



RESTORATIVE JUSTICE UNDER INDONESIA'S NEW CRIMINAL CODE: BETWEEN PENAL REFORM AND LEGAL CERTAINTY

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Abstract

The enactment of Law Number 1 of 2023 concerning the Criminal Code (hereinafter referred to as the National Criminal Code) marks a paradigmatic transformation of Indonesian criminal law from the retributive legacy of the colonial *Wetboek van Strafrecht* to a more humanistic and recovery-oriented model. One of the central ideas promoted in this reform is restorative justice, which places the restoration of relationships between perpetrators, victims, and society as the goal of punishment, rather than merely retribution. This article examines how restorative justice is normatively constructed in the National Criminal Code and how this concept interacts with the principle of legal certainty that has been the foundation of the legalistic criminal law system. Using normative legal research methods through legislative, conceptual, and comparative approaches, this article finds that the National Criminal Code accommodates restorative justice through various instruments, including the recognition of existing law in society, judicial forgiveness (*rechterlijk pardon*), alternative non-imprisonment sentences, and space for settlement outside the formal judicial process. However, the formulation of these norms remains general and leaves law enforcement officials with ample discretion, potentially leading to disparities in implementation and tensions with the principles of legality and legal certainty. This article recommends the need for more operational implementing regulations, strengthened institutional capacity, and adequate judicial oversight to ensure the consistent application of restorative justice without compromising legal certainty and the protection of victims' rights.

Keywords: policy formulation; criminal law; hoax; social media; freedom of expression.

Introduction

Reforming national criminal law is an agenda that the Indonesian people have been fighting for since the early days of independence.¹ Efforts to replace the Dutch East Indies Code of Conduct, a colonial product that had been in effect since 1918, had been initiated since the 1960s, but only reached its culmination on January 2, 2023, when the President of the Republic of Indonesia ratified Law Number 1 of 2023 concerning the Criminal Code.² The span of more than six decades shows how complex the process of recodifying criminal law is, which must

¹Hasibuan, M., Sumiadi, S., & Sastro, M. (2024). Perbandingan ketentuan asas legalitas dalam KUHP lama Undang-Undang Nomor 1 Tahun 1946 dan KUHP baru Undang-Undang Nomor 1 Tahun 2023. *Jurnal Ilmiah Mahasiswa Fakultas Hukum Universitas Malikussaleh*, 7(3).

²Nurul Fadillah, R. (2024). Keadilan restoratif pada KUHP baru di Indonesia. *Rechtsidee*, Universitas Muhammadiyah Sidoarjo.

reconcile the need for legal modernization with respect for Indonesian values that exist in a pluralistic society.

One of the most fundamental changes brought about by the National Criminal Code is not simply the replacement of outdated articles, but rather a shift in the philosophical paradigm regarding the purpose of punishment itself. While the colonial legacy of the Criminal Code placed retribution as the primary objective of criminal sanctions, the National Criminal Code explicitly formulates a more pluralistic purpose of punishment, encompassing prevention, development, conflict resolution, and the restoration of social balance. This shift does not stand alone, but is a consequence of the inclusion of the concept of restorative justice as one of the principles that informs almost the entire normative architecture of the National Criminal Code.³ Restorative justice is understood as an approach to resolving criminal cases that is oriented towards restoring the relationship between the perpetrator, victim, and society, not simply inflicting suffering as retribution for the actions committed.⁴

Historically, the concept of restorative justice is not entirely foreign to Indonesian criminal law discourse. The values of restoration and deliberation to resolve conflicts have long been practiced in various customary legal systems across the archipelago, as seen in dispute resolution practices among indigenous communities, which view violations not merely as individual wrongs committed against the state, but as events that disrupt social balance and must be restored through family mechanisms.⁵ The recognition of living law in society as a source of formal criminal law in the National Criminal Code can be read as a form of legal legitimacy for restorative practices that have long been running informally.

Nevertheless, the formalization of restorative justice within the national criminal code raises several fundamental issues that require critical examination. First, restorative justice is essentially an approach that prioritizes flexibility, case individualization, and the discretion of law enforcement officials, while the Indonesian criminal law system has traditionally been built on the principle of

³Vinal, D., Saptawan, A., & Lubis, A. M. (2025). Kebijakan formulasi restorative justice dalam KUHP baru dan urgensinya bagi anak berhadapan dengan hukum. *Jurnal Ilmiah Galuh Justisi*, 13(2), 261–270.

⁴Sri Utami, R. (2023). Restorative justice: A comprehensive shift towards victim-perpetrator reconciliation and community healing. *Indonesian Journal of Law and Economics Review*, 18(3).

⁵Karjono, A., Malau, P., & Ciptono, C. (2024). Penerapan keadilan restoratif dalam hukum pidana berbasis kearifan lokal. *Jurnal USM*, 7(2), 6–7.

legality, which demands certainty, uniformity, and predictability of norms.⁶ The tension between restorative flexibility and the rigidity of the principle of legality has the potential to give rise to disparities in the application of the law between regions and between law enforcement agencies, which in turn can harm the public's sense of justice.

Second, a number of recent studies show that the restorative justice norms in the National Criminal Code are still formulated in a general and abstract manner, containing principles and policy directions without clear operational parameters regarding victims' rights, the obligations of law enforcement officers, or oversight mechanisms.⁷ This kind of lack of technical regulation opens up space for different interpretations between agencies, from the police, the prosecutor's office, to the courts, which can ultimately weaken the function of criminal law as an instrument of legal certainty as well as a means of protecting victims.

Third, amidst the strong push to prioritize a restorative approach to address structural issues such as overcapacity in correctional institutions and high caseloads in the courts, concerns have arisen that an excessive restorative orientation could erode the deterrent effect and weaken the authority of the law, especially for crimes that have serious social impacts.⁸ Therefore, an analytical framework is needed that is able to position restorative justice proportionally, namely as a complement, not a total replacement, for a legal certainty-based criminal justice system.

This study is limited by its library-based approach, which relies exclusively on secondary sources without incorporating primary data from field observations or interviews with customary leaders and other stakeholders. In addition, the analysis cannot fully represent the diversity of customary institutions across Indonesia due to the wide variation in local legal traditions and practices. Therefore, the findings should be interpreted as a conceptual synthesis rather than a comprehensive assessment of all customary institutions in Indonesia.

Future research is encouraged to employ empirical approaches, such as qualitative case studies, interviews, or mixed-method designs, to examine how customary institutions operate in different regional contexts and to evaluate their

⁶Wardhana, F. P., & Hosnah, A. U. (2026). Arah baru hukum pidana Indonesia: Analisis KUHP Nasional dalam perspektif kepastian hukum dan hak asasi manusia. *Journal of Innovative and Creativity*, 6(1), 7259–7267.

⁷Nainggolan, M. (2025). Transformasi penegakan hukum pidana dalam KUHP baru. *Locus: Jurnal Konsep Ilmu Hukum*, 5(2).

⁸Daffi Iqbal, A., & Edrisy, I. F. (2025). Paradigma pemidanaan baru dalam KUHP 2023: Alternatif sanksi dan keadilan restoratif dalam peradilan pidana. *Journal Evidence of Law*, 4(3), 1943–1952.

effectiveness in resolving contemporary social conflicts. Comparative studies across provinces or customary communities would also provide deeper insights into how institutional capacity, legal recognition, and local socio-cultural conditions influence the sustainability of customary institutions in Indonesia's multicultural society.

The urgency of this study becomes even more apparent when linked to the structural issues that have burdened Indonesia's criminal justice system, including overcrowding in correctional institutions and the high caseload at the investigation, prosecution, and trial levels. A restorative approach is often positioned as the answer to these issues, as resolving cases without requiring imprisonment is seen as capable of reducing pressure on correctional institution capacity while accelerating case resolution at the earliest levels of law enforcement.⁹ However, this kind of bureaucratic efficiency motive should not shift the essence of restorative justice itself, namely the restoration of relationships and the fulfillment of the interests of victims, because if restorative justice is only understood as an instrument to reduce the burden of cases, there is a risk that the interests of victims will be neglected for the sake of the administrative interests of law enforcement institutions.

