

The Shift of Sentencing Paradigm from Retributive to Restorative Justice in the Indonesian Criminal Justice System

Carolina S. Martha¹✉, Angga Aldilla Gussman², Ainurrafiqa Pelupessy³
Kota Depok, Beji, Indonesia¹, Universitas Jambi, Indonesia² Universitas Khairun,
Indonesia³

e-mail: [*marthasumampouw8@gmail.com](mailto:marthasumampouw8@gmail.com)¹

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ABSTRAK

The development of modern criminal law thought indicates a significant shift in the sentencing paradigm from a retributive approach toward a restorative one. The retributive paradigm, which emphasizes punishment and retaliation for criminal acts, has increasingly been criticized for its inability to deliver substantive justice for victims, offenders, and society. In contrast, restorative justice emerges as an alternative paradigm that prioritizes restoration, dialogue, and the active participation of all parties affected by crime. This article aims to analyze the shift in sentencing paradigm from retributive to restorative justice within the Indonesian criminal justice system and to examine its implications for national criminal law reform. This study employs a qualitative legal research method using normative and conceptual approaches, relying on statutory analysis, legal doctrines, and relevant criminal justice policies. The findings reveal that restorative justice has gained increasing recognition in Indonesia through recent regulations and law enforcement policies. However, its implementation still faces substantial challenges in terms of legal substance, institutional structure, and legal culture. The novelty of this article lies in its comprehensive analysis of restorative justice not merely as an alternative mechanism, but as a potential new sentencing paradigm capable of reshaping the core orientation of Indonesian criminal law.

Kata kunci: *Sentencing, Retributive Justice, Restorative Justice, Criminal Law, Indonesia.*

INTRODUCTION

The sentencing paradigm in criminal law reflects the fundamental way in which the state responds to crime. For decades, the Indonesian criminal justice system has been predominantly influenced by the retributive paradigm, which conceptualizes punishment as a form of retaliation proportionate to the offender's wrongdoing¹. This approach is grounded in moral blameworthiness and emphasizes the imposition of suffering as a means of achieving justice². Despite its strong philosophical foundations, retributive

¹ Riziq, M. (2025). A Critical Analysis of Restorative Justice in Indonesia's Criminal Justice System: from Punishment to Restoration. *International Journal of Law Dynamics Review*, 3(1), 11-19.

² Kelly, E. I. (2023). Is blame warranted in applying justice?. *Critical Review of International Social and Political Philosophy*, 26(1), 71-87.



sentencing has been widely criticized for its limited concern for victims and its broader social consequences.

In practice, retributive sentencing in Indonesia is manifested through the dominance of imprisonment as the primary form of punishment³. This reliance on incarceration has generated systemic problems, including prison overcrowding, high recidivism rates, and the marginalization of victims' interests⁴. Moreover, a punishment-oriented system tends to prioritize the offender state relationship, while neglecting the victim's need for meaningful justice and social restoration.

In response to these limitations, restorative justice has gained prominence within modern criminal law discourse⁵. Restorative justice reconceptualizes crime as a social conflict that causes harm to victims, offenders, and the community. Accordingly, criminal case resolution should not focus solely on punishing offenders, but also on repairing harm, restoring relationships, and reintegrating offenders into society⁶.

In Indonesia, the discourse and practice of restorative justice have intensified in recent years, as reflected in various policies and regulations that allow restorative approaches at different stages of criminal proceedings. Nevertheless, its application remains inconsistent and fragmented⁷.

The research gap addressed in this article lies in the limited number of studies that examine restorative justice as part of a systemic transformation of sentencing paradigms within Indonesian criminal law⁸. Existing studies largely focus on sectoral or procedural applications of restorative justice, without situating it within a broader paradigm shift in sentencing philosophy.

Based on this gap, the novelty of this research lies in its holistic and conceptual analysis of restorative justice as a new sentencing paradigm⁹. Rather than treating restorative justice merely as an alternative dispute resolution mechanism, this article positions it as an integral component of criminal law reform capable of challenging the dominance of retributive punishment in Indonesia¹⁰.

State of the Art

³ Erdianti, R. N., Pratama, B. R., & Said, M. H. M. (2025). The Short-Term Imprisonment of Independence Penalty from the Perspective of Punishment Objectives as Criminal Law Reform in Indonesia. *Indonesia Law Reform Journal*, 5(2), 261-286.

