Criminal Justice Reform: From Due Process Model to Reintegrative Model as an Alternative to Criminal Case Resolution

Hajairin¹, Muhammad Mustofa², Tofik Yanuar Chandra³
¹,² Universitas Jayabaya, Indonesia
Email: hajairinbima91@gmail.com

* Correspondence: hajairinbima91@gmail.com

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ABSTRACT
The research problem of this study is the reform of criminal justice from the due process model to the reintegrative model as a consequence of the development of criminal law, including in the resolution of criminal cases. The reintegrative model is a process of establishing new norms or values, as a form of adaptation in the enforcement of criminal law with the approaches of restorative justice, penal mediation, and discretion. The research method used is normative legal research, with statutory, historical, comparative, and conceptual approaches. The results of this study indicate that, firstly, the reform of criminal justice from the due process model to the reintegrative model is an effort to integrate several approaches such as restorative justice, penal mediation, and discretion. This approach is introduced as an effort to minimize the dominance of the due process model. Resolving criminal cases using the due process model is not the only model for resolving criminal cases, but there are many alternatives available. The concept of the reintegrative model emerged due to the numerous issues in law enforcement with the current dominance of the due process model in criminal justice, which focuses on imprisonment as punishment. Secondly, the reintegrative model of criminal justice provides an alternative for resolving criminal cases, with several approaches that can be used and maximized, including restorative justice, penal mediation, and discretion. Restorative justice can be applied in resolving various criminal offenses, penal mediation involves resolving criminal cases outside the court through deliberation and consensus, and police discretion is a justified police action in the interest of the public. However, these approaches are not well-implemented because some still perceive that resolving criminal cases using these approaches is not part of the criminal law enforcement process.
Introduction

The implementation of law enforcement is currently heavily dominated by the due process model, which emphasizes procedural justice without considering the severity of the crime. Under this model, all crimes are treated equally, and the manner of resolving them is the same. The due process model, also known as due process of law, guarantees justice based on strict procedures, with a focus on procedural justice.

In the Indonesian Code of Criminal Procedure (KUHAP), we currently adhere to the due process model, which is not without problems. Blindly adhering to the due process model as it has developed in the United States is not entirely beneficial for the development of national criminal law. The essence of the due process model is grounded in values that place the individual as the primary focus in the judicial process, and the deprivation of someone's rights and freedoms can only be done by the state (Romli Atmasasmita, 2010).

The public's discontent and the emergence of various issues in criminal law enforcement from the perspective of the due process model have led to the introduction of the reintegrative model as an alternative for resolving criminal cases. The reintegrative model is a process of establishing new norms or values, as a form of adaptation to institutions or organizations that have undergone changes (Soejono Soekanto, 2015). The new norms or values involve integrating various approaches in criminal law enforcement, such as restorative justice, penal mediation, and discretion. These approaches are based on the concept of law enforcement that is in line with national legal development, emphasizing humanity and justice. The reintegrative model with these approaches can be applied to all minor offenses. However, these approaches have not been well implemented, mainly due to the perception that resolving criminal cases using these approaches is not part of the law enforcement process.

However, the principle of fairness is the result of agreements and fair negotiations (J. Rawls, 2006). Fair justice, as understood, can only be achieved through the agreement of the parties involved in the case. However, this still requires a mechanism that can reconcile shared interests and produce decisions (Teddy Lesmana, 2020). Law enforcement is a means of development and renewal of society that we hope will uphold the law as implied in the Pancasila principles. The current condition of the Indonesian criminal justice system, which has not achieved justice in the eyes of the public, has led to the perception that the law enforcement system is no longer a place to seek full justice (J. Pajar Widodo, 2012).

The reintegrative model concept can be an alternative to place the law as an instrument in achieving justice. The legal instruments referred to are restorative justice, penal mediation, and discretion. These instruments are essentially based on the principles of deliberation and consensus to achieve fair resolutions for all parties involved in legal matters. Thus, this approach is introduced as an effort to minimize the dominance of the due process model in current criminal case resolutions. Therefore, law enforcement agencies must consider these approaches as an effort to achieve order and justice.

