

# Moral Authority of Procedure and Recidivism: Reassessing the Limits of Restorative Justice in Criminal Law

Dwi Belqis Apriliarista Devi, Alfons Zakaria  
Universitas Brawijaya, Indonesia

[dwibelqis@gmail.com](mailto:dwibelqis@gmail.com)

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## ABSTRACT:

**Background:** Restorative justice is intended to repair harm and offer a credible alternative to routine punitive responses, yet its practice is often narrowed by procedural eligibility rules that come to be treated as the measure of justice itself. A recurring illustration is the blanket exclusion of repeat offenders from restorative pathways.

**Aims:** This article re-examines whether recidivism should legitimately limit access to restorative justice, and asks whether such exclusions align with restorative aims or instead reflect a proceduralist bias that weakens equality before the law and victim-oriented resolution.

**Methods:** Using a normative juridical design, the study combines statutory and conceptual approaches. It analyzes primary legal instruments governing restorative justice across the stages of investigation, prosecution, and adjudication, and reads them against doctrinal interpretation and key theoretical discussions on procedural justice, substantive justice, and restorative justice.

**Result:** The findings suggest that recidivism-based restrictions frequently function as gatekeeping devices that privilege formal order and institutional convenience over contextual judgment about harm, accountability, and meaningful victim participation. As procedure is elevated into moral legitimacy, restorative justice risks being reduced to a compliance model, while the aims of reintegration and the prevention of recurrence receive limited space.

**Conclusion:** Recidivism should not operate as an automatic disqualifier for restorative justice. A more principled framework would shift from rigid procedural exclusions to case-sensitive assessment centered on harm repair, responsibility, and social restoration.

**Keyword:** criminal law reform; equality before the law; procedural justice; recidivism; restorative justice;

## INTRODUCTION

Restorative justice has gained increasing attention in criminal law as an approach that emphasizes harm repair, victim participation, and meaningful offender accountability beyond conventional punitive responses. This approach is often promoted as a response to the limitations of punitive justice systems, which frequently fail to resolve conflicts substantively and may even exacerbate the social consequences of crime (Kubrin & Tublitz, 2022; Nafid et al., 2024). However, in the process of its institutionalization, restorative justice has not developed solely as a practice of repair but has become embedded within procedural frameworks that determine the eligibility of cases and subjects for access to restorative mechanisms. One of the most prominent restrictions is

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the exclusion of repeat offenders, which is often treated as a sufficient reason to deny access to restorative justice. This practice reflects a shift in orientation from assessing harm and social context toward administrative selection based on offending history.

A substantial body of prior research has examined restorative justice from conceptual, institutional, and policy perspectives (Maggiolo et al., 2025; Robinson et al., 2021). (Wahid & Sulistiyono, 2025) conceptualizes restorative justice as a means of achieving substantive justice, arguing that justice should not be measured solely by procedural compliance. At the level of implementation, (Rony et al., 2023) discusses restorative justice as an alternative mode of criminal case resolution operating within the dynamics of the criminal justice system, highlighting the role of law enforcement institutions in shaping its scope of application. In the context of prosecutorial policy, link restorative justice to the principle of *ultimum remedium* through Indonesian Prosecutorial Regulation No. 15 of 2020, illustrating how procedural rules function as the primary gateway to restorative resolution. Meanwhile, research by Reni Aryani and Hudi Yusuf (2024) examines the effectiveness of restorative justice in reducing recidivism, positioning repeat offending as an indicator of policy success or failure (Hawkes et al., 2024; Weir et al., 2021). Taken together, these studies enrich the understanding of restorative justice while simultaneously revealing the strong influence of procedural criteria in shaping its practical boundaries.