⁴ Varghese, F. P., Israel, T., Seymour, G., Becker Herbst, R., Suarez, L. G., & Hargons, C. (2019). Injustice in the justice system: Reforming inequities for true "justice for all". *The Counseling Psychologist*, 47(5), 682-740.

⁵ Maglione, G. (2019). The restorative justice apparatus: A critical analysis of the historical emergence of restorative justice. *Social & Legal Studies*, 28(5), 650-674.

⁶ Marshall, C. D. (2020). Restorative justice. In *Religion matters: The contemporary relevance of religion* (pp. 101-117). Singapore: Springer Singapore.

⁷ Widiartana, G., Setyawan, V. P., & Anditya, A. W. (2025). Exploring Restorative Justice in Domestic Violence Cases. *Journal of Sustainable Development and Regulatory Issues (JSDERI)*, 3(3), 641-666.

⁸ Irwanto, I., Ghoni, A., Jaya, A., & Hartawati, A. (2025). Literature Review: The Effectiveness of the Implementation of Restorative Justice in the Criminal Justice System in Indonesia. *RIGGS: Journal of Artificial Intelligence and Digital Business*, 4(3), 4718-4723.

⁹ Zhou, S. (2025). Analysis of whether restorative justice and criminal justice are incompatible justice paradigms. *Contemporary Justice Review*, 28(1), 1-12.

¹⁰ Arpangi, A., Ramadani, M., & Yosiana, C. (2024). Optimizing Penal Mediation through Restorative Justice: A Progressive Solution in Criminal Law Reform. *Journal of Justice Dialectical*, 2(2), 84-97.

Scholarly discourse on sentencing paradigms in modern criminal law has evolved considerably over the past decades¹¹. Classical criminal law theory placed retributive justice at the core of punishment, emphasizing moral blame and proportional retaliation. However, since the late twentieth century, scholars in criminal law and criminology have increasingly criticized retributive justice for its failure to adequately address victims' needs, reduce recidivism, and repair social harm caused by crime.

Contemporary studies position restorative justice as a transformative paradigm that challenges punishment-centered criminal justice systems. The state of the art in this field highlights a shift from offender-centered justice toward victim-centered and community-centered approaches. Restorative justice emphasizes accountability through responsibility-taking, dialogue, and reparation, rather than through suffering imposed by the state.

In the Indonesian context, scholarly discussions on restorative justice have expanded, particularly in relation to juvenile justice, minor offenses, and prosecutorial discretion. However, most studies remain implementation-oriented and do not conceptualize restorative justice as a foundational shift in sentencing philosophy. This article contributes to the state of the art by offering a paradigm-based analysis that integrates restorative justice into the broader discourse of sentencing reform, bridging global theoretical developments with Indonesia's criminal law transformation agenda.

METHOD

This study employs qualitative legal research using a normative approach. The normative approach involves the examination of statutory regulations related to sentencing and restorative justice, as well as relevant legal doctrines and principles of modern criminal law. A conceptual approach is also applied to analyze theories of punishment and restorative justice within contemporary criminal law thought.

The legal materials used in this study consist of primary, secondary, and tertiary sources. Primary legal materials include criminal law statutes and regulations related to restorative justice policies. Secondary legal materials comprise academic books, peer-reviewed journal articles, and previous research findings. Tertiary materials include legal dictionaries and encyclopedias.

Data collection was conducted through library research. The analysis was carried out qualitatively using a descriptive-analytical method to examine the shift in sentencing paradigms from retributive to restorative justice and its implications for the Indonesian criminal justice system.

DISCUSSION

Comparative Framework of Retributive and Restorative Justice

To strengthen the analytical clarity and highlight the paradigm shift in sentencing, a comparative framework between retributive justice and restorative justice is presented below. This comparison illustrates the fundamental differences in philosophical foundations, objectives, and practical implications of both paradigms, thereby reinforcing the argument that restorative justice represents a substantive transformation rather than a

¹¹ Kurlychek, M. C., & Kramer, J. H. (2019). The transformation of sentencing in the 21st century. In *Handbook on sentencing policies and practices in the 21st century* (pp. 19-42). Routledge.

