

Development of the Concept of Criminal Law Based on Restorative Justice in Combating Crime in Indonesia

Coky Roganda Manurung¹⁾, Zainal Abidin Pakpahan²⁾
^{1,2,3)} Master of Law, Faculty of Law, Labuhanbatu University

*Corresponding Author
Email: coky.roganda@gmail.com

Abstract

The criminal justice system in Indonesia has so far focused more on a retributive approach that is oriented towards punishing the perpetrator without paying sufficient attention to the recovery of victims and the social impact of crime. As a result, there is overcapacity in correctional institutions and high recidivism rates because perpetrators do not get optimal rehabilitation opportunities. As an alternative, restorative justice comes with a more humane and inclusive approach, emphasizing the recovery of victims, accountability of perpetrators, and community involvement in resolving cases. This research evaluates the effectiveness of the conventional criminal system and the implementation of restorative justice in Indonesia using a normative juridical and sociological approach. Data was obtained through interviews with law enforcement officials as well as studying literature and legal documents. The research results show that restorative justice provides benefits for victims, perpetrators, and society, such as more satisfying recovery, reduced recidivism, and the creation of social harmony. However, challenges in regulations, the capacity of law enforcement officials and public understanding are still obstacles. Therefore, it is necessary to reform criminal law regulations, increase the capacity of officers through training, and optimize the role of the community in implementing restorative justice. With these steps, the criminal justice system in Indonesia can become more fair, effective and sustainable.

Keywords: *Restorative Justice, Criminal Justice System, Criminal Law, Regulatory Reform, Victim Recovery*

INTRODUCTION

The criminal justice system in Indonesia is still dominated by a retributive approach, which focuses on punishing perpetrators without taking into account recovery for victims and society (Ferdiles, 2019). This approach aims to provide a deterrent effect on perpetrators through repressive punishment, such as imprisonment, fines, or the death penalty in certain cases. However, this approach is often ineffective in addressing the root causes of crime, especially in the context of crimes that occur due to social, economic and psychological factors. In addition, a punishment system that is oriented towards retaliation often ignores the rights of victims, who actually also need recovery both materially and psychologically. (Akbar, 2021) As a result, in many cases, victims actually experience injustice because they are only objects in the criminal justice process, without having the space to actively participate in resolving the case.

(Hendrawati, 2017) The implementation of the conventional punishment system also gives rise to various other problems, one of which is overcapacity in correctional institutions (prisons) which has an impact on the low quality of inmate development. According to data from the Ministry of Law and Human Rights, the number of prison inmates in Indonesia far exceeds the available capacity, causing inhumane conditions and hampering the effectiveness of rehabilitation programs. Overcrowding in prisons not only results in poor living conditions for prisoners, but also increases the possibility of negative interactions between them, which can actually strengthen criminal networks within prisons. In addition, the high recidivism rate shows that the criminal punishment given often does not provide an optimal deterrent effect. Many criminals after serving their sentences commit similar crimes again, which indicates that the existing criminal justice system has not been able to comprehensively address the root causes of crime.

As an alternative to the retributive approach, the concept of restorative justice is starting to gain attention in various countries as a more humane and effective case resolution model. Restorative justice aims to improve relationships between victims, perpetrators, and society by emphasizing dialogue, reconciliation, and restoration. (Sunarto, n.d.) This model allows victims to participate in the case resolution process and obtain compensation or other forms of recovery that are more adequate than simply seeing the perpetrator punished. Apart from that, restorative justice also provides an opportunity for perpetrators to understand the impact of their actions and take responsibility directly to the victim. (Luftia Gunawan et al., 2023) This approach has been implemented in various countries, such as Canada, New Zealand and South Africa, with quite positive results in reducing recidivism rates and increasing a sense of justice for victims and society.

(No et al., 2025) In Indonesia, the concept of restorative justice has been adopted in several legal policies, such as diversion in the Juvenile Criminal Justice System (UU No. 11 of 2012) and Supreme Court Regulation no. 2 of 2012 concerning Settlement of Children's Cases Outside of Court. Apart from that, several minor criminal cases have also begun to be resolved through restorative justice mechanisms, such as through penal mediation which involves the victim and perpetrator in reaching a fair agreement. However, the implementation of restorative justice is still limited and has not yet become an integral part of the criminal law system in Indonesia as a whole. (APRIANTO, 2023) Many law enforcement officials still prefer the litigation route compared to more restorative resolution alternatives, due to the lack of clear regulations and the unpreparedness of the legal infrastructure that supports this concept.