It should also be noted that the restorative idea was actually introduced into the Indonesian criminal law system through Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which introduced a diversion mechanism for children in conflict with the law as a concrete manifestation of the restorative approach in the context of juvenile justice.¹⁰ The experience of more than a decade of implementing diversion in the juvenile criminal justice system has become a valuable empirical reference for the formulation and evaluation of restorative justice provisions, the scope of which has now been expanded into the National Criminal Code to apply generally, not limited to child offenders alone.

Based on these issues, this article aims to answer two main questions. First, how is the normative construction and philosophical foundation of restorative justice formulated in the National Criminal Code? Second, what is the dialectic between the spirit of restorative penal reform and the demand for legal certainty, and what challenges are faced in its implementation? By elaborating on these two questions, this article is expected to provide an academic contribution to the

⁹Harahap, M. (2025). Sistem diversi dan restorative justice anak berhadapan dengan hukum (ABH) di Indonesia (M. A. Lubis & A. Zuliah, Ed.). Eureka Media Aksara.

¹⁰Sitorus, D. F., & Munawar, A. C. K. (2023). Penyelesaian perkara kekerasan dalam rumah tangga (KDRT) melalui restorative justice di tingkat penyidikan. *Warta Dharmawangsa*, 17(2), 9–17.

development of criminal law policies that balance the ideals of substantive justice with the need for legal certainty and predictability.

The significance of this study lies in its position as an effort to bridge two discourses that have often been discussed separately in the Indonesian criminal law literature: the discourse on the renewal of the substance of material criminal law on the one hand, and the discourse on the theory of legal certainty as one of the basic values of the rule of law on the other. Most previous studies tend to discuss restorative justice separately from the theoretical framework of legal certainty, or conversely discuss legal certainty without specifically linking it to the concrete challenges posed by the mainstreaming of restorative justice in the codification of national criminal law. This article seeks to fill this gap by presenting an analysis that explicitly positions both discourses within a single, interrelated framework. It is hoped that this will enrich the academic literature on the direction of Indonesian criminal law reform following the full enactment of the National Criminal Code in 2026.

Methods

This research uses a normative legal research method (normative juridical), namely research that examines law as a written norm by examining legal materials, both primary and secondary, in order to answer the formulated legal issues.¹¹ The approach used in this research includes three main approaches. First, the statute approach, which is used to systematically examine the provisions in Law Number 1 of 2023 concerning the Criminal Code that are relevant to restorative justice regulations, including related implementing regulations, such as Supreme Court Regulation Number 1 of 2024 concerning Guidelines for the Implementation of Restorative Justice.¹² Second, a conceptual approach is used to analyze theoretical concepts regarding restorative justice, legal certainty, and criminal policy as they develop in contemporary criminal law literature. Third, a limited comparative approach is used to compare the regulation of the principle of legality and the space for law that exists in society between the old Criminal Code (*Wetboek van*

¹¹Al-Irsyad, M. A. Y. (2023). Analisis kebijakan restorative justice dalam upaya penyelesaian tindak pidana pencurian dengan pemberatan di Polres Bojonegoro (Skripsi). Universitas Bojonegoro.

¹²Mahkamah Agung Republik Indonesia. (2024). Peraturan Mahkamah Agung Nomor 1 Tahun 2024 tentang Pedoman Penerapan Keadilan Restoratif.

Strafrecht as enacted through Law Number 1 of 1946) and the National Criminal Code.¹³

The primary legal materials used in this study include Law Number 1 of 2023 concerning the Criminal Code and its academic text, Supreme Court Regulation Number 1 of 2024, and other related laws and regulations, such as the Prosecutor's Regulation concerning the termination of prosecution based on restorative justice. Secondary legal materials were obtained from books, scientific journals, research results, and other academic publications discussing restorative justice and criminal law reform in Indonesia, with an emphasis on literature published in the last five years to maintain the topicality of the analysis. The legal material collection technique was carried out through library research, while the analysis was conducted qualitatively using descriptive-analytical techniques, namely explaining relevant norms and concepts and then analyzing them critically to identify patterns, gaps, and emerging legal implications. This research is prescriptive in the sense that it not only describes the prevailing legal state (*das sein*), but also seeks to formulate recommendations on how these norms should be refined (*das sollen*) to make them more operational and consistent with the principle of legal certainty.

To maintain the objectivity of the analysis, this study also examines a number of recent scientific publications discussing the application of restorative justice to various types of crimes, ranging from minor crimes such as aggravated theft, to private-relational crimes such as domestic violence, to crimes involving broader public interests. This cross-sectional comparison of crime types is important to demonstrate that the application of restorative justice cannot be generalized uniformly, but must instead consider the characteristics and social impacts of each type of crime. The systematics of the discussion in this article are structured as follows: the introduction describes the background and problem formulation; the research methods section explains the approach used; the results and discussion section analyzes the normative construction of restorative justice in the National Criminal Code and its dialectic with legal certainty; and the closing section contains conclusions and policy recommendations.

Discussion

Philosophical Basis and Normative Construction of Restorative Justice in the National Criminal Code

¹³Hasibuan, M., Sumiadi, S., & Sastro, M. (2024). Perbandingan ketentuan asas legalitas dalam KUHP lama Undang-Undang Nomor 1 Tahun 1946 dan KUHP baru Undang-Undang Nomor 1 Tahun 2023. *Jurnal Ilmiah Mahasiswa Fakultas Hukum Universitas Malikussaleh*, 7(3).

An understanding of restorative justice cannot be separated from a critique of the retributive paradigm that has dominated Indonesia's criminal justice system. The retributive paradigm views crime solely as a violation of the state, thus centering its resolution on inflicting suffering on the perpetrator as a form of retribution, while the interests and rehabilitation of the victim tend to be marginalized.¹⁴ The National Criminal Code attempts to correct these weaknesses by formulating the objectives of punishment in a more holistic manner, which includes not only prevention and development of perpetrators, but also the restoration of balance, order, and a sense of security in society, as well as the resolution of conflicts arising from criminal acts, the restoration of balance, and a sense of security in society.

In the contemporary criminal law literature, restorative justice is understood in various ways, but generally rests on the idea that crime is essentially a violation of human relations, so that its resolution should involve all affected parties, namely the perpetrator, the victim, and the community, in order to jointly formulate the most appropriate form of restitution, rather than leaving the decision entirely to the state as a party that is distanced from the concrete events experienced by the victim.¹⁵ Before being formally adopted into the National Criminal Code, this idea had already received a legal basis through Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, which gives prosecutors the authority to stop prosecution in certain cases by considering a restoration agreement between the perpetrator and the victim.¹⁶ The experience of implementing these prosecutorial regulations also serves as an important empirical reference in formulating more comprehensive restorative justice provisions in the National Criminal Code.

Philosophically, this shift can be understood as an effort to realize a balance between the three basic legal values as formulated by Gustav Radbruch, namely legal certainty (*rechtszekerheid*), justice (*gerechtigheid*), and utility (*doelmatigheid* or *zweckmässigkeit*).¹⁷ The National Criminal Code consciously seeks to move away from the tendency of colonial criminal law, which places

¹⁴Panjaitan, B. S. (2022). Restorative justice sebagai penyelesaian perkara pidana berbasis korban. *Doktrina: Journal of Law*, 5(1), 157–169.

¹⁵Sri Utami, R. (2023). Restorative justice: A comprehensive shift towards victim-perpetrator reconciliation and community healing. *Indonesian Journal of Law and Economics Review*, 18(3).

¹⁶Hukumonline. (2025). Restorative justice dan judicial pardon KUHP 2023: Transformasi menuju sistem peradilan yang humanis.

