

## RESTORATIVE JUSTICE RECONSTRUCTION WITH THE INDONESIAN CRIMINAL SYSTEM AFTER LAW NO. 1 OF 2023

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### *Abstrak:*

The reform of criminal law in Indonesia through the new Criminal Code adopts the principle of Restorative Justice, with the formulation of restorative criminal acts, opening up opportunities to make it the basis for reforming criminal law in the future. Discussion, ratification, and implementation of the draft Criminal Code following the current Indonesian values are no longer by the nation's culture based on Customary Law and other diverse values. This research is normative, conceptualizing law as a written rule or norm that becomes a standard of behavior. The data used is secondary data, including primary, secondary, and tertiary legal materials related to Restorative Justice. Research results: The implications of Restorative Justice after ratifying the RKUHP into the Criminal Code Law reflect fair and dignified law. The substance of Restorative Justice is spread across various articles, including Article 51, which emphasizes the purpose of punishment to re-educate prisoners with forgiving divine values. This principle underlies the belief that humans can change towards goodness despite misbehaving. Article 52 of the Criminal Code Law emphasizes that punishment must not degrade human dignity. It can be concluded that the substance of restorative justice that has been facilitated in the Criminal Code Law, articles 51, 52, 53, 54 and especially Article 132, which states that the authority to prosecute is null and void if a settlement has occurred outside the judicial process, is relevant to the idea and purpose of the law itself.

## INTRODUCTION

A legal rule provides protection and a sense of justice for the entire community. This is explained in the 1945 Constitution. Therefore, the Indonesian state must resolve a legal problem to create a sense of justice and security for the community. In the criminal law system, if a crime harms the interests of others, the legal consequences for the perpetrator will not only be the victim's rights. However, they will expand to the interests of the family, society and the state. Legal events in Indonesia are developing rapidly, starting from the types of crimes committed and the perpetrators of crimes that are not limited in age or class. Criminal law is one of the divisions of law used as a basis for upholding Justice in Indonesia.

Restorative justice, in its function, provides a different approach to the process of understanding and handling a crime. Restorative justice provides the exact meaning of a crime, but resolving it presents a different process from that regulated in the mechanism through the court by involving the parties directly. In this case, it aims to provide a faster and more efficient solution to resolving criminal cases and uphold a sense of justice for both parties, as well as efforts to avoid negative stigma for the parties. The concept of restorative justice is another way in which criminal justice is used to resolve a criminal case. Restorative justice prioritizes the integration of the





perpetrator and victim or society to find solutions and return to a good relationship between the perpetrator and victim.

Restorative justice presents to reconstruct the idea of modern criminal law that emphasizes the balance between perpetrators, victims, and the interests of society. Restorative justice is based on the dimensions and reasoning of substantive law to present the dimensions. After the enactment of the Criminal Code Law in early 2023, optimism regarding criminal law based on Pancasila law has grown because the substance of the Criminal Code Law has been adjusted to the legal culture of the Indonesian nation. In this context, the concept of Restorative Justice has also been formulated in the Criminal Code Law as explained in various articles in the Criminal Code Law. Such as Article 54 of the Criminal Code Law explains that in sentencing, it is mandatory to consider forgiveness from the victim and the victim's family, then Article 132, the authority to prosecute is declared null and void if there has been a settlement outside the judicial process.

The idea of Restorative Justice in the Criminal Code Law, in addition to efforts to build the ideals of Indonesian law, also seeks to present a correction to the criminal justice system that emphasizes the punishment of the perpetrator, not the recovery of the victim. The emphasis on the perpetrator's punishment only tends to simplify criminal problems because criminal problems are not only resolved when the perpetrator has been imprisoned. The resolution of criminal problems must be complex, where there is a meeting point between the legal interests of the community, victims, and perpetrators of criminal acts. Based on this explanation, the author concludes that the concept of Restorative Justice has not been explained implicitly in the old Criminal Code but in regulations outside the Criminal Code. In contrast, in the new Criminal Code (Criminal Code Law), it has been explained implicitly. The implications of Restorative Justice after the ratification of the RKUHP into the Criminal Code Law from a legal perspective have actually been facilitated in the Criminal Code Law and are spread across various articles.

Currently, the Police, Prosecutor's Office and Courts are institutions that are the mainstay for developing methods for resolving criminal cases. In the current justice system, two methods of legal settlement are known, namely through litigation and non-litigation. In general, in the steps to resolve a criminal case, the litigation route or mechanism through the courts is more often used. In its implementation, these steps are often not by expectations and instead give rise to new problems, such as a pattern of punishment that is retaliatory (revenge) so that it has the potential to cause a sense of injustice, accumulation of cases and also often does not pay attention to the legal rights of victims of criminal acts.

In addition, resolving cases through litigation has various shortcomings, such as a protracted settlement process, which, of course, takes time, energy, and costs. The settlement tends to be rigid, does not restore the impact of the crime, does not reflect a sense of justice towards the community, the condition of correctional institutions is inadequate and so on. Laws are made with the aim of protecting the interests of individuals or human rights and protecting the interests of society and the state with a harmonious balance so that the role of the law is under what is regulated in the Preamble to the 1945 Constitution of the Republic of Indonesia which states:

"protecting all the Indonesian people and all of Indonesia's territory and advancing the general welfare, improving the nation's life, and participating in implementing world order based on independence, eternal peace and social justice." "

On this basis, a new mechanism emerged to resolve problems in the field of criminal law, the implementation of which is through non-litigation channels; the mechanism is the "Restorative Justice" mechanism. The model for resolving criminal acts with the Restorative Justice mechanism is an effort to resolve a criminal case by emphasizing the direct participation of the perpetrators of



the crime, victims and also the community with the hope that justice will be created for all parties and an effort to restore a situation to its original state as before the crime occurred. In implementing this out-of-court settlement method, a mediation process brings together the parties concerned.

