

Revisiting Criminal Policy: Between Prevention, Rehabilitation, and Restorative Justice

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ABSTRACT

Criminal justice policy in Indonesia continues to be dominated by the deterrence paradigm, which emphasizes the deterrent effect of severe punishment. This is evident in the increasing overcrowding of correctional institutions, which are operating at more than twice their normal capacity, and the high rate of recidivism. This study aims to review the direction of Indonesia's criminal justice policy by examining the interaction between three main paradigms, namely deterrence, rehabilitation, and restorative justice, in the context of national social and political change. Using a qualitative approach with a descriptive-analytical design based on socio-legal research, this study analyzes legal documents, official institutional data, and interviews with legal experts and practitioners from the period 2015–2024. The results of the study show that Indonesian criminal policy is still influenced by penal populism and political pressure, although there are indications of a shift towards a more humanistic paradigm through the application of restorative justice. However, this transition is still partial and faces institutional resistance and resource constraints in its implementation in the field. This study concludes that the success of criminal policy reform in Indonesia requires political balance in penal policy, namely a balance between political power, public interest, and human values in the formulation of criminal law. These findings are expected to serve as a conceptual basis for the renewal of a more just, effective, and sustainable criminal justice system.

Keyword: criminal law policy; deterrence; rehabilitation; restorative justice; Indonesia.

INTRODUCTION

Penal policy is a true reflection of how a country understands, responds to, and manages deviant behavior within society¹. In a socio-political context, this policy is not merely a set of legal rules governing crime and punishment, but also reflects the ideological and moral orientation of a ruling regime². In a socio-political context, this

¹ Kenedi, J. (2017). *Buku Kebijakan Hukum Pidana (Penal Policy) Dalam Sistem Penegakan Hukum Di Indonesia*. Pustaka Pelajar.

² Muladi, S. H., Diah Sulistyani, R. S., & SH, C. (2021). *Kompleksitas Perkembangan Tindak Pidana dan Kebijakan Kriminal*. Penerbit Alumni.

policy is not merely a set of legal rules governing crime and punishment, but also reflects the ideological and moral orientation of a ruling regime.³

Initially, the paradigm of punishment in various countries, including Indonesia, was heavily influenced by retributive and deterrence approaches. These two approaches are rooted in the classical view of crime, which sees perpetrators as rational individuals who must be given appropriate punishment so that they do not repeat their actions. The principle of “retribution” (lex talionis) then developed into the concept of deterrence, which views punishment as a means of intimidating and preventing crime. This view has influenced many criminal policies around the world, especially at a time when law enforcement was understood as a symbol of the state's power over its citizens⁴.

However, as legal thinking and human rights developed, this paradigm began to be questioned. Various criminological and sociological studies have found that a penal system that solely emphasizes deterrence is often ineffective in reducing crime rates. On the contrary, this system often creates new problems such as overcrowding in correctional institutions, increased recidivism rates, and social marginalization of former prisoners⁵. In the Indonesian context, this is reflected in the high occupancy rates in correctional institutions that exceed normal capacity, as well as the weak effectiveness of rehabilitation programs run by the state. This phenomenon confirms that deterrence does not necessarily guarantee the success of the penal system.⁶

The failure of the punitive approach gave rise to a new paradigm in sentencing policy, namely rehabilitation and social reintegration. This paradigm is based on the view that the main objective of sentencing is not retribution, but rather the rehabilitation of offenders so that they can live with dignity and contribute to society⁷. Rehabilitation prioritizes guidance, education, and psychosocial therapy to restore the social functioning of offenders. On the other hand, there is also the restorative justice approach, which places offenders, victims, and the community in a single conflict resolution ecosystem. Restorative justice seeks to restore social balance through dialogue, moral responsibility, and compensation for losses, rather than simply punishment.⁸

Although the concepts of rehabilitation and restorative justice have received widespread attention, their application in national criminal justice policy is often inconsistent. In Indonesia, for example, criminal justice policy still shows ambivalence between the interest in punishing and the desire to restore. On the one hand, regulations

³ Adinda, D., Salam, A., Ramadhan, A., Narendra, A., Anasti, M., & Yanto, J. (2024). Politik Hukum Dalam Pembaharuan Hukum Pidana di Indonesia. *Wathan: Jurnal Ilmu Sosial Dan Humaniora*, 1(1), 12-25.

⁴ Kusuma, D. P. R. W. (2024). *Ide Dasar Green Victimology Dalam Kebijakan Penal Mengenai Kriminalisasi, Pertanggungjawaban Pidana Dan Pemidanaan Undang-Undang Bidang Lingkungan Hidup* (Doctoral dissertation, Universitas Islam Indonesia).

