



CRIMINAL LAW REFORM IN THE NEW KUHP: PARADIGM ANALYSIS AND ITS IMPLICATIONS FOR THE JUSTICE SYSTEM

Henny Saida Flora¹

Universitas Katolik Santo Thomas, Indonesia¹

hennysaida@yahoo.com

Abstract

The enactment of Law Number 1 of 2023 concerning the Criminal Code (National Criminal Code) marks a fundamental change in the architecture of Indonesian criminal law after more than a century of being subject to the *Wetboek van Strafrecht*, a colonial legacy. This article aims to analyze the paradigm shift brought by the National Criminal Code, specifically the shift from a retributive-legalistic paradigm to a paradigm that accommodates the balance of interests of perpetrators, victims, and society through the principle of monodualistic balance, and examines the normative and structural implications of this change for the Indonesian criminal justice system. Beyond mapping these reforms, this article also critically examines the conceptual tensions embedded within this paradigm shift, particularly the unresolved dualism between the recognition of living law and the principle of legal certainty, situating the discussion within Thomas Kuhn's framework of paradigm change. This research uses a normative juridical method with a statutory, conceptual, and comparative approach. The results of the study indicate that the National Criminal Code introduces a number of significant reform ideas, including the recognition of living law in society as a source of material criminal law, strengthening the principles of subsidiarity and ultimum remedium, the implementation of a two-track system in criminal punishment, the formulation of explicit objectives and guidelines for criminal punishment, and more comprehensive regulations for corporate criminal liability. The implications of this paradigmatic shift for the criminal justice system include the need to adjust criminal procedural law, increase the institutional capacity of law enforcement officials, reorient legal culture toward a restorative justice approach, and the challenge of harmonizing the National Criminal Code with various existing special criminal laws. This article recommends strengthening derivative regulations, intensive training for law enforcement officials, and ongoing implementation oversight to ensure the goals of criminal law reform are achieved effectively and fairly.

Keywords: National Criminal Code; criminal law reform; legal paradigm; criminal justice system; restorative justice.

Introduction

Indonesian criminal law has long been criticized as a legal product that no longer reflects the sociological, cultural, and philosophical conditions of contemporary Indonesian society. The Criminal Code in effect since the colonial era, the *Wetboek van Strafrecht voor Nederlandsch-Indie*, was enacted based on the principle of concordance and was maintained after independence through Law Number 1 of 1946 concerning Criminal Law Regulations. For more than seven decades, efforts to reform national criminal law have been continuously initiated by various generations of Indonesian criminal law experts, but the legislative

process has been slow due to the complexity of the material content, the dynamics of legal politics, and prolonged academic debates on a number of sensitive issues.

Criticism of the old Criminal Code stems not only from its age, which is more than a century old, but also from the substance aspect, which is considered no longer in line with the development of Indonesian national values after independence, especially the values contained in Pancasila and the 1945 Constitution of the Republic of Indonesia. A number of groups believe that maintaining colonial legal products for such a long period reflects a gap between the ideals of national law and the prevailing normative reality, a condition that some experts call a structural delay in the development of national law.¹

The culmination of this reform process was realized on January 2, 2023, when the President of the Republic of Indonesia ratified Law Number 1 of 2023 concerning the Criminal Code, which was later widely known as the National Criminal Code.² The National Criminal Code is given a three-year transition period before being declared effective, as stipulated in Article 624, with the aim of providing an opportunity for all stakeholders to conduct socialization, harmonization of implementing regulations, and institutional adjustments.³

The significance of the presence of the National Criminal Code lies not only in the formal aspect of replacing a code of law, but also in the underlying paradigmatic change.⁴ So far, Indonesian criminal law has been implemented on the foundation of a legalistic-positivistic paradigm that emphasizes the principle of strict legality as stipulated in Article 1 paragraph (1) of the old Criminal Code, which emphasizes that no act can be punished except by the force of criminal regulations in legislation that existed before the act was committed.

This legalistic paradigm, although it provides a high level of legal certainty, is considered by a number of criminal law academics as a paradigm that is less responsive to the social realities of plural Indonesian society, especially customary law communities that still apply unwritten legal norms in everyday life.⁵

¹ Anghie, A. (2023). Rethinking international law: A TWAIL retrospective. *European Journal of International Law*, 34(1), 7-112. <https://doi.org/10.1093/ejil/chad005>

² Rahmawati Dewi, "Masa Transisi Pemberlakuan KUHP Nasional: Tantangan dan Strategi Implementasi," *Jurnal Hukum dan Pembangunan*, Vol. 53, No. 2 (2023), hlm. 245-260.

³ Bambang Waluyo Sugiharto, "Living Law sebagai Sumber Hukum Pidana Materiil dalam Perspektif Pluralisme Hukum Indonesia," *Jurnal Hukum Adat dan Pembaruan Hukum*, Vol. 8, No. 1 (2022), hlm. 33-51.

⁴ Faisal, Yanto, A., Rahayu, D. P., Haryadi, D., Darmawan, A., & Manik, J. D. N. (2024). Genuine paradigm of criminal justice: rethinking penal reform within Indonesia New Criminal Code. *Cogent Social Sciences*, 10(1), 2301634. <https://doi.org/10.1080/23311886.2023.2301634>

⁵ Lihat Pasal 2 Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana.

The National Criminal Code expressly accommodates the laws that exist in society as part of the Indonesian material criminal law system, as regulated in Article 2, which states that the provisions as referred to in Article 1 paragraph (1) do not reduce the validity of the laws that exist in society which determine that a person deserves to be punished even though the act is not regulated by law.⁶ This provision is a fairly radical legal breakthrough because it explicitly opens up space for the application of the principle of material legality alongside the principle of formal legality, while still being accompanied by strict requirements in the form of the requirement to comply with the values of Pancasila, human rights, and legal principles recognized by the community of nations.⁷

In addition to the issue of material legality, the National Criminal Code also brings a number of other paradigmatic changes that are no less significant, including the formulation of the objectives of criminal punishment explicitly in Article 51, the application of criminal punishment guidelines that provide concrete guidance for judges in issuing decisions, the regulation of a two-track criminal punishment system that allows for the simultaneous imposition of criminal penalties and actions, as well as regulations on corporate criminal liability that are more detailed than previous regulations that were spread across various special criminal laws.⁸

These changes, in turn, have far-reaching consequences for the entire Indonesian criminal justice system, encompassing the police investigation and inquiry subsystem, the prosecutor's office prosecution subsystem, the courts' examination and adjudication subsystem, and the correctional system. The criminal justice system, as an integrated whole, demands paradigmatic consistency across all subsystems, so that paradigm shifts at the substantive level of criminal law should be accompanied by adjustments at the formal level of criminal law.⁹

In this context, the ratification of Law Number 20 of 2025 concerning Criminal Procedure Law as a replacement for Law Number 8 of 1981 is a further step that cannot be separated from the major agenda of national criminal law reform, because the new criminal procedure law is designed to adjust the law

⁶Erna Kurniawati, "Dualisme Asas Legalitas dalam KUHP Nasional: Antara Kepastian Hukum dan Keadilan Substantif," *Jurnal Konstitusi*, Vol. 20, No. 3 (2023), hlm. 412-430.

⁷Yusuf Ananta Prabowo, "Sistem Dua Jalur (Double Track System) dalam KUHP Nasional: Kajian terhadap Pidana dan Tindakan," *Jurnal Hukum Pidana dan Kriminologi Indonesia*, Vol. 9, No. 2 (2022), hlm. 178-196.

