



DOI: <https://doi.org/10.38035/glhr.v1i1>  
<https://creativecommons.org/licenses/by/4.0/>

## "Building Bridges of Justice: Restorative Justice Reconstruction with The Indonesian Criminal System After Law No. 1 Of 2023"

**Padlah Riyadi<sup>1</sup>**

<sup>1</sup>Sultan Adam College of Law, Banjarmasin, Indonesia, [padlah.riyadi@gmail.com](mailto:padlah.riyadi@gmail.com)

Corresponding Author: [padlah.riyadi@gmail.com](mailto:padlah.riyadi@gmail.com)<sup>1</sup>

**Abstract:** In the context of criminal law reform in Indonesia through the new Criminal Code (KUHP) accommodates and includes the principle of Restorative Justice, where the formulation of types of criminal acts (strafmaat) contains restorative properties. So it is very possible that the concept of Restorative Justice can be used as part of the reform of criminal law in Indonesia in the future. Discussion, ratification, and implementation of the draft Criminal Code in accordance with Indonesian values, considering that the current Criminal Code is no longer suitable for the culture of the Indonesian nation which is based on Customary Law (traditional law) and other values of diversity. This research is a normative legal research. In normative legal research, law is conceptualized as what is written in laws and regulations (law in books) or law is associated with conceptualizing it as a rule or norm that is a benchmark for behavior. In normative research, the data sources used are only secondary data, consisting of primary legal materials, secondary legal materials or tertiary legal materials related to Restorative Justice. The results of this study are: The implications of Restorative Justice after the ratification of the RKUHP into the Criminal Code Law from the perspective of just law, namely the substance of Restorative Justice has actually been facilitated in the 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 punishment which from the perspective of just and human-dignifying law is relevant to re-educate prisoners and is linear with the divine value that requires 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 limit. Thus, 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 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.

**Keywords:** Regulation, Implementation, Restoration Justice

### INTRODUCTION

In essence, a legal rule is made to provide protection and provide a sense of justice for the entire community. This is explained in the 1945 Constitution, therefore the Indonesian state

is required to be able to resolve a legal problem that occurs, so that it can create a sense of justice and security for the community. In the criminal law system, if a crime occurs that harms the interests of others, the legal consequences for the perpetrator will not only be the rights of the victim of the crime, but will expand to the interests of the family, society and also the state. Legal events that occur in Indonesia are currently developing rapidly, starting from the types of crimes committed and also the perpetrators of crimes that are not limited in terms of age or class. One of the divisions of law used as a basis for upholding justice in Indonesia is criminal law.

*Restorative Justice* in its function provides a different approach in the process of understanding and handling a crime, which in Restorative Justice provides the same meaning of a crime, but in the process of 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 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 be able to find solutions and return to a good relationship between the perpetrator and victim.

*Restorative Justice* present 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 in order 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 explaining that in sentencing it is mandatory to consider forgiveness from the victim and/or 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 punishment of the perpetrator 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 draws the conclusion 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, while 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 in 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 in accordance with expectations and instead give rise to new problems, such as a pattern of punishment that is retaliatory in nature (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, the process of resolving cases through litigation has various shortcomings such as a long settlement process which of course takes time, energy and also 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 in accordance with 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 to advance general welfare, to improve the life of the nation, and to participate in implementing world order based on independence, eternal peace and social justice."

On this basis, a new mechanism emerged in an effort 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 is used that brings together the parties concerned.

*Restorative Justice* in its function provides a different approach in the process of understanding and handling a criminal act, which in Restorative Justice provides the same meaning of a criminal act, but in the process of resolving it 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, and 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 be able 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, the principle of restorative justice is to build joint participation between perpetrators, victims, and community groups to resolve an event or crime. Placing perpetrators, victims, and the community as stakeholders who work together and directly try to find a just solution for all parties.

