

Implementation of Restorative Justice in the New Criminal Code: A Normative Analysis of Criminal Case Resolution

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ABSTRACT

This study examines the application of the restorative justice approach in the New Criminal Code (KUHP) enacted through Law Number 1 of 2023. The background of this study is the increasing need for a more humane and effective criminal case resolution system that simultaneously takes into account the interests of victims, perpetrators, and the community. The New Criminal Code brings a significant paradigmatic shift by integrating the principles of restorative justice into Indonesian positive legal norms. The research method used is normative legal research with a statute approach, a conceptual approach, and a comparative approach. The results show that the New Criminal Code explicitly accommodates the principle of restorative justice through several provisions, including: the regulation of recovery-oriented sentencing objectives (Article 54), a settlement mechanism outside the judicial process (Article 70), and provisions on supervisory punishment and rehabilitative measures. However, its implementation faces a number of normative challenges, including the lack of comprehensive technical regulations, limited institutional capacity, and the need for harmonization with other laws and regulations. This study recommends the development of detailed implementing regulations, strengthening the capacity of law enforcement officials, and developing an institutional infrastructure that supports the optimal implementation of restorative justice in the Indonesian criminal justice system.

Keywords: Restorative Justice, New Criminal Code, Restorative Justice, Criminal Case Resolution, Indonesian Criminal Law.

INTRODUCTION

The Indonesian criminal justice system has historically adhered to a retributive paradigm that places punishment as the primary goal of the criminal case resolution process. This paradigm prioritizes punishing the perpetrator as a form of retribution for the crime, without adequately addressing the needs of the victim or restoring social relations disrupted by the crime.¹ Dissatisfaction with this retributive paradigm has encouraged the development of alternative thinking in the criminal justice system, one of which is restorative justice, which emphasizes the importance of restoring victims' losses,

¹Howard Zehr. (2015). *The Little Book of Restorative Justice: Revised and Updated*. New York: Good Books. p. 37.



meaningful perpetrator accountability, and active community involvement in the process of resolving criminal cases.²

The concept of restorative justice began to receive serious attention from Indonesian lawmakers at the beginning of the 21st century, marked by various sectoral regulations adopting restorative justice principles in handling certain criminal cases. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System became a significant milestone in the institutionalization of restorative justice in Indonesia through the diversion mechanism. Subsequently, various regulations at the law enforcement level, such as Police Regulation Number 8 of 2021, Prosecutor's Regulation Number 15 of 2020, and Supreme Court Regulation Number 1 of 2024, gradually developed instruments for implementing restorative justice at various stages of the criminal justice process.³

The culmination of this legislative process was the ratification of Law Number 1 of 2023 concerning the Criminal Code (KUHP), which is Indonesia's first codification of substantive criminal law since independence. This New Criminal Code substantially contains fundamental paradigmatic changes compared to the Criminal Code of the Dutch colonial era (*Wetboek van Strafrecht voor Nederlandsch Indie*, Staatsblad 1915 Number 732). One of the most significant changes is the integration of restorative justice principles into various provisions of the New Criminal Code, particularly in the regulation of the purpose of punishment, types of crimes and actions, and settlement mechanisms outside the formal judicial process.⁴ Although the New Criminal Code has accommodated the principles of restorative justice, there are various normative questions that need to be studied in depth regarding the extent to which these provisions can be implemented effectively in the practice of resolving criminal cases in Indonesia. These questions cover aspects such as: (1) how the New Criminal Code regulates the principles of restorative justice normatively; (2) what are the normative challenges and obstacles in its implementation; and (3) what are the prospects for the development of restorative justice in the Indonesian criminal justice system going forward.⁵

Theoretically, restorative justice developed in response to the limitations of the retributive approach in the modern criminal law system. Howard Zehr defines restorative justice as a process that involves all parties involved in a crime to jointly resolve the consequences and determine appropriate remedial steps for the future.⁶ This concept positions criminal acts not merely as violations against the state, but as violations against human beings and social relations. Therefore, the resolution of criminal cases must be directed towards victim rehabilitation, active accountability of perpetrators, and social reconciliation within society. This approach aligns with the principle of legal utility as developed by Jeremy Bentham, which emphasizes that the law must provide the greatest

²Marlina. (2010). *Pengantar Konsep Diversi dan Restorative Justice dalam Hukum Pidana*. Medan: USU Press. hlm. 12.

³United Nations Office on Drugs and Crime (UNODC). (2006). *Handbook on Restorative Justice Programmes*. New York: United Nations. p. 6-8.

⁴Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana (KUHP), Lembaran Negara Republik Indonesia Tahun 2023 Nomor 1.

