

# Comparison of the Implementation of Restorative Justice in Criminal Case Resolution between the Old and New Criminal Codes (Law No. 1 of 2023)

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## ABSTRACT

Restorative justice is an approach to resolving criminal cases that emphasizes restoring relationships between perpetrators, victims, and the community, as well as resolving conflicts in a fair and balanced manner. In the Indonesian criminal law system, the application of restorative justice has experienced significant developments following the ratification of Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code). Unlike the Old Criminal Code (Wetboek van Strafrecht), which does not explicitly regulate restorative justice and is still oriented towards a retributive approach, the New Criminal Code normatively accommodates the principle of restorative justice as part of the objectives of punishment and considerations in resolving criminal cases. This study aims to analyze and compare the application of restorative justice in resolving criminal cases between the Old and New Criminal Codes. The research method used is normative juridical with a statutory and conceptual approach. The results of the study show that in the Old Criminal Code, restorative justice was only implemented in a limited manner through law enforcement policies, whereas in the New Criminal Code, restorative justice has been institutionalized as a criminal law principle that shifts the orientation of criminal case resolution from mere punishment to restoration, peace, and social balance.

**Keywords:** Restorative justice, criminal case resolution, Old Criminal Code, New Criminal Code.

## INTRODUCTION

The criminal justice system is fundamentally designed to uphold the law, ensure legal certainty, and achieve justice for the community. However, current criminal case resolution practices tend to emphasize a punitive approach to criminal offenses, particularly through imprisonment. This approach often places victims only as objects of evidence, while the interests of recovering losses and restoring

social relations receive less adequate attention. As a result, criminal decisions are often seen as not fully reflecting substantive justice.

Criticism of the retributive nature of the criminal justice system has led to the development of the concept of restorative justice. Restorative justice is an approach to resolving criminal cases that focuses on restoring the original state, resolving conflicts between perpetrators and victims, and restoring balance within society. This approach views criminal acts not merely as violations against the state, but as acts that cause real harm to the victim and disruption to social harmony. Therefore, the resolution of criminal cases should ideally not only focus on punishing the perpetrator, but also on the recovery of the victim and the responsibility of the perpetrator.

In the context of Indonesian criminal law, restorative justice regulations have evolved gradually. The Old Criminal Code (*Wetboek van Strafrecht*), a product of colonial law, did not explicitly regulate restorative justice and remained based on the classical criminal law paradigm that emphasized retribution through punishment. The Old Criminal Code also did not formulate the objectives of criminal punishment explicitly, so that judges in imposing punishment were more oriented towards the perpetrator's guilt and the criminal threat determined by law. However, in law enforcement practice, the idea of restorative justice has begun to be implemented through the policies of law enforcement officers, such as police discretion and prosecution policies by the prosecutor's office. This application is generally applied to certain cases, such as minor crimes or cases where a settlement has been reached between the perpetrator and victim. However, because it lacks a clear normative basis in the Old Criminal Code, the application of restorative justice is limited and has the potential to create legal uncertainty and disparities in treatment between cases.

A significant development occurred with the enactment of Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code). The New Criminal Code brings fundamental reforms by incorporating restorative justice values into the national criminal law system. This is reflected in the formulation of the objectives of punishment, which are oriented not only toward prevention and deterrence, but also toward conflict resolution, restoration of balance, and the creation of a sense

of peace in society. In addition, the New Criminal Code provides broader space for resolving criminal cases that considers reconciliation and restitution of victims' losses.

Based on this background, this research is crucial to examine and compare the application of restorative justice in criminal case resolution between the Old and New Criminal Codes. This comparison is expected to provide insight into the changing paradigm of Indonesian criminal law and its implications for a more just and humane criminal justice system.

### **Research purposes**

This study aims to analyze the regulation and application of restorative justice in the settlement of criminal cases according to the Old Criminal Code (Wetboek van Strafrecht), particularly in relation to the sentencing paradigm which is still oriented towards a retributive approach. In addition, this study also aims to examine the provisions of restorative justice in the New Criminal Code (Law Number 1 of 2023) as a form of national criminal law reform that emphasizes restoration, peace, and social balance.

Furthermore, this study aims to compare the application of restorative justice in resolving criminal cases between the Old Criminal Code and the New Criminal Code, in order to determine the differences in paradigms, normative bases, and their implications for the criminal justice system in Indonesia. Through this comparison, it is hoped that this research can provide a comprehensive picture of the direction of Indonesian criminal law policy and the contribution of restorative justice in realizing a more just and humane criminal justice system.

### **METHODS**

This research uses a normative juridical legal research method, namely research that examines law as a norm or rule that applies in the legal regulatory system. This method was chosen because the focus of the research is to compare the regulation and application of restorative justice in the resolution of criminal cases between the Old Criminal Code and the New Criminal Code, which is substantially a study of material criminal law norms.

The approaches used in this research include the statute approach and the conceptual approach. The legislative approach is carried out by examining the provisions of the Old Criminal Code (Wetboek van Strafrecht) and Law Number 1 of 2023 concerning the Criminal Code, particularly norms related to the purpose of sentencing, judicial considerations, and the resolution of criminal cases. A conceptual approach is used to examine the concept of restorative justice based on the doctrines and thinking of criminal law experts.

