

Original Article

Inclusive Justice and The Future Human Rights and Criminal Law in The Era of Globalization

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Abstract

This study examines the application of the principle of inclusive justice in criminal law enforcement in Indonesia, grounded in human rights values. In the context of a national legal system still dominated by a retributive approach, inclusive justice offers a new, more humane and participatory paradigm. This approach emphasizes the importance of protecting vulnerable groups and encourages the use of restorative mechanisms such as diversion and termination of prosecution based on restorative justice. Using normative legal research methods with conceptual and analytical approaches, this study demonstrates that integrating human rights values into criminal law can strengthen legal legitimacy, increase the efficiency of the justice system, and foster social reconciliation. This study recommends transforming legal culture and increasing the capacity of law enforcement officials as strategic steps towards a more just and civilized legal system.

Keywords: Criminal Law; Globalization; Human Rights; Inclusive Justice

Introduction

In the Indonesian criminal law system, law enforcement should not be interpreted as an effort to punish the perpetrators of crimes. More than that, criminal law enforcement is faced with the challenge of realizing justice that respects human dignity and is based on human rights values. Human rights principles are the philosophical foundation for the formation and application of fair criminal law, because the law must not in essence, contradict the universal human values inherent in each individual ¹. Therefore, the application of a more humanist approach, such as restorative justice, provides space for the recovery process and dialogue between perpetrators, victims, and communities, instead of focusing only on the retribution aspect ². This approach is in line with the concept of inclusive justice, which views justice as a process that involves all affected parties, taking into account the social, economic, and cultural context behind it ³.

Inclusive justice in criminal law enforcement means that the law must provide justice for all without exception. This principle emphasizes that the law should not only benefit those in power or have greater access to the legal system, but should also protect vulnerable groups, small communities, and those with economic and social limitations. In the diverse lives of Indonesian people, with differences in ethnicity, culture, religion, and social and economic conditions, the application of inclusive justice is critical. The goal is that the law can really be felt by all citizens, not just those who have a position or influence.

¹ Yumna Sabila, Kamaruzaman Bustamam and Badri Badri, 'Theoretical Basis of Human Rights and Human Rights Violations', *Justisia Journal: Journal of Law, Legislation and Social Institutions*, 3.2 (2019), 205 <<https://doi.org/10.22373/justisia.v3i2.5929>>.

² Mark B. Scholl and Christopher B. Townsend, 'Restorative Justice: A Humanistic Paradigm for Addressing the Needs of Victims, Offenders, and Communities', *The Journal of Humanistic Counseling*, 63.3 (2024), 184–200 <<https://doi.org/10.1002/johc.12204>>.

³ Rizaldy Purnomo Pedju and others, 'Progressive Law Perspective: Analysis of Restorative Justice in National Criminal Code', *Amsir Law Journal*, 6.2 (2025), 68–83 <<https://doi.org/10.36746/alj.v6i2.634>>.



The restorative justice approach is one example of the application of inclusive values in criminal law. This approach provides space for perpetrators, victims, and the community to engage in the process of resolving cases peacefully and humanely, rather than focusing only on the imposition of punishment⁴. In this way, the law not only imposes sanctions but also helps to restore social relations, repair the situation damaged by criminal acts, and restore balance and a sense of justice in society.

On the other hand, the application of inclusive justice cannot be separated from the principles of human rights (HAM) that are the basis of the national legal system. In Indonesia, the recognition and protection of human rights has been constitutionally guaranteed and regulated in various laws and regulations. However, in practice, there are still considerable gaps, especially for underprivileged communities and groups that do not have equal access to justice⁵.

Indonesia's criminal justice system still tends to be oriented towards a retributive approach, which focuses on imposing punishments. As a result, the protection of the rights of suspects or defendants is often neglected⁶. In criminal law enforcement, law enforcement officials should not only look at formal legal aspects, but also consider substantive justice, namely ensuring that every individual is treated humanely and equally before the law. Thus, inclusive justice means enforcing laws that respect human rights and ensuring that the legal process does not turn into a means of oppression or discrimination against certain parties.