The main purpose of restorative justice itself 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. There are many ways that can be taken to achieve the objectives of criminal law in order to create order and justice, such as by means of resolving 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 in combating crime by using a system approach. Remington and Ohlin stated that the criminal justice system can be interpreted as the use of a system approach to the criminal justice administration mechanism, and justice as a system is the result of interaction between laws and regulations, administrative practices and social attitudes or behavior. The definition of a system implies an interaction process that is prepared rationally and efficiently to provide certain 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 that with the imposition of criminal sanctions, it is said that the substance and procedure for resolving criminal acts through the criminal law path that has been 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. In fact, 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 in the form of, such as 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, but in minor crimes, restorative justice can be applied such as in several traffic cases, child cases and domestic violence. Restorative justice is considered to be 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 which is part of alternative dispute resolution (ADR) has so far only been known in the realm of private law. Alternative dispute resolution is a concept that includes various forms of dispute resolution other than the judicial process through legal means.

In the Indonesian justice system, restorative justice is something new, although it has been indirectly applied in the customary law settlement system through deliberation and consensus. 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 is also an implementation of the principle of a speedy trial that emphasizes the aspects of effectiveness, efficiency, and affordability. Restorative Justice is actually a "critique" of the conventional criminal law enforcement process that tends to emphasize the aspect of "punishment" as the "primary aspect" in 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 that emphasizes 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 important because efforts to fight for the ratification of the RKUHP even began in 1963 and was only ratified in 2023. In addition, an important aspect in the Criminal Code Law is the spirit of law by prioritizing the ideals of Indonesianness. In this context, of course, the study of Restorative Justice is relevant in relation 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 aspect of legal balance in the dimensions of divinity, justice, and humanity. This legal perspective is interesting to study in relation to the aspect of humanity and the ideals of law in the future. Research on Restorative Justice and the RKUHP has actually been carried out by previous researchers, such as:

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

The three previous studies above actually confirm that the research conducted by the author is original research 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:

1. How is the reconstruction or regulation of Restorative Justice in the criminal justice system in Indonesia after Law No. 1 of 2023?
2. How is the implementation of the Restorative Justice policy in the criminal justice system in Indonesia after Law No. 1 of 2023?

### **METHOD**

#### **1. Research Type**

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

#### **2. Research Approach**

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

#### **3. Nature of Research**

Legal science has the characteristics of being an applied science. From the results of the review, an opinion or 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 the purposes of 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, which is just.

### **RESULTS AND DISCUSSION**

#### **A. Reconstruction or Restorative Justice Arrangement with the Criminal System in Indonesia Post Law No. 1 of 2023**

##### **1. 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. In the midst of 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, namely retributive, distributive, and restorative. The

development of the application of Restorative Justice in the criminal law system shows 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.

## **2. 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 punishment of the perpetrator and the judicial process was only centered on the perpetrator and the state. With this framework, gradually the victims and the fulfillment of their rights 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 in line with the birth of the concept of Restorative Justice.

## **3. 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:

- 1) Article 310 of the Criminal Code (KUHP)
- 2) Article 205 of the Criminal Procedure Code (KUHP)
- 3) 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 Amount of Fines in the Criminal Code
- 4) 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 17 October 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
- 5) Letter from the Director General of the General Courts Number 301 of 2015 concerning the Settlement of Minor Criminal Offenses
- 6) Police Regulation Number 8 of 2021 Concerning Handling of Criminal Acts Based on Restorative Justice
- 7) Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice
- 8) 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 given is a maximum of 3 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:

1. Child Crime
2. Criminal Acts of Women in Conflict with the Law
3. Narcotics Crimes
4. Information Crime and Electronic Transactions
5. Traffic crimes

#### Conditions for Implementing Restorative Justice

- 1) 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.
- 2) According to the Kompolnas website, handling criminal acts with Restorative Justice must meet general and specific requirements. General requirements apply to the implementation of 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:

- 1) Does not cause unrest and/or rejection from the community
- 2) Does not cause social conflict
- 3) It has no potential to divide the nation
- 4) No radicalism and separatism
- 5) Not a repeat offender based on a court decision
- 6) Not a crime of terrorism, a crime against state security, a crime of corruption, and a crime against people's lives.

