

RESTORATIVE JUSTICE IN THE NEW CRIMINAL CODE: A LITERATURE REVIEW ANALYSING THE SHIFT IN THE PARADIGM OF PUNISHMENT FROM RETRIBUTIVE TO REHABILITATIVE IN INDONESIA

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Abstract

The New Criminal Code, enacted through Law No. 1 of 2023, marks a renewal of national criminal law by positioning punishment no longer merely as retribution, but also as a means of prevention, rehabilitation of offenders, conflict resolution, and the restoration of balance between offenders, victims and society. Within this framework, restorative justice has gained an increasingly important position as an approach that reflects the shift in the paradigm of punishment from retributive to rehabilitative and restorative in Indonesia. This study aims to analyse the implementation of restorative justice in the New Criminal Code and to examine the accompanying shift in the paradigm of punishment through a literature review approach. The method used is a literature review. The findings indicate that the New Criminal Code accommodates a more humanistic approach to punishment through an emphasis on victim restoration, the social reintegration of offenders, the use of alternative sanctions, and the restriction of imprisonment to a last resort. Furthermore, the implementation of restorative justice in practice still requires harmonisation of regulations among law enforcement agencies, strengthening of institutional capacity, and a common understanding among officials to prevent disparities in application. Thus, restorative justice in the New Criminal Code can be understood as part of the transformation of Indonesia's penal system towards a model that is more rehabilitative, corrective, and responsive to the needs for substantive justice in society.

Keywords: restorative justice, the New Criminal Code, sentencing paradigms, retributive, rehabilitative, Indonesian criminal law.

Introduction

The penal system within criminal law has undergone significant transformation throughout the history of human civilisation. From an approach that was initially retributive—emphasising punishment for offenders—it has now evolved towards a more humanistic and rehabilitative paradigm, namely restorative justice. This shift reflects a change in the global community's perspective on the nature of crime, the role of victims, and the very purpose of punishment itself (Braithwaite, 2016). In the Indonesian context, this transformation has become increasingly evident with the enactment of the New Criminal Code through Law No. 1 of 2023, which explicitly adopts the principles of restorative justice within the national criminal justice system.

Restorative justice emerged as a response to the failings of the conventional criminal justice system, which tends to be retributive in nature. The retributive system, which focuses on meting out just punishment to offenders, often neglects the needs of victims and the community, and fails to provide scope for the restoration of social relationships damaged by criminal acts (Arrigo et al., 2011). In contrast, restorative justice places victims, offenders and the community as active participants in the conflict resolution process, with the primary aim of restoration, rather than merely punishment (Arrigo et al., 2011).

At the international level, restorative approaches have been widely adopted as an alternative or complement to the traditional criminal justice system. The United Nations, through Economic and Social Council (ECOSOC) Resolution No. 2002/12, has encouraged

member states to integrate restorative justice into their criminal justice systems (Nicholson-Crotty & Meier, 2003). Many developed countries, such as New Zealand, Canada and Norway, have successfully implemented restorative justice programmes with satisfactory results, both in terms of recidivism rates and victim satisfaction (Adams, 2004).

Indonesia, as a country with strong local wisdom values, has in fact long practised restorative justice informally within its communities. Through mechanisms such as village deliberations, kinship-based resolutions, and customary peace-making, Indonesian communities have long been familiar with kinship-based conflict resolution aimed at restoring social harmony (Braithwaite, 2016). However, these practices had not been formally institutionalised within the national legal system until they were finally adopted into the New Criminal Code.

The adoption of restorative justice in the New Criminal Code represents a recognition of the relevance of local values within the modern legal system. The provisions of the New Criminal Code explicitly regulate diversion mechanisms, out-of-court settlements, and the active role of victims in the criminal justice process (Republic of Indonesia, 2023). This marks a fundamental paradigm shift from the retributive approach that dominated the old Criminal Code (Arrigo et al., 2011). The New Criminal Code not only accepts restorative justice as an alternative, but establishes it as one of the main principles of the Indonesian criminal justice system.