In the Law Number 1 of 2023 concerning the Indonesian Penal Code, the value of restorative justice is reflected in the purpose of punishment under Article 52, which states that punishment is not intended to degrade human dignity. Additionally, various technical regulations on the implementation of restorative justice with general and specific requirements serve as alternatives for resolving criminal cases. Restorative justice means redemption of wrongdoing that the offender wants to carry out towards the victim.
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the aim of resolving the legal problems arising from the criminal act through agreement and consensus among the parties involved (Hanafi Arief & Ningrum Ambarsari, 2018).

Settling cases outside the court through penal mediation is a new dimension. However, in practice, penal mediation has already been conducted by the community through non-judicial institutions, such as customary institutions, and others. However, the practice of penal mediation is currently in a state of flux (Lilik Mulyadi, 2022). The main factor that motivates the police to utilize discretion is the substantial provision in Law Number 2 of 2012 concerning the National Police, Article 18, which states that one legal form of police discretion authorizes the police to take responsible actions. Implementing discretion as an approach in resolving criminal cases changes the pattern of resolution based on the needs of the victim and the improvement of societal order, compared to merely prosecuting individuals (Alfano Ramadhan, 2021).

The reintegrative model with the aforementioned approaches can be an alternative for resolving criminal cases, particularly those categorized as minor offenses. The restorative justice approach can even be applied to corruption cases. These approaches can be adopted at all levels by legal institutions such as the police, prosecutors, judges, and lawyers. Based on the above issues, the research problem can be formulated as follows: How can the reform of criminal justice from the due process model to the reintegrative model be achieved through the approaches of restorative justice, penal mediation, and discretion?

Research methods

In this study, the research methodology used is normative legal research, which focuses on examining the application of rules or norms in positive law (Johnny Ibrahim, 2006). Normative legal research is also conducted to inventory positive law, discover legal principles and doctrines, synchronize existing legislation, and conduct research by studying and analyzing various existing literature (Irwansyah, 2021). In this context, it is related to the reform of criminal justice from the due process model to the reintegrative model as an alternative for resolving criminal cases using the approaches of restorative justice, penal mediation, and discretion.

This study utilizes several approaches. Firstly, the Statute Approach, which involves understanding the hierarchy and principles within legislation (Peter Mahmud Marzuki, 2017). Secondly, the Historical Approach, which is employed to understand historical values (I Made Pasek Diantha, 2017). Thirdly, the Comparative Approach, which involves comparing the law of one country with that of another country or comparing the law at a certain point in time with the law at another point in time. Finally, the Conceptual Approach, which involves studying concepts, theories, and opinions of experts related to the research object (Amiruddin & Zainal Asikin, 2016).

As for the primary legal materials, they encompass the conceptual framework of the due process model as the dominant criminal justice model currently in practice. Additionally, the new paradigm in the development of criminal law, namely the reintegrative model in criminal justice with the approaches of restorative justice, penal mediation, and discretion as alternatives for resolving criminal cases. Secondary legal materials can explain the primary legal materials, such as previous research findings and works by legal experts, among others (Saifullah, 2015).
Results and Discussion
Reforming Criminal Justice from the Due Process Model to the Reintegrative Model

Law enforcement systems should not only focus on procedural systems but also consider the value system of fair legal principles. This issue is greatly influenced by the dominance of the due process of law in the current criminal justice system. To achieve substantive justice, it is important to reorient the resolution of minor criminal offenses by reforming the criminal justice system from the due process model to the reintegrative model (Sahabuddin, 2014). Alternative methods of resolving criminal cases such as restorative justice, penal mediation, and discretion can be employed. Indonesia has already formed criminal laws that are oriented towards the integration of justice (Febby Mutiara Nelson, 2020).