#### **4. 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 are carried out by involving 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 as above, the values are actually 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 by involving affected parties and the community has actually been widely carried out in the archipelago and Indonesia. Even handling disputes outside the formal judicial process has been carried out long before the Indonesian state was formed. This is because the majority of the Indonesian population does not come from and is not urban and is not secular, so that the social values that are prioritized 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.

#### **5. Reconstruction or Arrangement of Direction of Change of Restorative Justice Mechanism after Law No. 1 of 2023**

In the view of several experts and with reference to 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. The implementation of Restorative Justice programs can also not only be carried out outside the criminal justice system (such as diversion mechanisms), but can also be carried out 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 that need to be strengthened in the Indonesian criminal justice system in the future (through the New Criminal Code). Some of

these mechanisms are seen as having great potential to institutionalize the principles of restorative justice in Indonesia.

1) 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) are used to facilitate conciliation and victim recovery. In addition, technical procedural mechanisms such as restitution, compensation, and victim assistance must always run optimally for the sake of restoring victim rights.

2) 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 real 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 there is no power relationship between the victim and the perpetrator that can hinder the restoration process.

3) 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.

4) Criminal Supervision

As a restorative justice enabler program, Supervisory Criminal Procedure has the potential to 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. Supervision (supervision and assistance) of the implementation of criminal supervision.

5) Waiver of Cases for Prosecution Policy (Seponering)

As a supporting program (enabler program) of restorative justice, Seponering (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/quasilegislation) whose implementation can always be tested; And
- b. This case waiver policy must be transparent and publicly accessible.
- 6) 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 placed as the determinant of justice for all parties involved.

Restorative justice is basically a criminal law approach that contains a number of traditional values. This is based on two indicators, namely the values that are its foundation and the mechanisms it offers. This is 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.

The idea of 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 that in the end Restorative Justice pays attention to the interests of victims of crime, perpetrators of crime and society. In the future, in order 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:

1. Crime prevention and control;
2. Improvement on the perpetrator;
3. Prevention of arbitrary actions outside the law; and;
4. Conflict resolution in society.

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

## **B. 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 an important momentum in efforts to reform criminal law in Indonesia. This is because it formally marks the enactment of criminal law made 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 actually 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 actually a follow-up to the Wetboek Van Straafrecht (WvS) which is a legal product during the Dutch colonial era.

In Indonesia, the understanding and views with the character of Continental European law as stated in the Criminal Code are considered irrelevant in society. This is as emphasized by Van Vollenhoven 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, which is commonly called customary law. This actually confirms that in addition to having to be based on written law, Indonesian society is also subject to unwritten law which is local in nature, 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 that if it is applied directly to Indonesian society with an 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) have differences

with the substance of zina understood by Indonesian society. Overspel in the Wetboek Van Strafrecht (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 by involving the role of the community, 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, including the concept of Restorative Justice which 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 on 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 actually existed before the ratification of the Criminal Code which has been spread across various internal regulations of law enforcement institutions, such as:

1. Letter of the Chief of Police No. Pol: B/3022/XII/2009/SDOPS dated 14 December 2009 concerning Handling of Cases through Alternative Dispute Resolution (ADR),
2. 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,
3. 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

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.

In the substance of the Criminal Code itself, the provisions of Restorative Justice are actually spread across various Articles, especially related to the substance 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, including 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 which include 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 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 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 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 conventional criminal justice system that currently exists.