Despite the significant growth of restorative justice scholarship, an important analytical gap remains, particularly concerning the normative foundations of excluding repeat offenders (Schiff & Green, 2025; Zakszeski & Rutherford, 2021). Most existing studies tend to accept recidivism as a technical and administrative eligibility criterion without critically examining its underlying moral justification. Repeat offending is often treated as a reasonable and unproblematic ground for denying access to restorative justice, as if such a criterion were neutral by nature. Yet this restriction directly limits the principle of equality before the law and shifts the orientation of restorative justice away from harm repair toward procedural gatekeeping (Kirkwood, 2022; Weimann Saks et al., 2025). To date, relatively few studies have systematically examined recidivism as an expression of proceduralism, in which procedure not only regulates process but also claims moral authority in determining who is deemed deserving of justice.

Building on this gap, the present study is important because it offers a critical reading of the relationship between procedure and substantive justice in restorative justice practices (Lodi et al., 2022; Suzuki & Yuan, 2021). When procedural requirements are treated as final determinants of eligibility, restorative justice risks being reduced to an administrative mechanism that prioritizes order and certainty, while the goals of harm repair, victim needs, and offender reintegration become secondary. By focusing on recidivism as an analytical entry point, this article seeks to demonstrate how procedure can transform into an implicit tool of moral judgment without adequate normative reflection (Herman & Pogarsky, 2022; Sellers & Arrigo, 2022). This approach also opens space for reassessing the limits of restorative justice in a manner that remains faithful to its foundational principles.

This study aims to reassess recidivism as an exclusionary criterion in the application of restorative justice within criminal law by examining its normative foundations and implications for the principle of equality before the law (Anderson et al., 2025a; Fulham et al., 2025a). The article

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advances the argument that treating recidivism as an automatic barrier reflects the dominance of proceduralism, which prioritizes procedural certainty and order over individualized and contextual assessment. Through this analysis, the study seeks to offer a more principled framework for understanding the limits of restorative justice, one in which procedure is no longer treated as a moral authority that forecloses substantive avenues of repair.

### METHOD

#### Research Design

This article uses a normative juridical design grounded in doctrinal and conceptual legal analysis. The design is chosen because the study is not concerned with measuring program outcomes but with examining how procedural eligibility rules in criminal law can take on moral force, particularly when recidivism is used to deny access to restorative justice. The doctrinal component focuses on interpreting the structure, meaning, and implications of relevant legal provisions and policy guidelines. The conceptual component engages restorative justice theory alongside debates on procedural justice and substantive justice to clarify what is at stake when procedure becomes a gatekeeper of moral worth. Taken together, these approaches allow the study to reassess recidivism as a normative boundary rather than a merely administrative condition.

#### Participant

The study does not involve human participants or fieldwork. Its analytical objects are legal and policy texts, as well as scholarly arguments that shape and justify restorative justice practices in criminal law. In this sense, the “units” examined are norms and the reasoning embedded within them, including how eligibility, responsibility, and legitimacy are framed through procedural criteria. This orientation is consistent with normative legal research, where the primary focus is on legal meaning, coherence, and justification rather than on respondent-based evidence.

#### Instrument

The main instruments are interpretive and conceptual tools commonly used in legal scholarship. Doctrinal interpretation is applied to read legal provisions and policy guidelines systematically, with attention to their internal logic and operative requirements. Conceptual analysis is used to refine and distinguish key terms such as restorative justice, recidivism, proceduralism, and equality before the law. To maintain consistency across sources, the study also uses a structured document review framework to record how different instruments define eligibility and how they implicitly attribute moral significance to procedural categories.

#### Data Analysis

Analysis is conducted through qualitative normative evaluation that combines interpretation and justification. First, the study identifies how recidivism is positioned within restorative justice frameworks as an exclusionary condition and maps the procedural steps through which that exclusion operates. Second, the relevant legal and policy materials are interpreted to establish the doctrinal basis and scope of such exclusions. Third, these findings are evaluated against core normative commitments of restorative justice, including harm repair, victim participation, offender

accountability, and equality before the law. Finally, the analysis synthesizes doctrinal and conceptual insights to assess whether exclusion rules function as neutral administrative filters or as implicit moral judgments that redefine the limits of restorative justice. The sequence of this analytical process is summarized in Figure 1, which is included to make the logic of the method transparent and replicable.