⁵Barda Nawawi Arief. (2008). *Bunga Rampai Kebijakan Hukum Pidana: Perkembangan Penyusunan Konsep KUHP Baru*. Jakarta: Kencana Prenada Media Group. hlm. 58.

⁶Chandra, T. Y. (2023). Penerapan restorative justice dalam sistem peradilan pidana anak di Indonesia. *Al-Mashlahah Jurnal Hukum Islam Dan Pranata Sosial*, 11(01), 61-78. <https://doi.org/10.30868/am.v11i01.3827>

possible benefit to society.⁷ Restorative justice is seen as more capable of producing substantive solutions than mere formal punishment which is repressive.

Globally, restorative justice has become a crucial component of criminal justice system reform in various countries. The United Nations, through its 2002 United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, encouraged member states to integrate restorative approaches into their national legal systems. This international instrument affirms that restorative justice is a mechanism that can increase victim participation, strengthen perpetrator accountability, and create more effective conflict resolution. Countries such as New Zealand, Canada, Belgium, and Norway have developed various restorative justice-based case resolution models through penal mediation, family group conferencing, and social rehabilitation programs.⁸ The success of these countries demonstrates that a restorative approach can reduce recidivism rates and increase victim satisfaction with the criminal case resolution process. Thus, restorative justice is no longer viewed as merely an alternative concept but as an integral part of the modern criminal justice system.

In Indonesia, the urgency of implementing restorative justice is growing as criticism of the effectiveness of the conventional penal system grows. The national penal system remains heavily dominated by the use of imprisonment as the primary instrument of law enforcement. As a result, correctional institutions are experiencing serious and persistent overcrowding. Data from the Directorate General of Corrections shows that the capacity of correctional institutions and detention centers in Indonesia has exceeded the ideal limit, resulting in poor inmate development and an increased potential for human rights violations within correctional institutions.⁹ This situation demonstrates that an overly repressive approach to punishment actually creates new problems in the criminal justice system. Therefore, a more proportional, effective, and socially rehabilitative legal approach is needed.

Another issue that highlights the weaknesses of the conventional criminal justice system is the continued processing of many minor cases through formal justice mechanisms, even after amicable settlements have been reached between the perpetrator and victim. In law enforcement practice, many cases that could have been resolved amicably are still forced through lengthy, expensive, and formalistic criminal litigation processes. This situation demonstrates that the criminal justice system still tends to prioritize procedural certainty over the interests of expediency and substantive justice. In fact, the principles of simple, expeditious, and low-cost justice, as mandated by the Indonesian justice system, should encourage more efficient and proportional case resolution. A progressive legal perspective believes that the law should not be trapped in a purely legalistic approach but must be able to provide concrete solutions to social problems faced by society.¹⁰ Thus, restorative justice becomes relevant as a case resolution mechanism that is more flexible and oriented towards recovery.

⁷ Ridwansyah, R. (2024). Konsep teori utilitarianisme dan penerapannya dalam hukum praktis di Indonesia. *Nusantara: Jurnal Pendidikan, Seni, Sains dan Sosial Humaniora*, 2(01). <https://doi.org/10.30868/am.v1i101.3827>

⁸ Wahyuningsih, D. (2024). Penerapan Restorative Justice di Negara Amerika Serikat. *Jurnal Ilmiah Penegakan Hukum*, 11(2), 250-257.

⁹ Isramsir, R. D. (2025). Dampak Overkapasitas Lembaga Pemasyarakatan Terhadap Pemenuhan Hak Asasi Narapidana: Studi Kasus Lapas Kelas Iia Padang. *Court Review: Jurnal Penelitian Hukum (e-ISSN: 2776-1916)*, 5(05), 315-322.

¹⁰ DM, M. Y., Saragih, G. M., Mustika, D., Hidayat, F., & Anggraini, R. (2025). Peran Hukum Progresif dalam Menyelesaikan Konflik Pidana Masyarakat: Tantangan dan Solusi Hukum

Prior to the enactment of the New Criminal Code, restorative justice arrangements in Indonesia developed sectorally through various regulations issued by law enforcement agencies. Law No. 11 of 2012 concerning the Juvenile Criminal Justice System was a significant milestone, introducing the concept of diversion as a form of resolving juvenile cases outside the formal judicial process. Diversion is a concrete implementation of restorative justice principles, emphasizing recovery and the best interests of the child.¹¹ These regulations demonstrate that Indonesian criminal law is beginning to adopt a more humane approach in handling certain crimes. Furthermore, diversion reflects the application of the *ultimum remedium* principle, which places punishment as a last resort in resolving criminal cases. Through these regulations, the state is beginning to recognize that punishment is not always the best solution in every criminal case.