The concept of law enforcement can be understood as an effort in law to achieve fairness for society and accuracy (Mukhlis R, 2018). The essence of law enforcement lies in activities that are in line with the values and norms contained within it, followed by attitudes and actions to foster, maintain, and uphold justice (Farida Sekti Pahlevi, 2016). Therefore, the due process model can undermine justice if it is implemented without considering other aspects of law enforcement. The basis of the due process model lies in the Criminal Procedure Code (KUHAP) and legislation outside the KUHAP as procedural standards for law enforcement. The reintegrative model is a consequence of the development of criminal law, introducing a responsive model for resolving criminal cases based on human values and justice.

The availability of options such as restorative justice, penal mediation, and discretion in resolving criminal cases is considered relevant to the public's desire for justice. The objective of punishment should also be directed towards achieving a balance in criminal law development based on Pancasila values (Ira Alia Maerani, 2015). Additionally, criminal punishment must consider the balance and harmonization of the interests of society, perpetrators, and victims (Ruben Achmad, 2013). Therefore, the due process model should not dominate the resolution of criminal cases because our approach to punishment has undergone changes and developments to meet the needs of Indonesian society.

In the past, the law heavily emphasized imprisonment and deterrence. This is not in line with the current spirit of legal development in Indonesia, which is oriented towards humanitarian justice. Although the current punitive system is based on the retributive justice paradigm, which is repressive in nature, resulting in imprisonment being the most frequently imposed punishment for offenders. Therefore, building a punitive paradigm based on restorative justice is crucial and should be maximized to ensure the effectiveness of criminal law enforcement (Brilian Capera, 2021).

The perspective of law enforcement based on the due process model may result in law enforcement that disregards the interests of all parties involved. The aforementioned alternative methods of resolving criminal cases can be used for minor offenses and can even be employed as extraordinary measures, such as using restorative justice for corruption cases.

Therefore, a reform of the criminal justice system based on the reintegrative model should be seriously implemented through various approaches as alternatives. Although the term "alternative" can imply choice, when restorative justice, penal mediation, and discretion meet the requirements, they become obligatory for all parties involved. The police, prosecutors, and judges must not act according to their own preferences but should consider the agreements reached by the parties involved, including victims, perpetrators,
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and the community, in facing criminal cases. This approach is introduced to minimize the dominance of the due process model in the current resolution of criminal cases, transforming it from the sole model to one among many options for resolving criminal cases.

Reintegrative Model of Criminal Justice as an Alternative to Solving Criminal Cases

In the current paradigm of criminal law enforcement has undergone many changes, this is marked by the emergence of several approaches, among others, restorative justice, penal mediation and discretion, some of these approaches actually if simplified then we call it deliberation and consensus to find solutions for all parties involved in a legal problem. In addition, legal structures, such as police, prosecutors and courts are required to carry out criminal justice based on a reintegrative model as an alternative to solving criminal cases can be classified as follows:

Principles of Restorative Justice in Criminal Justice

Restorative criminal justice views the realization of justice as not only a matter for the state and the offender but also as a comprehensive approach that considers the interests and rights of victims and the community. The goal of restorative justice is to achieve the restoration of the conditions of the crime victims, offenders, and the concerned community through the process of resolving criminal cases.

The reintegrative model is a process of forming new norms or values as a form of adaptation within institutions or organizations that have undergone changes. Thus, the restorative justice approach in criminal law enforcement does not depend on the willingness of law enforcement agencies, but rather it is an obligation that must be fulfilled by law enforcement agencies when the conditions for restorative justice are met. Restorative justice has been formulated in the Indonesian Presidential Regulation No. 18 of 2020 concerning the National Medium-Term Development Plan 2020-2024, which explicitly states that the restorative justice approach is one of the strategies for law enforcement in Indonesia.