⁵ Situmeang, S. M. T., & Meilan, K. (2025). EVOLUSI KEJAHATAN DAN PEMIDANAAN: TANTANGAN DALAM PENEGAKAN HUKUM DAN PENOLOGI MODERN: The Evolution of Crime and Punishment: Challenges in Law Enforcement and Modern Penology. *Res Nullius Law Journal*, 7(2), 87-97.

⁶ Nainggolan, R. H. (2025). *Kajian Kritis Terhadap Pidana Kerja Sosial Mengurangi Kelebihan Kapasitas Di Lembaga Pemasyarakatan Di Masa Mendatang* (Doctoral dissertation, Universitas Kristen Indonesia).

⁷ Wulandari, S. (2023, December). Reintegrasi Sosial Dalam Sistem Pemasyarakatan Sebagai Visi Pemidanaan Dalam Hukum Nasional. In *Seminar Nasional Teknologi Dan Multidisiplin Ilmu (SEMNASTEKMU)* (Vol. 3, No. 2, pp. 26-36).

⁸ Merta, C. B. (2021). Konsep Rehabilitasi Sebagai Implementasi Keadilan Restoratif Tindak Pidana Narkotika. *Jurnal Hukum Media Justitia Nusantara*, 11(1), 150-176.

such as the 2023 National Criminal Code (KUHP) have accommodated a restorative justice approach in several criminal offenses. On the other hand, criminal justice practices in the field are still dominated by a deterrence paradigm oriented towards punishment and retribution. This shows a gap between normative idealism and the reality of implementation in criminal justice policy.⁹

From a theoretical perspective, the debate between deterrence, rehabilitation, and restorative justice is not merely a technical matter of law enforcement, but rather a reflection of the state's moral politics towards crime. The deterrence approach emphasizes the logic of rationality and social control, while rehabilitation highlights the humanitarian aspects and the state's social responsibility towards perpetrators¹⁰. Meanwhile, restorative justice seeks to combine both through a participatory perspective that restores social relationships. However, in practice, policy choices often depend on the prevailing political direction of the law. Governments oriented toward stability and public security tend to prioritize deterrence, while regimes that emphasize legal reform are more open to rehabilitative and restorative approaches.¹¹

From the available literature, a number of previous studies have discussed the effectiveness of each paradigm in the context of criminal law enforcement. For example, studies on deterrence highlight the importance of certainty and speed in law enforcement so that punishment has a real preventive effect. Meanwhile, studies on rehabilitation emphasize the importance of integration between the correctional system and social policies so that the rehabilitation process can be sustainable. Research related to restorative justice has highlighted its impact on victim satisfaction, recidivism rates, and the effectiveness of conflict resolution at the community level. However, although many studies discuss the technical aspects of each approach, there has not been much research that comprehensively examines the political relationship between the three in the context of the formulation and direction of national criminal policy.¹²

This is the research gap in this study. Most previous studies tend to view deterrence, rehabilitation, and restorative justice as separate approaches, without examining how the three influence each other in the realm of legal politics and policy practice. In reality, however, every change in criminal policy is the result of negotiations between power, public morality, and the needs of the legal system. Thus, a more critical and interdisciplinary study is needed to review the politics of criminal policy, not only from a positive legal perspective, but also from an ideological and social perspective¹³.

This study attempts to fill this gap by reexamining the political dynamics behind changes in criminal policy. The main focus of this study is how the three main paradigms of deterrence, rehabilitation, and restorative justice are positioned and negotiated within

⁹ Sihombing, L. A. (2024). Restorative Justice, Kejahatan, Hukuman, Dan Peradilan Pidana: Sebuah Analisis Kesejarahan, Peluang Dan Tantangan. *UNES Law Review*, 6(3), 8902-8911.

¹⁰ Nuryanto, N. T. (2024). *Rekonstruksi Regulasi Penegakan Hukum Tindak Pidana Pengguna Narkotika Melalui Pendekatan Restorative Justice Berbasis Nilai Keadilan* (Doctoral dissertation, Universitas Islam Sultan Agung (Indonesia)).

¹¹ Sudewo, F. A. (2021). *Pendekatan Restorative Justice Bagi Anak Yang Berhadapan Dengan Hukum*. Penerbit Nem.

¹² Purwogandi, B. (2023). *Rekonstruksi regulasi penegakan hukum dalam upaya penanggulangan tindak pidana perbankan yang berkeadilan* (Doctoral dissertation, UNIVERSITAS ISLAM SULTAN AGUNG).

