

The Implementation of Restorative Justice in the Criminal Justice System Under the New Criminal Code

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Abstract

The reform of criminal law in Indonesia through Law Number 1 of 2023 concerning the Criminal Code introduces a new paradigm in the criminal justice system by emphasizing a more humane, proportional, and restorative approach. The conventional retributive model, which focuses primarily on punishment, is considered insufficient to address the needs of victims, perpetrators, and society, particularly regarding recovery of losses, conflict resolution, and restoration of social harmony. This study aims to examine the implementation of restorative justice within the criminal justice system under the new Criminal Code and identify the challenges faced in its application. This research employed a normative juridical method using statutory and conceptual approaches. Data were obtained through the analysis of primary legal materials, including laws and regulations, as well as secondary legal materials such as legal literature, journals, and expert opinions. The data were analyzed qualitatively through descriptive-analytical methods to examine legal norms and their relevance to restorative justice principles. The results indicate that restorative justice is reflected in various provisions of the new Criminal Code, including sentencing objectives, judicial pardon, alternative sanctions, and mechanisms for resolving cases outside judicial proceedings. However, its implementation still faces challenges, including regulatory harmonization, victim protection, potential abuse of discretion, limited understanding among law enforcement officials, and differences in community perceptions. The study concludes that restorative justice has significant potential to strengthen Indonesia's criminal justice system, but its effectiveness requires consistent regulations, institutional supervision, competent law enforcement resources, and protection of victims' rights.

INTRODUCTION

The reform of the national criminal law is one of the important agendas in the development of Indonesian law (Faisal & Rustamaji, 2021; Hiariej, 2021). For many years, Indonesia's criminal law system has been still influenced by colonial legacies (Dewi, 2021) that place criminals as a means of retribution against the perpetrators of criminal acts (Daly, 2020). This pattern is considered not to be fully able to answer the needs of modern society (Akbar, 2022), especially in certain cases that are actually more appropriate to be resolved through the recovery of losses, peace, and the restoration of social relations (Chandra, 2023). Therefore, the birth of Law Number 1 of 2023 concerning the Criminal Code is an important momentum to strengthen the orientation of national criminal law that is more humane, proportional (Fitriani, 2022), and in accordance with the values of Pancasila (Ginting & Wartoyo, 2025; Alam & Patmawanti, 2025). BPK noted that Law No. 1 of 2023 was drafted to replace the Criminal Code inherited by the colonial government of the Dutch East Indies and came into force after three years since it was promulgated.

One of the important ideas in the criminal law reform is restorative justice (Arief & Ambarsari, 2018). Restorative justice does not view criminal acts solely as a violation against the state, but also as a social event that causes harm to victims, perpetrators, families, and society (Daly, 2020). Therefore, the settlement of criminal cases is not enough just by imposing a penalty on the perpetrator, but must be directed to the recovery of the victim's losses, the accountability of the perpetrator, and the restoration of social harmony (Flora, 2023; Sihombing & Nuraeni, 2023). This approach is relevant in the context of Indonesia's criminal justice system, which has been facing problems such as the accumulation of cases (Sidabutar, 2024), overcapacity of correctional institutions (Triana & Erowati, 2022; Wani et al., 2024), and limited space for victim participation in criminal proceedings (Ramadhani et al., 2026).

The new Criminal Code not only serves as a codification of national criminal law, but also brings a change in the criminal paradigm. In the new Criminal Code, punishment is no longer understood solely as retribution, but also as a means of prevention, coaching, conflict resolution, balance restore, and creating a sense of security in society. Article 51 of the new Criminal Code emphasizes the purpose of punishment, including preventing criminal acts, socializing convicts through coaching, resolving conflicts due to criminal acts, restoring balance, and fostering remorse for perpetrators. This orientation shows that there is a common point between the purpose of punishment in the new Criminal Code and the principle of restorative justice (Branham, 2023; Maculan & Gil Gil, 2020; Pande et al., 2026).

The implementation of restorative justice in Indonesia has actually developed before the new Criminal Code came into effect. The Police already have the Regulation of the National Police of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice, while the Prosecutor's Office has the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Prosecutions Based on Restorative Justice. Both regulations show that law enforcement agencies have adopted a restorative approach at the investigation and prosecution stages. Prosecutor's Regulation Number 15 of 2020 is effective from July 22, 2020, while Police Regulation Number 8 of 2021 is effective from August 20, 2021.