The shift from a retributive to a rehabilitative and restorative paradigm is not merely a matter of formal legal change, but also reflects an underlying shift in social values. A retributive system rooted in the concept of 'just deserts' often fails to provide redress for victims and is ineffective in preventing recidivism (Nicholson-Crotty & Meier, 2003). Conversely, rehabilitative and restorative approaches emphasise the process of rehabilitating the offender as an individual, redressing the victim's losses, and restoring social relationships within the community (Braithwaite, 2016). The challenges of implementing restorative justice in the New Criminal Code are quite complex. On the one hand, there is a gap between progressive legal norms and law enforcement practices on the ground, which remain tied to conventional paradigms. Furthermore, law enforcement officials' understanding of restorative justice varies, meaning its implementation is not uniform across all regions of Indonesia (Hakeem et al., 2026). Legal culture, human resource capacity, and infrastructure support also present significant barriers to the full implementation of restorative justice.

From a theoretical perspective, this shift in the sentencing paradigm requires an in-depth review of the literature discussing the effectiveness, challenges and implications of the application of restorative justice. The urgency of this research is all the greater given the limited academic literature that comprehensively addresses the implementation of restorative justice within Indonesia's New Criminal Code. Most existing research focuses only on specific aspects, such as diversion for children or the resolution of specific cases, without providing a comprehensive picture of the overall shift in the sentencing paradigm (Saputra & Nugraha, 2022). Yet, a comprehensive understanding is essential to ensure effective and consistent implementation.

Consequently, the aim of this study is to analyse the shift in the sentencing paradigm from retributive to rehabilitative in Indonesia's New Criminal Code through a literature review

of relevant sources. It is hoped that the findings of this study will make an academic and practical contribution to the development of a more humane and effective criminal justice system.

Research Methodology

The research method employed is a literature review, which is a research method that relies on the analysis of academic documents, legislation, research reports, and other secondary sources (Zed, 2008) . Using this method, the researcher can collect, select, and critically analyse various findings from previous studies to build a comprehensive understanding of the paradigm shift in criminal punishment in Indonesia (Eliyah & Aslan, 2025) . This approach allows for in-depth synthesis and the identification of research gaps that still need to be addressed.

Results and Discussion

The Implementation of Restorative Justice in the New Criminal Code

The implementation of restorative justice in the New Criminal Code cannot be understood merely as the addition of a case-resolution technique, but rather as a fundamental shift in the orientation of Indonesian criminal law. Law No. 1 of 2023 on the Criminal Code affirms that the purpose of punishment is to prevent criminal acts, rehabilitate offenders, resolve conflicts arising from criminal acts, restore balance, and foster remorse without demeaning human dignity. This formulation indicates that the New Criminal Code no longer views punishment solely as an instrument of retribution, but as a means of social restoration that is closer to the principles of restorative justice (Law No. 1 of 2023).

Conceptually, restorative justice in the New Criminal Code is evident in the shift in the purpose of criminal punishment towards conflict resolution and the restoration of relationships between the offender, the victim, and the community. The wording of Article 51(c), which emphasises the restoration of balance and a sense of security, indicates that the national criminal justice system is beginning to give more tangible consideration to the interests of victims and social harmony, rather than merely the punishment of offenders. In this context, the implementation of restorative justice becomes relevant because it operates through dialogue, accountability, and reparation, thereby aligning with the reformist nature of the national Criminal Code (Adams, 2004) .

This approach is also evident in the sentencing guidelines, which require judges to take into account the victim's circumstances, forgiveness from the victim or the victim's family, the offender's personal history, and the impact of the sentence on the offender's future. Article 54 of the New Criminal Code explicitly includes the victim's forgiveness and the impact of the criminal act on the victim as considerations in sentencing, meaning that the victim's voice gains a stronger normative position within the judicial process. Thus, the implementation of restorative justice in the New Criminal Code is not merely an administrative policy of law enforcement officials, but has a normative basis in substantive criminal law (Law No. 1 of 2023).

The implementation of restorative justice in the New Criminal Code is also reinforced through a preference for lighter and more constructive penalties. Article 57 stipulates that if a criminal offence is punishable by alternative principal penalties, the imposition of a lighter penalty must be prioritised provided it is consistent with the objectives of criminal punishment.