The development of restorative justice was further strengthened through internal policies of law enforcement agencies. The National Police issued Police Regulation No. 8 of 2021 concerning Handling Criminal Offenses Based on Restorative Justice, while the Attorney General's Office issued Prosecutor's Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. Both regulations provide discretion for law enforcement officers to resolve certain cases through peace and restoration mechanisms. The Supreme Court also issued Supreme Court Regulation No. 1 of 2024 concerning Guidelines for Handling Criminal Cases Using a Restorative Justice Approach to strengthen the restorative approach in the judicial process. The presence of these various regulations demonstrates a shift in the orientation of national criminal law policy toward a more rehabilitative and restorative approach. However, these sectoral regulations also raise issues of coordination and harmonization of norms in their implementation.

The ratification of Law Number 1 of 2023 concerning the Criminal Code marks a significant milestone in national criminal law reform. For the first time, the principle of restorative justice has been more systematically integrated into Indonesian substantive criminal law. This is reflected in the regulation of the objectives of punishment, which are no longer solely oriented towards retribution but also emphasize conflict resolution, restoring balance, and fostering a sense of peace in society. These provisions demonstrate a paradigm shift in punishment from a repressive model to a rehabilitative-restorative model. From the perspective of modern theories of the objectives of punishment, punishment is intended not only to inflict suffering on the perpetrator but also to reform the perpetrator and restore social relationships damaged by the crime.¹² Thus, the New Criminal Code represents a reform of criminal law that is more responsive to the evolving needs of modern society. This article aims to normatively analyze the provisions of restorative justice in the New Criminal Code, identify implementation challenges, and formulate constructive recommendations for developing a restorative justice-oriented criminal case resolution system in Indonesia. The urgency of this study is heightened given that the New Criminal Code will come into effect in 2026, necessitating thorough

Berkeadilan. *Legalite: Jurnal Perundang Undangan dan Hukum Pidana Islam*, 10(2), 125-142. <https://doi.org/10.32505/legalite.v10i2.10681>

¹¹ Fithri, B. S., & Wahyuni, W. S. (2026). Pelaksanaan restorative justice sebagai implementasi asas kepentingan terbaik bagi anak pelaku tindak pidana tawuran. *Jurnal Hukum Sasana*, 12(1), 87-106. <https://doi.org/10.31599/sasana.v12i1.4598>

¹² Muksin, M. R. S. (2023). Tujuan pemidanaan dalam pembaharuan hukum pidana Indonesia. *Sapientia Et Virtus*, 8(1), 225-247. <https://doi.org/10.37477/sev.v8i1.465>

preparation from various parties, including lawmakers, law enforcement officials, and the wider community.

METHODOLOGY

The research method used in this study is normative legal research, which positions law as a system of norms that is analyzed systematically and comprehensively. Normative legal research is essentially library research based on the analysis of relevant legal materials.¹³ This research uses three main approaches, namely: (1) a statutory approach to analyze the legal norms governing restorative justice in the New Criminal Code and related regulations; (2) a conceptual approach to examine the concept and theory of restorative justice from a criminal law perspective; and (3) a comparative approach to compare the restorative justice provisions in the New Criminal Code with previous regulations and with the legal systems of other relevant countries.¹⁴

The legal materials used in this study consist of three categories. First, primary legal materials, which include Law Number 1 of 2023 concerning the Criminal Code, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Law Number 8 of 1981 concerning the Criminal Procedure Code, Supreme Court Regulation Number 1 of 2024, Prosecutor's Regulation Number 15 of 2020, and Police Regulation Number 8 of 2021. Second, secondary legal materials, which include criminal law literature, scientific journal articles, previous research results, and official documents from law enforcement agencies. Third, tertiary legal materials, which include legal dictionaries, legal encyclopedias, and various other supporting reference sources. The analysis of legal materials was conducted qualitatively using legal interpretation methods, which include grammatical, systematic, historical, and teleological interpretations to understand the meaning and purpose of the legal norms being studied.

RESULTS AND DISCUSSION

The Evolution and Integration of Restorative Justice in the Indonesian Criminal Law System

Restorative justice Restorative justice as a concept and practice of resolving criminal cases has developed since the 1970s in various countries, particularly in North America, Western Europe, and Australasia. This term was first used systematically by Albert Eglash in 1977 to distinguish it from the distributive and retributive justice approaches in handling criminal cases. However, the development of the concept and practice of restorative justice in a more comprehensive manner was carried out by various legal thinkers and practitioners, including Howard Zehr, who is often referred to as the father of modern restorative justice. Howard Zehr defines restorative justice as a process that involves all parties with an interest in a particular criminal offense to jointly identify and address the impact of the offense, as well as its implications for the future.¹⁵ This definition emphasizes three key elements: (1) involvement of all stakeholders; (2) identification of needs and responsibilities; and (3) a constructive future orientation.

