continued application of Restorative Justice in cases of fraud and embezzlement within Polda South Sulawesi demonstrates a holistic, socially responsive, and culturally grounded model of criminal justice. By combining legal theory, rehabilitative principles, cultural insight, and practical mediation strategies, this approach delivers outcomes that are substantively just, socially restorative, and operationally efficient. It not only repairs harm and restores relationships but also promotes moral accountability, community cohesion, and sustainable crime prevention, offering a replicable framework for other jurisdictions in Indonesia seeking to modernize their criminal justice systems.

4 CONCLUSION

The implementation of the Restorative Justice approach in addressing fraud and embezzlement crimes within the jurisdiction of Polda South Sulawesi demonstrates a significant shift in the criminal justice paradigm from a punitive, retributive orientation toward a more humanistic, participatory, and socially restorative framework. This approach prioritizes the restoration of social relationships, the repair of harm experienced by victims, and the moral rehabilitation of offenders, emphasizing accountability, empathy, and reconciliation over mere punishment. Empirical observations and case studies, such as the mediation between business partners involved in fraud, reveal that restorative processes provide tangible benefits for all stakeholders. Victims gain a meaningful voice in the resolution process and receive restitution for both material and psychological harm, while offenders have the opportunity to acknowledge wrongdoing, repair damage, and reintegrate into society without enduring prolonged social stigma.

These outcomes reflect key theoretical principles, including Criminal Law Theory, Punishment or Treatment Theory, and Criminal Responsibility Theory, which collectively support a justice system that is educational, rehabilitative, and socially constructive. Furthermore, the alignment of restorative practices with local cultural values—such as *sipakatau* (mutual respect), *sipakainge* (mutual guidance), and *sipakalebbi* (mutual appreciation)—strengthens social legitimacy, facilitates compliance,

and fosters communal harmony. The active role of law enforcement officers as facilitators, coupled with community participation and culturally embedded norms, underscores the interdependence of legal, social, and cultural factors in achieving substantive justice. Ultimately, Restorative Justice in Polda South Sulawesi exemplifies a holistic, culturally sensitive, and operationally effective model for resolving crimes of fraud and embezzlement. It bridges the gap between formal legal structures and societal realities, ensuring that justice is not only procedural but also restorative, equitable, and sustainable. The continued institutionalization of this approach promises to enhance public trust in law enforcement, reduce recidivism, and strengthen the moral and social fabric of the community, offering a replicable framework for broader application throughout Indonesia.

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Authors' Contribution

All authors contributed equally to the development of this article.

Data availability

All datasets relevant to this study's findings are fully available within the article.

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