However, the implementation of restorative justice still faces a number of problems. First, there is no uniformity of understanding between law enforcement officials regarding the limits of cases that can be resolved restoratively. Second, the potential for abuse of authority in the peace process is still open if it is not accompanied by a strong monitoring mechanism. Third, the victim's position is often not fully protected because the peace process can be influenced by power relations, social pressure, or economic inequality between the victim and the perpetrator. Fourth, it is necessary to harmonize the new Criminal Code, the Criminal Code, internal regulations of the police, prosecutor's office, and courts so that the application of restorative justice does not cause legal uncertainty.

Based on this description, this study examines how the implementation of restorative justice in the criminal justice system based on the new Criminal Code and the challenges of its application in law enforcement practices in Indonesia.

METHOD

This research used a normative juridical method, which is legal research that relies on the study of positive legal norms, legal principles, legal doctrines, and relevant legal concepts.

The approaches used are a legislative approach and a conceptual approach. The legislative approach is carried out by examining Law Number 1 of 2023 concerning the Criminal Code, Prosecutor's Regulation Number 15 of 2020, Police Regulation Number 8 of 2021, and other regulations related to the criminal justice system. Conceptual approaches are used to understand restorative justice theory, the purpose of punishment, and national criminal law reform.

The type of data used in this study is secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include laws and regulations related to the new Criminal Code and restorative justice. Secondary legal materials include books, scientific journals, research results, and the opinions of criminal law experts. Tertiary legal materials include legal dictionaries, legal encyclopedias, and other supporting sources.

The technique of collecting legal materials is carried out through literature studies. All legal materials are analyzed qualitatively by identifying legal norms, interpreting the meaning of legal provisions, and relating them to the concept of restorative justice in the criminal justice system. The analysis is carried out in a descriptive-analytical manner, namely describing the applicable legal arrangements, then analyzing the relevance, weaknesses, and challenges of its implementation.

RESULTS AND DISCUSSION

The Concept of Restorative Justice in the Criminal Justice System

Restorative justice is an approach to criminal case resolution that places victims, perpetrators, families, and the community as important parties in the case settlement process. In contrast to the retributive approach that emphasizes retribution, restorative justice focuses on restoration. In this approach, the success of the settlement of the case is not only measured by the imposition of the crime on the perpetrator, but also by the extent to which the victim's losses are recovered, the perpetrator is held accountable, and damaged social relations can be repaired.

In the conventional criminal justice system, victims are often only placed as witnesses. The state takes over criminal cases and processes perpetrators through formal mechanisms. As a result, the victim's need for recovery, apology, compensation, or assurance of non-recurrence is often not the main focus. Restorative justice is here to fill the void by providing space for victims to convey the losses experienced and for the perpetrators to take direct responsibility for their actions.

Restorative justice also does not mean removing the criminal responsibility of the perpetrators freely. Instead, this approach requires the perpetrator to admit the mistake, apologize, compensate for damages, repair the consequences of the crime, or carry out certain mutually agreed agreements. Thus, restorative justice is not a form of impunity, but a more substantive and restorative-oriented form of accountability.

Restorative Justice in the New Criminal Code

The new Criminal Code provides an important basis for strengthening restorative justice in the criminal justice system. Although the term "restorative justice" is not always explicitly stated in every provision, restorative substance can be found in sentencing objectives, sentencing guidelines, judge pardons, alternative crimes, and recognition of settlement of cases

outside the judicial process.

First, the purpose of punishment in the new Criminal Code shows a shift from a retaliatory approach to a restorative approach. Criminalization is directed to prevent criminal acts, foster perpetrators, resolve conflicts, restore balance, and bring a sense of security in society. This provision is in line with the principle of restorative justice because criminal acts are seen not only as a violation of the law, but also as a source of social conflict that needs to be resolved fairly.

Second, the new Criminal Code introduces sentencing guidelines that provide space for judges to consider humanitarian aspects, the circumstances of the perpetrators, the impact of criminal acts on the victim, and the values that live in society. Article 54 paragraph (1) of the new Criminal Code places the sentencing guidelines as an important norm that must be considered by judges in imposing a crime. With these guidelines, judges are not only oriented to the severity of the criminal threat, but also to substantive justice in concrete cases.

Third, the Criminal Code only recognizes the concept of judge pardon or judicial pardon. This concept allows the judge not to impose a criminal or action on the defendant in certain circumstances, for example because of the seriousness of the act, the personal circumstances of the perpetrator, the circumstances at the time the crime was committed, or the circumstances after the act occurred. Article 54 paragraph (2) of the new Criminal Code is referred to as the basis for the concept of judges' pardons, especially in cases that are relatively light and meet considerations of justice and humanity. This concept is closely related to restorative justice because it places the settlement of cases not solely on punishment, but on proportionality and restoration.