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

- 1) Police,
- 2) The Prosecutor's Office and
- 3) 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:

- 1) *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.*
- 2) *A victim is a person who experiences physical, mental, or economic suffering resulting from a crime.*
- 3) *The Public Prosecutor is a prosecutor who is authorized by law to carry out prosecutions and implement judges' decisions.*
- 4) *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

1. Definition and Concept: Law No. 1 of 2023 concerning the Criminal Code (KUHP) introduces the concept of restorative justice as a new approach in 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:

- 1) Implementation of Restorative Justice in the criminal justice system not solely aimed at stopping the case
- 2) *Restorative justice* can be done at every stage criminal justice process.
- 3) 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.
- 4) 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.
- 5) *Restorative Justice* principled on volunteerism without pressure coercion, and intimidation.

- 6) In the case of children, the application of Restorative Justice must...consider the best interests of the child.
2. In the context of criminal law reform in Indonesia through the new Criminal Code (KUHP) accommodates and includes the principle of Restorative Justice, where the formulation of types of criminal acts (strafmaat) contains restorative properties. So it is very possible that the concept of Restorative Justice can 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 that is in accordance with Indonesian values. Considering that the current Criminal Code is no longer in accordance with the culture of the Indonesian nation which is based on Customary Law (traditional law) and other values of diversity.
3. 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 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.
4. 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:
  - 1) Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.
  - 2) Regulation of the Chief of the Republic of Indonesia National Police Number 6 of 2019 concerning Criminal Investigation.
  - 3) 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.
  - 4) 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.

## REFERENCE

### Legislation:

The 1945 Constitution of the Republic of Indonesia

Law Number 1 of 2023 concerning the Criminal Code

Article 310 of the Criminal Code (KUHP)

Article 205 of the Criminal Procedure Code (KUHP)

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 Amount of Fines in the Criminal Code

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System  
Article 1 number (6) of Law Number 11 of 2012. Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004

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 17 October 2012

National Police Chief Circular Number: SE/8/VII/2018 About the Implementation of Restorative Justice in Criminal Case Resolution

Republic of Indonesia Attorney General's Regulation Number 15 of 2020 On Termination of Prosecution Based on Restorative Justice.

Decree of the Director General of the General Court of the Supreme Court of the Republic of Indonesia Number: 691/DJU/SK/PS.00/12/2020 Regarding the Implementation of Guidelines for the Implementation of Restorative Justice.

Regulation of the Republic of Indonesia National Police Number 8 of 2021 About Handling Criminal Offenses Based on Restorative Justice.

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 17 October 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

Letter from the Director General of the General Courts Number 301 of 2015 concerning the Settlement of Minor Criminal Offenses

Police Regulation Number 8 of 2021 Concerning Handling of Criminal Acts Based on Restorative Justice

Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice

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 given is a maximum of 3 months imprisonment or a fine of Rp 2.5 million.

### **Books:**

- A. Asep Saepudin Jahar, Raju Moh Hazmi, "Construction of Legal Justice, Certainty, and Benefits in the Supreme Court Decision Number 46P/HUM/2018," *Cita Huk.*, vol. 9, no. 1, p. 162, 2021.
- A. Safa'at, *Dynamics of State and Islam in the Development of Law and Politics in Indonesia*, 1st ed. Jakarta: Konstitusi Press, 2018.
- Abidin Farid, Zainal, *Criminal Law I*, Second Edition, Sinar Grafika, Jakarta, 2007
- Achjani Zulfa, Eva, *Restorative Justice*, FHUI, Jakarta, 2009.
- Burt Galaway and Joe Hudson, *Criminal Justice, Restitution and Reconciliation (Criminal Justice)* Monsey, NY: Criminal Justice Press, 1990 accessed from website <http://www.restorativejustice.org> on July 04, 2021.
- Čehulić, "Perspectives of Legal Culture," *Rev. Sociol.*, vol. 51, no. 2, pp. 257–282, Aug. 2021, doi: 10.5613/rzs.51.2.4.
- Chazawi, Adami, *Criminal Law Lessons Part I*, Rajawali Press, Jakarta, 2011,
- Christianto, "Norms of Unity as Limitations of Criminal Acts of Spreading Hate Speech via the Internet," *Verit. Justitia*, vol. 6, no. 1, pp. 94–126, 2020, doi: 10.25123/vej.3501.
- Criminology*, 2003.
- DE Prasetyo, FP Disantara, NH Azzahra, and D. Perwitasari, "The Legal Pluralism Strategy of Sendi Traditional Court in the Era of Modernization Law," *Rechtsidee*, vol. 8, pp. 1–14, March. 2021, doi: 10.21070/jjhr.2021.8.702.
- Eddy OS Hiariej, *Principles of Criminal Law*, Cahaya Atma Pustaka, Yogyakarta, 2019, p 36
- Efendi, DO Susanti, and RI Tektona, *Doctrinal Law Research*. Surabaya: Laksbang Justitia, 2019.
- Erdianto Effendi, *Indonesian Criminal Law*, Refika Aditama, Bandung, 2014,