In addition, the importance of implementing inclusive justice is increasingly evident when reviewing various legal regulations and practices that are beginning to accommodate a more humane approach. Normative studies show that the concept of restorative justice has found a place in the Indonesian legal system through some policies and regulations, although its implementation in the field is still limited⁷. This proves that there is room to integrate the values of inclusivity into criminal law, but there are still many challenges to be faced, especially in the realm of legal practice and culture that has not yet fully supported such changes. Therefore, this study seeks to examine how the principle of inclusive justice can be applied effectively in criminal law enforcement without neglecting human rights values.

Despite various efforts, the implementation of inclusive justice in the criminal justice system still faces some serious obstacles. Some of them include the paradigm of law enforcement officials who are still oriented towards a retributive approach, where punishment is the main focus, so that aspects of recovery and inclusion are often overlooked. In addition, inequality of access to justice for vulnerable groups is still high, while regulatory support, resources, and legal culture have also not fully supported the implementation of inclusive values. Therefore, a comprehensive paradigm change and the internalization of inclusive justice values are needed at every stage of the criminal law process, starting from investigation, prosecution, trial, to the implementation of the verdict.

Against this background, the research entitled "Inclusive Justice in the Enforcement of Human Rights (HAM) and Criminal Law" is relevant and important to be carried out. This research aims to explain conceptually and practically how the principle of inclusive justice can be applied in criminal law enforcement in Indonesia without ignoring human rights values. The results of this research are expected to contribute to the reform of the national criminal law system towards a more humane, equitable, and truly inclusive order for all levels of society.

Method

This study uses normative legal research methods because the focus of the study departs from the ambiguity of norms, and uses statute approaches, conceptual approaches, and analytical

⁴ Rahayu Sri Utami, 'Restorative Justice: A Comprehensive Shift Towards Victim-Perpetrator Reconciliation and Community Healing', *Indonesian Journal of Law and Economics Review*, 18.3 (2023) <<https://doi.org/10.21070/ijler.v18i3.959>>.

⁵ Maemanah, 'State Responsibility in Legal Aid for the Poor: Ensuring Access to Justice and Equality in Indonesia', *The Juris*, 8.2 (2024), 695–704 <<https://doi.org/10.56301/juris.v8i2.1499>>.

⁶ Dwi Prasetyo and Ratna Herawati, 'Review of the Criminal Justice System in the Context of Law Enforcement and Protection of Human Rights of Suspects in Indonesia', *Journal of Indonesian Legal Development*, 4.3 (2022), 402–17 <<https://doi.org/10.14710/jphi.v4i3.402-417>>.

⁷ Satria Dwie Raharja and Ade Saptomo, 'Reconstruction Discourse Justice Criminal Law as an Ideal Model for Implementing Restorative Justice', *Journal of Indonesian Impressions*, 3.12 (2024), 924–32 <<https://doi.org/10.58344/jii.v3i12.5732>>.



approaches. This research also uses the technique of tracing legal material document studies, as well as study analysis using qualitative analysis.

Results and Discussions

The concept of inclusive justice in criminal law enforcement emphasizes the importance of the involvement of all elements of society in creating a just and humane legal process. In this view, justice is no longer interpreted solely as a result of the formal application of legal norms, but as a process that guarantees respect for the dignity and dignity of every individual without discrimination. This approach requires that criminal law not only serve as an instrument to take action or suppress violations, but also as a means to build social reconciliation, namely restoring damaged relationships between perpetrators, victims, and society based on humanitarian values and social recovery⁸.

In the national legal system, the principles of Human Rights (HAM) are the fundamental foundation for the implementation of inclusive justice. This principle emphasizes that every individual, including perpetrators of criminal acts, has fundamental rights that must not be ignored and must still be protected by the state. Therefore, the criminal law system that places the suspect or defendants only as the object of punishment is clearly contrary to the spirit of the constitution, which affirms the protection of dignity and human rights⁹.