Restorative justice, in its function, provides a different approach to the process of understanding and handling a criminal act. Restorative justice provides the same meaning as a criminal act. However, the process of resolving presents a different process in the mechanism through the court by involving the parties directly. In this case, it aims to provide a faster and more efficient solution to resolving criminal cases. It upholds a sense of justice for both parties and efforts to avoid negative stigma for the parties. The concept of restorative justice is another way in criminal justice that is used to resolve a criminal case; restorative justice prioritizes the integration of the perpetrator and victim or society as a whole to find solutions and return to a good relationship between the perpetrator and victim.

The United Nations (UN) working group defines restorative justice as a process that involves all parties involved in a particular crime working together to solve the problem and think about how to deal with the consequences in the future. According to Bagir Manan, Restorative Justice builds joint participation between perpetrators, victims, and community groups to resolve an event or crime. Perpetrators, victims, and the community are stakeholders who work together and directly try to find a just solution for all parties.

The primary purpose of Restorative Justice is to provide recovery for improvements to the impacts caused by a crime. In the criminal law system, punishment is not the only end goal to achieve the objectives of criminal law enforcement. Many ways can be taken to achieve the objectives of criminal law to create order and justice, such as using Restorative Justice, especially in cases that are classified as minor.

Crime prevention policies, as part of law enforcement policies, must be able to place every component of the legal system in a conducive and participatory direction to combat crime. The criminal justice system is a working mechanism for combating crime using a system approach. Remington and Ohlin stated that the criminal justice system can be interpreted as using a system approach to the criminal justice administration mechanism. Justice results from the interaction between laws, regulations, administrative practices, and social attitudes or behavior. The definition of a system implies an interaction process prepared rationally and efficiently to provide specific results with all its limitations.

Currently, restorative justice is starting to be widely practiced in resolving criminal cases due to the shift in the paradigm of criminal law enforcement from retributive justice to restorative justice, which was first developed in the United States. Historically, restorative justice was first introduced by Albert Eglash, who in 1977 divided three categories of criminal justice, namely retributive justice, distributive Justice, and Restorative Justice. The retributive justice paradigm views crime as part of a problem between the state and the individual perpetrator because the law set by the state to maintain order, peace, and security of community life has been violated by the perpetrator. Retributive justice views that the form of the perpetrator's responsibility must culminate in the imposition of criminal sanctions. The victim's losses or suffering are considered to have been even and paid for or restored by the perpetrator by undergoing and accepting the criminal process. So, with the imposition of criminal sanctions, it is said that the substance and procedure for resolving criminal acts through the criminal law path carried out so far has almost not provided relief from the suffering of victims of criminal acts.

So far, criminal sanctions have been more about payment or atonement for the perpetrator's mistakes to the state than a form of accountability for the perpetrator's evil deeds to the victim. The





one who experiences suffering and loss as a result of a crime is the victim. Legal protection for victims of crime as part of protection for society can be realized through the provision of restitution and compensation, medical services, and legal aid.

In principle, Restorative Justice is an effort to divert the criminal justice process to a settlement through penal mediation, but it cannot be applied to all types or levels of crime. In minor crimes, restorative justice can be applied, such as in several traffic, child, and domestic violence cases. Restorative justice is considered more able to realize the principle of simple, fast and cheap justice, which is very important for protecting the rights of victims and perpetrators. The mediation mechanism, part of alternative dispute resolution (ADR), has only been known in private law. Alternative dispute resolution is a concept that includes various forms of dispute resolution other than the judicial process through legal means.

Restorative justice is a new concept in the Indonesian justice system, although it has been indirectly applied through deliberation and consensus in the customary law settlement system. In restorative justice, there is a development in the settlement of criminal cases that can better restore the rights of victims and accommodate the interests of the parties by providing justice and benefits.

Restorative justice is part of the criminal justice system that emphasizes the restoration of victims and balance related to criminal acts with a level of reprehensibility in society. Restorative justice also implements the principle of a speedy trial that emphasizes the aspects of effectiveness, efficiency, and affordability. Restorative justice is a "critique" of the conventional criminal law enforcement process that tends to emphasize the aspect of "punishment" as the "primary aspect" of the criminal justice system. This tends to deny the perpetrators and victims of criminal acts, who are sometimes ignored by the conventional criminal law enforcement process emphasizing law as a text and process.

The new Criminal Code, in its development, was then enacted through Law No. 1 of 2023 concerning the Criminal Code (UU KUHP) on January 2, 2023. The enactment of the RKUHP as a Law is necessary because efforts to fight for the ratification of the RKUHP even began in 1963 and was only ratified in 2023. In addition, an essential aspect of the Criminal Code Law is the spirit of the law, which prioritizes the ideals of Indonesianness. In this context, the study of Restorative Justice is relevant to the post-ratification of the Criminal Code Law. The study of Restorative Justice and the Criminal Code Law is also interesting when associated with the perspective of just law, which emphasizes the legal balance in divinity, justice, and humanity. This legal perspective is interesting to study concerning humanity and the ideals of law in the future. Research on Restorative Justice and the RKUHP has been carried out by previous researchers, such as:

- a) Eko Syaputra (2021), on the Application of the Restorative Justice Concept in the Criminal Justice System in the future, focuses on the urgency of pouring and implementing the Restorative Justice concept in the RKUHP. Furthermore, research conducted by
- b) Ida Made Oka Wijaya (2022) on Restorative Justice in Progressive Legal Review: Existence and Implications focuses on progressive legal analysis regarding the application of Restorative Justice, one of which is in the RKUHP. In addition, research conducted by
- c) Muhammad Fatahillah Akbar (2022) focuses on Restorative Justice Reform in the Indonesian Criminal Justice System, which should be the basic concept and spirit of the RKUHP, the ideal of Indonesian law.