- Eva Achjani Zulfa, *Paradigm Shift in Criminal Procedure*, Lubuk Agung, Bandung, 2011.
- F. Akbar, "Restorative Justice Reform in the Indonesian Criminal Justice System," *Mass. Law.*, vol. 51, no. 2, p. 200, 2022
- G. Widiartana, *Victimology: The Perspective of Victims in Combating Crime*, Atma Jaya University Yogyakarta, 2013.
- Ghunarsa Sujatnika, "The Influence of the God-Based Constitution in the Practice of State Administration (A Comparison Between Indonesia and Various Countries)," *Law and Development*, vol. 48, no. 4, pp. 1689–1699, 2017, doi: 10.1017/CBO9781107415324.004.
- H. Thahir, *Ijtihad Maqasidi: Reconstruction of Islamic Law Based on Interconnectivity*, 1st ed. Yogyakarta: LKIS, 2015.
- H. Widodo and FP Disantara, "Problematics of Legal Certainty of Public Health Emergency During the COVID-19 Pandemic," *J. Suara Huk.*, vol. 3, no. 1, p. 197, Mar. 2021, doi: 10.26740/jsh.v3n1.p197-226.
- Hadi Utomo, Warsito, *Police Law in Indonesia*, Prestasi Pustaka, Jakarta, 2005.
- Hamzah and Siti Rahayu, *A Brief Review of the Criminal Justice System in Indonesia*, Akademik Pressindo, Jakarta, 1986.
- Handbook on Restorative Justice Programme*, New York: United Nations, 2006, p 19
- Hanum, "Prospects of Restorative Justice in Indonesian Legislation," *Veritas*, vol. 7, no. 1, p. 3, 2021.
- Hariman Satria, "Restorative Justice: A New Paradigm of Criminal Justice", *Jurnal Media Hukum*, Vol. 25, No.1, 2018.
- Hobson, A. Twyman-ghoshal, R. Banwell-moore, and DP Ash, "Restorative Justice, Youth Violence, and Policing : A Review of the Evidence," *MDPI*, vol. 11, no. 62, pp. 1–20, 2022.
- Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice*, Scottdale, Pennsylvania Waterloo, Ontario; Herald Press, 1990, p. 181. Accessed from website <http://www.restorativejustice.org> on January 04, 2021
- Institute for Criminal Justice Reform*, 2022, Opportunities and Challenges of Implementing Restorative Justice in the Criminal Justice System in Indonesia, [https://leip.or.id/wp-content/uploads/2022/11/221014-Ebook\\_Peluang-Penerapan-RJ-dalam-SPP-di-Indonesia..pdf](https://leip.or.id/wp-content/uploads/2022/11/221014-Ebook_Peluang-Penerapan-RJ-dalam-SPP-di-Indonesia..pdf)
- Iqraq Sulhin, Covid-19, Excessive Imprisonment, and the Potential for Humanitarian Catastrophe, *Journal of Law & Development* Volume 50 No. 2 26 September 2020
- Iqraq Sulhin, Covid-19, Excessive Imprisonment, and the Potential for Humanitarian Catastrophe, *Journal of Law & Development* Volume 50 No. 2 26 September 2020
- Ishaq, *Introduction to Indonesian Law*, 5th ed. Jakarta: Raja Grafindo Persada, 2018.
- JS and AVH Annemieke Wolthuis, Jacques Claessen, "Dutch developments: restorative justice in legislation and in practice," *Int. J. Restor. Justice*, vol. 2, no. 1, p. 119, 2019.
- Jim Consedine, *Restorative Justice Healing The effects of Crime*, Royal New Zealand Foundation of the Birth, published 2018
- Johan Nasution, 2012. *Legal Research Methods*, Bandung: Mandar Maju, p. 98.
- Johnny Ibrahim, 2014. *Theory and Methodology of Normative Legal Research*. Bandung: Remaja Rosdakarya.
- Julaiddin, Henny Puspita Sari, Legal Policy in the Midst of Handling the Corona Virus Disease (Covid-19) Outbreak. *Unnes Lau Review Journal*, Volume 2, Issue 4, June 2020
- Julaiddin, Henny Puspita Sari, Legal Policy in the Midst of Handling the Corona Virus Disease (Covid-19) Outbreak. *Unnes Lau Review Journal*, Volume 2, Issue 4, June 2020
- Big Indonesian Dictionary*, KKBI.
- Karyono, Handling and Prevention of the Corona Virus Pandemic (Covid-19) in Indramayu Regency, *Journal of Conflict Resolution Collaboration*, Vo. 3 No. 2.
- Decree of the Director 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.