Criminal law enforcement that is oriented towards human rights values should be able to balance three main elements, namely legal certainty, justice, and utility. These three aspects are the main pillars of the principles of modern criminal law that place human beings as subjects of law, not just parties to be tried. Inclusive justice also encourages a paradigm shift from a retributive approach that emphasizes punishment to a restorative approach, which focuses on restoring social relationships and moral responsibility. This approach views criminal acts not only as an offense against the state but also as a disturbance of social harmony between individuals. Therefore, settlements that emphasize dialogue, restoration, and shared responsibility are considered more in accordance with the principles of substantive justice.

In the context of Indonesian law, the application of this principle is beginning to be seen in the policy of diversion and restorative justice in the juvenile justice system. This approach is oriented towards the best interests of children as legal subjects who need special protection¹⁰, as well as being the first step towards a more humane and fair criminal justice system for all parties. The concept of inclusive justice also has important relevance in criminal law enforcement policies against adults. This is reflected in the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, which marks a step forward in efforts to integrate the recovery approach into the national legal system. This policy provides space for the settlement of criminal cases outside the formal judicial process, as long as the principles of justice, responsibility, and restorative justice for the parties involved are met.

The mechanism not only accelerates the law enforcement process and reduces the burden on the judiciary, but also reflects a shift in the orientation of criminal law from mere punishment to social and humanitarian recovery. By prioritizing dialogue, mutual agreement, and recovery of victims' losses, this policy is a reflection of the application of more humane, participatory, and inclusive justice values in criminal law practice in Indonesia¹¹.

The implementation of inclusive justice in criminal law enforcement practices requires synergy between law enforcement agencies, human rights institutions, and civil society. This synergy is important because impartial and non-discriminatory law enforcement can only be achieved if law enforcement officials uphold the principles of "due process of law and the principle of non-discrimination". In reality, the implementation of these principles still faces obstacles, including low

⁸ Pedju and others.

⁹ Vinda Agustina, H. S. Tisnanta and Muhtadi Muhtadi, 'Restorative Justice as an Effort to Fulfill the Constitutional Rights of Citizens', *Jurnal Konstitusi*, 21.2 (2024), 244–57 <<https://doi.org/10.31078/jk2125>>.

¹⁰ Azhary Ramadhan, Kamarusdiana Kamarusdiana and Soefyanto Soefyanto, 'Settlement of Juvenile Crime Cases Through Diversion from the Perspective of the Juvenile Criminal Justice System', *Journal Of Legal Research*, 3.1 (2021), 129–44 <<https://doi.org/10.15408/jlr.v3i1.19581>>.

¹¹ Ribut Hari Wibowo, 'Restorative Justice Approach in Termination of Prosecution Based on Restorative Justice', *Progressive Law Journal*, 9.2 (2021), 146–57 <<https://doi.org/10.14710/jhp.9.2.146-157>>.



access to legal aid, lack of transparency in the investigation process, and continued acts of violence against suspects¹². Therefore, strengthening legal institutions and increasing the capacity of the apparatus is a determining factor in realizing truly inclusive justice.

The application of inclusive justice also has implications for the relationship between the state and society. Restorative and participatory justice play a role in strengthening the legitimacy of the law in the eyes of the public. People who are actively involved in the case settlement process tend to have a higher level of trust in the judiciary¹³. Thus, inclusive justice is not only a tool for resolving legal disputes but also a social instrument for rebuilding trust between citizens and the state. This approach ultimately expands the function of law from mere social control to a means of sustained social reconciliation.

In addition to strengthening the legitimacy of the law, the implementation of inclusive justice also has a positive impact on the effectiveness of the criminal justice system. With a restorative-based settlement mechanism, the burden of cases in the courts can be significantly reduced, so that law enforcement can run more efficiently¹⁴. This approach is in line with the spirit of national criminal law reform that puts human values above the spirit of retaliation. In this context, the law is no longer understood as a tool of power, but as a means to achieve social harmony and common welfare.