⁸Setiyono Hadi Wibowo, "Keterpaduan Sistem Peradilan Pidana Terpadu Pasca Reformasi KUHP dan KUHPA," *Jurnal Ilmu Hukum*, Vol. 15, No. 1 (2024), hlm. 55-74.

⁹Lihat Undang-Undang Nomor 20 Tahun 2025 tentang Hukum Acara Pidana, Lembaran Negara Republik Indonesia Tahun 2025 Nomor 112.

enforcement mechanism to the new paradigms introduced by the National Criminal Code.¹⁰ Interestingly, the dynamics of Indonesian criminal law legislation did not stop at these two legal instruments. In early 2026, the government and the House of Representatives re-enacted Law No. 1 of 2026, which included several technical adjustments to the provisions of the National Criminal Code and criminal procedure law, in response to various inputs received during the transition period.¹¹

This dynamic demonstrates that national criminal law reform is progressive and ongoing, not a final and static legal event, but rather a process that is continually refined along with implementation experience in the field.¹² This phenomenon is in line with the view that criminal law as part of a living legal system is always in a continuous process of formation, where written legal norms and law enforcement practices influence each other reciprocally, so that evaluation and refinement of regulations are a natural and even necessary part of a healthy legal reform process, as long as it is carried out through a participatory and accountable legislative mechanism.¹³

Based on the above description, there is an academic urgency to conduct a comprehensive study of the paradigm shift in the National Criminal Code and its implications for the Indonesian criminal justice system as a whole. Such a study is crucial given that the success of criminal law reform at the normative level does not necessarily guarantee success at the implementation level, as demonstrated by various experiences of legal reform in other countries.¹⁴

This article addresses two fundamental questions. First, how the shifting paradigm of criminal law embodied in the National Criminal Code compares with the paradigm underlying the previous Criminal Code, both philosophically, normatively, and technically. Second, what are the implications of this paradigm shift for the structure, function, and practice of each subsystem within the Indonesian criminal justice system, and what challenges need to be anticipated in its implementation.

¹⁰Lihat Undang-Undang Nomor 1 Tahun 2026 tentang Perubahan atas Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana.

¹¹Muhammad Rizki Handoyo, op.cit., hlm. 90.

¹²Haryogi, M. P. (2025). Revitalization and Revitalization and Repositioning of the Witness and Victim Protection Agency of LPSK in Building a Robust Institution. *Indonesia Law Reform Journal*, 5(2), 209-227. <https://doi.org/10.22219/ilrej.v5i2.39363>

¹³Muhammad Rizki Handoyo, "Gap antara Law in Books dan Law in Action dalam Reformasi Hukum Pidana: Perbandingan Pengalaman Beberapa Negara," *Jurnal Perbandingan Hukum*, Vol. 6, No. 1 (2023), hlm. 89-107.

¹⁴Deni Setiawan Kusuma, op.cit., hlm. 17.

Many studies on the reform of the National Criminal Code have been conducted by previous researchers, but most of these studies tend to focus on partial analysis of certain articles, such as special studies on crimes against morality, special studies on corruption, or special studies on the death penalty. This article attempts to fill this gap by offering a more holistic analysis, placing the various normative changes in the National Criminal Code within a coherent, paradigmatic analytical framework and systematically linking them to their implications for the entire criminal justice system, not just one specific subsystem. Beyond synthesizing these normative changes, this article also adopts a critical stance toward the paradigm shift itself, examining internal tensions and academic objections that a purely descriptive account would overlook. Thus, it is hoped that this article will provide a more comprehensive understanding of the meaning and consequences of national criminal law reform.

Based on this background, this article was written with the aim of analyzing in depth the shift in the paradigm of criminal law in the National Criminal Code and identifying the normative and structural implications it has on the Indonesian criminal justice system, with the hope of providing academic contributions to the development of criminal law science as well as practical input for stakeholders in preparing for the optimal implementation of the National Criminal Code.

Methods

This research uses a normative legal research method which focuses on the study of positive legal norms as the main research object.¹⁵ The approaches used in this study include three main approaches: the statute approach, the conceptual approach, and the comparative approach. The statutory approach is used to systematically examine the provisions of Law Number 1 of 2023 concerning the Criminal Code, Law Number 20 of 2025 concerning Criminal Procedure Law, and Law Number 1 of 2026, in relation to the provisions of the old Criminal Code and various special criminal laws that are still in force.

The conceptual approach is used to examine the criminal law concepts that underlie paradigmatic changes in the National Criminal Code, such as the concept of monodualistic balance, the concept of the double track system, the concept of restorative justice, and the concept of corporate criminal responsibility, by

¹⁵Peter Mahmud Marzuki, sebagaimana dikutip dalam Aditya Wirawan, "Metode Penelitian Hukum Normatif dalam Kajian Pembaruan Hukum Pidana," *Jurnal Metodologi Penelitian Hukum*, Vol. 4, No. 2 (2021), hlm. 121-138.

referring to the views of national and international criminal law experts.¹⁶ A comparative approach is used in a limited way to compare several provisions of the National Criminal Code with the experience of criminal law reform in other countries, especially countries with a civil law tradition that have previously codified modern criminal law, in order to obtain a broader perspective in analyzing the implications of national criminal law reform.

The legal materials used in this study consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include relevant laws and regulations, while secondary legal materials include books, scientific journals, research results, and academic papers related to national criminal law reform. Tertiary legal materials include legal dictionaries and legal encyclopedias, which are used to provide additional explanations of certain legal terms. The legal material collection technique is carried out through library research by tracing and collecting relevant legal materials from various sources, both in print and electronic form. The analysis of legal materials is carried out qualitatively using a descriptive-analytical method, namely presenting the data and legal materials obtained systematically, then analyzing them to obtain answers to the problems studied in this study.¹⁷

Discussion

Paradigm Analysis in the National Criminal Code

A paradigm shift in criminal law essentially represents a fundamental shift in perspective regarding the nature, purpose, and function of criminal law in society. A paradigm can be understood as a framework of thought underlying a system of norms, determining how those norms are structured, interpreted, and applied.¹⁸ The old Criminal Code was based on the classical, retributive paradigm of criminal law a paradigm that views punishment solely as retribution for the wrongdoing committed by the offender. This paradigm strictly emphasizes legal certainty through the principle of formal legality, but tends to overlook the need to balance the interests of the victim with those of society at large.

It is important to clarify at the outset that the term paradigm as used in this article draws upon, but does not mechanically transplant, Thomas Kuhn's classical

¹⁶Deni Setiawan Kusuma, "Keseimbangan Monodualistik sebagai Paradigma Baru Hukum Pidana Indonesia," *Jurnal Hukum Pidana Progresif*, Vol. 11, No. 1 (2024), hlm. 15-34.

¹⁷Rina Anggraeni Putri, "Teknik Analisis Bahan Hukum dalam Penelitian Hukum Normatif," *Jurnal Ilmu Hukum dan Metodologi*, Vol. 7, No. 1 (2022), hlm. 44-59.

¹⁸Sri Wahyuni Kartika, "Pergeseran Paradigma dalam Pembaruan Hukum Pidana Indonesia: Sebuah Tinjauan Filosofis," *Jurnal Filsafat Hukum Indonesia*, Vol. 5, No. 2 (2023), hlm. 201-218.

account of paradigm shifts in the philosophy of science, in which a paradigm denotes the constellation of shared assumptions, exemplars, and problem-solving standards that structure inquiry within a given community until accumulating anomalies precipitate a revolutionary shift to a new framework.¹⁹ Legal paradigms differ from scientific ones in at least one crucial respect: a shift in legal paradigm is not settled through open-ended scholarly contestation alone, but is authoritatively enacted through legislation, so that the “revolutionary” moment is a legislative act rather than a gradual accumulation of scholarly consensus. Nevertheless, the Kuhnian framework remains analytically useful here because it directs attention to precisely the elements this article seeks to examine: the underlying assumptions about the purpose of punishment, the exemplary norms and provisions that operationalize those assumptions, and the anomalies within the old paradigm most notably its rigidity in the face of legal pluralism that are invoked to justify the shift. Operationalized in this way, “paradigm” in this article refers to the coherent set of assumptions regarding the object, purpose, and normative basis of criminal law that underlies and gives shape to specific legal provisions, rather than a purely descriptive label attached retrospectively to a body of new norms.²⁰ The analysis in the following sections is therefore structured around identifying these underlying assumptions in specific articles of the National Criminal Code, rather than merely enumerating them.