The three previous studies above confirm that the research conducted by the author is original because it discusses the reconstruction or regulation of the existence of Restorative Justice and its implementation after the ratification of the RKUHP into the Criminal Code Law. Based on the





description above it encourages the author's curiosity to study further the restorative justice in question, so the author chooses the title "Building Bridges of Justice: Restorative Justice Reconstruction with the Indonesian Criminal System Post Law No. 1 of 2023"

**Formulation of The Problem.** Based on the description of the background of the problem that has been explained previously, the author has formulated several problem formulations that will be discussed in this research, as follows:

- a) How is the reconstruction or regulation of Restorative Justice in the criminal justice system in Indonesia after Law No. 1 of 2023?
- b) How is the Restorative Justice policy implemented in Indonesia's criminal justice system after Law No. 1 of 2023?

## METHODS

**Research Type.** This research is normative legal research. In normative legal research, law is conceptualized as what is written in laws and regulations (law in books) or is associated with rules or norms that are benchmarks for behavior. The data sources used are only secondary data, consisting of primary legal materials, secondary legal materials or tertiary legal materials.

**Research Approach.** The approaches used in this study are the Statute Approach and the Conceptual Approach. A normative study must undoubtedly use a statutory approach because various legal regulations are the focus and central theme of the study. The statutory approach examines all laws and regulations related to the legal issue being handled. The conceptual approach studies legal concepts such as sources of law, functions of law, and legal institutions. This approach is based on views and doctrines that develop in legal science. This approach is necessary because understanding the doctrines that develop in legal science can be a basis for building legal arguments when resolving legal issues. Views/doctrines will clarify ideas by providing legal definitions, concepts, and principles relevant to the problem.

**Nature of Research.** Legal science has the characteristics of being an applied science. From the results of the review, a legal opinion can be made. The opinion or legal opinion expressed by a legal expert is a description. To be able to provide that description for legal practice, legal research is needed. In this study, the author describes how the reconstruction or regulation and implementation of Restorative Justice in the criminal justice system in Indonesia after Law No. 1 of 2023 is just.

**Theoretical Review.** The philosophy of punishment is based on the objectives to be achieved; in criminal law, ideally, it continues to develop to continue to seek the objectives of punishment, both sociologically, politically and philosophically, to achieve a basis for the application of sanctions, from various alternative punishments that are fairer, to achieve social justice for the Indonesian people, the philosophy of punishment cannot be separated from the philosophy of law itself, because the concept of punishment is contained in written norms, namely legal norms.

The philosophy of punishment combines several elements that become one function. The philosophy of punishment holds a strategic position in efforts to overcome criminal acts. The philosophy of punishment is oriented and related to criminal sanctions and punishment. Suppose the definition of the philosophy of punishment is interpreted broadly as a process of giving or imposing a sentence by a judge. In that case, it can be said that the philosophy of punishment includes all provisions of the legislation that regulate how criminal law is enforced or operationalized concretely so that someone is given a criminal (legal) sanction.

The philosophy of punishment carried out by an orderly society against criminals can be in the form of eliminating or paralyzing the perpetrators of criminal acts so that the perpetrators no





longer interfere in the future. The way to eliminate can be done in various ways, namely the death penalty, exile, sending overseas and even imprisonment.

**New Indonesian Criminal Code.** (1) Revision of the Criminal Code: The legal reform efforts in Indonesia that have begun since the proclamation of independence on August 17, 1945, through the 1945 Constitution of the Republic of Indonesia cannot be separated from the foundation and national goals that are to be achieved as formulated in the Preamble to the 1945 Constitution of the Republic of Indonesia, especially in the fourth paragraph.

From the formulation of national goals stated in the fourth paragraph of the 1945 Constitution of the Republic of Indonesia, two main national goals can be identified, namely (1) to protect the entire Indonesian nation and (2) to advance public welfare based on Pancasila. According to Barda Nawai Arief, two keywords are seen from the national goals: "community protection" and "community welfare." These two keywords are identical to the terms known in the literature/scientific world as "social defense" and "social welfare." With these two keywords, the principle of balance in national development goals can be seen. It should be noted that these two terms are often found in just one term, namely "social defense," because the term "community protection" also includes "community welfare."

The drafting of Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code) is intended to replace the *Watboek van Starfrecht* or the so-called Criminal Code (KUHP) left over from the colonial era. The replacement is one of the efforts in the framework of national legal development, which is intended to create and enforce consistency, justice, truth, order, and legal certainty by paying attention to the balance between national interests, public interests, and individual interests in the Unitary State of the Republic of Indonesia and the 1945 Constitution of the Republic of Indonesia. (2) Theory of Abolitionism: One of the efforts to reduce the crime rate is criminalizing perpetrators of criminal acts with imprisonment. The effort to punish someone with restrictions on access to society with imprisonment often causes a problem. The Graduate School of Crime (High school for criminals) is where prison is considered. Placing people in prison is essentially an effort to restrict a person's freedom to fulfill all their needs. That is why the inmates experience pain due to various losses, both loss of security, relationships, sexuality, autonomy, and loss of power over the goods they own. Therefore, seen from the side of humanism, imprisoning someone is a violation of Human Rights. Then, the Abolitionism ideology emerged, which wanted the abolition of the death penalty until other types of punishment replaced the reform of the prison system.

**The Concept of Restorative Justice.** (1) The Concept of Restorative Justice: The concept of Restorative Justice is simple, namely that the measure of justice is no longer based on the victim's equal retribution to the perpetrator (whether physically, psychologically, or as punishment). However, the painful act is healed by supporting the victim and requiring the perpetrator to take responsibility with the help of family and society if necessary.