¹³Soerjono Soekanto dan Sri Mamudji. (2014). *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Jakarta: Rajawali Pers. hlm. 13-14.

¹⁴Peter Mahmud Marzuki. (2019). *Penelitian Hukum (Edisi Revisi)*. Jakarta: Kencana Prenada Media Group. hlm. 47.

¹⁵Baihaky, M. R. A., & Isnawati, M. (2024). Restorative justice: Pemaknaan, problematika, dan penerapan yang seyogianya. *Unes Journal of Swara Justisia*, 8(2), 276-289. <https://doi.org/10.31933/4mqgaj17>

Meanwhile, Tony Marshall, in the United Nations guidelines, defines restorative justice as a case resolution process in which all parties involved in a particular criminal offense sit together to collectively solve problems regarding how to deal with the consequences of the offense and its implications for the future.¹⁶

Philosophically, restorative justice is based on the premise that crime is fundamentally a violation of human beings and interpersonal relationships, not simply a violation of the state and the law. Therefore, the appropriate response to crime should be oriented toward restoration rather than retribution. This restoration encompasses three main dimensions: reparation of the victim for the harm suffered, reparation of the perpetrator through meaningful accountability and reintegration into society, and reparation of the community for the social impact of the crime. This approach differs fundamentally from the retributive paradigm, which tends to marginalize victims in the criminal justice process and focuses solely on punishing the perpetrator.¹⁷ Over its development, restorative justice has developed various models and implementation mechanisms, including victim-offender mediation, family group conferencing, healing circles, and various forms of rehabilitation and social reintegration programs. Each model has different characteristics, procedures, and implementation contexts, but all adhere to the same basic principles of restorative justice.¹⁸

Prior to the enactment of the New Criminal Code, the normative development of restorative justice in Indonesia took place sectorally and partially through various laws and regulations in specific legal fields. This development can be traced through several important regulations that gradually established the institutional and procedural framework for the implementation of restorative justice in Indonesian legal practice. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) is the most important milestone in the institutionalization of restorative justice in Indonesia. This law explicitly adopts the principles of restorative justice through a diversion mechanism that must be pursued by all law enforcement officials in handling criminal cases involving children as perpetrators.¹⁹ Diversion is defined as the transfer of the settlement of children's cases from the criminal justice process to a process outside the criminal justice system.²⁰ This can take the form of reconciliation with or without compensation, restitution to parents/guardians, participation in education or training, or community service. The successful implementation of diversion mechanisms in the juvenile justice system has become an important reference in the development of restorative justice for criminal cases in general.²¹

At the law enforcement level, the Indonesian National Police (Polri) issued Police Regulation Number 8 of 2021 concerning the Handling of Criminal Offenses Based on Restorative Justice. This regulation establishes the requirements and procedures for the police's implementation of restorative justice during the investigation phase, including criteria for cases that can be resolved through this approach, requirements for

¹⁶ Huda, M. N. (2023). Restorative justice dalam hukum acara pidana di Indonesia. *Voice Justisia: Jurnal Hukum Dan Keadilan*, 7(1), 21-35. <https://journal.uim.ac.id/index.php/justisia/article/view/2178>

¹⁷ Braithwaite, J. (2002). *Restorative Justice and Responsive Regulation*. Oxford: Oxford University Press. p. 11.

¹⁸ Van Ness, D., & Strong, K. H. (2015). *Restoring Justice: An Introduction to Restorative Justice* (5th ed.). New York: Routledge. p. 45.

¹⁹ Pasal 129 huruf a Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak.

²⁰ Pasal 7 ayat (1) Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak.

²¹ Pasal 71B Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak.

reconciliation between the perpetrator and victim, and monitoring and reporting mechanisms.²² Meanwhile, the Attorney General's Office issued Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, which regulates the authority of public prosecutors to terminate prosecution in certain cases that meet the requirements of restorative justice.²³ At the judicial level, the Supreme Court issued Supreme Court Regulation No. 1 of 2024 concerning Guidelines for Handling Criminal Cases Using a Restorative Justice Approach. This regulation provides guidance for judges in integrating restorative justice principles into the trial and sentencing process, including provisions on penal mediation, consideration of reconciliation between perpetrators and victims in determining the type and severity of punishment, and mechanisms for monitoring the implementation of restorative-oriented decisions.²⁴ However, this sectoral normative framework has fundamental limitations in the form of the absence of a strong and comprehensive codified legal basis, so there is the potential for inconsistency and non-uniformity in implementation in the field.²⁵