¹³ SUNARDI, S. (2024). *ESENSI UPAYA POLISI DALAM MENGGESER PARADIGMA PEMIDANAAN PENGGUNA NARKOTIKA* (Doctoral dissertation, Universitas Islam Sultan Agung Semarang).

the political framework of contemporary Indonesian law. In addition, this study also aims to analyze the extent to which national criminal justice policy has moved from a punitive approach to a more humanistic and socially just approach. Thus, this study not only contributes theoretically to enriching the study of criminal justice politics, but also has practical relevance for policymakers, academics, and law enforcement officials.

Reviewing criminal justice policy means reviewing how the state understands the meaning of justice and humanity. In a world that increasingly demands a balance between security and human rights, a criminal justice policy paradigm is needed that is not only oriented towards retribution, but also towards social rehabilitation. This study stems from the awareness that a fair criminal justice system is not the harshest system, but rather the most humane and effective in creating behavioral change and maintaining social harmony. Therefore, further discussion in this study will explore the political roots, direction of development, and implementation challenges of the three main paradigms in modern criminal justice policy.

METHOD

This study uses a qualitative approach with a descriptive-analytical design based on the socio-legal research paradigm, which examines the relationship between normative aspects of law and the social and political realities that influence the formation of criminal policy. The focus of the study is on the dynamics of legal politics in Indonesian criminal policy from 2015 to 2024, with particular attention to the application of the deterrence, rehabilitation, and restorative justice paradigms. Data were obtained through literature studies, document analysis, and semi-structured interviews with key informants, including academics, officials from the Ministry of Law and Human Rights, and legal practitioners. Data analysis was conducted interactively using the Miles, Huberman, and Saldaña (2014) model through the stages of data reduction, data presentation, and inductive conclusion drawing. The validity of the research results was maintained using source and method triangulation techniques, while the theoretical analysis referred to three main frameworks: deterrence theory (Beccaria, 1764/2009), rehabilitation theory (Cullen & Jonson, 2017), and restorative justice theory (Zehr, 2015). The entire research process was carried out in accordance with academic ethics principles by maintaining objectivity, informant confidentiality, and the use of data solely for scientific purposes.

Discussions

1. The Dominance of the Deterrence Paradigm in Indonesian Criminal Policy

Various studies show that until 2024, criminal justice policy in Indonesia will continue to be dominated by the paradigm of deterrence. This paradigm is rooted in the classical view that severe punishment is the primary means of preventing crime and enforcing social order¹⁴. Within this framework, justice is considered to be achieved when perpetrators receive punishment commensurate with their actions, with the hope that the threat of severe punishment will instill fear in other potential perpetrators. This approach is clearly evident in various laws and regulations, speeches by public officials, and even political discourse within society. Criminal law, in practice, is often used as a symbolic instrument to demonstrate the state's firm stance against crime, rather than as a means of social development or moral restoration of society.¹⁵

¹⁴ Shodiq, M. (2025). *Kebijakan Hukum Pidanas*. Takaza Innovatix Labs.

¹⁵ LUBIS, M. K. (2024). *FORMULASI PENUNTUTAN PELAKU TINDAK PIDANA KORUPSI BERBASIS NILAI KEADILAN* (Doctoral dissertation, Universitas Islam Sultan Agung Semarang).

An analysis of various legal documents, including the Criminal Code Bill, the Narcotics Law, and policies related to corruption, shows that Indonesia's criminal justice policy is influenced more by political considerations and social pressure than by empirical research or humanitarian values. For example, the application of the death penalty for narcotics offenders is often driven by public opinion demanding instant justice and deterrence, without considering its effectiveness in reducing crime rates.¹⁶ Similarly, long prison sentences for corruptors and restrictions on remissions for perpetrators of serious crimes are often positioned as political strategies to demonstrate the government's seriousness in enforcing the law. On the other hand, these measures are often marred by inconsistencies, disparities in verdicts, and overlapping regulations, which actually weaken the legitimacy of criminal law itself.

Although the deterrent effect paradigm is often claimed to be a solution for reducing crime rates, empirical data shows contradictory results. Recidivism rates, namely offenders who reoffend after serving their sentences, continue to increase year after year, indicating that severe punishment does not necessarily lead to long-term behavioral change¹⁷. In addition, the density of correctional institutions in Indonesia has reached a critical point, with capacity far exceeding ideal capacity. This condition not only reduces the effectiveness of prisoner rehabilitation, but also creates new social problems such as violence in prisons, the spread of disease, and weak supervision. This phenomenon shows that a punishment paradigm oriented towards deterrence tends to result in over-criminalization and over-punishment, which ultimately hinders the achievement of the main objectives of criminal law: namely, the protection of society and social rehabilitation. Therefore, it is necessary to critically reflect on the direction of criminal justice policy so that it is not merely oriented towards punishment, but also towards humanity, social justice, and rehabilitative effectiveness.