**Figure 1.** Flowchart of the Normative Research Process

## RESULTS AND DISCUSSION

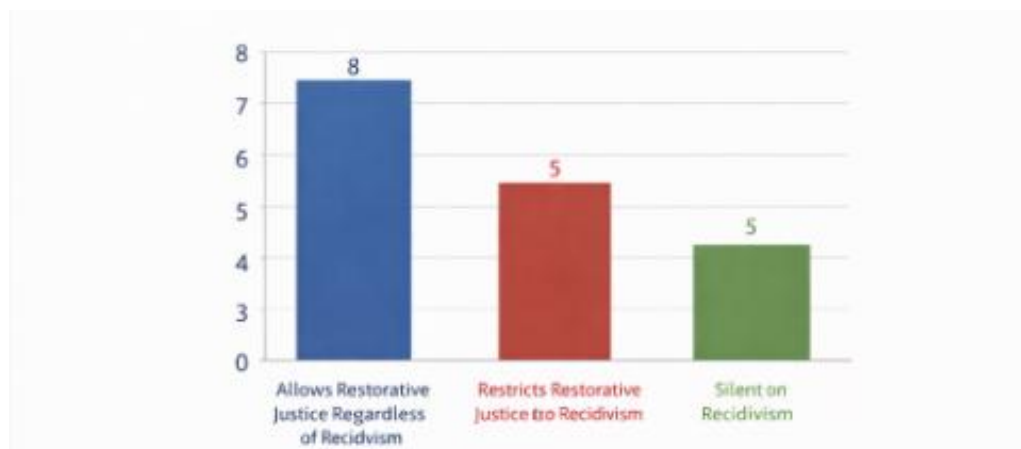
### Result

The normative examination shows that recidivism is repeatedly framed as a decisive eligibility boundary in restorative justice, operating through procedural requirements that determine who may enter a restorative pathway. In this configuration, repeat offending functions as more than a factual criminal history. It becomes a shorthand for presumed non suitability, allowing procedural rules to work as a mechanism of moral sorting. The practical consequence is that restorative justice is not simply administered through procedure, it is also limited by procedure, with eligibility language performing a gatekeeping role that displaces contextual assessments of harm, repair, and responsibility. The central relationship identified by this analysis is captured in Figure 2, which visualizes how procedural eligibility rules transform recidivism into an automatic barrier and, in doing so, redirect restorative justice from substantive repair toward procedural legitimacy.



**Figure 2.** Conceptual model of procedural exclusion in restorative justice  
Insert conceptual diagram image here.

A further result concerns the way exclusion is produced across a set of legal and policy instruments rather than through a single uniform rule. The documents analyzed distribute authority to exclude by framing recidivism in different ways, sometimes explicitly as a disqualifying condition, sometimes indirectly through broader eligibility formulations, and sometimes through open textured criteria that enable discretionary filtering at the implementation level. This variation does not dilute exclusion. It stabilizes it by making gatekeeping appear administratively ordinary across institutional settings. Figure 3 presents a structured categorization of these instruments according to how they position recidivism. The figure should be read as an analytical mapping of normative stances derived from doctrinal interpretation, not as a numerical summary of case outcomes.



**Figure 3.** Analytical categorization of legal instruments by stance toward recidivism  
Insert bar chart image here.

To make the doctrinal findings transparent, Table 1 summarizes how selected instruments situate recidivism within restorative justice eligibility and what kind of exclusion logic follows from that positioning. The table highlights that exclusion is rarely defended in explicit moral terms.

Instead, it is embedded in procedural language that treats restriction as a matter of orderly administration, thereby allowing a normative judgment to travel under the cover of technical criteria.