In the investigative stage, the legal basis for restorative justice is the Indonesian National Police Circular Letter No. SE/8/2018 regarding the Implementation of Restorative Justice in Resolving Criminal Cases, the Indonesian National Police Chief Regulation No. 6 of 2019 regarding Criminal Investigation, and the Indonesian National Police Chief Regulation No. 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice. Restorative justice can be applied at the investigation level if certain general and specific requirements are met. The general requirements include material and formal requirements. Material requirements include: (1) not causing public unrest or rejection, (2) not resulting in social conflict, (3) not potentially dividing the nation, (4) not involving radicalism and separatism, (5) not being a repeat offense based on court decisions, and (6) not being terrorism, crimes against state security, corruption, or crimes against human life. Specific requirements for certain criminal offenses relate to information and electronic transactions, narcotics, and traffic offenses. The main objective is to achieve justice for all parties involved.

At the prosecution stage, the Attorney General has issued the Attorney General Regulation No. 15 of 2020 regarding Discontinuation of Prosecution based on Restorative Justice. Meanwhile, at the trial stage, the implementation is guided by the Decree of the Director General of the General Court Administration of the Indonesian Supreme Court No. 1691/DJU/SK/PS.00/12/2020 regarding the Implementation Guidelines for
Restorative Justice. In this context, criminal justice focuses on transforming punishment into a process of dialogue and mediation involving the offender, victim, families, and other relevant parties, aiming to reach a fair and balanced agreement in the resolution of criminal cases that promotes restoration to the original state and restores positive relationships within society.

The restorative justice approach is responsive to the Due Process Model, which tends to undermine the values of justice for the community by focusing on procedural justice without considering all parties involved in a criminal act. Although the use of restorative justice in resolving criminal cases has been widely discussed in the last five years, it is the obligation of all parties to strive for a legal process that incorporates restorative justice, especially as an alternative for resolving minor criminal offenses. Moreover, the concept of restorative justice is not only applicable to minor offenses but can also be offered or used in cases of corruption, taking into account the financial losses to the state (Hajairin, 2022).

**Penal Mediation as an Alternative for Resolving Criminal Cases**

The handling of non-criminal issues through punishment mediation does not yet have a strong legal basis, but the phenomenon of penal mediation is widely used in the resolution of criminal cases. The practice of mediation has become part of Indonesian society. Currently, penal mediation in criminal cases does not have a strong legal foundation, although in practice, such mediation is often carried out in the community (Teguh Hariyono, 2021). Penal mediation is conducted outside the criminal justice process through a mechanism of dialogue and seeking reconciliation to resolve conflicts (Tendy Septiyo et al., 2020).

The principles of penal mediation reflect the main characteristics of Indonesian society in resolving social issues. Although there is no specific law regulating the resolution of criminal cases outside of the court system, indications towards such an approach can be seen in several legal regulations. Renewal of the criminal justice system by integrating penal mediation is necessary to establish a progressive Indonesian criminal justice system based on the noble values of Pancasila. This can be achieved through the establishment of penal and non-penal policies that support the legislation of penal mediation in positive Indonesian law (Teddy Lesmana, 2019). The police are granted authority to carry out their duties and powers based on their own judgment, commonly referred to as police discretion. This discretion gives them full authority in handling all tasks and responsibilities of the police, including resolving minor criminal offenses through penal mediation (Budi Heriyanto, 2022).

The Criminal Procedure Code (RUU-KUHAP) also states that the termination of an investigation can occur based on a judge's decision during pre-trial proceedings, which is requested by the complainant/victim. This can happen through mediation between the victim and the suspect. Article 111, paragraph (3), also explains that mediation can be conducted if the criminal offense is classified as minor, with a maximum penalty of 4 years' imprisonment or only a fine, if the damages resulting from the criminal act have been compensated, and if the suspect is over 70 years old when committing the offense.