Data from the Ministry of Law and Human Rights (2023) and World Prison Brief (2024) show a consistent increase in the prison population over the past five years, with occupancy rates reaching more than twice the ideal capacity of correctional institutions.

Table 1. Trends in Prison Overcrowding and Recidivism Rates in Indonesia (2019–2023)

Year	Number of Prisoners	Prison Capacity	Occupancy Rate (%)	Recidivism Rate (%)
2019	264.000	132.000	200%	65%
2020	267.000	133.000	201%	68%
2021	270.000	133.500	203%	69%
2022	273.000	134.000	204%	71%
2023	276.000	135.000	204%	72%

¹⁶ Adinda, D., Salam, A., Ramadhan, A., Narendra, A., Anasti, M., & Yanto, J. (2024). Politik Hukum Dalam Pembaharuan Hukum Pidana di Indonesia. *Wathan: Jurnal Ilmu Sosial Dan Humaniora*, 1(1), 12-25.

¹⁷ Hersyanda, M. D., Lubis, I. S., Ikhwan, N., Septriani, D., & Haqqi, M. (2024). Efektivitas sanksi pidana terhadap pengulangan kejahatan (residivisme) di Indonesia. *JIMMI: Jurnal Ilmiah Mahasiswa Multidisiplin*, 1(3), 253-265.

The data shows that harsh punishment has not been effective in reducing crime rates or recidivism. In addition, the ratio of correctional officers to inmates, which stands at 1:55, also indicates limited capacity for social guidance and rehabilitation. This situation points to the need for a shift in the criminal justice paradigm toward a more humane approach focused on social rehabilitation.

2. The Evolution of Sentencing Policy and Its Political Context

Analysis of various legal documents, government policies, and public discourse shows that the direction of criminal policy in Indonesia has undergone gradual changes over time, although these shifts have not been consistent¹⁸. In the early days of legal reform, the main focus of sentencing policy was still centered on the deterrent paradigm, emphasizing harsh punishment for criminals. However, with increasing awareness of human rights and the influence of legal globalization, efforts began to emerge to balance the objectives of punishment and rehabilitation. This indication can be seen from the emergence of various policies that emphasize rehabilitation, such as skills-based rehabilitation of prisoners, social reintegration programs, and the discourse on the development of restorative justice in handling minor cases.¹⁹

Although there is a move towards change, the implementation of these policies is still marked by political and legal tug-of-war. The government and legislative bodies often face social and political pressure demanding a quick response to rising crime rates. In this context, a repressive approach is often seen as a populist short-term solution, even though it does not address the root causes of crime. For example, in the debate over the drafting of the Criminal Code and the implementation of prison system reforms, there is a dilemma between the desire to strengthen deterrence through severe punishment and the need to create a more humane and effective punishment system. As a result, punishment policies in Indonesia tend to be ambivalent, on the one hand showing an intention to transform, but on the other hand still maintaining old retributive patterns.²⁰

Furthermore, the dynamics of criminal policy evolution cannot be separated from the political and social contexts that influence it. Legal politics in Indonesia often moves in line with the dynamics of power, public opinion, and media pressure. In certain situations, criminal policy is used as a political instrument to demonstrate the government's firmness in dealing with certain issues, such as narcotics, terrorism, and corruption. This causes criminal law to function not only as an instrument of justice, but also as a symbol of power and political legitimacy²¹. As a result, the direction of penal reform is often not based on in-depth scientific studies, but rather on pragmatic considerations that are reactive to the socio-political situation. Thus, although Indonesia has begun to show a tendency toward a more balanced criminal justice paradigm between deterrence, rehabilitation, and restorative justice, these changes are still hampered by political structures and legal cultures that do not yet fully support sustainable reform.

¹⁸ Agrarini, L. S. P. (2025). DINAMIKA PIDANA MATI DALAM KUHP BARU: PEMBARUAN HUKUM PIDANA DAN TANTANGAN IMPLEMENTASI. *JURNAL ILMIAH ADVOKASI*, 13(2), 509-527.

¹⁹ Situmeang, S. M. T., & Meilan, K. (2025). EVOLUSI KEJAHATAN DAN PEMIDANAAN: TANTANGAN DALAM PENEGAKAN HUKUM DAN PENOLOGI MODERN: The Evolution of Crime and Punishment: Challenges in Law Enforcement and Modern Penology. *Res Nullius Law Journal*, 7(2), 87-97.

