

Reorientation of the Criminal Justice System Towards Restorative Justice in The Perspective of the New Criminal Code (KUHP)

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KEYWORDS

restorative justice; New Criminal Code; the criminal justice system; the purpose of the crime; Criminal Law Reform

ABSTRACT

The reform of criminal law through Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code) marks a paradigm shift in the Indonesian criminal justice system—from a retributive approach to a more humanistic and corrective one. This article aims to analyze the reorientation of the criminal justice system towards restorative justice from the perspective of the New Criminal Code, by placing the values of restoration, balance, and humanity as the main cornerstones of criminalization. In contrast to previous research, which generally positions restorative justice as limited to sectoral law enforcement policies or the discretion of the apparatus, this article emphasizes that the New Criminal Code has integrated the principles of restorative justice both normatively and structurally into the national criminal law system. The analysis was carried out using a normative and conceptual juridical approach to the purpose of punishment, sentencing guidelines, and the role of judges in imposing sentences, as stipulated in the New Criminal Code, and by comparing these with conventional criminal justice practices. The results of the study show that the New Criminal Code not only accommodates restorative justice as an alternative mechanism for case resolution but also establishes it as a philosophical orientation for the criminal justice system, which has implications for changing the perspectives of perpetrators, victims, and society. Thus, this reorientation requires consistent implementation by law enforcement officials so that the goals of criminal law reform can be achieved substantively.

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INTRODUCTION

The criminal justice system is the state's main instrument for enforcing the law and realizing justice. However, criminal law enforcement practices in Indonesia have often been seen as not fully reflecting substantive justice, particularly for victims, perpetrators, and the community (Hertanto et al. 2024; Wicaksono 2025). The system's orientation, which tends to be retributive and places imprisonment as the primary response to crime, has caused various structural problems, including the overcapacity of correctional institutions, the low rehabilitative effect of criminalization, and the lack of recovery for victims. This condition underscores the need for a reorientation of the criminal justice system toward a more humane and just approach (Gour 2026; Kanwel et al. 2024; Skotnicki 2019).

In this context, restorative justice has developed as an alternative paradigm that emphasizes the recovery of losses, dialogue, and the responsibility of perpetrators, as well as the restoration of social relationships disrupted by criminal acts (Omowon et al. 2024; Umbreit

2023). In Indonesia, the idea of restorative justice was previously implemented more broadly through sectoral policies, such as police, prosecutor, and Supreme Court regulations, as well as certain criminal procedure laws (Andriyani et al. 2026; Djanggih et al. 2023; Widjanto et al. 2025). This means that restorative justice has often been positioned as a pragmatic mechanism outside the formal criminal justice system, rather than as a fundamental principle that animates substantive criminal law.

The ratification of Law Number 1 of 2023 concerning the New Criminal Code (New Criminal Code) marks an important milestone in the reform of national criminal law. The New Criminal Code not only replaces the colonial *Wetboek van Strafrecht* but also introduces a fundamental change in the philosophy of punishment. The principle of balancing individual and societal interests, the recognition of punishment objectives that extend beyond retribution, and the granting of greater discretion to judges all indicate a shift toward a restorative approach within the criminal justice system (Maculan et al. 2020; Van Ness et al. 2022; O'Mahony et al. 2017; Prasad 2024; Singh 2025).

Several previous studies have examined restorative justice in the context of Indonesian criminal law. Rokhmad (2020) analyzed restorative justice as an alternative to reforming the criminal system in Indonesia, finding that restorative approaches have been implemented through various sectoral policies but lack integration into the material criminal law framework. Sutorius (2021) examined the paradigm of restorative justice in national criminal law reform, concluding that restorative values have been accommodated in several specific regulations but remain peripheral to the main criminal justice system. Marlina (2012) studied the development of diversion and restorative justice concepts in the juvenile criminal justice system in Indonesia, demonstrating that restorative approaches have been more progressively implemented for child offenders through specific legislation. Atmasasmita (2017) discussed the reconstruction of criminal law principles, emphasizing the need to balance individual and societal interests in criminal justice. Arief (2016, 2018) comprehensively analyzed criminal law policy and law enforcement issues, highlighting the limitations of retributive approaches and the potential for restorative justice to address structural problems in the criminal justice system.