procedural alternative.¹²

Aspect	Retributive Justice	Restorative Justice
Philosophical foundation	Crime is viewed as a violation of state law and moral order	Crime is viewed as harm to individuals and social relationships
Primary focus	Offender and proportional punishment	Victim, offender, and community
Main objective of sentencing	Retaliation and deterrence through punishment	Restoration of harm, accountability, and reconciliation
Role of the victim	Passive, mainly as a witness	Active participant in the justice process
Role of the offender	Subject of punishment	Responsible actor required to repair harm
Role of the community	Largely excluded	Actively involved in restoring social harmony
Measurement of justice	Severity and proportionality of punishment	Degree of harm repaired and relationships restored
Long-term impact	Risk of stigmatization and recidivism	Reintegration and reduction of repeat offending

Figure 1. Conceptual Framework of the Shift from Retributive to Restorative Sentencing Paradigm

The conceptual framework below illustrates the structural transformation of

¹² Ghoni, A., Kadir, T., & Wijoyo, H. (2025). Restorative Justice in Contemporary Criminal Law: Comparative Perspectives and Emerging Trends. *RIGGS: Journal of Artificial Intelligence and Digital Business*, 4(3), 6116-6121.

sentencing philosophy from a retributive to a restorative paradigm within the criminal justice system:

- Retributive Paradigm → Punishment-Centered Justice → Offender-State Orientation → Imprisonment as Primary Sanction → Limited Victim Involvement → Social Disruption and Recidivism Risk
- Restorative Paradigm → Restoration-Centered Justice → Victim-Offender-Community Orientation → Dialogue, Accountability, and Reparation → Active Victim Participation → Social Healing and Reintegration

This framework demonstrates that the shift toward restorative justice is not merely procedural but represents a fundamental reorientation of sentencing objectives, actors, and outcomes within the criminal justice system.¹³

Retributive Sentencing Paradigm in Indonesian Criminal Law

The retributive paradigm is rooted in the notion that punishment is a moral response to wrongdoing, premised on the idea that an offender deserves to suffer as a consequence of violating legal and moral norms. Within this framework, sentencing is primarily concerned with proportionality between the gravity of the offense and the severity of the punishment imposed, rather than with the future social outcomes of the sanction. Indonesian criminal law has long reflected this paradigm, particularly through the prioritization of imprisonment as the primary sanction, which is viewed as the most concrete manifestation of state condemnation. This orientation is historically influenced by classical criminal law doctrines inherited from colonial legal traditions, where punishment functions as moral retaliation. Consequently, sentencing practices tend to emphasize legal certainty and formal justice over individualized or relational considerations. As a result, the offender is positioned mainly as a subject of blame rather than as a participant in a broader process of social repair.¹⁴

While retributive sentencing is intended to deter crime and affirm moral responsibility, its practical effectiveness remains contested within contemporary criminal justice discourse. The focus on punishment as suffering often neglects the complex social realities underlying criminal behavior, including structural inequality and social exclusion. Moreover, this paradigm frequently marginalizes victims by limiting their role to that of witnesses rather than recognizing them as parties with substantive interests in the justice process.¹⁵ As a result, the broader social consequences of crime, such as community disruption and recurring cycles of offending, remain insufficiently addressed. This has led to growing criticism that punishment-centered justice fails to produce meaningful deterrence or rehabilitation. Consequently, the legitimacy and sustainability of purely retributive sentencing have increasingly been questioned in both academic and policy debates.

¹³ Gunawan, M. M., Suwadi, P., & Rustamaji, M. (2024). Comparison of restorative justice implementation in Indonesia, USA, Germany, Poland and Switzerland. *Revista de Gestao Social e Ambiental*, 18(1), 1-15.

¹⁴ Sirot, M., & Soesatyo, B. (2025). New Directions for Criminal Law Politics Post-National Criminal Code Law: Between Restorative and Retributive Justice. *Greenation International Journal of Law and Social Sciences*, 3(3), 932-940.

¹⁵ Rivanie, S. S., & Ashar, M. S. I. (2025). Reorientation of Indonesian Criminal Law Politics: Shifting Paradigm from Retributive to Restorative in Death Penalty Regulation. *SIGN Jurnal Hukum*, 7(2), 869-885.