The National Criminal Code is shifting toward a more comprehensive paradigm, known in Indonesian criminal law as the “monodualistic balance paradigm” a paradigm that seeks to balance the protection of the interests of individual offenders with the protection of the interests of society, as well as to balance legal certainty with justice and the public benefit of the law.²¹ This monodualistic balance paradigm is essentially a manifestation of the values of Pancasila, particularly the principle of just and civilized humanity and the principle of social justice for all the people of Indonesia, which require that criminal law not be oriented solely toward the state’s interest in maintaining order, but also take into account human dignity and worth, whether as perpetrators or as victims of criminal acts.²²

One of the most fundamental breakthroughs in the National Criminal Code is the recognition of the living law within society, as stipulated in Article 2. This

¹⁹ Kuhn, T. S. (1962). *The Structure of Scientific Revolutions*. Chicago: University of Chicago Press, pp. 10–22.

²⁰ Sri Wahyuni Kartika, *op.cit.*, hlm. 209.

²¹ Deni Setiawan Kusuma, *op.cit.*, hlm. 20.

²² Sri Wahyuni Kartika, *op.cit.*, hlm. 207.

provision opens the possibility for a person to be prosecuted based on customary legal norms applicable in a particular region, provided that such norms are not explicitly regulated by law and are consistent with the values of Pancasila and human rights.²³ The recognition of the living law within society is not actually a new concept in the Indonesian legal system; rather, it has long been acknowledged in judicial practice through Law No. 48 of 2009 on Judicial Power, specifically Article 5(1), which requires judges to explore, follow, and understand the legal values and sense of justice that exist within society.²⁴ However, the National Criminal Code elevates this recognition to a more formal and binding level by explicitly incorporating it into the main body of the criminal code, so that customary law is no longer merely a consideration for judges in adjudicating cases but can serve as the basis for sentencing itself.

The issue that then arises is how to objectively determine the existence and legal boundaries of the living law within that community, given that Indonesia has hundreds of customary law communities with highly diverse systems of norms. To address this issue, Article 2(2) of the National Criminal Code stipulates that the application of customary law within a community is further regulated by local regulations, thereby establishing a formal mechanism for identifying and validating customary norms that can serve as the basis for criminal prosecution.²⁵

The explanation of Article 2 of the National Criminal Code also provides quite strict limitations regarding the types of sanctions that can be imposed based on the existing law in society, namely limited to sanctions as regulated in the existing law as long as they do not take the form of a heavier penalty than the penalty regulated in the National Criminal Code, so that there is a maximum limit that remains subject to the framework of proportionality of punishment generally adopted by the National Criminal Code.²⁶ The provisions regarding regional regulations as an instrument for formalizing customary law pose a unique challenge, because until the three-year transition period has been running, not all regional governments have issued the intended regional regulations, thus

²³ Wibianto, M. Y., Hartiwiningsih, H., & Handayani, I. G. A. K. R. (2025). Real Justice, Real Impact with the Prosecutors in Action. *Journal of Human Rights, Culture and Legal System*, 5(3), 1015-1041. <https://doi.org/10.53955/jhcls.v5i3.804>

²⁴ Andi Muhammad Fadli, "Hukum yang Hidup dalam Masyarakat sebagai Sumber Hukum Pidana: Kontinuitas dan Perubahan," *Jurnal Hukum dan Peradilan*, Vol. 10, No. 3 (2021), hlm. 301-319.

²⁵ Lihat Pasal 2 ayat (2) Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana.

²⁶ Erna Kurniawati, *op.cit.*, hlm. 418.

potentially creating a legal vacuum or legal uncertainty in the application of Article 2 after the National Criminal Code comes into effect.²⁷

Another equally important paradigmatic shift is the explicit formulation of the purpose of punishment in Article 51 of the National Criminal Code. This provision is entirely new, as the previous Criminal Code never explicitly formulated the purpose of punishment in its body, so that the purpose of punishment could only be traced through doctrine and jurisprudence. Article 51 of the National Criminal Code formulates four objectives of punishment, namely preventing the commission of criminal acts by enforcing legal norms for the protection and care of society, socializing convicts by providing guidance so that they become good and useful people, resolving conflicts caused by criminal acts and restoring balance and bringing a sense of security and peace in society, and fostering a sense of regret and freeing the convict from guilt.²⁸

The formulation of the objectives of punishment clearly reflects a combination of absolute theory (retribution), relative theory (prevention), and combined theory (integrative) which also accommodates the idea of restorative justice through an emphasis on conflict resolution and restoration of balance.²⁹ In addition to the purpose of sentencing, the National Criminal Code also introduces sentencing guidelines as regulated in Article 54, which requires judges to consider a number of factors in imposing sentences, including the guilt of the perpetrator of the crime, the motive and purpose of committing the crime, the mental attitude of the perpetrator of the crime, whether the crime was committed with planning, the method of committing the crime, the attitude and actions of the perpetrator after committing the crime, the life history and socio-economic conditions of the perpetrator of the crime, the influence of the crime on the future of the perpetrator of the crime, the influence of the crime on the victim or the victim's family, forgiveness from the victim and/or his/her family, and/or the legal values and sense of justice that exist in society.³⁰

The presence of these sentencing guidelines aims to reduce disparities in judges' decisions, which has been a classic problem in Indonesian criminal justice practice, while also providing a more measurable argumentative framework for

²⁷Rahmawati Dewi, *op.cit.*, hlm. 252.

²⁸Lihat Pasal 51 Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana.

²⁹Yusuf Ananta Prabowo, *op.cit.*, hlm. 183.

³⁰Lihat Pasal 54 ayat (1) Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana.

judges in imposing proportional sentences.³¹ Interestingly, Article 54 paragraph (2) of the National Criminal Code also regulates specific mitigating circumstances, namely if the crime is committed by a perpetrator who is still a minor, a perpetrator who is elderly, a perpetrator who is committing a crime for the first time, or the loss arising from the crime is not large, so that the judge has a clearer legal basis for imposing a lighter sentence than the minimum threat without having to rely solely on extensive interpretation or analogy.³²

The National Criminal Code consistently applies a two-track system for sentencing, distinguishing between criminal sanctions (*straf*) and sanctions in the form of actions (*maatregel*). This system allows judges to impose both criminal penalties and actions, or to impose only actions without criminal penalties, particularly for perpetrators who cannot be fully held accountable, such as those with mental disorders or juvenile offenders.