The New Criminal Code, enacted through Law No. 1 of 2023, represents a comprehensive codification of restorative justice principles into Indonesian substantive criminal law. Unlike previous sectoral regulations, the New Criminal Code positions restorative justice not merely as a technical mechanism for resolving cases, but as one of the fundamental values (*grundnorm*) that underpin the entire new Indonesian criminal law system.²⁶ The most fundamental paradigmatic change in the New Criminal Code is in the regulation of the objectives of criminal punishment as regulated in Article 54. Different from the old Criminal Code which did not explicitly regulate the objectives of criminal punishment, the New Criminal Code stipulates that the objectives of criminal punishment are: (1) preventing the commission of criminal acts by enforcing legal norms for the protection of society; (2) socializing convicts by providing guidance so that they become good and useful people; (3) resolving conflicts caused by criminal acts, restoring balance, and bringing a sense of peace to society; (4) freeing convicts from guilt; and (5) forgiving convicts.²⁷ The third and fourth objectives of this punishment clearly reflect a restorative justice orientation that emphasizes restoration and reconciliation rather than mere punishment.

Furthermore, Article 70 of the New Criminal Code explicitly regulates out-of-court settlement as a legally recognized mechanism for handling criminal offenses. This article states that in criminal cases that do not result in victims and/or only result in minor losses, and where there has been a reconciliation between the perpetrator and victim, prosecution may not be pursued or may be terminated in the public interest.²⁸ This provision provides a strong legal basis for law enforcement officers to implement a

²²Peraturan Kepolisian Negara Republik Indonesia Nomor 8 Tahun 2021 tentang Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif.

²³Peraturan Kejaksaan Republik Indonesia Nomor 15 Tahun 2020 tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif.

²⁴Peraturan Mahkamah Agung Nomor 1 Tahun 2024 tentang Pedoman Penanganan Perkara Pidana dengan Pendekatan Keadilan Restoratif.

²⁵Harahap, M. Yahya. (2016). *Pembahasan Permasalahan dan Penerapan KUHAP: Penyidikan dan Penuntutan* (Edisi Kedua). Jakarta: Sinar Grafika. hlm. 358.

²⁶Penjelasan Umum Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana.

²⁷Pasal 54 ayat (2) Undang-Undang Nomor 1 Tahun 2023 tentang KUHP tentang tujuan pemidanaan.

²⁸Pasal 70 ayat (1) Undang-Undang Nomor 1 Tahun 2023 tentang KUHP tentang Penyelesaian di Luar Proses Peradilan.

restorative justice approach in a more systematic and standardized manner in their daily criminal case handling practices.²⁹

The New Criminal Code also introduces various new types of punishments and measures that reflect a restorative orientation, including: supervision (Articles 77-79), community service (Articles 85-87), and various forms of rehabilitation (Articles 96-100). Supervision is one of the main types of punishment that can be imposed as an alternative to imprisonment for perpetrators of certain crimes who meet certain requirements.³⁰ Community service is aimed at providing tangible benefits to the community while also providing an opportunity for offenders to improve themselves without having to serve a prison sentence, which often has a destructive impact on the lives of offenders and their families. Meanwhile, rehabilitation measures are oriented towards restoring the mental, social, and economic well-being of offenders, particularly those with drug addiction, mental disorders, or other vulnerable conditions.³¹

From a normative perspective, the integration of restorative justice into the New Criminal Code reflects a fundamental paradigm shift from a punitive model to a rehabilitative-restorative model in the Indonesian criminal justice system. This shift aligns with developments in international criminal law and human rights standards, which prioritize a more humane and restorative approach to handling criminal cases.³² Structurally, the restorative justice provisions in the New Criminal Code can be divided into three normative layers: first, norms that explicitly refer to the concept of restorative justice; second, norms that regulate mechanisms and procedures consistent with the principles of restorative justice; and third, norms that establish the goals and values of restorative-oriented punishment.³³

Reconstruction of the Implementation of Restorative Justice in the Indonesian Criminal Law System

The New Criminal Code provides several concrete mechanisms for resolving criminal cases through a restorative justice approach. These mechanisms operate at various stages of the criminal justice process, from the investigation stage to the implementation of the verdict, thus forming a comprehensive system to encourage recovery-oriented criminal case resolution. The extrajudicial settlement mechanism is regulated in Article 70 of the New Criminal Code. This provision allows public prosecutors to discontinue or discontinue prosecution in certain cases that meet the following requirements: (a) the crime did not result in victims; (b) the crime only resulted in minor losses; and (c) reconciliation has occurred between the perpetrator and the victim. These requirements are cumulative, so all must be met for the extrajudicial settlement mechanism to be implemented. However, this provision provides the necessary flexibility for law enforcement officials to consider the specific context of each case when making decisions about implementing a restorative approach.³⁴

Supervision sentence mechanism as an alternative to imprisonment. Articles 77-

²⁹Penjelasan Pasal 70 Undang-Undang Nomor 1 Tahun 2023 tentang KUHP.