The urgency of developing a criminal law concept based on restorative justice in Indonesia is based on several main factors. First, restorative justice can be a solution to overcome the problem of overcapacity in prisons by providing alternative punishments that do not always result in imprisonment. Second, this approach can reduce recidivism rates by giving offenders the opportunity to take social responsibility and improve their behavior. Third, restorative justice provides greater space for victims to obtain restorative justice, not only in the form of punishment for the perpetrator, but also in the form of compensation or psychological recovery. Fourth, this system is more in line with the values of customary law and culture of Indonesian society which prioritizes deliberation and peaceful resolution of conflicts. Therefore, the development of a criminal law concept based on restorative justice needs to be considered as a legal reform step that can create a fairer and more effective justice system.

(Diansyah, 2022) Based on this background, the problem formulation in this research is how the concept of criminal law based on restorative justice can be developed and implemented effectively in the Indonesian criminal justice system. This research aims to analyze the weaknesses of the conventional criminal law system which is still dominant today, explore the implementation of restorative justice in various countries as a comparison, and formulate strategies for implementing restorative justice that are appropriate to the legal and social context in Indonesia.

This research uses normative juridical methods with statutory, conceptual and comparative approaches. A legislative approach is used to examine existing regulations related to restorative justice in Indonesia as well as regulations in other countries that have previously adopted this concept. A conceptual approach is used to analyze legal theories that support the application of restorative justice in the criminal law system. Meanwhile, a comparative approach is carried out by comparing the implementation of restorative justice in several countries that have successfully adopted it, in order to obtain applicable recommendations for the development of the criminal law system in Indonesia. (Purba, 2023) With this approach, it is hoped that research can provide academic contributions as well as practical recommendations for policy makers in designing strategies for implementing restorative justice in Indonesia.

RESEARCH METHODS

This research is normative legal research combined with an empirical approach. A normative approach is used to analyze applicable regulations and the concept of restorative justice in the Indonesian criminal law system, while an empirical approach is carried out by exploring information through interviews and case studies related to the application of restorative justice in judicial practice.

The approach used in this research is a normative juridical and sociological juridical approach. A normative juridical approach is used to examine statutory regulations, legal doctrine, and theories relevant to restorative justice. Meanwhile, a sociological juridical approach is applied to understand how restorative justice is implemented in practice and how the community and law enforcement officials respond to this approach.

1. Data source

This research uses primary and secondary data sources.

- a. Primary data sources, namely data obtained directly from field research through interviews with law enforcement officials (judges, prosecutors and police), legal practitioners, and communities involved in implementing restorative justice.
- b. Secondary data sources, namely data obtained from literature studies, include related laws and regulations, court decisions, law books, scientific journals, and other documents relevant to this research.

2. Data Collection Techniques

- a. Data collection techniques in this research were carried out through two main methods, namely literature study and interviews. A literature study was conducted to analyze regulations and theories related to restorative justice, while interviews were conducted to obtain views from legal experts and justice system actors regarding the implementation of this concept.
- b. After the data was collected, the analysis technique used was qualitative analysis with descriptive-analytical methods. The data obtained is analyzed systematically to see the relationship between legal theory, existing regulations and practice in the field, so that it can provide applicable recommendations for the development of restorative justice-based criminal law concepts in Indonesia.