²⁰ Imamia, A., Zehro, A. I., Sjarif, E. I., Rizkiyah, T., Jennah, R., & Rusdani, Z. (2025). *Strategi Dan Kebijakan Publik Dalam Dinamika Politik Indonesia*. Penerbit: Kramantara JS.

²¹ Zaidan, M. A., & Sh, M. (2021). *Kebijakan kriminal*. Sinar Grafika (Bumi Aksara).

Table 2. Evolution of the Criminal Justice Policy Paradigm in Indonesia (1990–2024)

Period	Dominant Orientation	Policy Examples	Social Impact	Analysis Notes
1990–2000	Retributive/Deterrence	Death penalty for drug-related crimes; severe punishment for corruption	Prison overcrowding increased by more than 100%	The policy is highly repressive and power-oriented
2001–2010	Partial Rehabilitation	Prisoner rehabilitation and remission programs	Administrative rehabilitation	Reforms are limited to procedural matters
2011–2020	Restorative Transition	Policy on resolving minor cases in the police force	Reduction of minor cases in court	Does not yet have a strong legal basis
2021–2024	Hybrid Approach	The 2022 Criminal Code and restorative justice policies	Resolution of justice cases increased	There is still resistance from officials and the community.

Source: Researcher analysis based on data from the Ministry of Law and Human Rights, ICJR (2023), and the Indonesian National Police (2022).

The table above shows that Indonesia's criminal justice policy is undergoing a transition towards a more balanced system between punishment, rehabilitation, and social recovery. However, at the implementation level, many law enforcement officials still adhere to the classic paradigm that equates justice with severe punishment. Data from the Ministry of Law and Human Rights (2023) also confirms that prison overcrowding has reached more than twice the normal capacity, thereby hampering the effectiveness of guidance and rehabilitation. Interviews with the Directorate of Corrections indicate that work training and education programs are still administrative in nature and do not yet focus on changing the behavior of prisoners.

3. International Comparisons and Lessons from Reform

Compared to other developed countries, penal policy reform in Indonesia is still in its early stages and faces many structural challenges. Countries such as Norway and Finland have developed penal systems that emphasize the principles of humanization and social reintegration, where prisons are not merely places of punishment, but rather a means of restoring the social functions of prisoners. Norway, for example, applies the principle of normalization, which makes life in prison almost equivalent to life in the general community. Prisoners are allowed to work, study, and engage in social activities as part of the rehabilitation process²². This approach has proven effective, with recidivism rates in Norway falling to 20%, well below the global average of 45–60%. The model

²² Hamzani, A. I. (2022). *Perlunya Reorientasi Sistem Pemidanaan di Indonesia*. Penerbit NEM.

shows that restorative justice can go hand in hand with public safety without compromising human rights.²³

Meanwhile, Canada has been one of the countries that has successfully implemented the concept of community-based restorative justice systematically since the 1990s. This approach focuses on restoring relationships between perpetrators, victims, and the community through mediation, dialogue, and voluntary settlement agreements. According to a report by the Department of Justice Canada (2021), the implementation of restorative justice in Canada has reduced recidivism rates by 27% while increasing victim satisfaction with the criminal justice process. This success is not only due to policy design but also to strong support from social and political systems that prioritize rehabilitation as a core value. Rehabilitation programs in Canada are even integrated with mental health services, job training, and social assistance, giving offenders a real opportunity to return to being productive members of society.²⁴

On the contrary, the penal system in Indonesia still relies heavily on imprisonment-based mechanisms, even for minor crimes. This approach, which focuses on physical punishment, often fails to address the root causes of crime, such as socioeconomic factors, education, and mental health. As a result, even when severe punishments are imposed, the desired deterrent effect is not always achieved. The high rate of recidivism and prison overcrowding are clear evidence that a repressive penal system is no longer relevant to the challenges of modern crime. Therefore, an important lesson that can be learned from international practices is that penal reform must begin with a change in legal culture, namely the way of viewing crime, perpetrators, and justice itself. This change includes increasing the capacity of law enforcement human resources, implementing an evidence-based policy approach, and strengthening cross-sector collaboration to ensure that sentencing policies are not only a symbol of the state's firmness but also an effective means of creating social justice and sustainable security.