Thus, restorative justice emphasizes justice based on peace, whereas in resolving a case, there is no justice based on revenge or punishment for the perpetrator. The application of this concept is a form of development of the criminal justice system that emphasizes the involvement of the perpetrator and victim in resolving a case, where this is not one of the mechanisms known in conventional criminal procedure law today. (2) The Concept of Restorative Justice in the New Criminal Code: The ratification of the RKUHP into the Criminal Code Law is an essential momentum in efforts to reform criminal law in Indonesia. This is because it formally marks the enactment of Indonesian-made criminal law, which is expected to implement the ideals of Indonesian law. The ratification of the RKUHP into the Criminal Code Law is a formal effort to break



the "domination" of positive Indonesian law, which is based on colonial legal products, namely the Netherlands. The Criminal Code with Dutch legal culture certainly has differences in substance with Indonesia. The difference in legal culture between the Netherlands and Indonesia gives rise to a legal gap where the inconsistency of the legal ideals of a society with the legal ideals of a statutory regulation can cause inconsistency and disparity in its application. The difference in legal culture between the Netherlands and Indonesia has implications for the conception and application of the Criminal Code in society. The *Wetboek Van Strafrecht* (WvS), later the Criminal Code, has a solid Continental European legal character, prioritizing written positive law. This is manifested in Article 1 of the Criminal Code, which emphasizes the principle of legality as the main principle in criminal law. In Indonesia, the understanding and views of the character of Continental European law as in the Criminal Code are considered irrelevant in society. This is emphasized by Van Vollenhoven, who states that before positive law was present in the Dutch East Indies (the name of Indonesia during the colonial era), society had existed with unwritten law, usually customary law. This emphasizes that in addition to being based on written law, Indonesian society is also subject to unwritten law, which is local.

After the enactment of the Criminal Code Law in early 2023, optimism regarding criminal law based on Pancasila law has increased because the substance of the Criminal Code Law has been adjusted to the legal culture of the Indonesian nation. In this context, the concept of restorative justice has also been formulated in the Criminal Code Law, as explained in various articles in the Criminal Code Law. Such as Article 54 of the Criminal Code Law explains that in sentencing, it is mandatory to consider forgiveness from the victim and the victim's family, then Article 132, the authority to prosecute is declared null and void if there has been a settlement outside the judicial process. Therefore, the idea of restorative justice in the Criminal Code Law, in addition to efforts to build the ideals of Indonesian law, also seeks to present a correction to the criminal justice system that emphasizes the perpetrator's punishment, not the victim's recovery. The emphasis on the perpetrator's punishment only tends to simplify criminal problems because criminal problems are not only resolved when the perpetrator has been imprisoned. The resolution of criminal problems must be complex, and there must be a meeting point between the legal interests of society, victims, and perpetrators of criminal acts. Based on the explanation, the author concludes that the concept of Restorative Justice has not been explained implicitly in the old Criminal Code but is explained in regulations outside the Criminal Code. In contrast, in the new Criminal Code (UU KUHP), the concept of Restorative Justice has been explained implicitly as stated in Articles 51, 52, 53, 54 and 132.

In addition, before the new Criminal Code, the concept of Restorative Justice tended to be less emphasized in the criminal law system in Indonesia. One proof is in the case of Minah's grandmother, which the author has explained in the background of the problem above. After the case, there were efforts to introduce Restorative Justice in several cases, especially in cases of minor crimes. After the new Criminal Code, the concept of restorative justice became more detailed and structured, although the new Criminal Code has not yet been implemented. (3) The Purpose of Restorative Justice: Implementing Restorative Justice in resolving criminal cases aims to empower victims. Perpetrators are encouraged to pay attention to recovery. Restorative justice prioritizes fulfilling the victim's material, emotional and social needs. The success of restorative justice is measured by how much the perpetrator has recovered from the loss, not by how severe the sentence imposed by the judge. In essence, the perpetrator is released from the criminal process and prison as much as possible. However, as Kent Roach said, Restorative Justice provides an alternative to prosecution and imprisonment and demands the perpetrator's responsibility.



In general, victims are passive (not included) in the conventional criminal justice process, but in restorative criminal justice, victims are allowed to participate in it. Braithwaite said that this method creates feelings of shame and responsibility for the perpetrator and family for the perpetrator's wrong actions and motivates the perpetrator and his family to improve proportionally. (4) Restorative Justice Principles: The principle of restorative justice can be simply interpreted as a model for resolving cases outside the courts or often referred to as out-of-court settlement, which pays more attention to justice, goals and desires of the parties with the concept of victim awareness work, according to Komariah E. Sapardjaja, the basic principles contained in the restorative justice approach are:

- a) The justice demanded is an effort to restore justice for the injured party.
- b) Anyone involved and affected by a crime must have the opportunity to fully participate in following up on it.
- c) The government plays a role in creating public order while society builds and maintains peace.

Restorative justice arises from dissatisfaction with the existing criminal justice system, which cannot involve the conflicting parties but only between the state and the perpetrator. Victims and local communities are not involved in resolving the conflict, in contrast to the restorative justice system, where victims and communities are involved as parties to resolve the conflict.

The emergence of Restorative Justice is because the criminal justice system does not run as expected; it fails to provide sufficient space for the interests of potential victims and potential defendants; in other words, the current conventional criminal justice system in various countries around the world often causes dissatisfaction and disappointment.

**Criminal System in Indonesia.** (1) Understanding the Criminal System: Sudarto explained that the criminal justice system is an action system from a functional perspective (in a broad sense). The criminal justice system can be seen from two perspectives; first, in a broad sense, the criminal justice system can be seen from a functional perspective, namely from the perspective of how it works or its process, which can be interpreted as follows

- a) The entire system (legal regulations) for the functionalization/operationalization/concretization of criminal law;
- b) The entire system (legislation) regulates how criminal law is enforced or operationalized concretely so that a person is subject to criminal (legal) sanctions.
- c) Second, in a narrow sense, the criminal system is viewed from a normative/substantive perspective, namely, only seen from the norms of substantive criminal law. Substantive criminal law can be considered a set of conditions that formally provide authority to apply criminal sanctions. Criminalization can be interpreted as the stage of determining sanctions and also the stage of giving sanctions in criminal law. The word criminal is generally interpreted as law, while criminalization is interpreted as punishment.

Doctrine distinguishes between material criminal law and formal criminal law. JM Van Bemmelen explains that there are differences between the two. Material criminal law is a rule that regulates what actions are prohibited against a person and the threat of punishment if someone violates the rule. Formal criminal law regulates how material criminal law is maintained through criminal procedure law.