The types of criminal penalties in the National Criminal Code are regulated in Article 65, which divides criminal penalties into principal and additional penalties. Principal penalties consist of imprisonment, detention, supervision, fines, and community service. Additional penalties include revocation of certain rights, confiscation of certain goods and/or bills, announcement of a judge's decision, payment of compensation, revocation of certain permits, and fulfillment of local customary obligations.³³ The types of actions regulated in Article 103 include counseling, rehabilitation, referral to an individual, institutional care, and driver's license revocation. The introduction of supervision and community service as new principal penalties demonstrates the National Criminal Code's orientation toward alternative punishments that do not always involve deprivation of liberty.³⁴

Community service sentences, for example, can be imposed on defendants who are threatened with a prison sentence of less than five years, a category II fine, or for attempting or assisting in a crime that is threatened with a prison sentence of five years or more, as long as the judge considers that the prison sentence imposed is no more than six months, taking into account the consideration that the perpetrator committed the crime for the first time and the length of the substitute prison sentence does not exceed one year.³⁵

³¹Setiyono Hadi Wibowo, *op.cit.*, hlm. 60.

³²Yusuf Ananta Prabowo, *op.cit.*, hlm. 185.

³³Lihat Pasal 65 dan Pasal 67 Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana.

³⁴Bambang Waluyo Sugiharto, *op.cit.*, hlm. 40.

³⁵Lihat Pasal 85 Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana.

The implementation of this two-track system is also in line with the idea of proportional and individualized punishment, which emphasizes that the sanctions imposed must be adjusted to the characteristics of the perpetrator and the level of danger they pose to society, not solely based on the severity of the act committed.³⁶ The new paradigm of the National Criminal Code is also reflected in the strengthening of the principle of *ultimum remedium*, namely the principle that places criminal law as a last resort after other legal efforts, such as civil law and administrative law, are no longer adequate to resolve a legal problem.³⁷

The strengthening of this principle is evident, among other things, through regulations regarding settlement outside the criminal justice process for minor crimes as regulated in Article 132, which opens up space for investigators to conduct penal mediation between perpetrators and victims while still paying attention to restorative justice.³⁸ The restorative justice approach is not actually new in Indonesian criminal law enforcement practices, as it has previously been accommodated through various Police and Prosecutor's Office regulations, such as Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice and the Prosecutor's Office Regulation concerning Termination of Prosecution Based on Restorative Justice.³⁹

The National Criminal Code elevates this approach to the level of law, thus providing a stronger and more binding legal basis than before, while reducing dependence on internal regulations of law enforcement institutions which are subject to change at any time. The strengthening of the *ultimum remedium* principle is also evident in the regulations regarding broader grounds for expungement of criminal penalties, including regulations regarding judicial forgiveness (*rechterlijk pardon*) as stipulated in Article 54 paragraph (2) letter f, which allows judges not to impose a penalty even though the defendant's guilt has been proven, if the imposition of a penalty is deemed not to provide benefits for either the defendant or society.⁴⁰

The National Criminal Code also introduces comprehensive regulations on corporate criminal liability in a separate chapter, which was previously only

³⁶Bambang Waluyo Sugiharto, *op.cit.*, hlm. 42.

³⁷Erna Kurniawati, *op.cit.*, hlm. 420.

³⁸Lihat Pasal 132 Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana.

³⁹Wahyu Trisno Nugroho, "Keadilan Restoratif dalam Sistem Peradilan Pidana Indonesia: Dari Kebijakan Institusional Menuju Pengaturan Undang-Undang," *Jurnal Kebijakan Hukum Pidana*, Vol. 12, No. 2 (2022), hlm. 155-172.

⁴⁰Deni Setiawan Kusuma, *op.cit.*, hlm. 24.

regulated partially and spread across various special criminal laws, such as the law on corruption, money laundering, and environmental laws.⁴¹ Article 45 of the National Criminal Code emphasizes that corporations are subjects of criminal acts, so that in addition to the responsibility of the management, the corporation itself can be subject to principal penalties in the form of fines and additional penalties in the form of revocation of business permits, confiscation of assets, freezing of some or all corporate activities, and even dissolution of the corporation.⁴²

This more detailed regulation provides better legal certainty compared to the previous partial regulation, while also closing legal loopholes that have been exploited by corporations to avoid criminal liability through complicated legal constructions.⁴³ The National Criminal Code also explicitly regulates three models of corporate criminal liability, namely sole corporate liability, sole management liability, or joint corporate and management liability, with clearer criteria regarding when a crime is deemed to have been committed by or for the benefit of the corporation, thereby reducing the ambiguity that has often made it difficult for law enforcement to determine the appropriate construction of liability.⁴⁴

Additional criminal provisions in the form of confiscation of assets and freezing of corporate business activities also reflect a shift in orientation from merely punishing individual managers to breaking the chain of economic profits obtained by corporations from the criminal acts they commit, an approach that is in line with the principle of asset recovery that has been widely developed in the context of eradicating corruption and money laundering.⁴⁵

The phenomenon of re-codifying criminal law is not unique to Indonesia. Several countries with civil law traditions have undergone or are currently undergoing similar processes, with the general trend being a shift from a classical retributive paradigm to a more humanistic one oriented toward the rehabilitation and social reintegration of criminals.⁴⁶ The Netherlands, as the country of origin of the *Wetboek van Strafrecht* which became the forerunner of the old Indonesian Criminal Code, has made several major updates to its criminal code, including expanding the types of alternative sanctions in the form of social work (*taakstraf*)

⁴¹Fitriani Anggraini, "Pertanggungjawaban Pidana Korporasi dalam KUHP Nasional: Suatu Kajian Komparatif," *Jurnal Hukum Bisnis dan Investasi*, Vol. 14, No. 1 (2023), hlm. 67-85.

⁴²Lihat Pasal 45 dan Pasal 122 Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana.

⁴³Fitriani Anggraini, *op.cit.*, hlm. 78.

⁴⁴Fitriani Anggraini, *op.cit.*, hlm. 75.

⁴⁵Fitriani Anggraini, *op.cit.*, hlm. 83.

⁴⁶Muhammad Rizki Handoyo, *op.cit.*, hlm. 92.

and strengthening the role of victims in the criminal justice process through the restitution mechanism.⁴⁷

Germany, through its *Strafgesetzbuch*, has also long recognized a two-track system of sentencing (*Zweispurigkeit*) that distinguishes between *Strafen* as sanctions based on guilt and *Massregeln* as measures based on the danger posed by the perpetrator to society, a concept that is substantially similar to the two-track system now adopted in the Indonesian National Criminal Code. This comparison shows that the direction of reform of the Indonesian National Criminal Code is in line with global trends in modern criminal law reform, although it still maintains local characteristics in the form of recognition of living law in society, which is relatively uncommon in the criminal law systems of Continental European countries that emphasize the unification and centralization of legal norms.⁴⁸

An important lesson that can be drawn from the experiences of other countries is that the success of criminal law reform is not only measured by the sophistication of the formulation of norms, but also by the consistency and sustainability of the implementation process, including the willingness to carry out continuous evaluation and adjustments to the norms that have been enacted if problems are found in practice, as reflected in the birth of Law Number 1 of 2026 as an improvement on the National Criminal Code which was only passed three years ago.⁴⁹

In addition to the Netherlands and Germany, the experience of a number of countries in the Asian region that are also in the process of codifying or have completed their national criminal law shows a relatively similar pattern, namely a tendency to expand the types of non-imprisonment sanctions, strengthen the role of victim recovery, and integrate local values into the national criminal law framework without sacrificing universal human rights principles, an approach that is conceptually known as legal localization within the framework of international human rights standards.⁵⁰ Based on the description above, it can be concluded that the paradigm shift in the National Criminal Code is multidimensional, encompassing a philosophical dimension in the form of a shift from retributive to monodualistic balance, a normative dimension in the form of recognition of living law in society and the formulation of the objectives of punishment, a technical dimension in the form of the implementation of a two-track system, an

⁴⁷Muhammad Rizki Handoyo, *op.cit.*, hlm. 95.

⁴⁸Andi Muhammad Fadli, *op.cit.*, hlm. 317.