3. Research Methodology Diagram

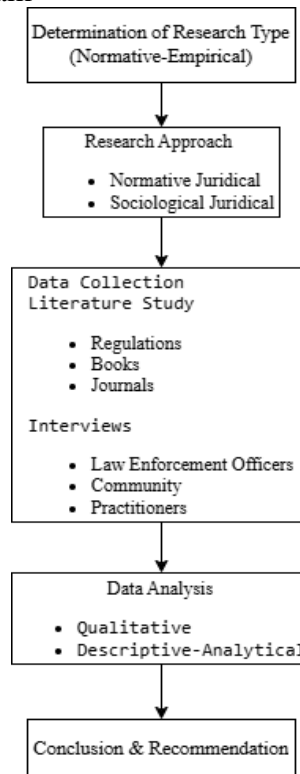


Figure 1. Research Methodology Flow Diagram

Information

- a. Determining the Type of Research: The first step is to determine the type of research, whether normative or empirical.
- b. Research Approach: After the type of research has been determined, the next step is to choose a research approach, namely normative juridical or sociological juridical.
- c. Data Collection:
 - 1) Literature Study: Conducting research by collecting data from written sources such as statutory regulations, books and scientific journals.
 - 2) Interview: Collecting data directly from sources such as legal officials, the public and practitioners relevant to the research topic.
- d. Data analysis:
 - 1) Qualitative: Analyzing non-numerical data, such as text, interviews, or documents, to find patterns, themes, or meaning.
 - 2) Descriptive-Analytical: Explain and analyze data in depth to answer research questions and identify relationships between variables or phenomena.
- e. Conclusion & Recommendations:
 - 1) Conclusion: Conclude the research results based on the data analysis that has been carried out.

Recommendations: Provide relevant suggestions or recommendations based on research findings, whether for academic, policy or practical purposes.

RESULT AND DISCUSSION

1. Analysis of Criminal Law Policy in Indonesia

a. Evaluation of the Effectiveness of the Conventional Sentencing System

The conventional criminal system in Indonesia is still oriented towards a retributive approach which emphasizes punishment as a form of retaliation against criminals. This approach aims to provide a deterrent effect for perpetrators as well as serve as a warning to the public not to commit similar crimes. However, in practice, the effectiveness of the conventional punishment system is still questionable. One of the main problems is the overcapacity of correctional institutions (prisons) due to the large number of prison sentences handed down, including for minor crimes. (Mulyadi et al., 2024) This condition results in suboptimal training of prisoners and increases the possibility of negative interactions between them, which in turn can increase the recidivism rate. In addition, a criminal system that only focuses on punishment often ignores the rights of victims, who should receive protection and recovery due to the impact of the crimes they experience. With these various weaknesses, a more effective alternative is needed in dealing with criminals, one of which is through a restorative justice approach.

b. Case Study of the Implementation of Restorative Justice in Indonesia

In Indonesia, the application of the concept of restorative justice has begun to be applied in several cases, especially in cases involving children, minor crimes, and certain cases that allow for resolution outside of litigation. One example of the implementation of restorative justice is in the Juvenile Criminal Justice System which is regulated in Law no. 11 of 2012, where diversion is implemented as an effort to avoid imprisoning children who commit criminal acts. Apart from that, the restorative justice policy has also been implemented by the National Police of the Republic of Indonesia through National Police Chief Regulation no. 8 of 2021, which regulates the resolution of certain criminal cases through a mediation mechanism between the perpetrator, victim and the community. (K et al., 2025) Several concrete cases show that this approach is more effective in creating justice for all parties, reducing the burden on the judiciary, and preventing long-term negative impacts due to disproportionate imprisonment. Nevertheless, the implementation of restorative justice in Indonesia still faces various challenges, such as limited regulations that regulate it comprehensively, differences in perceptions among law enforcement officials, and resistance from the public who still believe that criminal punishment must take the form of retribution. Therefore, further strengthening of regulations and outreach is needed so that the restorative justice approach can be adopted more widely in the Indonesian criminal justice system.

2. The Urgency of Developing the Concept of Restorative Justice

(Jaka Prima, 2024) The development of the concept of restorative justice in Indonesia is becoming increasingly important as an alternative to the conventional criminal system which is still oriented towards punishment. This approach provides solutions to various problems, such as overcapacity in correctional institutions, high recidivism rates, and lack of recovery for crime victims. By emphasizing dialogue, reconciliation, and the responsibility of perpetrators towards

victims, restorative justice not only reduces the burden on the criminal justice system, but also creates balance in restoring the rights of all parties involved. In addition, this approach is more in line with Indonesian cultural values which prioritize deliberation and peaceful conflict resolution. Therefore, strengthening regulations and implementing restorative justice needs to be carried out immediately in order to create a fairer and more effective legal system.

a. Benefits of implementing restorative justice in the criminal justice system

The application of restorative justice in the criminal justice system provides various advantages compared to a retributive approach that only focuses on punishing the perpetrator. One of the main benefits is that it provides space for victims, perpetrators and the community to be involved in resolving cases more fairly and constructively. Through mediation and dialogue mechanisms, restorative justice enables more humane conflict resolution and reduces the negative impacts of the conventional criminal system. Apart from that, this approach also contributes to reducing the burden on the justice system, reducing recidivism rates, and saving state resources used for detention and trial of minor cases.