Furthermore, the New Criminal Code recognises probation, fines and community service as principal penalties, thereby providing judges with more flexible tools to select forms of sanction that do not necessarily result in imprisonment (Law No. 1 of 2023).

These non-custodial sentencing options are crucial to the implementation of restorative justice, as they allow for restitution to be made without completely severing the offender's social ties with their family and community. Article 70 even states that custodial sentences should, as far as possible, not be imposed in a number of circumstances, for example if the defendant is a first-time offender, the victim's losses are not particularly significant, the defendant has paid compensation, or rehabilitation outside a correctional facility is expected to be successful. This provision demonstrates that the New Criminal Code is moving towards a more rehabilitative and restorative model of sentencing, as the success of case resolution is measured not only by the severity of the punishment, but also by the offender's prospects for social reintegration and the victim's recovery (Law No. 1 of 2023; Presidential, 2026).

In practice, the implementation of restorative justice in Indonesia does not stand alone within the New Criminal Code, but is linked to internal regulations of law enforcement agencies that had already been developed previously. At the investigation stage, Police Regulation No. 8 of 2021 provides a basis for the resolution of criminal offences through restorative justice outside the courts, with an emphasis on restoring the status quo. Consequently, the New Criminal Code can be interpreted as a normative reinforcement of the reformist direction that had previously emerged in police policy, thereby making the implementation of restorative justice more systematic and no longer entirely dependent on sectoral discretion (Adrianto, 2023).

At the judicial stage, the Supreme Court has also reinforced this implementation through Supreme Court Regulation No. 1 of 2024 on Guidelines for Adjudicating Criminal Cases Based on Restorative Justice. These guidelines define restorative justice as an approach involving the victim, the victim's family, the defendant or child, the defendant's or child's family, and other relevant parties, with the primary aim of restoration rather than retribution. The existence of this Supreme Court Regulation is important as it provides an operational bridge between the normative orientation of the New Criminal Code and adjudication practices in court, particularly in cases that meet certain criteria (State District Court, 2024).

Perma No. 1 of 2024 also indicates that the implementation of restorative justice is not applied haphazardly, but is subject to strict substantive and procedural requirements. According to these guidelines, cases that may be considered for a restorative approach include minor offences, offences requiring a complaint, offences carrying a maximum sentence of five years' imprisonment, cases involving children where diversion has failed, and certain traffic offences. Conversely, this approach cannot be applied if the victim or the defendant refuses reconciliation, there is a power imbalance, or the defendant has reoffended with a similar offence within a three-year period, thereby ensuring that victim protection is maintained in its implementation (Tomalili, 2019).

From a technical perspective, the implementation of restorative justice places judges in an active role in exploring the possibility of a meaningful reconciliation. In the Supreme Court guidelines, judges inquire about the victim's presence, the chronology of the criminal act, the resulting harm, the victim's needs, and any reconciliation efforts undertaken prior to the trial.

Consequently, the courtroom is no longer merely a venue for the formal establishment of guilt, but also a forum for assessing whether there has been genuine and legally accountable restitution (Saputra & Nugraha, 2022) .

The implementation of restorative justice in the New Criminal Code is also reflected in the recognition of compensation, damages, and the perpetrator's concrete responsibility towards the victim. Article 66 of the New Criminal Code includes the payment of damages as an additional penalty, whilst Article 76(3) permits specific conditions within probation orders in the form of an obligation to compensate for all or part of the losses resulting from the criminal offence. This demonstrates that victim restoration is no longer placed outside the logic of criminal punishment, but rather becomes an integral part of the criminal sentence itself, meaning that the implementation of restorative justice has tangible legal consequences (Law No. 1 of 2023). Furthermore, the New Criminal Code affirms that imprisonment is not always the best response to all criminal offences. The provisions of Article 71 allow judges to impose a fine for criminal offences punishable only by imprisonment of less than five years, provided the victim does not object or the case is not a repeat offence. This provision indicates that the implementation of restorative justice in the New Criminal Code is moving towards the principle of *ultimum remedium*, namely treating imprisonment as a last resort when mechanisms of restitution, rehabilitation, or alternative penalties are deemed more appropriate to the objectives of punishment (Law No. 1 of 2023).