³⁰Pasal 51 dan 52 Undang-Undang Nomor 1 Tahun 2023 tentang KUHP.

³¹Pasal 96 Undang-Undang Nomor 1 Tahun 2023 tentang KUHP tentang Tindakan Rehabilitasi.

³²Eva Achjani Zulfa. (2011). Pergeseran Paradigma Pemidanaan. Bandung: Lubuk Agung. hlm.63.

³³Aertsen, I., Daems, T., & Robert, L. (Eds.). (2006). Institutionalizing Restorative Justice. Devon: Willan Publishing. p. 12-14.

³⁴Pasal 2 ayat (1) Peraturan Kejaksaan Nomor 15 Tahun 2020 tentang kriteria restorative justice.

79 of the New Criminal Code regulate supervision sentences that can be imposed on convicts who meet certain requirements as an alternative to imprisonment. While serving a supervision sentence, convicts are required to fulfill certain obligations determined by the judge, which may include obligations to provide compensation to victims, participate in rehabilitation programs, or perform community service for the benefit of the community. This mechanism allows convicts to continue interacting with their families and communities while serving their sentences, thereby reducing the negative impact of punishment on the social and economic lives of convicts and their families.

The mechanism for rehabilitation measures is regulated in Articles 96-100 of the New Criminal Code. Rehabilitation measures are oriented toward restoring the condition of criminal offenders who are experiencing drug addiction, mental disorders, or other vulnerable conditions. Unlike punitive punishment, rehabilitation measures do not include suffering as an essential element, but rather focus on healing and restoring the offender's condition so that they can lead a normal and productive life. This provision aligns with the principles of restorative justice, which prioritizes offender rehabilitation as an integral part of a comprehensive criminal case resolution process.³⁵ The mechanism for considering reconciliation in determining sentences. The New Criminal Code implicitly recognizes the importance of reconciliation between the perpetrator and the victim as a mitigating factor. Judges are given broader discretion to consider the defendant's reconciliation efforts and compensation when determining the type and severity of the sentence imposed. This discretion incentivizes perpetrators to proactively seek reparation for the victim, thus encouraging restorative justice-oriented case resolution, even if the case is still resolved through the formal judicial process.³⁶

Although the New Criminal Code has established a fairly comprehensive normative framework for the implementation of restorative justice, several normative challenges must be addressed to ensure its effective implementation in criminal case resolution practices in Indonesia. These challenges are multidimensional and encompass substantive, procedural, and institutional aspects. The first challenge is the lack of comprehensive and detailed implementing regulations. The New Criminal Code, as is typical of codified laws, only regulates general and principled provisions regarding restorative justice, without providing detailed technical guidance on procedures, standards, and implementation mechanisms. This creates an urgent need for implementing regulations, whether in the form of Government Regulations, Supreme Court Regulations, Attorney General's Office Regulations, or Police Regulations, that would provide more detailed guidance on the procedures for implementing the various restorative justice mechanisms stipulated in the New Criminal Code.³⁷ The absence of technical regulations has the potential to cause inconsistency and non-uniformity in implementation in the field, as well as providing room for abuse of discretion by law enforcement officials.

The second challenge is the need for harmonization with other laws and regulations. The New Criminal Code does not operate in a normative vacuum, but interacts with various other laws and regulations that also govern specific aspects of criminal case resolution. There is potential for conflict or inconsistency between the New

³⁵Pasal 100 ayat (2) Undang-Undang Nomor 1 Tahun 2023 tentang KUHP.

³⁶Pasal 4 Peraturan Mahkamah Agung Nomor 1 Tahun 2024 tentang syarat dan prosedur mediasi penal.

³⁷Satjipto Rahardjo. (2008). *Negara Hukum yang Membahagiakan Rakyatnya*. Yogyakarta: Genta Publishing. hlm. 44.

Criminal Code's provisions on restorative justice and those of the Criminal Procedure Code, law enforcement regulations, and other sectoral laws.³⁸ Proper harmonization of these various regulations is a crucial prerequisite for the effective implementation of restorative justice in actual criminal justice practice. The third challenge is limited institutional capacity. Effective implementation of restorative justice requires adequate institutional capacity from all components of the criminal justice system, including the police, prosecutors, courts, correctional institutions, and supporting institutions such as mediators, counselors, social workers, and community organizations.³⁹ Currently, this institutional capacity is not evenly distributed across Indonesia, particularly in remote and outermost areas with limited human resources, infrastructure, and budget. Developing this necessary institutional capacity requires significant investment and considerable time, requiring systematic planning and budgeting by the government and law enforcement agencies.⁴⁰