Sudarto stated that "criminalization" is synonymous with the word punishment. Sudarto further said that punishment embodies the bare words of the law, so it can be described as a means to decide a legal event. Deciding the law for an event involves not only one area of criminal law but also other areas of law, such as civil law, administrative law, state administrative law, and so on. So



that the determination of law in criminal law, the term must be more narrow in meaning. The definition of punishment in criminal cases is often known as the synonym "punishment" or "granting/imposing a sentence" by a judge.

**Restorative Justice in the Criminal Justice System.** (1) Understanding Restorative Justice: A British criminologist, Tony F. Marshall, in his writing "Restorative Justice an Overview," explains that:

Restorative justice is a process whereby all the parties with a stake in a particular offense come together to collectively resolve how to deal with the aftermath of the offense and its implications for the future. (Restorative Justice is a process whereby the parties involved in a particular violation come together to jointly resolve the issue of how to resolve the consequences of the violation for the benefit of the future). (2) The Purpose of Restorative Justice: The Restorative Justice approach aims to:

- a) Placing decisions on the parties most involved in criminal cases;
- b) Focusing the law more on recovery and, ideally, on the further development of the law;
- c) Reducing the likelihood of future hostility or other problems;
- d) Victims are directly involved in the process to achieve satisfactory results;
- e) The perpetrator is aware of the consequences of his actions on others and is responsible for what he does;
- f) Repair of losses more quickly, taking into account the wishes of the victim and the perpetrator;
- g) Victims and perpetrators end the problems that occur directly and return to society can be done more effectively.
- h) The main goal of restorative justice is recovery, while the second goal is compensation. This means that the process of dealing with criminal acts through a restorative approach is a process of resolving criminal acts, which aims to restore the situation, including compensation for victims, through a method agreed upon by the parties involved in it.

(3) Restorative Justice Approach System Model: The settlement of criminal acts through the Restorative Justice approach will not be a reality that can be implemented if a structural model with a restorative paradigm cannot be built or developed, which will be a choice in the criminal law system. In this case, there are various models of the restorative approach system described by Van Ness, including:

- a) Unified System
- b) Dual Track System
- c) Safeguard System
- d) Hybrid System

**Table 1. Samples Criteria**

No.	Samples Criteria	Total
1.	Manufacturing companies that were not listed in three consecutive years from 2017-2019.	168
2.	Manufacturing companies that were not listed in three consecutive years from 2017-2019.	(23)
3.	Manufacturing companies whose financial statements are not presented in the rupiah currency.	(40)

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4.	Manufacturing companies registered as State-Owned Enterprises.	(14)
5.	Manufacturing company registered in the cigarette industry sub-sector	(4)
6.	Manufacturing company registered in the plastic industry sub-sector	(10)
7.	Manufacturing company registered in the wood industry sub-sector	(2)
	Number of samples of manufacturing companies	75
	Number of samples of manufacturing companies in 3 years / during 2017-2019	75 x 3 = 225

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## RESULT AND DISCUSSION

**Reconstruction or Restorative Justice Arrangement with the Criminal System in Indonesia Post Law No. 1 of 2023.** Restorative Justice Arrangements in Criminal Practices in Several Countries. The history of the development of criminal law in the world shows that there is increasing attention to the interests of victims in the enforcement of criminal law, which also goes hand in hand with the emergence of a new approach to the purpose of punishment, from mere deterrence and retaliation to rehabilitation. Amid this development, the idea of Restorative Justice was also born, a terminology first introduced by Albert Eglash, who, in his writing, identified three types of criminal justice systems: retributive, distributive, and restorative. The application of Restorative Justice in the criminal law system has shown a positive development. There are several similarities in practice and thinking in the application of restorative programs, starting from the national level in several countries to international, for example, by prioritizing the interests of victims, communication between perpetrators and victims, restoring conditions to victims and the community, and involving community groups instead of making criminalization a personal bugbear.

**Restorative Justice Arrangements in the Concept of Sentencing.** The history of criminal law reveals the evolution of criminal acts from the concept of "private" or individual to the scope of "public" or social. With this evolution, criminal acts were then interpreted as a violation of criminal law regulated by the state, in which the defendant would be prosecuted by the public prosecutor and decided by the judge. The orientation was given to the perpetrator's punishment, and the judicial process centered only on the perpetrator and the state. With this framework, the victims and the fulfillment of their rights gradually began to be neglected. It was only around the 1970s that awareness of the importance of the vital role of victims was echoed. The public began to realize the importance of the role of victims. The victim movement was widely recognized and was in line with the birth of the concept of Restorative Justice.

**Restorative Justice Arrangements in Minor Criminal Cases.** In the implementation of Restorative Justice, the perpetrator has the opportunity to be involved in restoring the situation (restoration), the community plays a role in preserving peace, and the court plays a role in maintaining public order. The legal basis for Restorative Justice in minor criminal cases is contained in the following regulations:

- a) Article 310 of the Criminal Code (KUHP)
- b) Article 205 of the Criminal Procedure Code (KUHP)
- c) Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2012 concerning Adjustment of the Limits of Minor Criminal Offenses and the Number of Fines in the Criminal Code
- d) Joint Memorandum of Understanding of the Chief Justice of the Supreme Court, Minister of Law and Human Rights, Attorney General, Chief of the Indonesian National Police Number 131/KMA/SKB/X/2012, Number M.HH-07.HM.03.02 of 2012, Number KEP-





- 06/E/EJP/10/2012, Number B/39/X/2012 dated October 17 2012 concerning the Implementation of the Application of Adjustments to the Limits of Minor Crimes and the Amount of Fines, Fast Examination Procedures and the Application of Restorative Justice
- e) Letter from the Director General of the General Courts Number 301 of 2015 concerning the Settlement of Minor Criminal Offenses
  - f) Police Regulation Number 8 of 2021 Concerning Handling of Criminal Acts Based on Restorative Justice
  - g) Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice
  - h) Criminal cases that can be resolved with Restorative Justice are minor criminal cases, as regulated in Articles 364, 373, 379, 384, 407 and 483 of the Criminal Code (KUHP). In this case, the law provides a maximum of three months imprisonment or a fine of Rp 2.5 million.