¹⁷Setiawan, I. (2026). Rekonstruksi keadilan pidana: Evolusi alasan pemberat dan peringan pidana dalam KUHP Nasional 2023.

excessive emphasis on legal certainty through textual rigidity, toward a construction that better accommodates substantive justice and social benefits, without completely abandoning legal certainty as the foundation of the criminal justice system. This tripartite balance aligns with the values of Pancasila, particularly the principles of Just and Civilized Humanity and Social Justice for All Indonesians, which demand that criminal law not only punishes but also contributes to improving conditions and restoring social harmony.¹⁸

Another relevant theoretical framework for understanding the direction of this reform is the idea of progressive law, which emphasizes that the law must always side with humans and humanity, rather than the other way around, forcing humans to submit to the rigid textual logic of regulations. This perspective demands that law enforcers, especially judges, no longer position themselves merely as mechanical mouthpieces of the law (*la bouche de la loi*), but rather as discoverers of the values of substantive justice that exist within society.¹⁹ Several recent doctoral studies have even constructed the mechanism of discretion of law enforcement officers at the investigation level as a concrete form of the application of progressive law in the practice of restorative justice, while simultaneously emphasizing that restorative justice is not merely a case resolution technique, but rather a reflection of a more human-oriented legal philosophy.²⁰

When examined within the context of the development of global legal thought, the modern restorative justice movement initially developed from the conflict resolution practices of indigenous communities around the world, including the traditions of indigenous dispute resolution in New Zealand and Canada, before being formalized into various international legal instruments and adopted by many countries as a complement to conventional criminal justice systems. A common characteristic of this movement is its emphasis on direct dialogue between perpetrators and victims facilitated by a neutral third party, with the goal of reaching a shared understanding of the most meaningful form of accountability for the victim's recovery, rather than simply the imposition of formal sanctions by the state. The adoption of this idea into the National Criminal

¹⁸Setiawan, I. (2026). Rekonstruksi keadilan pidana: Evolusi alasan pemberat dan peringan pidana dalam KUHP Nasional 2023.

¹⁹Ramadhani, D., Nur, A., Shafira, M., Dewi, E., Jatmiko, G., & Warganegara, D. (2024). Implementasi perluasan makna asas legalitas berdasarkan Kitab Undang-Undang Hukum Pidana (KUHP) nasional. *Jurnal Ilmiah Hukum dan Hak Asasi Manusia*, 3(2), 65–74.

²⁰Samodra, H. R. (2022). Rekonstruksi diskresi Bhabinkamtibmas sebagai payung hukum dalam implementasi restorative justice di tingkat penyidikan berdasarkan hukum progresif (Disertasi Doktor). Universitas Islam Sultan Agung.

Code places Indonesia in line with the global trend of criminal law reform that is increasingly moving away from a purely state-centered justice model toward a more participatory model centered on the interests of those directly affected by the crime.

In line with this view, the theory of justice that emphasizes the importance of fair and balanced procedures for all parties also provides a normative basis for restorative justice, because this approach essentially seeks to present a more inclusive process, where victims are no longer passive parties who simply watch the state process the perpetrator, but are actively involved in determining the form of reparation that best suits the losses they have suffered. This principle of active victim involvement is what fundamentally distinguishes restorative justice from the conventional, state-centered retributive paradigm.

The relevance of the theory of procedural justice can also be further elaborated through the concept of justice as fairness, which emphasizes that a social order can be called just if the procedures and structures that govern it provide equal opportunities for all parties to express their interests, without the domination of one party over the other. Applied in the context of criminal law, this idea demands that the case resolution process is not solely designed for the benefit of the state's efficiency in resolving cases, but also provides equal space for victims to express their interests in restitution and for perpetrators to receive a fair opportunity to be accountable for their actions without excessive stigmatization. Such a balance of interests is an important normative prerequisite so that restorative justice does not become a mechanism that only benefits one party, whether it is the perpetrator who seeks to avoid accountability or law enforcement officials who are interested in resolving cases quickly without considering the substance of restitution.

From a normative construction perspective, the National Criminal Code accommodates restorative justice through at least four groups of provisions. First, it recognizes living law as part of the principle of material legality. This provision affirms that customary criminal law remains valid as long as it aligns with the values contained in Pancasila and the 1945 Constitution of the Republic of Indonesia. This opens up space for customary criminal resolution mechanisms, including customary fines and social restitution according to local customs, particularly for small-scale offenses with local impacts.²¹ This recognition is an important correction to the old Criminal Code which strictly adhered to the

²¹Republik Indonesia. (2023). Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana.

principle of formal legality and prohibited the use of analogies or unwritten laws, thus often alienating criminal law from the values that exist in Indonesia's pluralistic society.²²

Restorative practices based on local wisdom have long existed in various regions of the archipelago, long before the modern concept of restorative justice was introduced into international legal discourse. In indigenous communities that adhere to communal legal systems, violations are not viewed solely as individual wrongs committed against the state, but rather as events that disrupt the collective balance and must be restored through deliberation, customary fines, or cleansing rituals involving community leaders as mediators.²³ Formal recognition of the law that exists in society in the National Criminal Code can thus be read as an effort to bridge the gap that has existed between formal criminal law inherited from the colonial era and the sociological reality of plural Indonesian society, while also providing legal recognition of the effectiveness of traditional settlement mechanisms that have been tested in maintaining social cohesion at the grassroots level.

However, the application of this local wisdom-based approach needs to be carefully limited so as not to conflict with criminal acts that have a broad public interest dimension. In corruption crimes, for example, a restorative approach based on a family settlement between the perpetrator and the injured party cannot be applied immediately, because the losses incurred are not just individual losses, but losses to state finances and the public interest as a whole, so that the resolution must still go through formal judicial mechanisms while still considering the principle of restorative justice in a limited way, for example through optimizing asset recovery as a form of restitution of state losses.²⁴ It is important to emphasize such limitations so that restorative justice is not misused as an instrument to soften law enforcement against crimes that have systemic impacts, including corruption and crimes against humanity.

Second, the National Criminal Code introduced the institution of judicial pardon (*rechterlijk pardon* or *judicial pardon*), which gives judges the authority to withhold punishment even if the defendant is legally and convincingly proven guilty, taking into account the minor nature of the offense, the perpetrator's

²²Theodora, S. H. (2023). Perkembangan asas legalitas dalam KUHP lama dan KUHP baru. *Hukumonline*.

²³Karjono, A., Malau, P., & Ciptono, C. (2024). Penerapan keadilan restoratif dalam hukum pidana berbasis kearifan lokal. *Jurnal USM*, 7(2), 6–7.

²⁴Nainggolan, M. (2025). Transformasi penegakan hukum pidana dalam KUHP baru. *Locus: Jurnal Konsep Ilmu Hukum*, 5(2).

personal circumstances, or the circumstances at the time of the offense and afterward. This institution represents an important breakthrough because it provides judges with the space to consider aspects of restoration and proportionality on a case-by-case basis, while also being one of the most concrete manifestations of the restorative philosophy in the adjudication stage.²⁵

The judge's pardon authority is not granted indefinitely, but is accompanied by a number of procedural safeguards to prevent abuse. The judge is still required to comprehensively outline in writing the considerations underlying the decision not to impose a penalty, including an assessment of the perpetrator's personal circumstances, the seriousness of the offense, the perpetrator's post-crime attitude, and the victim's interests, which must still be considered even if a penalty is not imposed, for example through the continued imposition of compensation or other restorative measures. This written accountability requirement is important to create space for oversight through legal remedies, so that the judge's pardon authority does not become an unlimited freedom that could erode public trust in the independence and integrity of the judiciary.

Third, the National Criminal Code expands the types and application of alternative non-imprisonment sentences, such as supervision and community service, as well as flexibility in imposing fines, including strengthening compensation and restitution mechanisms for victims. These provisions reflect a shift in the orientation of criminal justice from merely punishing perpetrators to more concretely restoring victims and social balance, particularly for crimes with light to moderate penalties.²⁶ Strengthening alternative non-institutional sentencing is also in line with efforts to address the structural problem of overcapacity in correctional institutions, which has long been a concern in the Indonesian criminal justice system.