**Table 1.** Mapping of legal and policy instruments and the operational role of recidivism in restorative justice eligibility

Instrument or source	Institutional stage	How recidivism is positioned	Exclusion logic	Effect on access
Prosecutorial Regulation No. 15 of 2020	Prosecution	Offending history incorporated into procedural eligibility	Categorical or conditional	Access narrowed through procedural gatekeeping
Scholarly analysis of implementation	System wide practice	Discretion emphasized in applying eligibility criteria	Discretionary filtering	Exclusion enabled through institutional interpretation
Doctrinal account of substantive justice	Normative benchmark	Procedure critiqued as insufficient proxy for justice	Critical benchmark	Reveals tension between eligibility and restorative aims
Policy oriented discussion on recidivism reduction	Policy discourse	Recidivism treated as performance indicator	Outcome oriented reasoning	Exclusion normalized as administratively justified

Where Table 1 maps how eligibility is structured, Table 2 sets out the normative consequences of recidivism based exclusion when assessed against core restorative justice commitments. The matrix indicates that automatic exclusion weakens the priority of harm repair, narrows the space for victim participation, and replaces individualized accountability with categorical judgments. The most consequential tension concerns equality before the law, not because the rules openly deny equality, but because they introduce a hierarchy of deservingness through procedural categories. In this sense, the exclusion of recidivists operates as a normative boundary that reshapes what restorative justice can mean in criminal law.

**Table 2.** Normative evaluation matrix, recidivism based exclusion and restorative justice principles

Restorative justice principle	What the principle entails	Effect of recidivism based exclusion	Tension identified
Harm repair	Repairing concrete harm takes priority	Focus shifts to offender history	Repair subordinated to eligibility
Victim participation	Victim voice shapes resolution	Victim interest can be bypassed by exclusion	Participation constrained by procedure
Offender accountability	Responsibility is contextual and relational	Repeat offending treated as fixed disqualifier	Accountability reduced to categorization
Equality before the law	Differentiation must be justified transparently	Hierarchy introduced via procedural labels	Equality constrained by gatekeeping
Individualized assessment	Case by case evaluation of context	Exclusion automated rather than contextual	Restorative logic displaced by proceduralism



## Discussion

The analysis undertaken in this study highlights a fundamental shift in the way restorative justice is positioned within contemporary criminal law (Procter-Legg et al., 2024; Widiartana et al., 2025). Procedure, which is conventionally understood as a neutral means of organizing legal processes, increasingly assumes a decisive normative role (Amstutz et al., 2021; Miehe et al., 2022). Through eligibility rules, particularly those tied to recidivism, procedure comes to define not only how justice is delivered but also who is deemed worthy of it. This finding resonates with the concern raised in the initial document that procedural compliance has gradually come to substitute for deeper moral evaluation, allowing justice to appear complete once formal requirements are satisfied.

The exclusion of repeat offenders illustrates this transformation with particular clarity (Bright et al., 2024; Syasyila et al., 2024). By treating recidivism as an automatic disqualifier, restorative justice is effectively subordinated to procedural categorization (Fulham et al., 2025). What is presented as a technical condition of eligibility functions in practice as a moral judgment about character and deservingness. This shift has significant implications for the normative identity of restorative justice. Instead of operating as a space for dialogue, accountability, and contextual repair, restorative justice becomes a selectively granted option, accessible only to those who fit within administratively acceptable profiles.

This procedural orientation sits uneasily with the philosophical foundations of restorative justice (Henham, 2022; Kong et al., 2025). At its core, restorative justice rejects abstract categorization in favor of relational assessment (Hazrati & Heffron, 2021). Harm is understood as situated, responsibility as dialogical, and accountability as a process rather than a status. Automatic exclusion based on prior offending disrupts this logic. Recidivism is treated as a fixed indicator of moral failure, rather than as one element among many in a complex moral and social narrative. As a result, the possibility of change, learning, and renewed accountability is foreclosed before restorative engagement can even begin.