In addition to minor criminal cases, restorative justice can also be applied to the following criminal cases:

- a) Child Crime
- b) Criminal Acts of Women in Conflict with the Law
- c) Narcotics Crimes
- d) Information Crime and Electronic Transactions
- e) Traffic crimes

**Conditions for Implementing Restorative Justice.** The requirements for implementing Restorative Justice are contained in the Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice and the National Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts based on Restorative Justice.

According to the Kompolnas website, handling criminal acts with Restorative Justice must meet general and specific requirements. General requirements apply to implementing criminal investigation, investigation, or inquiry functions. While special requirements only apply to criminal acts based on Restorative Justice in investigation or inquiry activities.

The following are the general requirements for the material implementation of Restorative Justice, including:

- a) Does not cause unrest and rejection from the community
- b) Does not cause social conflict
- c) It has no potential to divide the nation
- d) No radicalism and separatism
- e) Not a repeat offender based on a court decision
- f) Not a crime of terrorism, a crime against state security, a crime of corruption, and a crime against people's lives.

**Restorative Justice Arrangements in the Indonesian Criminal Justice System.** Based on the previous explanation, we can conclude that Restorative Justice is an approach to handling criminal cases that involve the parties, whether victims, perpetrators, or related parties, with a process and purpose that seeks recovery and not just revenge. With the definition and principles above, the values are not something that comes from outside Indonesia. The values of Restorative Justice are essentially embedded in the sociological conditions of society in Indonesia, even before the term and terminology of Restorative Justice itself was widely known. The practice of handling disputes involving affected parties and the community has been widely carried out in the archipelago and Indonesia. Even disputes outside the formal judicial process were handled long before the





Indonesian state was formed. This is because most of the Indonesian population does not come from urban areas and is not secular, so the prioritized social values tend to emphasize personal relationships with characteristics of tolerance, communal solidarity, and avoidance of disputes.

One example of customary justice that has a concept that is in line with the concept of Restorative Justice is the Customary Peace Court in Aceh, Bale Mediation in West Nusa Tenggara (NTB), the Mela Sareka traditional ritual in East Nusa Tenggara (NTT), the Customary Court in Papua, one of which is in the Enggros Tobati, Sough, Kayu Batu customary law community. The Banjar Customary Community also recognizes the Badamai custom, namely the resolution of disputes, both civil and criminal. There are also other dispute-handling practices in South Sulawesi.

**Reconstruction or Arrangement of Direction of Change of Restorative Justice Mechanism after Law No. 1 of 2023.** In the view of several experts concerning the Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters adopted by the UN, it has been emphasized that Restorative Justice is oriented towards the process and outcome. Restorative Justice programs can also be implemented outside the criminal justice system (such as diversion mechanisms) and in each stage of the criminal justice system.

This section also explains the conceptual framework of several criminal justice mechanisms that are in line with restorative justice and need to be strengthened in the Indonesian criminal justice system in the future (through the New Criminal Code). Some of these mechanisms have great potential to institutionalize the principles of restorative justice in Indonesia.

**Restoration of Victims' Rights.** As a direct program of restorative justice, victim recovery is based on the principle that the response to crime should restore the victim's rights as much as possible. Some indicators of victim rights restoration are:

- a) Disclosure of information by the courts to victims;
- b) The courts always take into account the opinions, views and needs of the victim;
- c) The courts accommodate assistance for victims in need, and
- d) Informal mechanisms (mediation, arbitration) facilitate conciliation and victim recovery. In addition, technical procedural mechanisms such as restitution, compensation, and victim assistance must always run optimally to restore victim rights.

**Penal Mediation.** Penal mediation is a form of Restorative Justice where the settlement of criminal cases is carried out by law enforcement officers such as judges, public prosecutors or police. Where penal mediation opens up space for dialogue between victims, perpetrators, and the community concerned to carry out reconciliation, victim recovery, and repair of actual losses experienced by victims, in several countries, Penal Mediation (Victim-Offender Mediation) must be implemented at all stages of the trial, including after sentencing as an indicator of granting parole. In addition, its implementation can be assisted by a third-party mediator/facilitator, and the process must also be in line with the principles of restorative justice and ensure that no power relationship between the victim and the perpetrator can hinder the restoration process.

**Diversion.** As a direct program of restorative Justice, Diversion is an alternative to resolving cases outside the courts that opens up opportunities for dialogue and involvement of victims, perpetrators, and the community in repairing losses and victim recovery. Diversion also has the potential to bring positive impacts, such as avoiding prison sentences, avoiding stigma for perpetrators, presenting participatory justice, and providing an effective response to criminal acts. In addition to child cases, in several countries, Diversion can also be applied to adult perpetrators who commit petty crimes for the first time.



**Criminal Supervision.** As a restorative justice enabler program, Supervisory Criminal Procedure can result in victim recovery when the judge includes conditions for the perpetrator to restore the victim in his/her decision. In addition, because of its non-imprisonment nature, this mechanism is also an effort to shift the retributive and incapacitation criminal settlement towards an approach to reintegrating the perpetrator into society. This mechanism can also prevent recidivism and reduce prison overcrowding. In implementing supervisory criminal procedures, it is necessary to pay attention to:

- a) Limitation of criminal acts with supervision penalties;
- b) Implementation of criminal supervision decisions; and
- c) Supervise (supervision and assistance) the implementation of criminal supervision.

**Waiver of Cases for Prosecution Policy (Seponering).** As a supporting program (enabler program) of restorative justice, separating (setting aside cases for the sake of public interest) can encourage the reintegration of (potential) perpetrators into society, as well as reduce prison overcrowding. However, it should be noted that the purpose of restorative justice is not merely to set aside cases (drop cases). However, Seponering remains an enabler program as long as its implementation promotes the principles of Restorative Justice. Several things to note about Seponering:

- a) the exclusion of cases must be implemented via a prosecution policy (beleidsregel/quasi legislation) whose implementation can constantly be tested, And
- b) This case waiver policy must be transparent and publicly accessible.