Concept and Principles of Restorative Justice

Restorative justice emphasizes repairing the harm caused by criminal acts through inclusive and participatory processes involving victims, offenders, and the community. Rather than framing crime solely as a violation of state law, this approach conceptualizes crime as a breach of social relationships that generates concrete harm. Its core principles include victim restoration, offender accountability understood as responsibility-taking, dialogue, and social reconciliation. Through structured communication, restorative justice seeks to empower victims to articulate their needs while encouraging offenders to acknowledge the consequences of their actions. In this paradigm, justice is measured not by the severity of punishment imposed, but by the extent to which harm is repaired and social balance is restored. This fundamentally redefines the meaning of justice from retaliation to restoration.¹⁶

This approach aligns closely with substantive justice values, particularly fairness, proportionality, and human dignity. By prioritizing the lived experiences of those directly affected by crime, restorative justice offers a more humane and context-sensitive response that accommodates social and cultural diversity. It also allows for flexible outcomes that may include restitution, apology, community service, or reconciliation agreements, rather than rigid penal sanctions. Such flexibility enables the justice system to respond more effectively to minor and non-violent offenses.¹⁷ Furthermore, restorative justice has the potential to reduce recidivism by fostering moral reflection and social reintegration. In this sense, it represents not merely an alternative sentencing model, but a transformative vision of criminal justice.

The Shift Toward a Restorative Sentencing Paradigm in Indonesia

The shift toward restorative justice in Indonesia is evidenced by increasing normative recognition and policy adoption within law enforcement and judicial practices. Various regulations, prosecutorial guidelines, and police discretion mechanisms have begun to accommodate restorative approaches, particularly in cases involving minor offenses, juvenile offenders, and first-time perpetrators. These developments reflect an acknowledgment that rigid punitive responses may not always serve the interests of justice or social harmony. In practice, restorative justice has been applied selectively, often relying on discretionary authority rather than binding legal mandates. This indicates a transitional phase in which restorative justice coexists with traditional sentencing paradigms. As such, the shift remains incremental rather than systemic.

This shift signifies a gradual reorientation of punishment from retribution toward restoration, emphasizing social repair over moral retaliation. It reflects an evolving understanding of justice that values problem-solving and community involvement alongside legal formalism. However, restorative justice has not yet been fully institutionalized as a dominant sentencing paradigm within Indonesian criminal law. Its application remains fragmented and uneven across regions and institutions. The absence of comprehensive statutory integration limits its normative force and consistency. Consequently, restorative justice is often perceived as an exception rather than a foundational principle of sentencing policy.

¹⁶ Van Ness, D. W., Strong, K. H., Derby, J., & Parker, L. L. (2022). *Restoring justice: An introduction to restorative justice*. Routledge.

¹⁷ Anderson, J., Islam, M. S., & Li, B. (2025). A study of the values and principles-based approach to restorative justice. *Contemporary Justice Review*, 1-26.

Challenges in Implementing Restorative Justice

Despite its growing recognition, restorative justice faces significant challenges in practical implementation within the Indonesian criminal justice system. One major obstacle is the lack of clear and comprehensive normative frameworks that define its scope, procedures, and legal consequences. Institutional readiness also varies considerably among law enforcement agencies, prosecutors, and courts, resulting in inconsistent application. Moreover, a deeply entrenched legal culture oriented toward punitive responses continues to shape professional attitudes and public expectations. Many legal actors remain skeptical of non-punitive resolutions, viewing them as incompatible with deterrence and legal certainty. These factors collectively hinder the mainstreaming of restorative justice.

Addressing these challenges requires a multidimensional strategy that extends beyond formal legal reform. Regulatory clarification is necessary to ensure uniform standards and safeguards, particularly to prevent coercion or unequal bargaining in restorative processes. Capacity building for criminal justice actors is equally important, including training in restorative principles, facilitation skills, and victim-centered approaches. In addition, broader cultural change within society is needed to reshape public perceptions of justice away from punishment as the sole measure of accountability. Without such cultural transformation, restorative justice risks remaining symbolic rather than substantive. Therefore, successful implementation depends on legal, institutional, and societal alignment.

CONCLUSION

The shift from retributive to restorative justice represents a critical development in the evolution of the Indonesian criminal justice system. Restorative justice offers a more comprehensive and humane approach to sentencing by emphasizing victim restoration, offender responsibility, and social harmony. This study concludes that while restorative justice has begun to influence Indonesian criminal law practice, its full potential as a dominant sentencing paradigm has yet to be realized. Strengthening legal frameworks, institutional capacity, and legal culture is essential for restorative justice to function effectively as a core paradigm of sentencing reform in Indonesia.

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