⁴⁹Rahmawati Dewi, *op.cit.*, hlm. 258.

⁵⁰Andi Muhammad Fadli, *op.cit.*, hlm. 318.

institutional dimension in the form of more comprehensive regulations on corporate criminal liability, and a comparative dimension that shows the alignment of the direction of Indonesian reform with the global trend of modern criminal law reform without losing local characteristics.

Paradigmatic Tensions and Critical Perspectives

The preceding analysis should not be read as suggesting that the paradigm shift embodied in the National Criminal Code is free of internal tension or immune from academic objection. The most conceptually significant tension concerns Article 2's recognition of living law alongside the principle of legality. While the discussion above frames this provision as a breakthrough that accommodates legal pluralism, a number of academics have argued that the coexistence of material legality (living law) and formal legality within a single code creates an unresolved dualism at the heart of the new paradigm itself, rather than a mere technical adjustment.⁵¹ Because the boundaries of a living legal norm are, by definition, unwritten and locally variable, critics contend that Article 2 reopens precisely the kind of legal uncertainty and potential for arbitrary criminalization that the formal legality principle was historically designed to foreclose, particularly for members of society who lack the resources to anticipate or contest an unwritten local norm being invoked against them.⁵² This concern is not merely hypothetical: it is compounded by the fact that determination of a living law's validity is delegated to regional regulations of uneven quality and coverage, so that the same conduct could, in principle, be criminal in one region and lawful in another, an outcome in evident tension with the equality-before-the-law premise that any monodualistic paradigm claiming to balance state, offender, and societal interests would need to satisfy. Civil society commentary in particular has raised the concern that this tension is likely to fall disproportionately on already vulnerable groups, including women, children, and persons with disabilities, whose conduct may be more readily characterized by a local community as contrary to customary norms.

A second area in which this article's engagement remains incomplete concerns the substantive, morality-related provisions of the National Criminal Code, such as those regulating cohabitation outside marriage and other offenses framed in terms of public decency, which prior sectoral studies identified in the Introduction have treated as a central and controversial site of contestation. These provisions have been criticized by some legal scholars as sitting uneasily with the

⁵¹ Erna Kurniawati, op.cit., hlm. 415.

⁵² Erna Kurniawati, op.cit., hlm. 422.

monodualistic balance paradigm's stated aim of protecting individual and societal interests in a genuinely reciprocal way, on the grounds that they extend the reach of the criminal law into private conduct in a manner more consistent with a communitarian-moralistic paradigm than with either the retributive-legalistic paradigm the National Criminal Code purports to replace or the rights-protective dimension the monodualistic paradigm claims to advance.⁵³ This suggests that the National Criminal Code does not embody a single, internally consistent paradigm shift so much as a layering of at least two, and possibly competing, normative orientations, an observation that qualifies the article's central claim and that future research disaggregating the Code's provisions by underlying orientation could usefully pursue.

Finally, it is worth noting that the monodualistic balance paradigm itself, and the broader premise that criminal law reform should be evaluated primarily through the lens of balancing offender, victim, and societal interests within the existing architecture of the criminal justice system, is not universally accepted even among reform-minded scholars. A strand of comparative criminal justice scholarship has questioned whether reforms that redistribute interests within the state-centered punitive apparatus, however more humane in orientation, address the more fundamental question of whether that apparatus itself should remain the primary vehicle for responding to social harm.⁵⁴ Engaging with this line of critique does not require abandoning the analytical framework adopted in this article, but it does suggest that the National Criminal Code's paradigm shift is best understood as a significant reconfiguration within the existing paradigm of state-administered criminal justice, rather than a paradigm shift in the fuller Kuhnian sense of a wholesale replacement of the field's foundational assumptions.

Implications of National Criminal Code Reform on the Criminal Justice System

The criminal justice system is a network consisting of various interrelated subsystems, including the police, prosecutors, courts and correctional institutions, which work in an integrated manner to achieve common goals, namely law enforcement and justice.⁵⁵ The characteristics of this integration imply that changes in one subsystem will have a chain effect on other subsystems, so that the success of material criminal law reform through the National Criminal Code will ultimately be determined by the extent to which all criminal justice subsystems are

⁵³ Butt, S., op.cit., hlm. 198.

⁵⁴ Levin, B., op.cit., hlm. 902.

⁵⁵ Setiyono Hadi Wibowo, op.cit., hlm. 58.

able to move synchronously in adapting to the new paradigm introduced, not just by the readiness of one subsystem alone.⁵⁶

The fundamental paradigmatic shift at the substantive level of criminal law, as outlined in the previous section, will logically create ripples of change throughout the criminal justice subsystem. This section will outline the implications of the National Criminal Code reforms for each subsystem in more detail. As an institution at the forefront of the criminal justice system, the police face significant challenges in implementing the new provisions of the National Criminal Code, particularly those related to the recognition of living law in society and the restorative justice approach.⁵⁷

In recognizing the law that lives in society, police investigators are required to have an adequate understanding of the customary legal norms that apply in their respective jurisdictions, including the ability to assess whether a customary norm has fulfilled the formal requirements in the form of regulations in regional regulations as required by Article 2 paragraph (2) of the National Criminal Code. This problem becomes increasingly complex considering the very high diversity of customary law in Indonesia, so that special training and technical guidelines are needed for investigators so that they can apply these provisions consistently and not cause disparities in law enforcement between regions.⁵⁸

In addition, the application of a restorative justice approach in handling minor crimes as regulated in Article 132 of the National Criminal Code requires investigators to have mediation and negotiation skills which have not been core competencies in conventional police education, so that a comprehensive adjustment of the police education and training curriculum is required.⁵⁹ The police also need to adjust internal guidelines regarding case titles and investigative oversight mechanisms so that decisions to pursue resolutions outside the criminal justice system are based on objective and accountable criteria, in order to prevent abuse of discretionary authority that can give rise to perceptions of injustice in the eyes of the public, especially in cases involving unequal power relations between the perpetrator and the victim.⁶⁰

The Prosecutor's Office as a prosecution institution faces equally significant challenges, particularly in terms of implementing the expanded scope of the opportunity principle within the framework of restorative justice, as well as the

⁵⁶ Levin, B. (2023). After the criminal justice system. *Washington Law Review*, 98(3), 899.

⁵⁷ Wahyu Trisno Nugroho, op.cit., hlm. 160.

⁵⁸ Andi Muhammad Fadli, op.cit., hlm. 314.

⁵⁹ Muhammad Rizki Handoyo, op.cit., hlm. 98.

⁶⁰ Wahyu Trisno Nugroho, op.cit., hlm. 163.

application of prosecution guidelines that must be in line with the objectives and guidelines for sentencing as stipulated in Article 51 and Article 54 of the National Criminal Code. Public prosecutors are required to go beyond simply proving the defendant's guilt, but also to comprehensively consider factors relevant to the objectives of sentencing in drafting the indictment, including considering the interests of victim recovery and the interests of the convict's development.⁶¹ In addition, the more comprehensive regulation of corporate criminal liability in the National Criminal Code requires the prosecutor's office to develop special capacity and expertise in handling corporate criminal cases, which are technically significantly different from handling criminal cases against individuals, both in terms of evidence and in terms of executing decisions.⁶²

The Prosecutor's Office is also required to strengthen its internal oversight function in implementing the mechanism for terminating prosecution based on restorative justice, so that the mechanism is not misused for certain interests, considering that the decision to terminate prosecution has major legal consequences for the interests of victims and the interests of law enforcement in general.⁶³

For the judiciary, the most significant implication of the National Criminal Code reform lies in the implementation of sentencing guidelines as stipulated in Article 54, which requires judges to formulate decisions with more detailed and structured considerations than current practice. Consistent application of sentencing guidelines is expected to reduce the disparity in sentencing that has been a focus of attention in Indonesian criminal justice practice, where cases with relatively similar characteristics are often sentenced to significantly different sentences without adequate justifiable reasons.⁶⁴

In addition, the recognition of existing law in society as regulated in Article 2 of the National Criminal Code also presents a unique challenge for judges, because judges are required to be able to objectively assess the existence and applicability of a customary legal norm in a concrete case, while ensuring that the application of the norm does not conflict with the values of Pancasila and human rights.⁶⁵ The implementation of a two-track sentencing system also requires judges

⁶¹Deni Setiawan Kusuma, *op.cit.*, hlm. 28.