Fourth, the National Criminal Code opens up space for resolving cases outside the formal judicial process through diversion mechanisms and restorative approaches, particularly for crimes with criminal penalties below a certain threshold, by taking into account agreements between the perpetrator and the

²⁵Malau, P. (2023). Tinjauan Kitab Undang-Undang Hukum Pidana (KUHP) baru 2023. *Al-Manhaj: Jurnal Hukum dan Pranata Sosial Islam*, 5(1), 837–844.

²⁶Daffi Iqbal, A., & Edrisy, I. F. (2025). Paradigma pembedaan baru dalam KUHP 2023: Alternatif sanksi dan keadilan restoratif dalam peradilan pidana. *Journal Evidence of Law*, 4(3), 1943–1952.

victim.²⁷ This provision is further strengthened through Supreme Court Regulation Number 1 of 2024, which outlines technical guidelines for the application of restorative justice by judges in the criminal case examination process, while also complementing similar guidelines previously issued by the Attorney General's Office and the Indonesian National Police in the form of internal regulations of each law enforcement institution.²⁸

The criteria for limiting crimes that can be resolved through a restorative approach generally rest on three main elements: a mild to moderate criminal threat, no social impact that disturbs the wider community, and a voluntary agreement between the perpetrator and victim without any element of coercion or pressure from any party. These three elements serve as an initial filter to ensure that the restorative approach is only applied to cases that are proportionally worthy of being resolved outside the formal justice system. While cases with a higher level of seriousness, such as crimes against life, serious sexual crimes, or crimes that have a systemic impact on the public interest, must still be resolved through conventional criminal justice mechanisms to ensure a deterrent effect and adequate protection of the public interest.

In addition to these four instruments, an equally fundamental change lies in the formulation of the objectives of punishment itself, which in the National Criminal Code are formulated explicitly and comprehensively, no longer left entirely to doctrinal interpretation as was the case in the old Criminal Code which did not contain a clear formulation of objectives of punishment. This explicit formulation of objectives of punishment provides clear normative guidelines for judges in issuing decisions, while also serving as a benchmark for assessing whether a decision is in line with the philosophy of punishment adopted by the National Criminal Code. With the formulation of these plural objectives, judges are no longer merely required to impose a sentence commensurate with the error (retributive proportionality), but must also consider aspects of development, recovery, and prevention in determining the type and severity of sanctions imposed.

A further consequence of this formulation of pluralistic sentencing objectives is the opening of a broader space for argumentation in court, both for public prosecutors and legal counsel, to present restorative-oriented considerations as the

²⁷Vinal, D., Saptawan, A., & Lubis, A. M. (2025). Kebijakan formulasi restorative justice dalam KUHP baru dan urgensinya bagi anak berhadapan dengan hukum. *Jurnal Ilmiah Galuh Justisi*, 13(2), 261–270.

²⁸Mahkamah Agung Republik Indonesia. (2024). Peraturan Mahkamah Agung Nomor 1 Tahun 2024 tentang Pedoman Penerapan Keadilan Restoratif.

basis for requests for leniency or even the elimination of criminal penalties. On the one hand, this enriches the adjudication process with a more holistic perspective. On the other hand, this open space for argumentation requires judges to have a higher analytical competence in weighing various, often conflicting interests: namely the interests of the perpetrator to obtain the opportunity for restorative justice, the interests of the victim to obtain justice and meaningful reparation, and the interests of the wider community to obtain a sense of security and certainty that the law is consistently enforced.²⁹

These four groups of regulations, when read systematically, demonstrate that the National Criminal Code does not treat restorative justice as a separate, additional mechanism, but rather as a common thread that weaves together the various stages of the criminal process, from investigation, prosecution, adjudication, to the execution of the sentence. A systematic comparison between the old Criminal Code and the National Criminal Code underscores the depth of this transformation.³⁰ The old Criminal Code, as a product of colonial law designed for the interests of the colonial government, was philosophically built on the logic of order and obedience, with imprisonment as the primary sanction applied almost uniformly without much consideration of the social context of the perpetrator or the interests of the victim's recovery. This colonial character is also reflected in the lack of provisions regarding alternative non-imprisonment punishments and the absence of formal space for victim involvement in the sanction-determining process. The National Criminal Code, on the other hand, was consciously designed to reflect the legal ideals born from the womb of Indonesian society itself, placing restoration, proportionality, and respect for humanitarian values as its primary orientation, without abandoning the function of criminal law as a means of maintaining public order.

Such construction is in line with an integral criminal policy approach, which views that crime prevention cannot only rely on penal means alone (criminal law approach), but must also be supported by non-penal means, including social and cultural approaches, so that crime prevention takes place in a comprehensive and

²⁹ Martin, P. P., Kranz, D., Wulff, P., & Graulich, N. (2024). Exploring new depths: Applying machine learning for the analysis of student argumentation in chemistry. *Journal of Research in Science Teaching*, 61(8), 1757-1792. <https://doi.org/10.1002/tea.21903>

³⁰ Marnija, M., & Hoesein, Z. A. (2025). The Dynamics of Criminal Law Reform in Indonesia: a Historical and Prospective Review From the Colonial Penal Code to the 2023 National Criminal Code. *Fox Justi: Jurnal Ilmu Hukum*, 15(03), 671-678. <https://ejournal.seaninstitute.or.id/index.php/Justi/article/view/6980>

sustainable manner.³¹ However, several recent studies warn that the success of this integral approach depends heavily on the synergy between regulations, legal culture, and the institutional capacity of law enforcement. Without such synergy, the progressive normative formulations in the National Criminal Code have the potential to remain mere paper formulas that are not fully manifested in daily law enforcement practices. The success of criminal law reform is determined not only by the quality of regulations, but also by the readiness of the apparatus, the harmonization of sectoral regulations, and the social acceptance of new, still controversial provisions.³²

This integral approach requires that crime prevention not be solely the responsibility of formal law enforcement institutions, but also involve the active participation of civil society elements, educational institutions, religious leaders, and traditional leaders as partners in building a legal culture that supports peaceful conflict resolution. These non-penal channels play a strategic role in preventing crime from its earliest stages, while also serving as a support network for the implementation of restorative justice after a crime occurs, for example through the provision of psychosocial support for victims and social reintegration programs for perpetrators who have completed the recovery process. Without the support of such a non-penal ecosystem, restorative justice risks being reduced to merely an administrative procedure for resolving cases, without truly addressing the root causes of the social problems that led to the crime or ensuring the sustainability of post-case recovery.

Dialectics between Criminal Reform and Legal Certainty: Challenges and Prospects for Implementation

Although the normative construction of restorative justice in the National Criminal Code is quite progressive, its practical application faces a fundamental tension with the principle of legal certainty, which has long been a key pillar of a civil law criminal justice system like Indonesia. Legal certainty demands that criminal norms be formulated clearly, firmly, and predictably, so that every citizen can know precisely what actions are prohibited and their legal consequences. In contrast, restorative justice is essentially an approach that emphasizes case individualization and flexibility in resolution, meaning that the final outcome of a

³¹Wardhana, F. P., & Hosnah, A. U. (2026). Arah baru hukum pidana Indonesia: Analisis KUHP Nasional dalam perspektif kepastian hukum dan hak asasi manusia. *Journal of Innovative and Creativity*, 6(1), 7259–7267.

³²Nainggolan, M. (2025). Transformasi penegakan hukum pidana dalam KUHP baru. *Locus: Jurnal Konsep Ilmu Hukum*, 5(2).

case depends heavily on the context, the agreement of the parties, and the subjective judgment of the law enforcement officers handling it. This conceptual tension is at the heart of the problem of implementing restorative justice in the National Criminal Code and is the main focus of the discussion in this section, which will sequentially explore the issues of disparity in application, law enforcement factors, dimensions of access to justice, tensions with the principle of legality, the victim's perspective, and policy steps that can be taken to reconcile these two values proportionally.