The attraction of recidivism as a screening criterion is not difficult to understand (Bengtson & Giraldi, 2023; Kamorowski et al., 2022). Within policy and institutional discourse, recidivism is often mobilized as a measure of risk or effectiveness (Garland, 2021; Jiang, 2024). Its apparent objectivity makes it administratively appealing, particularly in systems under pressure to manage caseloads efficiently. However, this study shows that when such logic is transferred into restorative justice without careful normative scrutiny, it produces consequences that are difficult to reconcile with restorative aims. Recidivism functions less as an empirical descriptor than as a moral shorthand, enabling institutions to deny access to restorative processes without openly articulating the values that underpin such denial.

This dynamic has particular relevance for the principle of equality before the law (Lake et al., 2021; Rajamani et al., 2021). Formal equality may be preserved in the sense that the same procedural rule applies to all repeat offenders (Maguire et al., 2021; Sachoulidou, 2023). Substantive equality, however, is more demanding. It requires that distinctions in treatment be justified through reasons that are proportionate and morally defensible. The exclusion of recidivists often fails to meet this standard. Rather than being defended through explicit ethical reasoning, it is normalized through procedural repetition. Over time, this repetition creates a stratified moral landscape in which access

to restorative justice is unevenly distributed, not on the basis of harm or need, but on the basis of procedural classification.

The consequences of this stratification extend beyond offenders. Victims, whose interests are central to restorative justice, may find their willingness to engage rendered irrelevant by procedural barriers (Gang et al., 2024; Maglione, 2021). Opportunities for meaningful accountability and reintegration are similarly curtailed, not because they lack merit, but because they fall outside procedural eligibility. In this way, procedure does not merely regulate justice; it actively shapes whose voices are heard and whose experiences are acknowledged within the legal process.

It is important to stress that this critique does not amount to a rejection of procedure as such (Braun & Clarke, 2023; Joshi et al., 2025). Procedural rules play an indispensable role in safeguarding consistency, transparency, and protection against arbitrariness (Bagi & Towfiq, 2024; Bayer, 2022). Restorative justice itself relies on procedural structure to function credibly. The problem identified in this study arises when procedure is asked to perform moral work that exceeds its justificatory capacity. When procedural criteria are treated as morally decisive rather than administratively supportive, they risk distorting the ethical foundations of restorative justice rather than reinforcing them.

Seen in this light, the limits imposed on restorative justice through recidivism are not inherent to restorative justice as a normative framework (Widjajanto et al., 2025). They are products of its institutional embedding within a criminal justice system oriented toward classification, risk management, and control (Barlow & Walklate, 2021). As restorative justice is absorbed into this environment, its transformative aspirations are constrained by procedural logics that prioritize order and predictability. The result is a form of restorative justice that is conditional and selective, offering restoration only within narrowly defined procedural boundaries.

Reassessing the role of recidivism therefore requires a shift in perspective (Davies et al., 2022). Rather than functioning as an automatic exclusion, recidivism should be understood as a relevant but non-determinative factor within a broader evaluative framework (Dancy & Zalnieriute, 2025). Such an approach would allow decision makers to consider offender history alongside the nature of the harm, the perspectives of victims, and the prospects for genuine accountability. Under these conditions, procedure can reclaim its proper role as a facilitator of justice rather than its moral surrogate.

Ultimately, the contribution of this study lies in redirecting attention from questions of institutional efficiency to questions of normative legitimacy (Alam, 2021). By exposing how procedural rules acquire moral authority through the exclusion of recidivists, the analysis invites a more transparent and principled discussion about the boundaries of restorative justice (Anderson et al., 2025). If restorative justice is to remain faithful to its ethical commitments, its limits must be justified through explicit moral reasoning rather than concealed within procedural convenience. Only then can procedure support justice without quietly redefining it.