- Kurnia, The Role of the Sajad District Police Sector in Handling Covid-19 in 2020, *Jurnal Syi'ar, Journal of Communication Science, Counseling and Guidance of Islamic Society* Vol. 3 No. 1 January 2023
- Makarao, M. Taufik, Legal Review on the Implementation of Restorative Justice in Resolving Criminal Acts Committed by Children, National Legal Aid Agency, Ministry of Law and Human Rights, Jakarta, 2013.
- Makkulawuzar, A. Ilmar, AP Moenta, and H. Halim, "The Existence of Final and Binding Ruling by the Constitutional Court in Constitutional Review," *Law, Policy Glob.*, vol. 79, no. 1, pp. 241–247, 2018.
- Manan, Bagir. 2006. "Restorative Justice (An Introduction)". *Varia Peradilan Law Magazine*, Number 247 June 2006, Jakarta; IKAHI.
- Marlina, Development of the Concept of Diversion and Restorative Justice, Refika Editama, Bandung, 2009.
- Marlina, Restorative Justice: A New Paradigm of Criminal Justice”, *Jurnal Media Hukum*, Vol. 25, No.1, 2023
- Marlina. Juvenile criminal justice in Indonesia: development of the concept of diversion and restorative justice., Refika Aditama Bandung, 2012.

**Research Journal:**

- Atalim, S. “Restorative Justice as an Inherent Critique of Legal-Conventional Courts”. *Jurnal Rechts Vinding: Media for National Legal Development*. Vol. II, no. 2, 2013, 145. DOI: <http://dx.doi.org/10.33331/rechtsvinding.v2i2.155>., accessed March 21, 2024.
- Chandra, Septa. “Restorative Justice: A Review of Criminal Law Reform in Indonesia”. *Jurnal Rechts Vinding: Media for National Legal Development*. Vol. II, no. 2, 2023, 264. DOI: <http://dx.doi.org/10.33331/rechtsvinding.v2i2.76>.
- Flora, Henny Saida. “Restorative Justice in the New Criminal Code in Indonesia: A Prophetic Legal Study”. *RECHTSIDE: Criminal Law*. Vol. X, no. 2, 2022, 10. DOI: <https://doi.org/10.21070/jjhr.v11i0.836>.