From a human rights perspective, inclusive justice acts as a bridge that connects legal norms with universal human values. The principles of non-discrimination and equal protection before the law are the main foundations that ensure that every citizen receives fair treatment regardless of social, economic, and cultural background. In the context of a pluralistic Indonesian society, the implementation of inclusive justice means recognizing diversity and ensuring protection for vulnerable groups, including women, children, and persons with disabilities, in all stages of the criminal justice process¹⁵. This reflects the essence of substantive justice that is not only procedurally enforceable, but also morally and socially.

However, in practice, the implementation of inclusive justice still faces various obstacles that are quite complex. A legal culture that is still oriented towards a retributive mindset is often a major barrier to implementing a more restorative approach. Some law enforcement officials still hold the view that severe punishment is the only effective way to have a deterrent effect, without considering the humanitarian, restorative, and social reintegration aspects of perpetrators¹⁶. This condition shows the need to transform values in legal education and the development of law enforcement officials to be more progressive, with the understanding that the main purpose of criminal law is not only to punish, but also to improve, restore, and maintain social balance in society.

The application of inclusive justice in criminal law enforcement is a strategic step towards a just and civilized legal system. Inclusive justice is not just a normative concept, but a new paradigm that puts humans at the center of the entire legal process. The integration between human rights principles and criminal law will give birth to a more responsive, participatory, and humane legal system. Thus, justice is not only measured by the fulfillment of formal legal elements, but also by the extent to which the law can bring humanity into its enforcement process.

¹² Kurniawan Tri Wibowo and . Sunarko, 'Challenges And Obstacles To The Application Of Restorative Justice On The Criminal Justice System In Indonesia', *International Journal of Law Policy and Governance*, 2.1 (2023), 32–40 <<https://doi.org/10.54099/ijlpg.v2i1.203>>.

¹³ Muhammad Firdaus, Chryshnanda Dwilaksana and Muhammad Daffa Auliarizky Onielda, 'Shifting Polri's Law Enforcement Strategy: Restorative Justice for Public Trust', *Legal Media Journal*, 30.2 (2023), 153–70 <<https://doi.org/10.18196/jmh.v30i2.18628>>.

¹⁴ Henny Saida Flora, 'Restorative Justice as an Alternative in Resolving Criminal Acts and Its Impact on the Criminal Justice System in Indonesia', *University Of Bengkulu Law Journal*, 3.2 (2018), 142–58 <<https://doi.org/10.33369/ubelaj.3.2.142-158>>.

¹⁵ Dian Ekawaty Ismail and others, 'Collocation of Restorative Justice with Human Rights in Indonesia', *Legality: Scientific Journal of Law*, 32.2 (2024), 394–417 <<https://doi.org/10.22219/ljih.v32i2.35374>>.

¹⁶ Fauziah Lubis, 'Implementation Of Restorative Justice, The Intent Of Punishment, And Legal Clarity In Indonesia', *Russian Law Journal*, 11.3 (2023) <<https://doi.org/10.52783/rlj.v11i3.1275>>.



Conclusion

Inclusive justice in criminal law enforcement emphasizes the importance of a balance between legal certainty, utility, and protection of human rights. This principle emphasizes that the application of criminal law must not stop at procedural aspects alone, but must also be based on human values and ensure equality for all citizens without discrimination. In this framework, the law is seen not just as a tool to punish, but as a means to restore, protect, and uphold human dignity. The enforcement of criminal law that is oriented towards human rights values will strengthen the legitimacy of the law in the eyes of the public, as it shows that the law is present not only to take action, but also to provide humane justice. Therefore, strengthening inclusive justice needs to be done through increasing the capacity and understanding of law enforcement officials on human rights principles, reforming the legal system to be more adaptive to the value of social justice, and engaging the community more broadly in the judicial process. Changing the legal system towards a more humane and recovery-oriented direction is an important step so that the law can truly protect the dignity of everyone and uphold justice that favors all levels of society.

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