## **Implications**

The implications of this study are twofold. On the theoretical side, the analysis disputes the common view that procedure is merely technical by showing that eligibility rules, particularly those tied to recidivism, can become a vehicle of moral authority that quietly determines who counts as a proper subject of restorative justice. This matters because it reframes procedure as a normative force that can narrow the meaning of justice itself, not simply regulate its delivery, which is precisely the



kind of procedural substitution for moral evaluation highlighted in the initial document. On the practical side, treating recidivism as an automatic bar risks eroding the restorative orientation toward harm repair, victim involvement, and individualized accountability, since categorical exclusion closes the restorative space before the relevant moral and relational questions are even asked. Taken together, these implications suggest that restorative justice policy should resist using procedural eligibility as a proxy for moral worth and instead ensure that any limits on access can be defended through explicit, principled justification.

### **Limitations**

This article has limitations that follow from its design and scope. Because the study is normative and doctrinal, it relies on legal and policy texts and on conceptual reasoning rather than on field data, meaning it does not trace how recidivism-based exclusions are applied in day-to-day restorative decision making or how those exclusions are experienced by victims and offenders. The analysis therefore speaks to the justificatory structure and institutional logic of exclusion, not to measurable program outcomes or effectiveness indicators. In addition, the argument is developed within a particular legal and institutional setting and does not offer a systematic comparison across jurisdictions, so variations in legal culture, prosecutorial practice, and restorative architecture may produce different patterns of procedural authority elsewhere. These constraints do not undermine the central normative claim, but they limit what can be concluded about implementation effects and cross-system generalizability.

### **Suggestions**

Further research can strengthen and test the arguments advanced here in three directions. First, empirical work is needed to examine how eligibility rules are interpreted and operationalized by legal actors, whether discretion mitigates or reinforces categorical exclusion, and how victims' preferences and offenders' accountability are handled when recidivism is present. Second, comparative studies across jurisdictions would help identify alternative regulatory designs that preserve procedural safeguards without converting prior offending into an automatic moral boundary, thereby offering credible reform pathways. Third, continued normative scholarship should develop clearer criteria for distinguishing procedurally necessary limits from exclusions that function primarily as unexamined moral judgments, so that the boundaries of restorative justice are articulated transparently and defended on principled grounds rather than left to the quiet authority of procedure.

## **CONCLUSION**

This article concludes that the most persistent difficulty in institutionalizing restorative justice is not the lack of legal provisions, but the tendency of procedural requirements to take on moral authority, with recidivism often functioning as the clearest example of that shift. When repeat offending is treated as a categorical bar to restorative processes, procedure does more than regulate stages of case handling, it quietly decides who is considered eligible for restoration and, by extension, who is treated as deserving of a reparative form of justice. In practice, this proceduralism invites formal compliance to stand in for substantive moral reasoning, weakening the restorative promise of dialogue, victim participation, contextual accountability, and individualized assessment, while also troubling equality before the law because access becomes dependent on procedural status rather than the relational realities of harm. The argument advanced here is not that procedure should be

removed, but that its role should be put back in proper proportion, so that safeguards remain protective without becoming substitutes for moral judgment, and recidivism is approached as a relevant but not decisive factor to be weighed alongside the nature of the harm, the interests of victims, and the prospects for meaningful accountability, thereby allowing restorative justice to retain its normative integrity within criminal law.

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### AUTHOR CONTRIBUTION STATEMENT

Dwi Belqis Apriliarista Devi was responsible for the conceptualization of the study, formulation of the research questions, normative and doctrinal legal analysis, and preparation of the manuscript. The author also conducted the interpretation of findings and developed the core arguments presented in the article. Alfons Zakaria, S.H., LL.M. provided academic supervision throughout the research and writing process, offering critical feedback on the theoretical framework, legal reasoning, and overall coherence of the manuscript. All revisions were carried out by the author in response to supervisory input, and the final version of the manuscript was approved for submission.

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