Another advantage is that it creates a balance between the rights and interests of the victim and the responsibility of the perpetrator. In the conventional criminal system, more focus is placed on punishing the perpetrator, while the needs of the victim are often neglected. With restorative justice, victims can receive compensation, a sincere apology, and better psychological support. (Harwanto, 2016) In addition, restorative justice is more in line with Indonesian social and cultural values which prioritize conflict resolution through deliberation and consensus, so this approach is more acceptable to the wider community.

b. Impact on perpetrators, victims and society

1) Impact on the Offender

For perpetrators, the implementation of restorative justice provides an opportunity to take responsibility for their actions without having to serve a prison sentence which has the potential to have long-term negative impacts. In the conventional criminal system, offenders who enter correctional institutions often experience social stigma, find it difficult to find work after release, and are even at risk of becoming more criminal due to the influence of the prison environment. With a restorative approach, the perpetrator is given the opportunity to make amends directly to the victim and society, for example through compensation, apology, or social work. This helps them to better understand the consequences of their actions and encourages more positive behavioral changes. Apart from that, this approach is also more effective in preventing recidivism, because perpetrators are given space to improve themselves in a more supportive social environment.

2) Impact on Victims

One of the main weaknesses of the conventional criminal system is the lack of attention to the needs of victims. In many cases, victims are only used as witnesses in the judicial process without receiving proper rights to recovery. The application of restorative justice gives victims a more active role in the case resolution process, where they can convey their feelings, needs and hopes directly to the perpetrator. Through dialogue facilitated by mediators, victims can obtain more effective recovery, both in the form of material compensation and psychological support. Apart from that, direct interaction with the perpetrator can also help victims gain clarity on the motives and reasons behind

the crime they experienced, thereby reducing trauma and speeding up the emotional healing process.

3. Impact on Society

From a societal perspective, restorative justice has a positive impact in maintaining social harmony and reducing the burden on the criminal justice system. In the conventional system, handling cases through litigation often creates tension and deepens conflicts between individuals or groups. With a restorative approach, case resolution is carried out through deliberation which allows for reconciliation between the parties involved. This helps prevent greater conflict and strengthens social cohesion within the community.

(Khoirunisa, 2022) Apart from that, restorative justice also helps reduce the number of people in prisons, which has been one of the main problems in the penal system in Indonesia. As the number of prisoners decreases, state budgets previously used for prisoner maintenance can be diverted to more effective rehabilitation and crime prevention programs. The community will also be more involved in the case resolution process, thereby creating collective awareness regarding the importance of social responsibility and more peaceful conflict resolution.

4. Strategy for Implementing Restorative Justice in Indonesian Criminal Law

a. Reform of criminal law regulations

Reforming criminal law regulations is an important step in ensuring a legal system that is fairer, more effective and oriented towards recovery, not just punishment. Currently, the criminal system in Indonesia is still dominated by a retributive approach, which places more emphasis on giving punishment to perpetrators without considering more constructive resolution efforts. Therefore, reform is needed in various aspects, starting from revising laws and regulations to strengthening policies that encourage the implementation of restorative justice.

One of the reform steps that has been taken is the ratification of the new Criminal Code (Law No. 1 of 2023) which will come into effect in 2026, where there are several provisions that open up more space for a restorative justice approach. Apart from that, sectoral regulations such as National Police Chief Regulation no. 8 of 2021 has regulated the resolution of certain cases through a restorative mechanism. However, existing regulations still need to be strengthened so that restorative justice can be applied more widely, not only in cases of children and minor crimes, but also in other cases where resolution without imprisonment is possible.

(Pokhrel, 2024) Regulatory reform must also include harmonization of rules between various law enforcement agencies such as the police, prosecutors and courts, so that the implementation of restorative justice can run effectively. Apart from that, there needs to be clearer standards in determining the types of cases that can be resolved restoratively as well as a more structured mediation mechanism, involving the role of the community and victims in every process.

b. The role of law enforcement institutions in implementing the concept of restorative justice

The success of implementing restorative justice is very dependent on the active role of law enforcement institutions, including the police, prosecutor's office, courts and correctional institutions. Each institution has a responsibility to ensure that a restorative approach is not just a policy on paper, but is actually implemented in practice.