Fourth, the new Criminal Code provides space for alternative crimes, such as supervision and social work crimes. This alternative crime is important because not all criminal acts must be resolved through imprisonment. In many minor cases, imprisonment can actually have negative impacts, such as stigmatization, job loss, family disturbances, and increased burden on correctional institutions. Therefore, alternative punishment can be an instrument that is more in accordance with restorative principles because it still demands accountability of the perpetrator without always separating the perpetrator from the community.

Fifth, the new Criminal Code also recognizes the possibility of losing the prosecution authority if there has been a settlement outside the judicial process as stipulated in the law. The provisions of Article 132 of the new Criminal Code contain the reasons for the loss of prosecution authority, including if there has been a settlement outside the judicial process in accordance with the law. This norm is important because it can be an entrance for a stronger institutionalization of restorative justice in the criminal justice system.

Implementation of Restorative Justice at the Investigation Stage

At the investigation stage, restorative justice has been regulated through Police Regulation Number 8 of 2021. This regulation is the basis for investigators to resolve certain cases with a restorative approach. Normatively, the settlement of cases through restorative justice at the investigation stage aims to avoid unnecessary criminal proceedings, especially for minor cases, cases with minor losses, and cases that have obtained a peaceful agreement between the victim and the perpetrator.

Implementation at the investigation stage has a strategic role because this stage is the initial door for cases to enter the criminal justice system. If from the investigation stage certain

cases can be resolved fairly through the recovery mechanism, then the burden of prosecution, court, and correctional facilities can be reduced. However, its implementation must be carried out carefully so as not to ignore the rights of victims or open up transactional space in criminal proceedings.

In practice, investigators need to ensure that peace is voluntary, that there is no pressure on the victim, that the perpetrator admits wrongdoing, that the harm is recovered, and that the agreement can be implemented. In addition, cases containing severe violence, sexual crimes, corruption, large-scale narcotics, terrorism, or crimes that cause widespread unrest should not be arbitrarily resolved through restorative mechanisms.

Implementation of Restorative Justice at the Prosecution Stage

At the prosecution stage, restorative justice is carried out through Prosecutor's Regulation Number 15 of 2020 concerning the Termination of Prosecutions Based on Restorative Justice. This regulation gives the prosecutor the authority to stop prosecution in certain cases if it meets the requirements of restorative justice. BPK noted that Prosecutor's Regulation Number 15 of 2020 specifically regulates the termination of prosecution based on restorative justice and is still in effect.

The role of the prosecutor in restorative justice is very important because the prosecutor is the controller of the case. The prosecutor not only functions as a public prosecutor, but also as a guardian of the public interest. In the context of restorative justice, prosecutors must be able to assess whether the termination of prosecution truly reflects justice, utility, and legal certainty. The prosecutor also needs to ensure that the victim's interests have been met and the perpetrator does not repeat the crime.

Stopping prosecutions based on restorative justice can be a solution to minor cases that actually do not necessarily end in prison sentences. For example, cases of petty persecution, theft of small value, or cases that occurred due to social conflicts that have been resolved peacefully. However, the termination of prosecution should not be based solely on a formal agreement, but rather should truly reflect a tangible recovery

Implementation of Restorative Justice at the Stage of Examination in Court

At the court stage, the principle of restorative justice can be implemented through the judge's consideration in issuing a verdict. The new Criminal Code provides a wider space for judges to consider the purpose of the crime, the circumstances of the perpetrator, the loss of the victim, peace, and the value of justice that lives in society. Thus, judges are not only the mouthpiece of the law, but also an important factor in realizing substantive justice.

The application of judge pardon is a concrete form of restorative approach in court. In certain cases, if the perpetrator has repaired the loss, the victim has forgiven, the act is relatively light, and the punishment is no longer necessary, the judge can consider not imposing a penalty. However, the application of a judge's pardon must be carried out selectively and accompanied by strong legal arguments so as not to create the impression of uncertainty or discrimination.

In addition, the judge can also impose an alternative sentence that is more in line with the purpose of recovery. Social work crimes, for example, can provide direct benefits to the community while fostering a sense of responsibility for the perpetrator. Criminal supervision can also be an option in certain cases so that the perpetrator remains in the community with supervision and coaching.

Challenges of Implementing Restorative Justice Based on the New Criminal Code

The first challenge is regulatory harmonization. Currently, the application of restorative justice is spread across various internal regulations of law enforcement agencies. The police have Perpol Number 8 of 2021, the Prosecutor's Office has Perja Number 15 of 2020, while the court has its own guidelines. These differences in regulation have the potential to cause differences in standards in the application of restorative justice. Therefore, more integrated rules are needed so that the application of restorative justice runs consistently from investigation, prosecution, to examination in court.