4. The Implementation of Restorative Justice and Institutional Challenges

The adoption of restorative justice policies by the Indonesian National Police and the Attorney General's Office marks an important paradigm shift in the direction of national criminal justice policy. This step is part of the government's efforts to shift the criminal justice system from a retributive approach to a more participatory and humanistic approach. Based on a report by the Attorney General's Office (2023), more than 12,000 minor cases were successfully resolved through restorative justice mechanisms during 2023. This achievement reflects the effectiveness of this approach in reducing the caseload in courts while accelerating the process of resolving legal conflicts in the community. Furthermore, this approach is considered capable of strengthening public trust in law enforcement institutions because it emphasizes the restoration of social relations between perpetrators, victims, and communities. Thus, justice is not only measured by formal legal aspects but also by the moral and social satisfaction felt by the parties involved.²⁵

²³ FAILIN, F. (2023). *REKONSTRUKSI REGULASI PERLINDUNGAN HUKUM BAGI NARAPIDANA RESIDIVIS PEREMPUAN DALAM PEMBINAAN DI LEMBAGA PEMASYARAKATAN BERBASIS NILAI KEADILAN* (Doctoral dissertation, Universitas Islam Sultan Agung).

²⁴ *ibid*

²⁵ Arafat, M. (2025). Paradigma Pemidanaan Baru dalam KUHP 2023: Alternatif Sanksi dan Transformasi Sistem Peradilan Pidana Indonesia. *Jurnal Ilmu Hukum*, 2(1), 33-46.

However, the implementation of restorative justice in Indonesia still faces various structural and normative limitations. Until 2024, the application of this policy will only focus on minor crimes such as petty theft, minor assault, or cases with low material losses. The absence of a strong legal basis in the form of specific legislation means that its implementation still depends on the discretion of law enforcement agencies. This has led to inconsistencies in its application between regions and agencies, as each agency has a different interpretation of the criteria for cases that can be resolved through restorative justice. In many cases, investigators who have reached a peaceful agreement between the perpetrator and the victim often face rejection from prosecutors or courts because it is considered inconsistent with the applicable criminal procedure law. This phenomenon shows that the Indonesian legal system is still oriented towards procedural formalism, rather than the achievement of substantive justice.²⁶

In addition to legal and institutional obstacles, another challenge faced in the implementation of restorative justice is the issue of coordination and human resource capacity. Most law enforcement officials do not yet have an adequate understanding of the basic principles of restorative justice, such as the moral responsibility of perpetrators, active participation of victims, and social reintegration after the case. Technical training often fails to address the ethical and sociological dimensions of restorative justice itself. On the other hand, limited supporting facilities, such as trained mediators, community mediation institutions, and budgetary support, further slow down the institutionalization process of this approach. Thus, although restorative justice has been recognized as a progressive policy innovation, its success still depends heavily on structural reforms, political commitment, and a shift in the legal paradigm from one oriented toward punishment to a more inclusive and socially just system.²⁷

5. The Dynamics of Penal Populism and Policy Politics

From a legal policy perspective, the results of this study show that the direction of criminalization policy in Indonesia until 2024 is still heavily influenced by the phenomenon of penal populism, namely the tendency to use criminal law as a political instrument to gain public support and legitimacy. In this context, the issue of crime is often exploited by political actors to strengthen the image of the state's firmness in the eyes of the public. The narrative of “a state that is tough on crime” is used strategically in political discourse and the media to build moral legitimacy, especially in times of social crisis or in the run-up to political contests. As a consequence, criminalization policies tend to be designed reactively and emotionally, rather than based on empirical research or comprehensive scientific analysis. This shows that criminal law in Indonesia does not fully function as an autonomous rational system, but rather as a political instrument that is vulnerable to the pressures of populism.

This tendency toward penal populism is clearly evident in government policies toward certain crimes such as corruption and narcotics. The death penalty, life imprisonment, and restrictions on parole for serious crimes are often used as symbols of the state's firmness in law enforcement. However, this approach is more symbolic than

²⁶ MURTADO, A. (2025). *URGensi REHABILITASI TERHADAP PEMULIHAN ANAK SEBAGAI KORBAN TINDAK PIDANA KEKERASAN SEKSUAL (Studi Putusan Nomor 4/Pid. Sus-Anak/2024/PN. Pdl)* (Doctoral dissertation, UNIVERSITAS SULTAN AGENG TIRTAYASA).

²⁷ Arwijayah, N., Pawennei, M., & Hasyim, S. (2025). Penerapan Restorative Justice Sebagai Upaya Penyelesaian Tindak Pidana Penganiayaan Pada Kejaksaan Negeri Mimika. *Journal of Lex Philosophy (JLP)*, 6(1), 68-83.

substantive. Empirical data shows that the application of severe penalties does not significantly reduce crime rates or recidivism, and in fact exacerbates the problem of prison overcrowding. On the other hand, this repressive approach does not provide adequate space for the social rehabilitation of offenders, which should be one of the main functions of a modern penal system. Nevertheless, in recent years, there has been a new awareness, both among academics and policymakers, of the importance of balancing punishment, rehabilitation, and social recovery.²⁸