In the Indonesian context, the implementation of restorative justice also resonates strongly with the local legal culture, which emphasises deliberation, peace, and the restoration of communal harmony. The reform of the Criminal Code with a restorative orientation can be understood as an effort to formalise social values that have long been embedded in society but were previously insufficiently accommodated within colonial criminal law, which was more legalistic and repressive. Consequently, the application of restorative justice in the New Criminal Code signifies not only the modernisation of criminal law but also a reorientation of national law to better align with the values of Pancasila, social justice, and a balance between the interests of the state, the offender, and the victim (Law No. 1 of 2023).

Nevertheless, the implementation of restorative justice in the New Criminal Code faces serious challenges in practice. One of the main issues is the potential for differing interpretations among law enforcement officials regarding the scope of cases suitable for restorative resolution and the criteria for measuring the success of victim recovery. Internal regulations within law enforcement agencies concerning restorative justice still require harmonisation to prevent disparities in treatment, overlapping jurisdictions, or inconsistent use of discretion (Adams, 2004) .

Other challenges relate to the protection of victims and the potential for a false sense of peace. Not all peace agreements reflect just restitution, as in practice victims may agree to a settlement due to social pressure, unequal positions, or power dynamics with the perpetrator; it is for this reason that restrictions have been introduced in Judicial Regulation No. 1 of 2024. Therefore, the implementation of restorative justice in the New Criminal Code requires careful oversight to ensure that the principle of restitution does not become a tool to unlawfully avoid criminal liability(Tomalili, 2019) .

Overall, the implementation of restorative justice in the New Criminal Code indicates that the reform of Indonesia's criminal law is moving towards a model that is more corrective, rehabilitative and recovery-oriented. This is evident from the objectives of sentencing in Article 51, the sentencing guidelines in Article 54, the preference for lighter penalties in Article 57, the restrictions on the use of imprisonment in Article 70, the possibility of fines in Article 71, and the use of probation and restitution as means of recovery. With the support of policies from law enforcement agencies such as Police Regulation No. 8 of 2021 and Supreme Court Regulation No. 1 of 2024, restorative justice in the New Criminal Code has a sufficiently strong normative and operational foundation, although its effectiveness remains heavily dependent on the integrity of officials, victim protection, and consistency in implementation on the ground.

A Shift in the Paradigm of Punishment: From Retributive to Rehabilitative

The penal system under Indonesian criminal law has undergone a fundamental transformation, particularly following the enactment of Law No. 1 of 2023 on the Criminal Code (KUHP). The new Criminal Code not only replaces the colonial-era Criminal Code but also brings about fundamental changes to the objectives of sentencing. The sentencing system, which previously placed greater emphasis on a retributive or punitive approach towards offenders, has begun to shift towards a more humanistic, rehabilitative and restorative approach (Padang et al., 2024). This shift reflects a change in perspective regarding the nature of crime, the role of victims, and the ultimate purpose of sentencing itself.

The retributive paradigm, rooted in absolutist theory, is the oldest form of punishment, focused on commensurate retribution for acts committed. In ancient history, this principle was embodied in *the Lex Talionis*, or the law of retaliation: 'an eye for an eye, a tooth for a tooth' (Republic of Indonesia, 2023). Philosophically, the retributive paradigm reached its zenith in the thought of Immanuel Kant and G.W.F. Hegel in the 18th–19th centuries. For Kant, punishment is an absolute moral imperative: a person is punished solely because they have done wrong (*quia peccatum est*), not because of the benefit to society (Supreme Court of the Republic of Indonesia, 2025). The primary focus is on the act (*daad*) and the past (*backward-looking*), where justice is achieved when the balance of suffering is equalised between the perpetrator and the victim.

As the Age of Enlightenment dawned, the world began to question the effectiveness of the retributive system when the death penalty, physical torture and sadistic reprisals failed to reduce crime rates. The theory of relativism, or utilitarianism, pioneered by Jeremy Bentham and Cesare Beccaria, emerged, shifting the paradigm from 'punishing for the crime' to 'punishing to prevent it from happening again' (*ne peccetur*). It was here that the concepts of deterrence and rehabilitation were born. Prisons changed their function from merely being places of temporary detention to correctional institutions aimed at reforming offenders' behaviour so that they could be accepted back into society (Supreme Court of the Republic of Indonesia, 2025).