Penal mediation is also a paradigm that is consistently taken as part of efforts to achieve justice for all parties involved, although it generates differing views from various stakeholders. However, it is also a critique of law enforcement dominated by the due process model. The due process model is an outdated paradigm in law enforcement that has always been focused on imprisonment, without distinguishing between minor and
serious offenses. Therefore, in the future, penal mediation as a new value should be formulated in stronger regulations, integrated with restorative justice and police discretion.

**Police Discretion**

The resolution of criminal cases through the use of police discretion allows investigators of the Indonesian National Police (Polri) to make decisions or adopt policies outside of legal regulations to resolve criminal cases based on the specific situation and conditions, with the aim of serving the public interest. Law Number 2 of 2012 concerning the National Police, Article 18, mentions one form of legal authority known as police discretion, where the police have the authority to take responsible actions outside of the usual procedures.

Polri also has the authority to take other actions within the boundaries of the law and in a responsible manner. This authority is granted to the police as part of the criminal process, specifically as investigators, as regulated in Article 5 paragraph (1) letter a number 4 and Article 7 paragraph (1) letter j of the Criminal Procedure Code (KUHAP). In carrying out their duties in the field of criminal proceedings, the police have the authority to take other actions in the form of investigation and inquiry, as long as they are (1) not in conflict with any legal regulations, (2) in accordance with legal obligations that require such actions, (3) reasonable and justifiable within the scope of their duties, (4) based on relevant considerations due to pressing circumstances, and (5) respectful of human rights.

The implementation of police discretion is part of governance, filling legal gaps, providing legal certainty, overcoming administrative stagnation in certain situations, for the benefit of the public and the pursuit of fair law enforcement. When exercising discretion, government officials must meet certain requirements, such as ensuring that the use of discretionary powers is aligned with the objectives of discretion, not in conflict with legal provisions, in line with the principles of good governance, based on objective grounds, not creating conflicts of interest, and conducted with good intentions (Ni Ketut Sari Adnyani, 2021).

Police discretion is essentially the precursor to a new paradigm in law enforcement based on the characteristics of Indonesian society. Although police discretion has been rarely exercised by the police until now, it can be a valuable tool to minimize the enforcement of laws that may jeopardize substantive justice under the due process model of the criminal justice system. Therefore, police discretion as a reintegrative model in criminal justice should be utilized to ensure the attainment of justice, as law enforcement is carried out to achieve justice. In this aspect, police cannot exercise discretion based solely on personal preferences and interests but should apply it to all minor criminal offenses that meet the criteria for discretionary action as an alternative means of resolving criminal cases.

**Conclusion**

Based on the research and discussion above, it can be concluded that, firstly, the legal enforcement system should not only focus on procedural systems that undermine the values of fair legal principles. This is heavily influenced by the due process model, which is dominant and focused on imprisonment as punishment. In order to achieve substantive justice, it is important to reorient the resolution of minor offenses by reforming criminal justice from a due process model to a reintegrative model. The
reintegrative model involves the formation of new norms or values as a form of self-adjustment in the criminal justice process, employing approaches such as restorative justice, penal mediation, and discretion. In simpler terms, these approaches involve deliberation and consensus to find a fair resolution for all parties involved in legal matters.

Secondly, the concept of the reintegrative model in criminal justice serves as an alternative approach to the resolution of criminal cases, arising from public dissatisfaction with the dominant Due Process Model in criminal justice. The resolution of criminal cases has undergone changes, and there are several approaches that can be used, including restorative justice, penal mediation, and discretion. These approaches serve as alternative means of resolving criminal cases at all stages of the legal enforcement process, including minor offenses. Restorative justice can even be applied to the resolution of corruption cases. Penal mediation involves resolving criminal cases outside of the courtroom through methods such as consensus and negotiation. Police discretion, on the other hand, refers to law enforcement actions justified by law, as long as they are accountable for the public interest. These approaches must be implemented when the conditions are met, not based on the whims of law enforcement officials. However, these approaches do not always work well, mainly due to the perception of some parties that resolving criminal cases through these alternative approaches is not part of the criminal justice process.

References
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