**Judicial Pardon.** As a supporting program (enabler program) for restorative Justice, Judge's Forgiveness can provide space for judges to listen to and consider the opinions and views of victims regarding the cases they experience. As in the Netherlands, in issuing a Judge's Forgiveness decision, the judge first listens to the victim's views on what decision is fair for him/her. However, the judge does not always have to follow the victim's opinion because the judge is the determinant of justice for all parties involved.

Restorative justice is a criminal law approach that contains several traditional values. It is based on two indicators: the values that are its foundation and the mechanisms it offers. These are the basis for considering why the existence of Restorative Justice is being reconsidered. The existence of this approach is perhaps as old as criminal law itself.

Restorative justice has also been accommodated in the new Criminal Code, namely the introduction of an alternative criminal system in the form of social work and supervision sentences. So, in the end, Restorative Justice pays attention to the interests of victims of crime, perpetrators of crime, and society. In the future, to achieve the goals of the law, which are the result of the thoughts of the Indonesian people. The future Criminal Code is expected to target 4 (four) things, namely:

- a) Crime prevention and control;
- b) Improvement on the perpetrator;
- c) Prevention of arbitrary actions outside the law and;
- d) Conflict resolution in society.

These four benchmarks are placed within the framework of community protection achieved through punishment. Thus, the new Criminal Code, which was ratified on July 2, 2023, and consisting of 37 chapters, 624 articles and 345 pages that will come into effect on January 2, 2026, impacts substantial changes related to community protection and shifts the paradigm of national criminal law. This change will undoubtedly impact many aspects, one of the most important of which is the conditions and policies of corrections.

**Implementation of Restorative Justice After the Enactment of the New Criminal Code (Law No. 1 of 2023).** The ratification of the RKUHP into the Criminal Code Law is actually a critical momentum in efforts to reform criminal law in Indonesia. This is because it formally marks the enactment of criminal law in Indonesia, which is expected to be able to implement the ideals of Indonesian law. The ratification of the RKUHP into the Criminal Code Law is a formal effort to break the "domination" of positive Indonesian law, which is based on colonial legal products, namely the Netherlands. It is known that the Criminal Code is a follow-up to the *Wetboek Van Straafrecht (WvS)*, which was a legal product during the Dutch colonial era.

In Indonesia, the understanding and views of the character of Continental European law, as stated in the Criminal Code, are considered irrelevant in society. This is emphasized by Van Vollenhoven, who states that before positive law was present in the Dutch East Indies (the name of Indonesia during the Dutch colonial era), society had existed with unwritten law, commonly called customary law. This confirms that in addition to being based on written law, Indonesian society is also subject to unwritten law, which is local, meaning it applies to certain places and regions. Second, the substance of the Criminal Code is also based on the legal reality of Western European society, so if it is applied directly to Indonesian society with Eastern culture, then it will actually not find relevance and common ground. This can be exemplified by the crime of *overspel* in the *Wetboek Van Straafrecht (WvS)*, which later became the Criminal Code, which was then translated into Indonesian as *zina*. In fact, the provisions of *overspel* in the *Wetboek Van Straafrecht (WvS)* differ from the substance of *zina* understood by Indonesian society. *Overspel* in the *Wetboek Van Straafrecht (WvS)* is only understood as a relationship between a man and a woman, like a husband and wife, one of whom has the status of husband or wife.

In the Criminal Code and Criminal Procedure Code, all criminal cases must be resolved through an integrated criminal justice system through law enforcement officers. This means that dispute resolution involving the community's role, which is genuinely recognized and developed in society, is not facilitated in positive criminal law in Indonesia (the Criminal Code and the Criminal Procedure Code).

After the ratification of Law No. 1 of 2023 (new Criminal Code) on January 2, 2023, optimism regarding criminal law based on Pancasila law has increased because the substance of the Criminal Code has been adjusted to the legal culture of the Indonesian nation. In this context, the concept of Restorative Justice has also been formulated in the Criminal Code. The idea of Restorative Justice in the Criminal Code, in addition to efforts to build Indonesian legal ideals, also seeks to present a correction to the criminal justice system that emphasizes the punishment of perpetrators, not the recovery of victims. The emphasis on the punishment of perpetrators only tends to simplify criminal problems because criminal problems are not only resolved when the perpetrator has been imprisoned. The resolution of criminal problems must be complex, where there is a meeting point between the legal interests of the community, victims, and perpetrators of criminal acts. Restorative justice existed before the ratification of the Criminal Code, which has been spread across various internal regulations of law enforcement institutions, such as :

- a) Letter of the Chief of Police No. Pol: B/3022/XII/2009/SDOPS dated December 14, 2009, concerning Handling of Cases through Alternative Dispute Resolution (ADR),
- b) Perma No. 2 of 2012 concerning Adjustment of the Limits of Minor Criminal Offenses and the Amount of Fines in the Criminal Code, Perma No. 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System,



- c) Chief of Police Regulation No. 6 of 2019 concerning Criminal Investigation, and Prosecutor's Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, also included in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System

Regarding the various provisions of Restorative Justice, the main weakness of the regulations spread across each institution is the potential for disharmony of the provisions of Restorative Justice, which can cause sectoral egos of each law enforcement institution, which makes the provisions of Restorative Justice different between one law enforcement institution and another. This has the potential to cause legal uncertainty in society.

The provisions of restorative justice are spread across various articles of the Criminal Code itself, especially those related to the improvement and restoration of victims of criminal acts, rehabilitation and compensation for perpetrators of criminal acts, environmental losses due to criminal acts, and efforts to involve the community. In addition, related to the substance of the main criminal offense in the Criminal Code, there have also been significant changes, including imprisonment, closure, supervision, fines, and social work.