Despite extensive discussions on restorative justice in Indonesia, previous studies have generally examined this concept within the context of sectoral law enforcement policies, criminal procedure regulations, or specific areas such as juvenile justice. These studies have not comprehensively analyzed restorative justice as a normative principle integrated into the material criminal law framework (Wilson et al. 2018). Consequently, the position of restorative justice in prior research has largely been as an alternative mechanism outside the formal system or as a discretionary tool for law enforcement officials, rather than as a fundamental philosophical orientation animating the entire criminal justice system.

This research offers novelty by analyzing the reorientation of the criminal justice system toward restorative justice through the perspective of the New Criminal Code (Law Number 1 of 2023). Unlike previous studies that positioned restorative justice as a sectoral policy or procedural mechanism, this article argues that the New Criminal Code has normatively and structurally integrated restorative justice principles into the national criminal law system. The analysis focuses on conceptual changes in the purpose of punishment, sentencing guidelines,

and the role of judges in imposing sentences as stipulated in the New Criminal Code, comparing them with conventional criminal justice practices. The findings demonstrate that the New Criminal Code not only accommodates restorative justice as an alternative to case resolution but also establishes it as a philosophical orientation for the criminal justice system, with significant implications for changing the perspectives of perpetrators, victims, and society. This reorientation requires consistent implementation by law enforcement officials so that the goals of criminal law reform can be achieved substantively. Thus, this article aims to make an academic contribution to the development of criminal law and to serve as a reference for policymakers and law enforcement officials in implementing the New Criminal Code consistently and fairly.

METHOD

This study employs a normative juridical legal research method with a prescriptive-analytical character, aiming to provide legal arguments for the reorientation of the criminal justice system toward restorative justice from the perspective of the New Criminal Code. This approach was chosen because the focus of the research is not only to explain the applicable legal norms but also to critically analyze the direction of criminal law policy and its normative implications for criminal justice practices in Indonesia.

The approaches used include the statute approach, the conceptual approach, and the case approach. The statute approach is conducted by systematically reviewing the provisions of Law Number 1 of 2023 concerning the Criminal Code, particularly norms related to the purpose of punishment, sentencing guidelines, types of crimes and actions, and the principle of balancing legal interests. The conceptual approach is used to analyze the concepts of restorative justice, modern criminality, and criminal law policy as developed in contemporary criminal law doctrine and theory. Meanwhile, the case approach is applied by examining court decisions that reflect the implementation of restorative values in criminal justice, as a reflection of the direction of criminal law reform.

The types and sources of legal materials used consist of primary, secondary, and tertiary legal materials. Primary legal materials include relevant laws and regulations, such as Law Number 1 of 2023 concerning the Criminal Code, Law Number 8 of 1981 concerning the Criminal Procedure Law, as well as court decisions that have permanent legal force and are relevant to the application of restorative-oriented punishment. Secondary legal materials consist of criminal law textbooks, national and international scientific journals, and previous research discussing restorative justice and criminal law reform. Tertiary legal materials are used in a limited manner, such as legal dictionaries and encyclopedias, to clarify certain terms and concepts.

Legal materials were collected through library research, which involved tracing laws and regulations, court decisions, and relevant scientific literature. All legal materials were then analyzed using normative qualitative analysis by interpreting legal norms systematically, grammatically, and teleologically. The results of the analysis are presented in a descriptive-analytical and argumentative manner to address the research problem and formulate prescriptive conclusions regarding the strengthening of restorative justice in the criminal justice system based on the New Criminal Code.

RESULTS AND DISCUSSIONS

Reorientation of Criminal Objectives in the New Criminal Code

The New Criminal Code through Law Number 1 of 2023 shows a fundamental shift in the formulation of penal goals. If the old Criminal Code emphasizes crime as a means of retribution for unlawful acts, the New Criminal Code normatively places punishment in a more comprehensive and balanced framework. The purpose of punishment is no longer solely directed at deterrence and retaliation, but also at restoring balance, improving the perpetrators, and protecting and restoring victims. This shift marks the entry of restorative justice values as a philosophical basis in material criminal law.