⁶²Fitriani Anggraini, *op.cit.*, hlm. 80.

⁶³Wahyu Trisno Nugroho, *op.cit.*, hlm. 165.

⁶⁴ Oktavianto, A. F., Warka, M., Prasetyawati, E., & Hufron, H. (2025). Disparity in Sentencing Against Advocates in Indonesia: Minimizing It Through Sentencing Guidelines. *Journal of International Trade, Logistics and Law*, 11(1), 385-394.

⁶⁵Erna Kurniawati, *op.cit.*, hlm. 425.

to be more careful in assessing the psychological and social conditions of the accused in order to determine the most appropriate type of sanction, whether in the form of criminal, disciplinary, or a combination of both, which in turn requires more adequate support from related experts, such as forensic psychologists and social workers, in the trial process.⁶⁶

The Supreme Court as the pinnacle of judicial power has a strategic role in maintaining the consistency of interpretation of the new provisions of the National Criminal Code through the issuance of Supreme Court Regulations and Supreme Court Circulars as technical guidelines for judges at all levels of court, as was done in the context of the application of restorative justice before the National Criminal Code was ratified.⁶⁷ Correctional institutions as the spearhead of criminal enforcement also experienced a significant impact from the reform of the National Criminal Code, especially with the introduction of new types of punishment such as supervision and social work, which require the development of supervision and guidance mechanisms that are different from the guidance mechanisms in conventional correctional institutions.⁶⁸

Supervision sentences, for example, require adequate numbers and quality of community guidance officers to supervise convicts serving sentences outside correctional institutions, while the capacity of Indonesian correctional institutions has so far been more oriented towards guidance within the institution. Similarly, community service sentences require close cooperation between correctional institutions and local government agencies, social institutions, and the community to provide appropriate places and types of social work for convicts, so that the implementation of this sentence truly provides benefits to the community and supports the process of rehabilitating convicts.⁶⁹

The diversification of types of crimes in the National Criminal Code also has implications for the need for reorganization of correctional institutions, from those that have been solely oriented towards detention and development functions within the institution, to institutions that also carry out criminal supervision functions outside the institution, so that a comprehensive restructuring of the organizational structure, work procedures, and standard operating procedures of

⁶⁶Yusuf Ananta Prabowo, op.cit., hlm. 190.

⁶⁷ Nasir, N., & Thalib, H. (2026). Restorative Justice at the Investigation Stage: A Normative Review of Its Conceptualization in the New Criminal Procedure Code. *Journal of Judicial Review*, 28(1), 241-278. <https://doi.org/10.37253/jjr.v28i1.12085>

⁶⁸Bambang Waluyo Sugiharto, op.cit., hlm. 45.

⁶⁹ Kholdaa, M. C., & Pujiyono, P. (2024). Social Work Crime as an Alternative to Resolving Overcrowding in Correctional Institutions. *Justisi*, 10(3), 806-816. <https://doi.org/10.33506/js.v10i3.3491>

correctional institutions is required.⁷⁰ One of the most complex implications of the National Criminal Code reform is the need for harmonization between the National Criminal Code and various special criminal laws that are still in force, such as the law on corruption crimes, narcotics laws, money laundering laws, and various other sectoral laws that contain criminal provisions.⁷¹

Article 622 of the National Criminal Code emphasizes that criminal provisions outside the statute book remain in force as long as they are not regulated otherwise in this statute book, however the application of Book One of the National Criminal Code which contains general rules, including provisions regarding the objectives and guidelines for sentencing, remains in force for criminal acts regulated outside the statute book, unless otherwise stipulated by the statute.⁷² This provision creates its own complexity in law enforcement practices, because law enforcement officers are required to understand in depth the interaction between the general provisions in the National Criminal Code and the specific provisions in various special criminal laws, which often contain different formulations, for example in terms of the type and severity of criminal sanctions.⁷³

This harmonization effort is becoming increasingly important considering that Law Number 1 of 2026 has made a number of technical adjustments to the National Criminal Code, which also implies the need for further adjustments to various implementing regulations and technical guidelines that have been prepared by each law enforcement institution before the amendments are ratified. The issue of harmonization also arises in the relationship between the National Criminal Code and Law Number 20 of 2025 concerning Criminal Procedure Law, considering that a number of new material criminal law provisions, such as settlement mechanisms outside criminal justice and regulations regarding laws that exist in society, require clear equivalent procedural mechanisms so that they can be implemented operationally by law enforcement officers in the field.⁷⁴

The government, through the Ministry of Law, needs to take a strong coordinating role in leading the process of harmonizing criminal laws comprehensively, including conducting a systematic inventory of all criminal provisions spread across various sectoral laws, to ensure that there are no

⁷⁰Bambang Waluyo Sugiharto, op.cit., hlm. 47.

⁷¹ Olujobi, O. J., & Yebisi, E. T. (2023). Combating the crimes of money laundering and terrorism financing in Nigeria: a legal approach for combating the menace. *Journal of Money Laundering Control*, 26(2), 268-289. <https://doi.org/10.1108/JMLC-12-2021-0143>

⁷²Lihat Pasal 622 Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana.

⁷³Fitriani Anggraini, op.cit., hlm. 82.

⁷⁴Setiyono Hadi Wibowo, op.cit., hlm. 63.

overlapping norms or legal gaps when the National Criminal Code comes into effect throughout Indonesia.⁷⁵ Beyond the normative and technical challenges as outlined above, the success of the National Criminal Code reform ultimately depends heavily on the reorientation of the legal culture of law enforcers and the wider community.⁷⁶

The legal culture that has been formed based on a legalistic-retributive paradigm cannot change instantly just because of changes in written legal norms, but rather requires a continuous process of internalizing values through legal education, ongoing training, and exemplary behavior from leaders of law enforcement institutions.⁷⁷ Strengthening institutional capacity is also an urgent need, both in terms of the quantity and quality of human resources, supporting facilities and infrastructure, as well as an integrated information system between law enforcement agencies, in order to support the effective and consistent implementation of the new provisions in the National Criminal Code throughout Indonesia.⁷⁸

Higher legal education also bears a major responsibility in this process of reorienting legal culture, considering that the criminal law education curriculum in most Indonesian universities is still largely oriented towards doctrine and jurisprudence developed based on the old Criminal Code, so that a comprehensive curriculum update is needed so that the generation of law graduates produced truly understands and is able to apply the new paradigm contained in the National Criminal Code.⁷⁹ Another crucial aspect of implementing the National Criminal Code is the readiness of the information technology infrastructure to support the management of increasingly complex criminal cases. The application of sentencing guidelines, which require multifactorial considerations as stipulated in Article 54 of the National Criminal Code, should ideally be supported by an integrated decision database system, allowing judges and prosecutors to access precedents for decisions in cases with similar characteristics to maintain consistency in sentencing.⁸⁰

The Case Tracking Information System developed by the Supreme Court, as well as the integrated case management system developed by the police and

⁷⁵ Butt, S. (2023). Indonesia's new Criminal Code: indigenising and democratising Indonesian criminal law?. *Griffith Law Review*, 32(2), 190-214. <https://doi.org/10.1080/10383441.2023.2243772>

⁷⁶ Sri Wahyuni Kartika, op.cit., hlm. 215.