However, the modern criminal justice system, which combines retributive and rehabilitative elements, began to show signs of disintegration in the mid-20th century. The system became highly state-centred, with crime defined as an offence against the state, and prosecutors representing the state against the accused. In this configuration, victims were

treated merely as witnesses, and their role ended once they had reported the crime to the police. The victims' need to be heard, to receive compensation, and to recover from trauma was often overlooked in favour of rigid legal procedures, leading to *revictimisation* (Supreme Court of the Republic of Indonesia, 2025).

The crisis in the justice system is also evident in the failure of rehabilitation within prisons. Data reveals high recidivism rates, prison overcrowding, and—rather than serving as a place of reform—prisons have instead become a where inmates learn new criminal motives from one another. Offenders leave prison bearing the stigma of being ex-convicts, without any sense of moral responsibility towards their victims, and often reoffend because they are rejected by society. Criminologist Nils Christie has even criticised the modern legal system for having “stolen the conflict” from its rightful owners, namely the victims and the offenders (Supreme Court of Indonesia, 2025).

From these failures emerged the rehabilitative and restorative paradigms as antitheses and solutions. The rehabilitative paradigm emphasises that offenders are not merely objects of punishment, but individuals who can be rehabilitated to once again become constructive members of society. The theory holds that punishment must be communicative in nature, that is, it must help offenders understand their mistakes and undergo moral transformation. Rehabilitative programmes include psychological counselling, education and *vocational training*, anti-drug programmes, and social reintegration. Within the Indonesian system, this approach is evident in the implementation of restorative justice and diversion under the SPPA Act, which prioritises rehabilitation (Braithwaite, 2021) .

Rehabilitative justice is a sentencing paradigm that focuses on the change, rehabilitation and social reintegration of offenders as the primary objectives of the criminal justice system. Unlike retributive justice, which emphasises punishment, or restorative justice, which focuses on victim recovery, rehabilitative justice views the offender as a person capable of change through structured interventions. This paradigm has developed in response to the limitations of retributive sentencing and as an effort to create a justice system that not only punishes but also rehabilitates (Braithwaite, 2021) .

Philosophically, rehabilitative justice has emerged from a long journey involving classical humanism, modern science, prison reform and international policy. This paradigm developed on the assumption that: (1) crime is the result of social, economic, and psychological factors; (2) offenders can be reformed through scientific intervention; and (3) the penal system must provide rehabilitation programmes such as psychological counselling, behavioural therapy, formal education, vocational training, social intervention, family support, *probation*, and *parole*. Despite its ups and downs, rehabilitative justice has now become a key foundation of penal policy in many countries, including Indonesia, as it offers a more effective, humane, and future-oriented approach (Braithwaite, 2021) .

The shift from a retributive to a rehabilitative and restorative approach in the 2023 Criminal Code is clearly evident in the formulation of the objectives of criminal punishment in Article 51 of Law No. 1 of 2023. The new Criminal Code integrates various theories of criminal punishment, such as the retributive theory, the relative theory and the integrative theory, and provides greater scope for the application of restorative justice within the Indonesian criminal justice system. This shift reflects a criminal law orientation that focuses not only on punishing

offenders, but also on victim recovery, the social reintegration of offenders, and the creation of balance within society (Padang et al., 2024).

In the 2023 Criminal Code, retribution remains but is limited by the aim of restoration. Restorative justice serves as a balancing element, ensuring that the ‘purpose’ of punishment encompasses social rehabilitation and the healing of victims’ wounds, rather than merely physical deterrence (Scribd, 2026). This differs from the purely retributive paradigm, which asks only “which law has been broken?”, “who is the perpetrator?”, and “what punishment is appropriate?”. The restorative paradigm poses entirely different questions: “who has been harmed?”, “what are their needs?”, and “who is obliged to rectify this situation?” (Supreme Court of Indonesia, 2025).