The implications of Restorative Justice after the ratification of the RKUHP into the Criminal Code Law in the perspective of law based on universal good values are the substance of Restorative Justice, which has actually been facilitated in the new Criminal Code Law and is spread across various articles. One of these articles is Article 51 of the Criminal Code Law, which relates to the purpose of the punishment, which in the perspective of just and humane law, is relevant to re-educating prisoners and is linear with the divine value, which requires the concept of *taubatan*' where the all-forgiving attitude possessed by God is the basis that even humans who behave badly can change to a better path.

In addition, Article 52 of the Criminal Code Law emphasizes that punishment must not degrade human dignity, which means that maintaining human dignity is God's command, and those who ignore the dignity of fellow human beings are people who have gone beyond the limits. Thus, it can be concluded that the substance of Restorative Justice that has been facilitated in the Criminal Code Law is actually relevant to the idea of law based on justice and protecting human dignity. Restorative justice is a concept of thought that responds to the development of the criminal justice system with an emphasis on the need for community involvement and marginalized victims, with mechanisms that work in the current conventional criminal justice system.

The concept of restorative justice in the criminal law enforcement system has been implemented by three main structures in law enforcement, namely

- a) Police,
- b) The Prosecutor's Office and
- c) Supreme Court,

Article 1 number 3 of the Republic of Indonesia National Police Regulation Number 8 of 2021 concerning the Criminal Action Plan Based on Restorative Justice (hereinafter referred to as the Police Regulation concerning Restorative Justice) states:

Restorative justice is the resolution of a criminal act by involving the perpetrator, victim, perpetrator's family, victim's family, community leaders, religious leaders, traditional leaders or stakeholders to jointly seek a just resolution through peace with an emphasis on restoring the crime to its original state.

Furthermore, Article 1 numbers (1, 2, 3 and 4) of the Republic of Indonesia Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice (hereinafter referred to as the Regulation concerning Restorative Justice) states:





- a) Restorative justice is the resolution of criminal cases by involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly seek a just resolution by emphasizing restoration to the original state, and not revenge.
- b) A victim is a person who experiences physical, mental, or economic suffering resulting from a crime.
- c) The Public Prosecutor is a prosecutor who is authorized by law to carry out prosecutions and implement judges' decisions.
- d) A suspect is a person who, due to his actions or circumstances, based on initial evidence, can be suspected of being the perpetrator of a crime.

Despite this fact, this approach is still being debated theoretically, but in reality this view is developing and has greatly influenced legal policies and practices in various countries, including criminal law policies in Indonesia, starting from the internal policies of law enforcement agencies, both in the Police, Prosecutors' Office and the Courts.

### CONCLUSION

Definition and Concept: Law No. 1 of 2023 concerning the Criminal Code (KUHP) introduces the concept of restorative justice as a new approach to the criminal justice system in Indonesia. Restorative justice is defined as the resolution of criminal cases by involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly seek a just resolution by emphasizing restoration to the original state, not retaliation. The basic principles that must be adhered to are:

- a) Implementation of Restorative Justice in the criminal justice system solely aimed at stopping the case.
- b) Restorative justice can be done at every stage of the criminal justice process.
- c) The implementation of restorative justice must respect the principles of gender equality and non-discrimination, taking into account the inequality of power relations and vulnerability factors based on age, social background, education and economy.
- d) The implementation of Restorative Justice must ensure the empowerment and active participation of the parties, starting from the perpetrator, victim, and other related parties involved.
- e) Restorative justice is principled on volunteerism without pressure, coercion, and intimidation.
- f) In the case of children, the application of Restorative Justice must...consider the best interests of the child.

In the context of criminal law reform in Indonesia, the new Criminal Code (KUHP) accommodates and includes the principle of Restorative Justice, which states that the formulation of types of criminal acts (strafmaat) contains restorative properties. So, it is possible that the concept of Restorative Justice will be used as part of the reform of criminal law in Indonesia in the future. Perhaps the discussion, ratification, and implementation of the Draft Criminal Code should be in accordance with Indonesian values. The current Criminal Code is no longer in accordance with the culture of Indonesia, which is based on customary law (traditional law) and other values of diversity.

The implications of Restorative Justice after the ratification of the RKUHP into the Criminal Code Law in the perspective of just and dignified law are facilitated in the Criminal Code Law and are spread across various articles. One of these articles is Article 51 of the Criminal Code Law, which relates to the purpose of the punishment which, in the perspective of just and humanizing law, is







relevant to re-educating prisoners and is linear with the divine values that require the concept of repentance *nasuha'* where the all-forgiving attitude possessed by God is the basis that even humans who behave badly can change to a better path. In addition, Article 52 of the Criminal Code Law emphasizes that punishment must not degrade human dignity, which means that maintaining human dignity is God's command and people who ignore the dignity of fellow human beings are people who go beyond the limits. Thus, it can be concluded that the substance of Restorative Justice which has been facilitated in the Criminal Code Law, articles 51, 52, 53, 54 and specifically Article 132, which states that the authority to prosecute is declared null and void if there has been a settlement outside the judicial process, is in fact relevant to the idea and purpose of the law itself.

The law and justice that live in society emphasize the restoration of victims' rights and the balance of protection between the interests of victims and perpetrators and other parties related to the principle of joint justice. The Police, Prosecutor's Office and Supreme Court implement the settlement of criminal cases that can still be carried out amicably or based on restorative justice by fulfilling formal and material requirements based on provisions and regulations other than the Criminal Code, including:

- a) Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.
- b) Regulation of the Chief of the Republic of Indonesia National Police Number 6 of 2019 concerning Criminal Investigation.
- c) Circular of the Chief of the Republic of Indonesia National Police Number SE/8/VII/2018 of 2018 concerning the Implementation of Restorative Justice in the Settlement of Criminal Cases.
- d) Decree of the Directorate General of the General Court of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020 concerning the Implementation of Guidelines for the Implementation of Restorative Justice.

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Criminal cases that can be resolved with restorative justice include minor criminal cases as regulated in Articles 364, 373, 379, 384, 407, and 483 of the Criminal Code (KUHP), with a maximum sentence of three months imprisonment or a fine of IDR 2.5 million.

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