⁷⁷ Ghaleb, B. D. S. (2024). Legaculturation: Turning laws into a culture. *Journal of Progressive Law and Legal Studies*, 2(03), 171-188. <https://doi.org/10.59653/jpills.v2i03.886>

⁷⁸ Setiyono Hadi Wibowo, op.cit., hlm. 68.

⁷⁹ Wahyu Trisno Nugroho, op.cit., hlm. 169.

⁸⁰ Sri Wahyuni Kartika, op.cit., hlm. 212.

prosecutors, need to be adjusted to accommodate new variables relevant to the National Criminal Code, such as data on the application of existing laws in society, data on the imposition of sanctions, and data on case resolution through a restorative justice approach.⁸¹ Without adequate technological infrastructure support, there is a risk that the implementation of the new provisions in the National Criminal Code will be inconsistent across regions, given that the information technology capacity between law enforcement agencies in various regions in Indonesia still shows quite significant gaps.⁸²

This technological capacity gap needs to be addressed gradually through a priority scheme that takes into account the level of complexity of the caseload in each region, accompanied by the provision of training in the use of information systems for law enforcement officers in the regions, so that the digital divide does not turn into a justice gap in the implementation of the National Criminal Code between urban areas and areas with limited infrastructure.⁸³

One of the important characteristics of the paradigm shift in the National Criminal Code is the increasing attention to the interests of victims of criminal acts, who have tended to be marginalized in a criminal justice system that is solely oriented towards the relationship between the state and the perpetrator of the crime.⁸⁴ The formulation of the objectives of criminal punishment in Article 51 of the National Criminal Code, which explicitly mentions conflict resolution and the restoration of balance as one of the objectives of criminal punishment, emphasizes that the interests of victims are no longer merely additional considerations, but rather an integral part of the objectives of the criminal justice system as a whole. This is further strengthened by the regulation of additional penalties in the form of compensation payments as stipulated in Article 67, which allows victims to obtain redress directly through the criminal justice process without having to pursue a separate civil lawsuit.⁸⁵

The implications of strengthening victim protection for the criminal justice system are the need to strengthen the role of institutions that handle witness and victim protection, as well as the need to adjust criminal procedural law so that victims have greater space for participation in the judicial process, including in the

⁸¹Setiyono Hadi Wibowo, *op.cit.*, hlm. 70.

⁸² Pambudi, P., & Redi, A. (2024). Criminal Law Politics and Reform to Strengthen Law Enforcement Roles in Indonesia in Combatting Narcotics Crimes. *Asian Journal of Social and Humanities*, 3(3), 660-672. <https://doi.org/10.59888/ajosh.v3i3.473>

⁸³Sri Wahyuni Kartika, *op.cit.*, hlm. 214.

⁸⁴Deni Setiawan Kusuma, *op.cit.*, hlm. 26.

⁸⁵Yusuf Ananta Prabowo, *op.cit.*, hlm. 187.

decision-making process regarding case resolution through a restorative justice approach, so that victim recovery is truly realized substantively and not merely a procedural formality.⁸⁶

Strengthening the orientation towards victims also demands a change in the mindset of law enforcement officers who have so far been more trained to focus on proving the guilt of the perpetrator, so that they also provide adequate attention to the psychological, social and economic recovery needs of victims from the initial stages of investigation to the stage of implementing the verdict, as a concrete manifestation of the implementation of the monodualistic balance paradigm which is the main spirit of the National Criminal Code.⁸⁷ The success of national criminal law reform is also inseparable from the active role of universities and civil society organizations in supporting the socialization, public education, and oversight of the implementation of the National Criminal Code. Universities have a strategic role in conducting ongoing academic studies to monitor the dynamics of the National Criminal Code's implementation and provide evidence-based policy recommendations to policymakers.⁸⁸

Civil society organizations, on the other hand, have an important role in monitoring the practice of implementing existing laws in society, to ensure that the application of customary norms as a basis for criminalization is not misused to perpetuate practices that are contrary to human rights, especially the rights of vulnerable groups such as women, children, and people with disabilities.⁸⁹ Synergy between the government, law enforcement officials, universities, and civil society within a participatory governance framework is an important key to ensuring that national criminal law reform does not stop at the normative level, but truly brings about substantive changes in law enforcement practices and the sense of justice of the Indonesian people at large.

The mass media also plays an important role in the governance ecosystem, particularly in conveying accurate and balanced information regarding the substance of the National Criminal Code to the wider community, in order to prevent the emergence of public misunderstandings that could hinder the process of social acceptance of the new norms introduced by the National Criminal Code, considering that experience shows that some of the polemics that emerged during

⁸⁶ Aisya, S. R., Guntara, D., Abas, M., & Pratama, R. I. (2026). Problems in the Implementation of Restorative Justice at the Inquiry Stage under Law Number 20 of 2025 on the Criminal Procedure Code. *Jurnal Mahkamah: Kajian Ilmu Hukum dan Hukum Islam*, 213-230. <https://doi.org/10.59888/ajosh.v3i3.473>

⁸⁷ Deni Setiawan Kusuma, *op.cit.*, hlm. 29.

⁸⁸ Deni Setiawan Kusuma, *op.cit.*, hlm. 31.

⁸⁹ Erna Kurniawati, *op.cit.*, hlm. 428.

the discussion of the National Criminal Code were also influenced by the public's lack of understanding of the substance of the articles that were actually regulated.⁹⁰ Thus, it can be concluded that the implications of the National Criminal Code reform on the criminal justice system are comprehensive, touching all criminal justice subsystems from the police, prosecutors, courts, to correctional institutions, and demanding efforts to harmonize laws and regulations, strengthen technological infrastructure, institutional synergy with universities and civil society, and a sustainable reorientation of legal culture so that the objectives of national criminal law reform can be achieved optimally.

Conclusion

The National Criminal Code (KUHP) represents a fundamental paradigm shift in Indonesian criminal law, moving from a legalistic-retributive paradigm to a monodualistic balance paradigm that accommodates the interests of perpetrators, victims, and society in a balanced manner. This paradigm shift is reflected in a number of substantial reforms, including the recognition of living law within society as a source of material criminal law, the explicit formulation of objectives and guidelines for sentencing, the implementation of a two-track sentencing system, the strengthening of the *ultimum remedium* principle through a restorative justice approach, and more comprehensive regulations on corporate criminal liability. This paradigm shift has broad and comprehensive implications for the Indonesian criminal justice system, affecting all subsystems, from the police and prosecutors to the courts and correctional institutions. These implications include the need to adjust the competence and institutional capacity of law enforcement officers, the need to harmonize the National Criminal Code with various existing special criminal laws, and the need to reorient the legal culture toward one that is more responsive to the values of restorative justice and a balance of interests.

At the same time, this paradigm shift is not without internal tension and academic contestation. The recognition of living law under Article 2 sits in unresolved dualism with the principle of legal certainty, creating a risk of arbitrary criminalization that may fall disproportionately on vulnerable groups; the Code's morality-related provisions reflect a communitarian-moralistic orientation that does not straightforwardly align with the monodualistic balance paradigm; and the broader premise of balancing interests within the existing state-centered criminal justice apparatus remains contested within comparative criminal justice

⁹⁰Deni Setiawan Kusuma, *op.cit.*, hlm. 33.

scholarship. Read in light of Thomas Kuhn's account of paradigm change, the National Criminal Code is therefore best understood as a significant reconfiguration within the paradigm of state-administered criminal justice rather than a wholesale replacement of its foundational assumptions, a qualification that future research should continue to interrogate.