A study of restorative justice norms in the National Criminal Code shows that most of its provisions are still formulated in general terms, in the form of principles and policy directions, without being accompanied by adequate operational parameters regarding the limits of the authority of officials, the rights of victims to be involved and express objections, or oversight mechanisms for decisions taken based on the restorative approach.³³ This kind of ambiguity risks giving rise to different implementations between law enforcement agencies, as is also shown in the application of restorative justice to the crime of aggravated theft, which although conceptually intended to prioritize conflict resolution and victim recovery, in practice still faces regulatory disharmony and unclear normative parameters regarding when and how this approach can be legally applied.³⁴

This disparity in application, in turn, has the potential to violate the principle of equality before the law, because cases with similar characteristics can receive different treatment simply because of differences in internal policies between agencies, jurisdictions, or even the individual preferences of the law enforcement officers handling them. Furthermore, disparity in application that is allowed to persist has the potential to erode public trust in the criminal justice system as a whole. Public trust is essential social capital for the sustainability of the rule of law, because laws that are no longer trusted by the public to be just will lose their social binding power, regardless of how progressive their normative formulations on paper. In this context, legal certainty is not merely understood as mere textual certainty, but also as certainty regarding the consistency of legal application that can be relied upon by the public, so that every individual, whether as a potential perpetrator, a potential victim, or as a citizen in general, can trust that the law will be applied fairly and consistently regardless of social or economic background.

³³Nainggolan, M. (2025). Transformasi penegakan hukum pidana dalam KUHP baru. *Locus: Jurnal Konsep Ilmu Hukum*, 5(2).

³⁴Al-Irsyad, M. A. Y. (2023). Analisis kebijakan restorative justice dalam upaya penyelesaian tindak pidana pencurian dengan pemberatan di Polres Bojonegoro (Skripsi). Universitas Bojonegoro.

To analyze the root of the problem, a framework of law enforcement factors including legal substance, law enforcement structure or apparatus, supporting facilities and infrastructure, public awareness, and legal culture, can be used as a relevant analytical tool.³⁵ From a legal substantive perspective, as previously outlined, the restorative justice norms in the National Criminal Code remain abstract and require more detailed implementing regulations. Structurally, the institutional readiness of the police, prosecutors, and courts to consistently understand and apply the concept of restorative justice remains a challenge, given that this approach requires additional competencies beyond those of conventional criminal procedure law, such as the ability to facilitate mediation and assess the feasibility of restitution agreements.

This disparity in implementation also has the potential to be regional, given that Indonesia's vast and diverse geography results in uneven levels of preparedness among law enforcement institutions between urban areas, which have relatively better access to legal resources, and remote areas, which still face limitations in the number of officers, facilities, and access to adequate legal assistance.³⁶ This disparity risks creating two distinct facets of restorative justice: relatively standardized implementation in areas with more established institutions, versus implementation that relies more on individual initiative and local wisdom in areas with limited formal institutions. In this context, the role of advocates and legal aid institutions is crucial as a bridge to ensure that the rights of perpetrators and victims remain equally protected, regardless of geographic location or the level of preparedness of local law enforcement institutions. Therefore, a program to strengthen the capacity of advocates and paralegals specifically regarding restorative justice mechanisms is needed so that the assistance provided is truly effective in safeguarding the interests of the parties.

In terms of facilities and infrastructure, the implementation of restorative justice requires supporting infrastructure such as a standardized penal mediation mechanism, trained facilitators, and an integrated inter-agency recording and monitoring system, which until now has not been fully available evenly throughout Indonesia. In terms of public awareness and legal culture, acceptance of the restorative approach also varies, with some viewing it as a more humane solution

³⁵Samodra, H. R. (2022). Rekonstruksi diskresi Bhabinkamtibmas sebagai payung hukum dalam implementasi restorative justice di tingkat penyidikan berdasarkan hukum progresif (Disertasi Doktor). Universitas Islam Sultan Agung.

³⁶Solehudin, R. H. (2023). Indonesia's Geostrategic Position in Global and Regional Politics: Government Preparation. *Revenue Journal: Management and Entrepreneurship*, 1(2), 81-89. <https://doi.org/10.61650/rjme.vii2.434>

and in line with family values, while others worry that this approach could be exploited as a loophole for perpetrators, especially those with greater economic or social resources, to avoid proper criminal accountability.³⁷

Another aspect that deserves critical attention is the dimension of access to justice in the implementation of restorative justice, particularly regarding the economic capacity of the parties. Restorative processes that require a restitution agreement, including the payment of restitution or compensation to the victim, have the potential to create new inequalities if not managed carefully. Offenders with sufficient economic capacity have a greater chance of reaching a restitution agreement and thus avoiding formal justice proceedings, while offenders from economically disadvantaged backgrounds risk still having to undergo conventional justice proceedings even though the level of culpability and impact of their actions are relatively equal. This disparity, if left without adequate control mechanisms, has the potential to create economically discriminatory restorative justice, contrary to the spirit of equality that is one of the fundamental values of a state based on the rule of law.

Beyond the economic dimension, public legal literacy regarding the nature and limits of restorative justice also plays a crucial role in preventing public misunderstanding.³⁸ Media coverage of the application of restorative justice is often oversimplified, giving the impression that this approach is synonymous with absolving the perpetrator of all responsibility. In fact, the essence of restorative justice demands a more meaningful form of accountability oriented toward real recovery, not simply the elimination of legal consequences. Such misunderstandings, if allowed to develop without adequate public education efforts, have the potential to generate social resistance to restorative justice policies as a whole, even though these policies are fundamentally designed for the benefit of victim and community recovery. Therefore, a more systematic public communication strategy is needed from law enforcement institutions, including transparent explanations of the criteria and procedures for applying restorative justice to each case of public interest, in order to build a proportionate understanding among the wider community.

To anticipate these risks, a mechanism is needed to ensure that the assessment of the feasibility of implementing restorative justice does not solely rely

³⁷Supriyanto, A., Santiago, F., & Barthos, M. (2023). Implementation of restorative justice as a justice law enforcement in Indonesia. *Jurnal Ius Constituendum*, 4(5), 448–456.

³⁸ Abdulovna, D. D. (2024). Advancing Criminal Justice Reform through Restorative Justice: A Narrative Review. *Sinergi International Journal of Law*, 2(4), 274–285. <https://doi.org/10.61194/law.v2i4.719>

on the perpetrator's ability to fulfill the material restitution agreement, but also considers non-material forms of restitution, such as a public apology, community service, or other meaningful contributions to the victim and the community, so that restorative justice remains equally accessible to perpetrators from various economic levels without compromising the essence of restitution for the victim. The development of guidelines that explicitly regulate the various forms of non-material restitution is an important agenda that needs to be immediately accommodated in the implementing regulations of the National Criminal Code going forward.³⁹

In the long term, the development of a legal culture that supports restorative justice is also inseparable from the role of legal education in higher education. The criminal law curriculum has been dominated by a doctrinal approach centered on the interpretation of statutory texts and formal judicial jurisprudence, while non-litigation skills such as mediation, negotiation, and facilitating dialogue between conflicting parties have not received adequate attention. Yet, these skills are core competencies required by prospective law enforcement officers and legal practitioners to implement a restorative approach effectively and with integrity. Updating the legal education curriculum to integrate these restorative skills from the tertiary level will provide a more solid long-term foundation for the sustainability of restorative-oriented criminal law reform, going beyond simply short-term technical training for officers already serving.