Conceptually, this orientation is in line with the development of modern criminal theory that rejects the dominance of the retributive approach. Restorative justice in the New Criminal Code is not positioned as a mechanism for resolving alternative cases alone, but as a principle that influences the direction of criminal policy. This can be seen from the formulation of penal goals and guidelines that provide space for judges to consider the impact of criminal acts on victims, perpetrators, and society proportionately. Thus, criminalization is expected to produce not only legal certainty, but also substantive justice.

The Position of Restorative Justice in the Criminal Code

One of the important reforms in the New Criminal Code is the strengthening of the role of judges through open and contextual sentencing guidelines. Judges are no longer rigidly bound by the type and severity of the crime, but are given the authority to thoroughly assess the concrete circumstances of the case. In this context, restorative justice is integrated through consideration of the losses caused, the inner attitude of the perpetrator, recovery efforts, and the possibility of restoring social relations between the perpetrator and the victim.

This approach reflects a shift from the offender-oriented justice model to stakeholder-oriented justice, where victims are no longer positioned as passive parties. The New Criminal Code opens up space for more proportionate and adaptive punishment, including through non-prison sentences and rehabilitative-oriented actions. Thus, restorative justice in the New Criminal Code has a stronger normative position than previous regulations which tended to be sectoral and administrative.

However, strengthening the discretion of judges also poses its own challenges, especially related to consistency of implementation. Without clear operational guidelines and integrated with the criminal procedure law, there is a risk of disparity in verdicts and legal uncertainty. Therefore, restorative justice as a normative principle needs to be supported by a systematic policy framework so as not to depend entirely on the subjectivity of law enforcement.

Implications for the Criminal Justice System

The reorientation of criminalization in the New Criminal Code has direct implications for the criminal justice system as a whole. Restorative justice requires a change in the perspective of law enforcement officials from the investigation stage to the criminal execution. A system that was previously oriented towards formal sentencing needs to shift towards a settlement that emphasizes the responsibility of the perpetrator and the recovery of the victim. In practice, this

requires synergy between material criminal law and criminal procedural law, so that the restorative values contained in the New Criminal Code can be implemented effectively.

From the perspective of criminal law policy, restorative justice in the New Criminal Code can be seen as an effort to overcome structural problems in the criminal justice system, such as the overcapacity of correctional institutions and the low effectiveness of prison sentences. However, the success of this reorientation is highly dependent on the institutional readiness and legal culture of law enforcement officials. Without paradigm shifts and capacity building, restorative justice has the potential to stop at the normative level with no real impact in practice.

Thus, the results of the analysis show that the New Criminal Code normatively has laid a strong foundation for the reorientation of the criminal justice system towards restorative justice. The main novelty lies in the recognition of restorative justice as a principle that animates criminal policy, not just an alternative instrument. The challenge ahead is to ensure the consistency and effectiveness of its implementation through harmonization of regulations, strengthening guidelines for law enforcement, and reforming the criminal procedure law in line with the spirit of the New Criminal Code.

CONCLUSION

The New Criminal Code through Law Number 1 of 2023 demonstrates a significant paradigm shift in the Indonesian criminal justice system, particularly in terms of criminal orientation. Criminalization is no longer understood solely as a means of retaliation but is directed toward efforts to restore the balance of interests among perpetrators, victims, and society. Within this framework, restorative justice attains a normative position as a principle that animates criminal law policy, reflected in the objectives and guidelines of sentencing as well as in the expansion of judicial discretion to impose more proportionate and contextual sentences. The results of the analysis show that the main novelty of the New Criminal Code lies in integrating the values of restorative justice into substantive criminal law, not merely as an alternative mechanism for case resolution outside the courts. This approach creates opportunities for non-custodial punishments and rehabilitative measures that are more responsive to the needs of victim recovery and offender rehabilitation, while potentially addressing structural problems within the criminal justice system, such as the overcapacity of correctional institutions and the low effectiveness of imprisonment.

However, this normative reorientation does not fully guarantee the realization of restorative justice in practice. The primary challenge lies in ensuring consistent implementation by law enforcement officials and achieving optimal harmonization between the New Criminal Code and the criminal procedure law. Therefore, it is essential to strengthen legal policies through the formulation of more operational sentencing guidelines, capacity building and paradigm shifts among law enforcement officials, and reform of the criminal procedure law in line with the restorative spirit of the New Criminal Code, so that substantive justice can truly be realized within the Indonesian criminal justice system.

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