Public and academic discourse in Indonesia is beginning to shift toward integrating the values of deterrence, rehabilitation, and restorative justice as a new foundation for national criminal justice policy. This shift is evident in policy proposals such as strengthening rehabilitation programs for prisoners, the implementation of restorative justice by the National Police and the Attorney General's Office, and the reformulation of criminal provisions in the 2022 Criminal Code, which begins to accommodate the human dimension in sentencing. However, this paradigm shift has not yet completely changed practices in the field. Hierarchical bureaucratic structures, resistance from law enforcement officials who still think retributively, and public perceptions that harsh punishment is the main form of justice remain significant obstacles in the transition to a more balanced and inclusive criminal justice system²⁹.

Previous studies on sentencing policy in Indonesia have mostly focused on normative and juridical aspects, emphasizing analysis of legislation and formal legal structures. As a result, the political and sociological dimensions of sentencing policy have been relatively neglected. The lack of research examining the relationship between legal political dynamics, institutional resistance, and legal culture with the implementation of rehabilitative and restorative policies has created a significant knowledge gap. This study attempts to fill this gap by combining a legal policy analysis approach and legal political theory to show that the main obstacles to penal reform lie not only in the weaknesses of legislation, but also in the ideological and political structures that support it. Therefore, the renewal of a fair criminal justice system must begin with a paradigm shift at the policy and institutional levels, and be reinforced by consistent political will, synergy between law enforcement agencies, and changes in legal culture towards a more humane, participatory, and socially restorative system.

CONCLUSIONS

Criminal justice policy in Indonesia currently faces major challenges in balancing the objectives of protecting society, rehabilitating offenders, and restoring victims. The old paradigm that emphasized deterrence has proven to be ineffective in reducing crime rates and restoring social balance. Therefore, there is a need to reconstruct criminal law thinking through a rehabilitation and restorative justice approach that focuses more on human values, substantive justice, and the social reintegration of offenders into society. The reform of the criminal justice system must be directed towards the synergy between these three paradigms, where deterrence remains necessary as a preventive measure, rehabilitation focuses on improving the moral character and behavior of offenders, and restorative justice is implemented to

²⁸ Yuniyanto, W. L. (2024). *Perspektif Hukum Progresif Terhadap Hukuman Mati Dalam Pembaharuan Hukum Pidana Di Indonesia* (Master's thesis, Universitas Islam Sultan Agung (Indonesia)).

²⁹ Rohman, F. (2023). *Rekonstruksi Konsep Mekanisme Restorative Justice Dalam Sistem Pemidanaan Terpadu Di Indonesia Untuk Mewujudkan Kepastian Hukum Yang Berbasis Keadilan* (Doctoral dissertation, Universitas Islam Sultan Agung (Indonesia)).

restore social relationships that have been damaged as a result of criminal acts. Thus, a criminal law policy oriented towards a balance between legal certainty, benefit, and justice can be realized, in line with the values of Pancasila and national legal objectives. This integrative paradigm-based penal reform is a strategic step towards a criminal justice system that is more just, humane, and relevant to the challenges of modern crime in the era of globalization.