The fourth challenge is the legal culture's resistance to the restorative justice approach. The dominant legal culture among law enforcement officials and Indonesian society remains strongly oriented toward a retributive paradigm that equates justice with punishment. Changing this legal culture requires intensive and sustained education, outreach, and advocacy efforts, aimed not only at law enforcement officials but also at the wider community, including victims of crime, who often prioritize punishing the perpetrator over reparation for the losses they have suffered.⁴¹ This legal cultural resistance is the most difficult challenge to overcome in the short term, because cultural change is basically a gradual social transformation process and requires a long time.⁴² The fifth challenge is protecting victims' rights in the restorative justice process. One of the main criticisms of various restorative justice mechanisms is the potential for pressure on victims to reach a settlement agreement that is not in accordance with their true wishes, or the potential for a power imbalance between the perpetrator and the victim in the mediation process. The New Criminal Code needs to be supplemented with provisions that explicitly guarantee the protection of victims' rights in the restorative justice process, including the right not to participate in the process, the right to legal representation, and the right to fair and adequate compensation. The absence of adequate guarantees for victims' rights has the potential to make restorative justice an instrument that benefits perpetrators more than victims, thus contradicting its fundamental purpose.⁴³

To broaden the analytical perspective, it is important to compare the restorative justice provisions in the New Criminal Code with similar provisions in several countries that have had longer experience in developing restorative justice systems. This comparison can provide insight into best practices that Indonesia can adapt in developing an effective and sustainable restorative justice system. New Zealand is one of the countries most frequently cited as a reference in the development of a restorative justice system, particularly in the context of handling juvenile criminal cases through the family group conferencing (FGC) mechanism introduced through the Children, Young Persons

³⁸Pasal 140 ayat (2) huruf a Kitab Undang-Undang Hukum Acara Pidana (KUHAP).

³⁹Rufinus Hotmaulana Hutauruk. (2013). *Penanggulangan Kejahatan Korporasi Melalui Pendekatan Restoratif: Suatu Terobosan Hukum*. Jakarta: Sinar Grafika. hlm. 91.

⁴⁰Laporan Mahkamah Agung Republik Indonesia. (2023). *Implementasi Restorative Justice dalam Sistem Peradilan Indonesia*. Jakarta: MA RI. hlm. 17.

⁴¹Mardjono Reksodiputro. (1994). *Hak Asasi Manusia dalam Sistem Peradilan Pidana*. Jakarta: Pusat Pelayanan Keadilan dan Pengabdian Hukum UI. hlm. 84.

⁴²Christie, N. (1977). *Conflicts as Property*. *British Journal of Criminology*, 17(1), 1-15.

⁴³Pasal 2 Peraturan Kepolisian Nomor 8 Tahun 2021 tentang asas-asas restorative justice.

and Their Families Act of 1989. New Zealand then further developed this system through the Sentencing Act 2002 and the Parole Act 2002, which integrated restorative justice into the sentencing and parole system for adult offenders.⁴⁴ New Zealand's experience shows that integrating restorative justice into a comprehensive legal framework, accompanied by adequate institutional support and resources, can result in high levels of satisfaction from both victims and offenders, and contribute to reduced recidivism rates.

Belgium is another country with a relatively advanced restorative justice system in Europe, integrating penal mediation into its criminal justice system through the 1994 Law on Mediation in Criminal Matters, which was subsequently reinforced by various subsequent regulations. Belgium's experience demonstrates the importance of building a dedicated institutional infrastructure to support restorative justice implementation, including the establishment of professional, independent mediation institutions, standardized mediator training programs, and a systematic monitoring and evaluation system.⁴⁵ Compared to New Zealand and Belgium, the restorative justice provisions in Indonesia's New Criminal Code are still in their early stages of development. While the New Criminal Code has established a robust normative framework, it still requires the development of a much more comprehensive institutional infrastructure, technical regulations, and human resource capacity to significantly impact criminal case resolution practices. Indonesia can learn from the experiences of these two countries, particularly in terms of institutional development, human resource training, and the development of effective monitoring and evaluation systems.

Based on the normative analysis conducted, several positive prospects and constructive recommendations are available for the future development of restorative justice in the Indonesian criminal justice system. These prospects are based on an assessment of the strength of the normative framework established by the New Criminal Code, as well as the opportunities for development that arise as public legal awareness and the institutional capacity of law enforcement officials grow. First, the urgent need to establish comprehensive implementing regulations. The government, together with the Supreme Court, the Attorney General's Office, and the National Police, needs to proactively develop detailed implementing regulations on the mechanisms, procedures, and standards for implementing restorative justice as stipulated in the New Criminal Code. These implementing regulations should provide clear and comprehensive guidance for all law enforcement officials in implementing the restorative justice approach, including requirements for case eligibility, mediation procedures, standards for protecting the rights of victims and perpetrators, monitoring and evaluation mechanisms, and sanctions for abuse of authority.