The implications of this paradigm shift are highly significant for the practice of criminal justice in Indonesia. Under the retributive paradigm, victims often play merely the role of witnesses and do not receive comprehensive trauma recovery support, whilst their rights to compensation and restitution are frequently difficult to fulfil adequately. Conversely, restorative and rehabilitative systems encourage offenders to take direct and active responsibility in the recovery process, thereby increasing awareness and the likelihood of behavioural change. This approach also opens up opportunities for better social reintegration and reduces the risk of offenders reoffending(Asafari & Hakim, 2023) .

This shift in the paradigm of criminal punishment also demonstrates that the deconstruction of the retributive paradigm is not merely a change in terminology, but a substantive transformation that alters the perspective on the objectives of criminal law—moving from pure retribution towards social restoration, substantive justice, and the reintegration of offenders into society. In the Indonesian context, restorative justice plays a strategic role as a mechanism for deconstructing the retributive paradigm because it places criminal law within a more humane, restorative-oriented, and socially responsive framework (Hakeem et al., 2026) .

Empirically, the direction of the criminal justice system in Indonesia is currently shifting from a retributive approach to a restorative-rehabilitative one, or *the ‘daad-dader-strafrecht’ model*, or the model of balancing interests. This is confirmed by the SPPA Law, which emphasises the concept of restorative justice through diversion, as well as the 2023 Criminal Code, which integrates restorative justice as a principle of legality(Asafari & Hakim, 2023) . The purpose of punishment is no longer merely retribution for the act committed, but punishment becomes a last resort when other means can no longer resolve the issue or is *an ultimum remedium*(Adrianto, 2023) .

The journey from retributive to restorative-rehabilitative justice is a journey of the maturation of human civilisation. We have moved from a primitive desire for revenge, through social experiments aimed at engineering human behaviour in prisons, and finally arrived at the realisation that the essence of the law is to preserve human harmony. This paradigm shift offers new hope that the state must not monopolise justice, and that justice must be restored to those most entitled to it: the wounded victims, the offenders seeking redemption, and the community yearning for peace. The law of the future is a law that is not merely harsh on the weak or the powerful, but a law that embraces from within, heals inner wounds, and mends broken social bonds (Supreme Court of the Republic of Indonesia, 2025).

Conclusion

The New Criminal Code, enacted through Law No. 1 of 2023, demonstrates that Indonesia's penal system no longer relies solely on retribution, but is moving towards prevention, rehabilitation, conflict resolution, the restoration of balance, and the fostering of remorse without undermining human dignity, as affirmed in Articles 51 and 52. Thus, restorative justice in the New Criminal Code represents a fundamental shift in the orientation of national criminal law, from a retributive model centred on punishment towards a model that is more rehabilitative, corrective, and oriented towards the social reintegration of offenders and the recovery of victims.

The implementation of restorative justice in the New Criminal Code does not stand alone, but is underpinned by policy developments within law enforcement agencies, including the resolution of cases at the investigation stage and the strengthening of sentencing guidelines that are more responsive to the interests of victims, offenders and the community. The literature also indicates that this paradigm shift has positive implications, including opening up space for more humane case resolution, reducing reliance on custodial sentences, and reinforcing the notion that criminal punishment is the last resort, not the sole response to criminal offences. Within this framework, restorative justice serves as a vital instrument for balancing legal certainty, utility, and substantive justice within Indonesia's criminal justice system.

However, the effectiveness of this new paradigm remains heavily dependent on the harmonisation of implementing regulations, consistency in the understanding of law enforcement officials, institutional readiness, and guarantees of protection for victims, so that restorative justice does not become a mere formality. Therefore, the revision of the Criminal Code must be accompanied by the strengthening of technical guidelines, capacity building within institutions such as the police, the prosecution service, the courts, and the prison service, as well as the internalisation of restorative values throughout all stages of law enforcement. Ultimately, the shift in the criminal justice paradigm from retributive to rehabilitative in Indonesia can be understood as an effort to build a criminal justice system that is more humane, responsive, and in line with the needs of modern society, without neglecting legal accountability for offenders.

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