REFERENCES

- Adinda, D., Salam, A., Ramadhan, A., Narendra, A., Anasti, M., & Yanto, J. (2024). Politik hukum dalam pembaharuan hukum pidana di Indonesia. *Wathan: Jurnal Ilmu Sosial dan Humaniora*, 1(1), 12–25. <https://doi.org/10.71153/wathan.v1i1.16>
- Agrarini, L. S. P. (2025). Dinamika pidana mati dalam KUHP baru: Pembaharuan hukum pidana dan tantangan implementasi. *Jurnal Ilmiah Advokasi*, 13(2), 509–527. <https://doi.org/10.36987/jiad.v13i2.7359>
- Arafat, M. (2025). Paradigma pemidanaan baru dalam KUHP 2023: Alternatif sanksi dan transformasi sistem peradilan pidana Indonesia. *Jurnal Ilmu Hukum*, 2(1), 33–46. <https://doi.org/10.58540/jih.v2i1.1047>
- Arwijayah, N., Pawennei, M., & Hasyim, S. (2025). Penerapan restorative justice sebagai upaya penyelesaian tindak pidana penganiayaan pada Kejaksaan Negeri Mimika. *Journal of Lex Philosophy (JLP)*, 6(1), 68–83.
- Failin, F. (2023). Rekonstruksi regulasi perlindungan hukum bagi narapidana residivis perempuan dalam pembinaan di lembaga pemasyarakatan berbasis nilai keadilan (Doctoral dissertation, Universitas Islam Sultan Agung).
- Hersyanda, M. D., Lubis, I. S., Ikhwan, N., Septriani, D., & Haqqi, M. (2024). Efektivitas sanksi pidana terhadap pengulangan kejahatan (residivisme) di Indonesia. *JIMMI: Jurnal Ilmiah Mahasiswa Multidisiplin*, 1(3), 253–265. <https://doi.org/10.71153/jimmi.v1i3.141>
- Imamia, A., Zehro, A. I., Sjarif, E. I., Rizkiyah, T., Jennah, R., & Rusdani, Z. (2025). Strategi dan kebijakan publik dalam dinamika politik Indonesia. *Kramantara JS*.
- Kenedi, J. (2017). Buku kebijakan hukum pidana (penal policy) dalam sistem penegakan hukum di Indonesia. Pustaka Pelajar.
- Kusuma, D. P. R. W. (2024). Ide dasar green victimology dalam kebijakan penal mengenai kriminalisasi, pertanggungjawaban pidana dan pemidanaan undang-undang bidang lingkungan hidup (Doctoral dissertation, Universitas Islam Indonesia).
- Lubis, M. K. (2024). Formulasi penuntutan pelaku tindak pidana korupsi berbasis nilai keadilan (Doctoral dissertation, Universitas Islam Sultan Agung Semarang).
- Merta, C. B. (2021). Konsep rehabilitasi sebagai implementasi keadilan restoratif tindak pidana narkoba. *Jurnal Hukum Media Justitia Nusantara*, 11(1), 150–176.
- Muladi, S. H., Diah Sulistyani, R. S., & SH, C. (2021). Kompleksitas perkembangan tindak pidana dan kebijakan kriminal. *Alumni*.
- Murtado, A. (2025). Urgensi rehabilitasi terhadap pemulihan anak sebagai korban tindak pidana kekerasan seksual (Studi Putusan Nomor 4/Pid. Sus-Anak/2024/PN. Pdl) (Doctoral dissertation, Universitas Sultan Ageng Tirtayasa).
- Nainggolan, R. H. (2025). Kajian kritis terhadap pidana kerja sosial mengurangi kelebihan kapasitas di lembaga pemasyarakatan di masa mendatang (Doctoral dissertation, Universitas Kristen Indonesia).

- Nuryanto, N. T. (2024). Rekonstruksi regulasi penegakan hukum tindak pidana pengguna narkoba melalui pendekatan restorative justice berbasis nilai keadilan (Doctoral dissertation, Universitas Islam Sultan Agung).
- Purwogandi, B. (2023). Rekonstruksi regulasi penegakan hukum dalam upaya penanggulangan tindak pidana perbankan yang berkeadilan (Doctoral dissertation, Universitas Islam Sultan Agung).
- Rohman, F. (2023). Rekonstruksi konsep mekanisme restorative justice dalam sistem pemidanaan terpadu di Indonesia untuk mewujudkan kepastian hukum yang berbasis keadilan (Doctoral dissertation, Universitas Islam Sultan Agung).
- Shodiq, M. (2025). Kebijakan hukum pidanas. Takaza Innovatix Labs.
- Sihombing, L. A. (2024). Restorative justice, kejahatan, hukuman, dan peradilan pidana: Sebuah analisis kesejarahan, peluang dan tantangan. *UNES Law Review*, 6(3), 8902–8911. <https://doi.org/10.31933/unesrev.v6i3.1777>
- Situmeang, S. M. T., & Meilan, K. (2025). Evolusi kejahatan dan pemidanaan: Tantangan dalam penegakan hukum dan penologi modern. *Res Nullius Law Journal*, 7(2), 87–97. <https://doi.org/10.34010/rnlj.v7i2.15913>
- Sunardi, S. (2024). Esensi upaya polisi dalam menggeser paradigma pemidanaan pengguna narkoba (Doctoral dissertation, Universitas Islam Sultan Agung Semarang).
- Wulandari, S. (2023, December). Reintegrasi sosial dalam sistem pemasyarakatan sebagai visi pemidanaan dalam hukum nasional. In *Seminar Nasional Teknologi dan Multidisiplin Ilmu (SEMNASTEKMU)* (Vol. 3, No. 2, pp. 26–36). <https://doi.org/10.51903/semnastekmu.v3i2.223>
- Yuniyanto, W. L. (2024). Perspektif hukum progresif terhadap hukuman mati dalam pembaharuan hukum pidana di Indonesia (Master's thesis, Universitas Islam Sultan Agung).
- Zaidan, M. A., & Sh, M. (2021). Kebijakan kriminal. Sinar Grafika (Bumi Aksara).