Another equally important issue is the potential tension between restorative justice and the principle of legality, particularly regarding the prohibition on analogy and the requirement that any expansion of the meaning of criminal norms must remain grounded in the text of the law. Several studies have shown that the National Criminal Code has actually attempted to bridge this tension by materially expanding the meaning of the principle of legality, namely by recognizing existing laws in society as a source of formal criminal law, as long as they are in accordance with the values contained in Pancasila, human rights, and general legal principles recognized by the nation's community.⁴⁰ This expansion is a step forward compared to the old Criminal Code which expressly prohibited the use of analogies

³⁹ Hadrowicz, S. (2024). Natural Restitution in a Comparative Legal Perspective. *Rebels Zeitschrift für ausländisches und internationales Privatrecht/The Rabel Journal of Comparative and International Private Law*, (H. 2), 278-306. <https://www.jstor.org/stable/48807046>

⁴⁰ Isima, N. (2022). Urgensi pengakuan hukum yang hidup pada masyarakat dalam asas legalitas ditinjau dari perspektif sosiologi hukum. *Jurnal Jinnsa (Jurnal Interdisipliner Sosiologi Agama)*, 2(1), 29-36.

and unwritten laws, so it was often criticized as being too rigid and foreign to Indonesian values.⁴¹

The debate regarding the expansion of the principle of legality is essentially centered on the dilemma between maintaining living unwritten law (*ongeschreven recht*) as a source of substantive justice, with its conceptual and philosophical consequences for legal certainty which has so far been guaranteed by the rigid principle of legality.⁴² A number of studies assess that the development of the principle of legality from the old Criminal Code to the National Criminal Code is basically a shift from a purely formal principle of legality to a material principle of legality, which still requires a legal basis for every criminal act, but expands the sources of this legal basis to also include norms that are alive and recognized by society, as long as they do not conflict with general legal principles.⁴³ Such a shift does not actually merely reduce legal certainty, but rather changes the basis of that certainty from merely textual certainty to certainty that is more contextual and responsive to Indonesia's social diversity.

To ensure that this expansion does not lead to uncertainty, several law enforcement agencies have begun developing internal guidelines to standardize the implementation of restorative justice within their respective jurisdictions. Studies conducted by provincial prosecutors, for example, indicate that regular evaluations of the implementation of the National Criminal Code, including its restorative justice provisions, are an urgent need to ensure consistency of implementation across regions and across levels of law enforcement.⁴⁴ Such efforts are important as a bridge between general norms in the law and operational needs in the field, even though the scope and binding power of these internal guidelines are still limited to each institution and have not been fully integrated across law enforcement agencies.

In closing this discussion of the philosophical foundations and normative construction, it can be affirmed that the National Criminal Code has laid a strong foundation for transforming Indonesia's penal paradigm toward a more restorative

⁴¹Theodora, S. H. (2023). Perkembangan asas legalitas dalam KUHP lama dan KUHP baru. *Hukumonline*.

⁴²Yuberlago, Ginting, Y. P., & Sugianto, F. (2023). Dilema keadilan hukum antara hukum tidak tertulis yang hidup (*ongeschreven recht*) dan asas legalitas dalam hukum pidana Indonesia ditinjau dari aspek filosofis. *Jurnal Ilmu Hukum Universitas Pelita Harapan*, 19(1).

⁴³Isima, N. (2022). Urgensi pengakuan hukum yang hidup pada masyarakat dalam asas legalitas ditinjau dari perspektif sosiologi hukum. *Jurnal Jinnsa (Jurnal Interdisipliner Sosiologi Agama)*, 2(1), 29–36.

⁴⁴Kejaksaan Tinggi Daerah Khusus Jakarta. (2025). *Tinjauan KUHP 2023*. Indonesia Judicial Research Society.

and humanistic model. This foundation is reflected in the consistency of restorative justice regulations across various stages of the criminal justice process, from the recognition of existing law within society, to the institution of judicial pardons, the expansion of alternative punishments, to the provision of non-formal settlements. However, the strength of a normative foundation will only be tested through its practical implementation, which is the focus of the discussion in the next section of this article.

Coordination between law enforcement agencies is also a determining factor in successful implementation, given that the restorative process can occur at various stages, from police investigations and inquiries, to prosecutions by the prosecutor's office, and ultimately to court hearings. Without a clear coordination mechanism, there is a risk of overlapping authority and a lack of synchronization of decisions between agencies. For example, when the police have facilitated a restorative resolution at the investigation level, but the prosecutor's office still transfers the case to the court due to differing interpretations of the eligibility criteria for applying this approach. Such a lack of synchronization not only leads to bureaucratic inefficiencies but can also create uncertainty for perpetrators and victims who have undertaken the recovery process in good faith but still face formal judicial proceedings due to differing views between law enforcement agencies. The development of a cross-institutional memorandum of understanding that explicitly regulates the coordination mechanism and alignment of restorative decisions across stages of the criminal justice process is an urgent need to address this issue.

However, the expansion of the principle of material legality also raises new concerns regarding the limits of legal certainty, because the recognition of living law in society has the potential to give rise to variations in the application of criminal law between regions, considering the diversity of customary law in Indonesia.⁴⁵ Some observers even highlight that the challenge of implementing living law in the National Criminal Code lies in the lack of a clear mechanism for identifying and verifying the existence of a particular customary law, thus potentially giving rise to authority disputes between customary law and national law in practice.⁴⁶ Therefore, the successful implementation of these provisions in the future will depend heavily on how the judicial institutions, especially the Supreme Court and the Constitutional Court, consistently interpret and oversee

⁴⁵Yuberlago, Ginting, Y. P., & Sugianto, F. (2023). Dilema keadilan hukum antara hukum tidak tertulis yang hidup (*ongeschreven recht*) dan asas legalitas dalam hukum pidana Indonesia ditinjau dari aspek filosofis. *Jurnal Ilmu Hukum Universitas Pelita Harapan*, 19(1).

⁴⁶Putra, A. (2025, 7 Maret). Tantangan implementasi living law dalam KUHP. *Kompas*.

these crucial articles, to ensure that the flexibility provided does not lead to legal uncertainty that is detrimental to the public.⁴⁷

Another dimension that requires serious attention is the victim's perspective in the application of restorative justice, because this approach is essentially claimed to be oriented towards victim recovery, but in practice the resolution process is often more controlled by the interests of law enforcement officials to resolve the case quickly. In relational crimes, such as domestic violence, the application of a restorative approach requires extra caution, because the unequal power relationship between the perpetrator and the victim has the potential to put the victim in a position of pressure to accept a family resolution, even though substantively their recovery interests have not been fully met.⁴⁸ A study of the resolution of domestic violence cases through a restorative approach at the investigation level shows that the success of this approach is highly dependent on the investigator's accuracy in assessing the equality of bargaining positions between the perpetrator and the victim before facilitating the peace process, so that the restorative approach does not turn into a means of indirectly silencing the victim.⁴⁹ The long-term effectiveness of restorative justice also needs to be tested in terms of its impact on offender behavior after the case is resolved. One of the main arguments supporting the restorative approach is the belief that a process that actively involves offenders in recognizing the impact of their actions on victims tends to produce a more meaningful deterrent effect than conventional, impersonal punishment, because offenders gain a direct understanding of the real consequences of their actions, rather than simply undergoing punishment as an administrative formality. However, this claim requires adequate empirical evidence through follow-up research that measures the rate of reoffending (recidivism) in offenders who have undergone the restorative process, compared to offenders processed through conventional justice channels for similar types of crimes. The absence of comprehensive empirical data on this matter in Indonesia is a significant limitation that needs to be addressed through further quantitative research and longitudinal studies, so that claims of the superiority of restorative

⁴⁷Wardhana, F. P., & Hosnah, A. U. (2026). Arah baru hukum pidana Indonesia: Analisis KUHP Nasional dalam perspektif kepastian hukum dan hak asasi manusia. *Journal of Innovative and Creativity*, 6(1), 7259–7267.

⁴⁸Sitorus, D. F., & Munawar, A. C. K. (2023). Penyelesaian perkara kekerasan dalam rumah tangga (KDRT) melalui restorative justice di tingkat penyidikan. *Warta Dharmawangsa*, 17(2), 9–17.

⁴⁹Sitorus, D. F., & Munawar, A. C. K. (2023). Penyelesaian perkara kekerasan dalam rumah tangga (KDRT) melalui restorative justice di tingkat penyidikan. *Warta Dharmawangsa*, 17(2), 9–17.

justice are not solely based on normative-philosophical arguments but are also supported by convincing empirical evidence.