1) Police

The police are the first institution to handle criminal cases, so they have an important role in determining whether a case can be resolved through a restorative approach. Based on Perkap no. 8 of 2021, the police can resolve

certain criminal cases through mediation between the victim and the perpetrator by considering aspects of justice for both parties. Therefore, the police need to receive special training in mediation and a humanist approach in resolving legal conflicts.

2) Prosecutor's Office

Prosecutors have authority in the prosecution process, so the prosecutor's role is very important in determining whether a case can be transferred to a restorative route before it reaches court. In some countries, prosecutors have discretionary policies that allow for termination of prosecution on grounds of legal expediency and public interest. Indonesia also needs to adopt a similar mechanism so that prosecutors can be more flexible in enforcing recovery-based justice.

3) Court

In the justice system, judges need to be given the freedom to hand down decisions based on restorative justice, especially in cases that do not require a prison sentence. The judge can direct the resolution of the case through peace between the victim and the perpetrator, compensation, or social work as a form of accountability. Therefore, stricter regulations are needed so that judges have a strong legal basis in implementing restorative decisions.

4) Correctional Institution

For perpetrators who have been sentenced, correctional institutions can also apply the principles of restorative justice in social development and reintegration programs. Programs such as social work, rehabilitation, and reconciliation with victims can be part of this approach so that perpetrators can return to society better.

Apart from that, coordination between these institutions must also be strengthened so that the restorative process can run synergistically and effectively. Socialization to the community, training for legal officers, and monitoring policy implementation are important steps in ensuring that the concept of restorative justice is truly implemented optimally.

c. A restorative justice model that is appropriate to the social and legal context in Indonesia

The application of restorative justice in Indonesia must be adapted to the applicable social, cultural and legal context, so that this approach can be widely accepted by society and is effective in creating justice. The model applied must take into account national legal principles as well as social values that have developed in Indonesia, such as the culture of mutual cooperation, deliberation and local wisdom in resolving conflicts.

The following are several models of restorative justice that can be implemented in Indonesia:

1) Diversion in the Juvenile Criminal Justice System

This model has been implemented through Law no. 11 of 2012 concerning the Juvenile Criminal Justice System, which allows juvenile criminal cases to be resolved outside the court process through a diversion mechanism. This process involves families, law enforcement officials and the community to find the best solutions oriented towards the recovery of children and victims. This model can be extended to the adult offender category in certain cases that meet restorative criteria.

2) Penal Mediation by the Police and Prosecutor's Office

This model refers to the mechanism for resolving cases by legal officials at the investigation and prosecution levels. The police and prosecutors can act as mediators to bring together the perpetrator and the victim to reach an agreement that benefits both parties. In the Indonesian context, this model can be further optimized by involving community leaders, ulama, or traditional leaders in the mediation process.

3) Strengthening the Role of Traditional Institutions and Local Wisdom

Many communities in Indonesia still adhere to customary law in resolving social conflicts, including minor criminal cases. Several regions such as Papua, Kalimantan and Nusa Tenggara have implemented traditional justice mechanisms, where conflicts are resolved through deliberation between the parties involved. This model can be integrated with the national legal system to have stronger legitimacy.

4) Restorative Justice at the Correctional Stage

This model can be applied to prisoners who are serving sentences by allowing them to participate in reconciliation programs with victims or the community. This approach aims to improve social relations and assist the reintegration process after release from prison.

So that these models can be implemented optimally, there needs to be support in terms of regulations, outreach to the community, and training for legal officers in understanding the principles of restorative justice. In this way, Indonesia can build a justice system that is fairer, more effective and in accordance with the social values that develop in society

CONCLUSION

This research shows that the application of restorative justice in the Indonesian criminal law system has great potential to create justice that is more inclusive, humanist and effective compared to the conventional retributive approach that has dominated the criminal justice system. A restorative approach does not only focus on punishing the perpetrator, but also provides opportunities for victims to obtain more meaningful recovery and involves the community in more constructive conflict resolution. To strengthen restorative justice, it is recommended that the government immediately reform criminal law regulations to better accommodate restorative case resolution, expand the scope of diversion for various types of possible cases, and provide clearer guidance for law enforcement officials in implementing this approach consistently and fairly. In addition, there is a need to increase the capacity of police, prosecutors and judges through special training on penal mediation, facilitation of restorative dialogue, as well as an in-depth understanding of the psychological and social impact on victims and perpetrators. Community support and synergy between law enforcement agencies must also be strengthened so that the restorative approach can be implemented widely and sustainably.