Systematic and sustainable human resource capacity development. Effective implementation of restorative justice requires law enforcement officers who not only understand its normative provisions but also possess practical skills in facilitating fair and constructive mediation and negotiation processes. Therefore, a comprehensive and sustainable training program is needed for all levels of law enforcement officers, from

⁴⁴ Sakti, I. (2024). Penerapan prinsip keadilan restoratif atas tindak pidana yang mengakibatkan kematian terhadap korban: Mungkinkah keadilan restoratif dapat diterapkan dalam tindak pidana yang mengakibatkan kematian. *Jurnal Darma Agung*, 32(5), 11-33. <http://dx.doi.org/10.46930/ojsuda.v32i5.4564>

⁴⁵ Febriansyah, M. F. (2025). Perbandingan Pengaturan Restorative Justice Dalam Hukum Pidana Indonesia Dan Negara Kanada. *Jurnal Kajian Hukum Dan Kebijakan Publik* | E-ISSN: 3031-8882, 2(2), 841-850. <https://doi.org/10.62379/556d7397>

investigators and prosecutors to judges and correctional officers. This training program should also include training for community mediators who can act as facilitators in the restorative justice-based criminal case resolution process at the local level.

Developing a supportive institutional infrastructure. The implementation of restorative justice requires adequate institutional infrastructure, including mediation centers across Indonesia, a standardized documentation and reporting system, an independent oversight mechanism, and a network of support services for victims and perpetrators during and after the case resolution process. Developing this infrastructure requires significant investment, but in the long run, it can generate substantial savings by reducing the burden on the formal justice system and the social costs associated with excessive imprisonment.

Strengthening the protection of victims' rights in the restorative justice process. For restorative justice to function fairly and effectively, strong guarantees of victims' rights are necessary at every stage of the process.⁴⁶ These victim protection provisions need to be explicitly and detailedly formulated in implementing regulations, covering rights such as: the right to receive complete information about the restorative justice process; the right to refuse to participate without negative consequences; the right to legal representation; the right to receive fair and adequate compensation; and the right to receive protection from intimidation or pressure from any party. Develop an effective monitoring and evaluation system. To ensure that the implementation of restorative justice truly achieves its objectives, a comprehensive monitoring and evaluation system based on accurate data is required. This system must be able to measure various indicators of success, including: the level of victim and perpetrator satisfaction with the process and outcome of case resolution; the level of perpetrator compliance with the peace agreement; the rate of recidivism of perpetrators undergoing restorative justice programs; the impact on the burden on the formal justice system; and the broader socio-economic impact of implementing this approach. This systematic data and evaluation will be very useful as a policy basis for continuously improving the restorative justice system in Indonesia.

CONCLUSION

Based on the normative analysis that has been conducted, it can be concluded that the New Criminal Code, enacted through Law Number 1 of 2023, represents a significant step forward in integrating the principles of restorative justice into Indonesia's substantive criminal law system. This integration is realized through various provisions that explicitly and implicitly accommodate the values and mechanisms of restorative justice, including: (1) the regulation of the objectives of punishment that are oriented towards recovery and reconciliation (Article 54); (2) settlement mechanisms outside the judicial process (Article 70); (3) the introduction of alternative types of punishment such as supervision and community service; and (4) the regulation of rehabilitation measures oriented towards restoring the condition of the perpetrator. However, the normative framework that has been built by the New Criminal Code still faces a number of implementation challenges that need to be addressed immediately, namely: the lack of comprehensive implementing regulations, the need for harmonization with various other laws and regulations, limited institutional capacity, resistance from a legal culture that is still retributively oriented, and the need for stronger protection of victims' rights in the restorative justice process.

⁴⁶ Utami, F. R., Anggraeniko, L. S., & Ambarwati, A. (2026). Perlindungan Korban dalam Kerangka Keadilan Restoratif pada Pembaharuan Sistem Hukum Nasional. *Locus: Jurnal Konsep Ilmu Hukum*, 6(1), 226-235. <https://doi.org/10.56128/jkih.v6i1.895>

Addressing these challenges requires coordinated and sustained efforts from all stakeholders, including the government, legislative bodies, law enforcement agencies, academics, and civil society. The prospects for developing restorative justice in the Indonesian criminal justice system are promising, provided that strategic steps are taken, including: the establishment of comprehensive implementing regulations, systematic human resource capacity development, adequate institutional infrastructure development, strengthening the protection of victims' rights, and developing a monitoring and evaluation system based on accurate data. Therefore, the New Criminal Code is expected to serve as a strong legal foundation for transforming the Indonesian criminal justice system toward a more humane, effective, and justice-oriented paradigm for all parties involved in criminal cases.

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