Therefore, the involvement of independent victim advocates, whether from psychologists, social workers, or legal aid institutions, needs to be made a mandatory requirement in every restorative resolution process that involves unequal power relations. In relation to the punishment itself, the National Criminal Code also strengthens the principle of fault as the main requirement for punishment, by clarifying the limitations regarding the elements of intent (*dolus*) and negligence (*culpa*) more systematically compared to the provisions of the old Criminal Code which were considered too general and opened up room for excessive interpretation.⁵⁰ Implementation challenges also arise from the harmonization of sectoral regulations, considering that various specific laws outside the National Criminal Code, such as the law on child protection, the law on the elimination of domestic violence, and the law on narcotics, each have their own provisions regarding case resolution mechanisms that are not always aligned with the restorative spirit espoused by the National Criminal Code. This kind of disharmony between cross-statutory regulations has the potential to cause confusion for law enforcement officials in determining which norms should be prioritized when there is an overlap in regulations in a concrete case. Efforts to harmonize sectoral laws and regulations with the spirit of the National Criminal Code, both through revisions to related laws and through the issuance of implementing regulations that explicitly regulate the hierarchy and interrelationships of norms, is an equally important legislative agenda that requires immediate follow-up to avoid overlapping and uncertainty of norms in daily law enforcement practices.

This strengthening of the principle of fault is important to read alongside the restorative approach, because both require a careful and individualized assessment of the perpetrator's circumstances, the degree of culpability, and the impact of the act, so that the sanctions and forms of reparation imposed are truly proportionate to the concrete circumstances of each case, rather than simply applying uniform sanctions without considering the context. Thus, the strengthening of the principle of fault can serve as an anchor of legal certainty that limits the scope for restorative discretion so that it is not used arbitrarily.

⁵⁰Ramadhani, D., Nur, A., Shafira, M., Dewi, E., Jatmiko, G., & Warganegara, D. (2024). Implementasi perluasan makna asas legalitas berdasarkan Kitab Undang-Undang Hukum Pidana (KUHP) nasional. *Jurnal Ilmiah Hukum dan Hak Asasi Manusia*, 3(2), 65–74.

To implement restorative justice proportionately without sacrificing legal certainty, several policy steps can be considered. First, the development of more detailed and operational implementing regulations that explicitly stipulate the criteria for crimes that can be resolved through a restorative approach, procedures for victim involvement, standards for restitution agreements, and mechanisms for objections and judicial oversight of restorative-based decisions. This, as already initiated through Supreme Court Regulation No. 1 of 2024, still needs to be strengthened with more detailed and integrated technical guidelines across institutions.⁵¹ Furthermore, digitizing the restorative justice system across all law enforcement institutions, from the police and prosecutors to the courts, can be a crucial tool for supporting transparency and accountability. An integrated information system allows for a complete history of every restorative decision, including the rationale for implementing the restorative approach, the parties involved, and the form of the recovery agreement reached. This allows internal and external oversight bodies to conduct data-driven evaluations, rather than relying solely on fragmented narrative reports. This use of information technology can also help identify patterns of disparity in implementation across regions more quickly, allowing for more responsive corrective action before these disparities develop into more difficult-to-address structural issues.

Second, strengthening institutional capacity through penal mediation training and standardizing procedures for law enforcement officials at all levels, so that the implementation of the restorative approach does not depend solely on individual initiative, but becomes a standardized institutional practice. Third, strengthening judicial oversight mechanisms, including the obligation to record and report every restorative-based case resolution, to ensure accountability and prevent the misuse of this approach as a means of avoiding criminal liability. Fourth, the need for regular evaluative studies on the effectiveness of the implementation of restorative justice, particularly from the perspective of restoring victims' rights, so that this approach does not remain merely normative discourse, but is truly manifested in practices that are just for all parties involved.

These four policy steps are interrelated and cannot be implemented in isolation. For example, more operational implementing regulations will be ineffective without strengthening the capacity of the officers spearheading their implementation in the field. This is reflected in various findings that demonstrate that law enforcement officers' readiness to understand updated legal concepts is a

⁵¹Mahkamah Agung Republik Indonesia. (2024). Peraturan Mahkamah Agung Nomor 1 Tahun 2024 tentang Pedoman Penerapan Keadilan Restoratif.

key prerequisite for successful criminal law reform.⁵² Similarly, strengthening judicial oversight mechanisms will be meaningless without an integrated inter-agency recording and reporting system, which allows every restorative-based decision to be systematically traced and evaluated, rather than simply being documented administratively without analytical follow-up.

To complement these four policy steps, lawmakers should also consider drafting a specific law on restorative justice that applies across sectors, as has been discussed in various academic and legislative forums. Such a specific law could serve as a legal umbrella that unifies the various restorative justice provisions currently scattered throughout the National Criminal Code, sectoral laws, and internal regulations of each law enforcement institution, thereby creating uniform definitions, procedures, and standards for protecting the rights of parties involved throughout the Indonesian criminal justice system, without exception.⁵³ The existence of such a comprehensive legal umbrella would significantly help reduce the disharmony in sectoral regulations outlined above, while also providing stronger legal certainty for all stakeholders in the criminal justice system.

The periodic evaluative studies recommended in the fourth point also need to be designed with clear and measurable indicators, focusing not only on the number of cases successfully resolved through a restorative approach, but also on the quality of recovery experienced by victims, the level of satisfaction of the parties with the process, and the rate of recidivism of perpetrators after restorative resolution compared to perpetrators processed through conventional justice channels. Qualitative indicators such as these are important to ensure that the success of restorative justice is measured not solely by bureaucratic efficiency, but by the substance of recovery truly felt by the parties affected by the crime.

In closing this series of recommendations, it should be emphasized that the four policy steps outlined above are not a final and closed list, but rather an initial framework that is open to further refinement as empirical experience develops with the implementation of the National Criminal Code in the field. Policymakers, academics, and legal practitioners need to continually foster interdisciplinary dialogue, including with criminology, legal sociology, and forensic psychology, to enrich perspectives in formulating a restorative justice model that best suits

⁵²Nainggolan, M. (2025). Transformasi penegakan hukum pidana dalam KUHP baru. *Locus: Jurnal Konsep Ilmu Hukum*, 5(2).

⁵³ Pande, Y., Sariyono, E. B., Gumilar, A. A., & Noya, S. W. (2026). Reformulation Of Punishment Objectives In The National Criminal Code: A Restorative Justice Perspective. *International Journal of Health, Economics, and Social Sciences (IJHESS)*, 8(1), 506-511. <https://doi.org/10.56338/ijhess.v8i1.9959>

Indonesia's diverse socio-cultural context, without losing sight of the principle of legal certainty that underpins the rule of law.

The ideal implementation model, as suggested in various recent studies, should be constructed in a limited and proportional manner, with clear conditions, adequate judicial oversight, and standardized procedures, in order to guarantee both legal certainty and the protection of the interests of victims and society simultaneously.⁵⁴ Such an approach will ultimately position restorative justice not as the antithesis of legal certainty, but as a complement that enriches the Indonesian criminal justice system so that it is able to respond to the complexity of social problems in a more humane manner, without having to sacrifice the predictability and uniformity of legal application that are the basis of public trust in the criminal justice system.

As a concluding note in this section of the discussion, it should be emphasized that the analysis presented in this article is based on a normative review of existing statutory texts and academic literature, thus having limitations in capturing the dynamics of the implementation of restorative justice directly in the field. This limitation is particularly relevant considering that the National Criminal Code has only been fully effective since early 2026, so empirical data and experience regarding its implementation are still in the early stages of accumulation. Therefore, the findings and recommendations in this article are preliminary and open to refinement as empirical data from law enforcement practices in the field increases in the coming years.