References

- Aisya, S. R., Guntara, D., Abas, M., & Pratama, R. I. (2026). Problems in the Implementation of Restorative Justice at the Inquiry Stage under Law Number 20 of 2025 on the Criminal Procedure Code. *Jurnal Mahkamah: Kajian Ilmu Hukum dan Hukum Islam*, 213-230. <https://doi.org/10.59888/ajosh.v3i3.473>
- Anggraini, Fitriani. "Pertanggungjawaban Pidana Korporasi dalam KUHP Nasional: Suatu Kajian Komparatif." *Jurnal Hukum Bisnis dan Investasi*, Vol. 14, No. 1 (2023): 67-85.
- Anghie, A. (2023). Rethinking international law: A TWAIL retrospective. *European Journal of International Law*, 34(1), 7-112. <https://doi.org/10.1093/ejil/chadoo5>
- Dewi, Rahmawati. "Masa Transisi Pemberlakuan KUHP Nasional: Tantangan dan Strategi Implementasi." *Jurnal Hukum dan Pembangunan*, Vol. 53, No. 2 (2023): 245-260.
- Fadli, Andi Muhammad. "Hukum yang Hidup dalam Masyarakat sebagai Sumber Hukum Pidana: Kontinuitas dan Perubahan." *Jurnal Hukum dan Peradilan*, Vol. 10, No. 3 (2021): 301-319.
- Faisal, Yanto, A., Rahayu, D. P., Haryadi, D., Darmawan, A., & Manik, J. D. N. (2024). Genuine paradigm of criminal justice: rethinking penal reform within Indonesia New Criminal Code. *Cogent Social Sciences*, 10(1), 2301634. <https://doi.org/10.1080/23311886.2023.2301634>
- Ghaleb, B. D. S. (2024). Legaculturation: Turning laws into a culture. *Journal of Progressive Law and Legal Studies*, 2(03), 171-188. <https://doi.org/10.59653/jplls.v2i03.886>
- Handoyo, Muhammad Rizki. "Gap antara Law in Books dan Law in Action dalam Reformasi Hukum Pidana: Perbandingan Pengalaman Beberapa Negara." *Jurnal Perbandingan Hukum*, Vol. 6, No. 1 (2023): 89-107.
- Haryogi, M. P. (2025). Revitalization and Repositioning of the Witness and Victim Protection Agency of LPSK in Building a Robust Institution. *Indonesia Law Reform Journal*, 5(2), 209-227. <https://doi.org/10.22219/ilrej.v5i2.39363>

- Kartika, Sri Wahyuni. "Pergeseran Paradigma dalam Pembaruan Hukum Pidana Indonesia: Sebuah Tinjauan Filosofis." *Jurnal Filsafat Hukum Indonesia*, Vol. 5, No. 2 (2023): 201-218.
- Kepolisian Negara Republik Indonesia. Peraturan Kepolisian Nomor 8 Tahun 2021 tentang Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif.
- Kholdaa, M. C., & Pujiyono, P. (2024). Social Work Crime as an Alternative to Resolving Overcrowding in Correctional Institutions. *Justisi*, 10(3), 806-816. <https://doi.org/10.33506/js.v10i3.3491>
- Kurniawati, Erna. "Dualisme Asas Legalitas dalam KUHP Nasional: Antara Kepastian Hukum dan Keadilan Substantif." *Jurnal Konstitusi*, Vol. 20, No. 3 (2023): 412-430.
- Kuhn, Thomas S. *The Structure of Scientific Revolutions*. Chicago: University of Chicago Press, 1962.
- Kusuma, Deni Setiawan. "Keseimbangan Monodualistik sebagai Paradigma Baru Hukum Pidana Indonesia." *Jurnal Hukum Pidana Progresif*, Vol. 11, No. 1 (2024): 15-34.
- Levin, B. (2023). After the criminal justice system. *Washington Law Review*, 98(3), 899.
- Nasir, N., & Thalib, H. (2026). Restorative Justice at the Investigation Stage: A Normative Review of Its Conceptualization in the New Criminal Procedure Code. *Journal of Judicial Review*, 28(1), 241-278. <https://doi.org/10.37253/jjr.v28i1.12085>
- Nugroho, Wahyu Trisno. "Keadilan Restoratif dalam Sistem Peradilan Pidana Indonesia: Dari Kebijakan Institusional Menuju Pengaturan Undang-Undang." *Jurnal Kebijakan Hukum Pidana*, Vol. 12, No. 2 (2022): 155-172.
- Oktavianto, A. F., Warka, M., Prasetyawati, E., & Hufron, H. (2025). Disparity in Sentencing Against Advocates in Indonesia: Minimizing It Through Sentencing Guidelines. *Journal of International Trade, Logistics and Law*, 11(1), 385-394.
- Olujobi, O. J., & Yebisi, E. T. (2023). Combating the crimes of money laundering and terrorism financing in Nigeria: a legal approach for combating the menace. *Journal of Money Laundering Control*, 26(2), 268-289. <https://doi.org/10.1108/JMLC-12-2021-0143>
- Pambudi, P., & Redi, A. (2024). Criminal Law Politics and Reform to Strengthen Law Enforcement Roles in Indonesia in Combatting Narcotics Crimes. *Asian Journal of Social and Humanities*, 3(3), 660-672. <https://doi.org/10.59888/ajosh.v3i3.473>
- Prabowo, Yusuf Ananta. "Sistem Dua Jalur (Double Track System) dalam KUHP Nasional: Kajian terhadap Pidana dan Tindakan." *Jurnal Hukum Pidana dan Kriminologi Indonesia*, Vol. 9, No. 2 (2022): 178-196.

- Putri, Rina Anggraeni. "Teknik Analisis Bahan Hukum dalam Penelitian Hukum Normatif." *Jurnal Ilmu Hukum dan Metodologi*, Vol. 7, No. 1 (2022): 44-59.
- Republik Indonesia. Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana. Lembaran Negara Republik Indonesia Tahun 2023 Nomor 1.
- Republik Indonesia. Undang-Undang Nomor 1 Tahun 2026 tentang Perubahan atas Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana.
- Republik Indonesia. Undang-Undang Nomor 20 Tahun 2025 tentang Hukum Acara Pidana. Lembaran Negara Republik Indonesia Tahun 2025 Nomor 112.
- Republik Indonesia. Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman. Lembaran Negara Republik Indonesia Tahun 2009 Nomor 157.
- Sugiharto, Bambang Waluyo. "Living Law sebagai Sumber Hukum Pidana Materiil dalam Perspektif Pluralisme Hukum Indonesia." *Jurnal Hukum Adat dan Pembaruan Hukum*, Vol. 8, No. 1 (2022): 33-51.
- Wibianto, M. Y., Hartiwiningsih, H., & Handayani, I. G. A. K. R. (2025). Real Justice, Real Impact with the Prosecutors in Action. *Journal of Human Rights, Culture and Legal System*, 5(3), 1015-1041. <https://doi.org/10.53955/jhcls.v5i3.804>
- Wibowo, Setiyono Hadi. "Keterpaduan Sistem Peradilan Pidana Terpadu Pasca Reformasi KUHP dan KUHP." *Jurnal Ilmu Hukum*, Vol. 15, No. 1 (2024): 55-74.
- Wirawan, Aditya. "Metode Penelitian Hukum Normatif dalam Kajian Pembaruan Hukum Pidana." *Jurnal Metodologi Penelitian Hukum*, Vol. 4, No. 2 (2021): 121-138.