The implication of this research for the formation of criminal law regulations and practices in the future is the creation of a justice system that not only punishes perpetrators, but also provides space for victims and the community to actively participate in conflict resolution, so that it is hoped that it can reduce recidivism rates, reduce overcapacity in correctional institutions, increase the efficiency of the justice system, and build stronger and more sustainable social harmony.

REFERENCES

- Akbar, M. F. (2021). Keadilan Restoratif Dalam Sistem Peradilan Pidana Sebagai Perwujudan Nilai-Nilai Pancasila. *Justitia et Pax*, 37(1), 85–101.
<https://doi.org/10.24002/jep.v37i1.3821>
- APRIANTO, R. A. (2023). *Implementasi Restorative Justice Pada Tahap Penyelidikan Di Kepolisian Resor Kendal*.
http://repository.unissula.ac.id/33270/%0Ahttp://repository.unissula.ac.id/33270/2/20302000205_fullpdf.pdf
- Diansyah, S. F. (2022). Peran Jaksa Dalam Penerapan Kebijakan Diversi Bagi Anak Pelaku Tindak Pidana (Studi Kasus di PN Ungaran Kab. Semarang). *Tesis Program Magister Fakultas Hukum Universitas Islam Sultan Agiung*, 31–34.
- Ferdiles, L. (2019). Reformasi Hukum dalam Penerapan Restorative Justice dalam Sistem Pidana Nasional. *Lex Publica*, 6(1), 25–31. <https://doi.org/10.58829/lp.6.1.2019.25-31>
- Harwanto, E. R. (2016). Keadilan Restorative Justice. In *Cv. Laduny Alifatama*.
- Hendrawati. (2017). No 主観的健康感を中心とした在宅高齢者における健康関連指標に関する共分散構造分析Title. In *Jurnal Akuntansi* (Vol. 11).
- Jaka Prima. (2024). Penerapan Restorative Justice Dalam Sistem Peradilan Pidana Anak. *JOSH: Journal of Sharia*, 3(01), 40–45. <https://doi.org/10.55352/josh.v3i01.702>
- K, A. T., Redi, A., & Borobudur, U. (2025). *Jurnal Retentum Reformasi Sistem Hukum Pidana di Indonesia Melalui Restorative Justice Untuk Pemulihan Korban dan Pelaku*. 358–369.
- Khoirunisa, D. (2022). Mediasi Penal Dalam Peradilan Pidana Di Indonesia. *Jurnal Hukum Das Sollen*, 7(1), 192–200. <https://doi.org/10.32520/das-sollen.v7i1.2031>
- Luftia Gunawan, Dian Ekawaty Ismail, & Suwitno Yutye Imran. (2023). Pendekatan Restorative Justice Terhadap Tindak Pidana Pencurian Oleh Pelaku Dibawah Umur. *Jurnal Hukum, Politik Dan Ilmu Sosial*, 3(1), 01–25.
<https://doi.org/10.55606/jhpis.v3i1.3155>
- Mulyadi, E. S., Aziz, H., & Humulhaer, S. (2024). *TINJAUAN YURIDIS PENERAPAN RESTORATIVE JUSTICE TANGGA PADA TINGKAT PENYIDIKAN DI POLRES METRO*. 5(2).
- No, V., Juni, J., & Pramita, S. A. (2025). *Penerapan Restorative Justice Dalam Penologi Modern : Alternatif Pemidanaan Di Era Reformasi Hukum*. 2(2), 899–912.
- Pokhrel, S. (2024). No TitleEAENH. *Ayan*, 15(1), 37–48.

Purba, R. J. (2023). *Rekonstruksi Regulasi Restorative Justice Dalam Sistem Peradilan Pidana Indonesia Berbasis Keadilan Pancasila.*

<http://repository.unissula.ac.id/31002/%0Ahttp://repository.unissula.ac.id/31002/1/10302000068.pdf>

Sunarto, S. H. (n.d.). *Monograf Dinamika Reformasi Hukum Di Indonesia Mengenang Satu Tahun Almarhum.*