Conclusion

Based on the above description, it can be concluded that the National Criminal Code brings a fundamental transformation in the Indonesian penal paradigm, from the retributive orientation inherited from colonial rule to a more humanistic and recovery-oriented model through the mainstreaming of restorative justice. This transformation is evident in four main normative instruments: the recognition of living law in society, the institution of judicial pardon, the expansion of alternative non-imprisonment punishments, and the opening of space for case resolution outside the formal judicial process. Philosophically, this shift reflects an effort to achieve a balance between legal certainty, justice, and utility as envisioned in the theory of the three basic legal values, while also being in line with the spirit of progressive law that demands that the law always side with humans. However,

⁵⁴Al-Irsyad, M. A. Y. (2023). Analisis kebijakan restorative justice dalam upaya penyelesaian tindak pidana pencurian dengan pemberatan di Polres Bojonegoro (Skripsi). Universitas Bojonegoro.

this progressive normative formulation has not been fully accompanied by operational clarity. Restorative justice norms in the National Criminal Code remain general and provide extensive discretion to law enforcement officials, creating potential disparities in implementation, tensions with the principles of legality and legal certainty, and the risk of misuse as a means of avoiding criminal accountability. These tensions are not irreconcilable contradictions, but rather implementation challenges that can be addressed through more careful policymaking.

References

- Abdulovna, D. D. (2024). Advancing Criminal Justice Reform through Restorative Justice: A Narrative Review. *Sinergi International Journal of Law*, 2(4), 274-285. <https://doi.org/10.61194/law.v2i4.719>
- Al-Irsyad, M. A. Y. (2023). Analisis kebijakan restorative justice dalam upaya penyelesaian tindak pidana pencurian dengan pemberatan di Polres Bojonegoro (Skripsi). Universitas Bojonegoro.
- Daffi Iqbal, A., & Edrisy, I. F. (2025). Paradigma pemidanaan baru dalam KUHP 2023: Alternatif sanksi dan keadilan restoratif dalam peradilan pidana. *Journal Evidence of Law*, 4(3), 1943-1952.
- Hadrowicz, S. (2024). Natural Restitution in a Comparative Legal Perspective. *Rabels Zeitschrift für ausländisches und internationales Privatrecht/The Rabel Journal of Comparative and International Private Law*, (H. 2), 278-306. <https://www.jstor.org/stable/48807046>
- Harahap, M. (2025). Sistem diversi dan restorative justice anak berhadapan dengan hukum (ABH) di Indonesia (M. A. Lubis & A. Zuliah, Ed.). Eureka Media Aksara.
- Hasibuan, M., Sumiadi, S., & Sastro, M. (2024). Perbandingan ketentuan asas legalitas dalam KUHP lama Undang-Undang Nomor 1 Tahun 1946 dan KUHP baru Undang-Undang Nomor 1 Tahun 2023. *Jurnal Ilmiah Mahasiswa Fakultas Hukum Universitas Malikussaleh*, 7(3).
- Hukumonline. (2025). Restorative justice dan judicial pardon KUHP 2023: Transformasi menuju sistem peradilan yang humanis.
- Isima, N. (2022). Urgensi pengakuan hukum yang hidup pada masyarakat dalam asas legalitas ditinjau dari perspektif sosiologi hukum. *Jurnal Jinnsa (Jurnal Interdisipliner Sosiologi Agama)*, 2(1), 29-36.
- Karjono, A., Malau, P., & Ciptono, C. (2024). Penerapan keadilan restoratif dalam hukum pidana berbasis kearifan lokal. *Jurnal USM*, 7(2), 6-7.
- Kejaksanaan Tinggi Daerah Khusus Jakarta. (2025). Tinjauan KUHP 2023. Indonesia Judicial Research Society.

- Mahkamah Agung Republik Indonesia. (2024). Peraturan Mahkamah Agung Nomor 1 Tahun 2024 tentang Pedoman Penerapan Keadilan Restoratif.
- Malau, P. (2023). Tinjauan Kitab Undang-Undang Hukum Pidana (KUHP) baru 2023. *Al-Manhaj: Jurnal Hukum dan Pranata Sosial Islam*, 5(1), 837–844.
- Marnija, M., & Hoesein, Z. A. (2025). The Dynamics of Criminal Law Reform in Indonesia: a Historical and Prospective Review From the Colonial Penal Code to the 2023 National Criminal Code. *Fox Justi: Jurnal Ilmu Hukum*, 15(03), 671–678. <https://ejournal.seaninstitute.or.id/index.php/Justi/article/view/6980>
- Martin, P. P., Kranz, D., Wulff, P., & Graulich, N. (2024). Exploring new depths: Applying machine learning for the analysis of student argumentation in chemistry. *Journal of Research in Science Teaching*, 61(8), 1757–1792. <https://doi.org/10.1002/tea.21903>
- Nainggolan, M. (2025). Transformasi penegakan hukum pidana dalam KUHP baru. *Locus: Jurnal Konsep Ilmu Hukum*, 5(2).
- Nurul Fadillah, R. (2024). Keadilan restoratif pada KUHP baru di Indonesia. *Rechtsidee*, Universitas Muhammadiyah Sidoarjo.
- Pande, Y., Sariyono, E. B., Gumilar, A. A., & Noya, S. W. (2026). Reformulation Of Punishment Objectives In The National Criminal Code: A Restorative Justice Perspective. *International Journal of Health, Economics, and Social Sciences (IJHESS)*, 8(1), 506–511. <https://doi.org/10.56338/ijhess.v8i1.9959>
- Panjaitan, B. S. (2022). Restorative justice sebagai penyelesaian perkara pidana berbasis korban. *Doktrina: Journal of Law*, 5(1), 157–169.
- Putra, A. (2025, 7 Maret). Tantangan implementasi living law dalam KUHP. *Kompas*.
- Ramadhani, D., Nur, A., Shafira, M., Dewi, E., Jatmiko, G., & Warganegara, D. (2024). Implementasi perluasan makna asas legalitas berdasarkan Kitab Undang-Undang Hukum Pidana (KUHP) nasional. *Jurnal Ilmiah Hukum dan Hak Asasi Manusia*, 3(2), 65–74.
- Republik Indonesia. (2023). Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana.
- Samodra, H. R. (2022). Rekonstruksi diskresi Bhabinkamtibmas sebagai payung hukum dalam implementasi restorative justice di tingkat penyidikan berdasarkan hukum progresif (Disertasi Doktor). Universitas Islam Sultan Agung.
- Setiawan, I. (2026). Rekonstruksi keadilan pemidanaan: Evolusi alasan pemberat dan peringan pidana dalam KUHP Nasional 2023.
- Sitorus, D. F., & Munawar, A. C. K. (2023). Penyelesaian perkara kekerasan dalam rumah tangga (KDRT) melalui restorative justice di tingkat penyidikan. *Warta Dharmawangsa*, 17(2), 9–17.

- Solehudin, R. H. (2023). Indonesia's Geostrategic Position in Global and Regional Politics: Government Preparation. *Revenue Journal: Management and Entrepreneurship*, 1(2), 81-89. <https://doi.org/10.61650/rjme.vii2.434>
- Sri Utami, R. (2023). Restorative justice: A comprehensive shift towards victim-perpetrator reconciliation and community healing. *Indonesian Journal of Law and Economics Review*, 18(3).
- Supriyanto, A., Santiago, F., & Barthos, M. (2023). Implementation of restorative justice as a justice law enforcement in Indonesia. *Jurnal Ius Constituendum*, 4(5), 448-456.
- Theodora, S. H. (2023). Perkembangan asas legalitas dalam KUHP lama dan KUHP baru. *Hukumonline*.
- Vinal, D., Saptawan, A., & Lubis, A. M. (2025). Kebijakan formulasi restorative justice dalam KUHP baru dan urgensinya bagi anak berhadapan dengan hukum. *Jurnal Ilmiah Galuh Justisi*, 13(2), 261-270.
- Wardhana, F. P., & Hosnah, A. U. (2026). Arah baru hukum pidana Indonesia: Analisis KUHP Nasional dalam perspektif kepastian hukum dan hak asasi manusia. *Journal of Innovative and Creativity*, 6(1), 7259-7267.
- Yuberlago, Ginting, Y. P., & Sugianto, F. (2023). Dilema keadilan hukum antara hukum tidak tertulis yang hidup (*ongeschreven recht*) dan asas legalitas dalam hukum pidana Indonesia ditinjau dari aspek filosofis. *Jurnal Ilmu Hukum Universitas Pelita Harapan*, 19(1).