The second challenge is victim protection. In practice, peace between perpetrators and victims does not always occur in an equal position. Victims can experience pressure from their families, communities, or authorities to accept peace. In such conditions, restorative justice can turn into a mechanism that harms the victim. Therefore, the application of restorative justice must guarantee the principle of voluntariness, free consent, adequate information, and protection from intimidation.

The third challenge is the potential abuse of authority. Because restorative justice opens up discretion for law enforcement officials, supervision is very important. Without supervision, this mechanism can be abused to "reconcile" cases that should be formally processed, especially cases involving the public interest or vulnerable victims.

The fourth challenge is the readiness of human resources. Law enforcement officials need to have an adequate understanding of the principles of restorative justice. They must not only understand administrative requirements, but also understand mediation techniques, communication with victims, recovery of losses, analysis of power relations, and protection of vulnerable groups.

The fifth challenge is the legal culture of the community. Some people still understand justice as a severe punishment for perpetrators. In certain cases, restorative remedies can be considered an unfair form of relief. Therefore, it is necessary to educate the public that restorative justice does not mean acquitting the perpetrator, but demanding that the perpetrator be held accountable and recover the victim's losses.

Ideal Model of Restorative Justice Implementation

The ideal model of the implementation of restorative justice based on the new Criminal Code must be built on several principles. First, restorative justice must be applied in a limited way to cases that deserve to be resolved through restoration. Not all criminal acts can be resolved restoratively. Serious cases, wide-ranging crimes, and cases with vulnerable victims must be treated with caution.

Second, the victim must be placed as the main subject. The restorative process must not sacrifice the interests of the victim for the sake of the efficiency of the case. The victim's consent should be given voluntarily, without pressure, and after obtaining sufficient information.

Third, the perpetrator must admit his mistake and be willing to take responsibility. Without recognition and accountability, the restorative process is just a formality. Forms of accountability can be in the form of apologies, compensation, restoration of circumstances, social work, or other proportionate agreements.

Fourth, there needs to be institutional supervision. Any restorative settlement must be recorded, verified, and testable if there are suspected irregularities. This is important to prevent

transactional practices and maintain public trust.

Fifth, it is necessary to integrate the new Criminal Code and the criminal procedure law. The new Criminal Code provides a material basis for the purpose of criminalization and settlement outside the judicial process, but its implementation requires a clear mechanism of proceedings. Therefore, the reform of the criminal procedure law must be in line with the spirit of the new Criminal Code.

CONCLUSION

This study concludes that the implementation of restorative justice within Indonesia's criminal justice system under the new Criminal Code reflects a substantive shift from a predominantly retributive model toward a more humane, proportional, and restorative orientation. Through normative juridical analysis, the study demonstrates that restorative principles are embedded in several provisions of the new Criminal Code, particularly those concerning the purposes of sentencing, sentencing guidelines, judicial pardon, alternative sanctions, and the possibility of terminating prosecutorial authority following lawful out-of-court settlements. Restorative justice can therefore operate across the stages of investigation, prosecution, and court examination by emphasizing victim recovery, offender accountability, conflict resolution, and the restoration of social balance. Nevertheless, its effective implementation remains constrained by differences in regulatory standards among law enforcement institutions, risks of unequal bargaining positions and pressure on victims, potential abuse of official discretion, limited human-resource capacity, and societal perceptions that continue to associate justice primarily with severe punishment. Consequently, an ideal restorative justice framework should prioritize voluntary and informed victim participation, genuine offender accountability, institutional supervision, careful limitation of eligible cases, and greater harmonization between the new Criminal Code and criminal procedural law. Future research should move beyond the normative juridical approach used in this study, which relies on statutory, conceptual, and secondary legal materials, by conducting empirical and socio-legal investigations into the actual implementation of restorative justice by police investigators, prosecutors, judges, victims, offenders, and community representatives. Such research could evaluate whether restorative justice is applied consistently across jurisdictions, whether victims genuinely participate without coercion, how law-enforcement discretion is monitored, and whether restorative settlements effectively provide compensation, reconciliation, offender accountability, and prevention of reoffending. Comparative studies across different regions and categories of criminal cases would also be valuable for identifying variations in institutional practice and determining which models provide the strongest protection for victims while maintaining legal certainty. In addition, future studies should examine the interaction between the new Criminal Code and evolving criminal procedural regulations so that a more integrated and measurable restorative justice framework can be developed for Indonesia's criminal justice system.

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