The types and sources of legal materials used in this research consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include relevant legislation, including the Old Criminal Code, the New Criminal Code, and other related regulations. Secondary legal materials include criminal law textbooks, scientific journals, and research findings addressing restorative justice and criminal law reform. Tertiary legal materials, such as legal dictionaries and legal encyclopedias, are used as supporting materials.

The technique for collecting legal materials is carried out through library research by searching, reading and reviewing legal literature that is relevant to the research problem. All legal materials obtained were then analyzed qualitatively using the descriptive-analytical analysis method, namely by describing the applicable legal provisions and analyzing them systematically to find differences and similarities in the application of restorative justice in the Old Criminal Code and the New Criminal Code.

The results of this analysis are then used to draw conclusions regarding the direction of changes in the paradigm of criminal case resolution in Indonesian criminal law and the implications of restorative justice regulations for the national criminal justice system.

## **DISCUSSION**

### **The Concept and Application of Restorative Justice in the Settlement of Criminal Cases According to the Old Criminal Code**

The Old Criminal Code (Wetboek van Strafrecht), a legacy of Dutch colonial law, was essentially built on a classical criminal law paradigm that emphasized the

principles of legality, legal certainty, and punishment as a form of retributive justice. Within this framework, criminal acts were viewed as acts that violated legal order and the interests of the state, thus allowing the state to take over the conflict between perpetrator and victim through formal criminal justice mechanisms. As a result, the position of victims in the criminal justice system tends to be marginalized and not become the main subject in the criminal case resolution process.

The Old Criminal Code does not contain explicit provisions regarding restorative justice. There are no norms explicitly regulating the resolution of criminal cases by prioritizing dialogue, restitution of victims' losses, and restoration of social relations between the perpetrator, victim, and the community. This indicates that, normatively, the Old Criminal Code did not provide space for the resolution of criminal cases outside of conventional sentencing mechanisms.

However, in law enforcement practice, restorative justice values have emerged in a limited and indirect way. For example, judges consider mitigating factors for defendants, such as reconciliation between the perpetrator and victim, compensation, or an apology from the perpetrator accepted by the victim. However, this practice does not have a strong legal basis and is casuistic in nature, so it is very dependent on the subjectivity of law enforcement officers.

The lack of a clear normative basis means that the application of restorative values in the Old Criminal Code fails to provide legal certainty for both victims and perpetrators. In many cases, victims' interests remain unmet because the primary focus of the criminal justice process is on sentencing the perpetrator, rather than redressing the victim's losses or repairing social relationships damaged by the crime. Thus, it can be concluded that restorative justice in the Old Criminal Code system has not become an integral part of the Indonesian criminal law system.

### **Strengthening Restorative Justice in the New Criminal Code (Law Number 1 of 2023)**

Unlike the Old Criminal Code, the New Criminal Code, enacted through Law Number 1 of 2023, represents a reform of national criminal law that consciously shifts the paradigm of punishment from a retributive approach to a more humanistic and restorative approach. The New Criminal Code explicitly incorporates the values

of restorative justice into the objectives of punishment, which focus not only on retribution but also on restoring balance and peace within society.

The purpose of punishment in the New Criminal Code emphasizes that punishment aims to resolve conflicts caused by criminal acts, restore balance, and foster a sense of security and peace in society. This formulation demonstrates that victims are no longer positioned as passive parties, but rather as subjects whose interests must be considered in the criminal case resolution process.

These regulations provide a strong normative basis for the implementation of restorative justice in the criminal justice system. Through the New Criminal Code, criminal cases no longer have to be resolved through imprisonment, but can instead be directed toward other, more proportionate and beneficial solutions, particularly for victims and the community. This reflects a shift in the orientation of punishment from offender-oriented to victim-oriented and community-oriented.

Furthermore, the recognition of restorative justice in the New Criminal Code aligns with developments in modern criminal law and international standards, which emphasize the importance of protecting victims' rights and efforts to reduce the use of imprisonment. Thus, the New Criminal Code not only reforms criminal law norms textually but also updates the philosophy of punishment adopted by the Indonesian criminal legal system.

### **Comparative Analysis of the Implementation of Restorative Justice between the Old and New Criminal Codes**

A comparison between the Old and New Criminal Codes reveals fundamental differences in their perspectives on crime and its resolution. The Old Criminal Code stems from a classical paradigm that emphasizes retribution and formal legal certainty, while the New Criminal Code prioritizes a balance between legal certainty, substantive justice, and legal expediency.

In the context of restorative justice, the Old Criminal Code only allowed for its implementation in an implicit and unstructured manner, while the New Criminal Code provides explicit recognition and a clear normative basis. This difference has important implications for victim protection, as the New Criminal Code opens up greater opportunities for victims to actively participate in the criminal case resolution process and obtain redress for the losses they have suffered.

Furthermore, the implementation of restorative justice in the New Criminal Code is expected to reduce the burden on the criminal justice system, particularly regarding overcrowding in correctional institutions, and increase the effectiveness of sentencing. With a restorative approach, sentencing serves not only as a means of punishment but also as an instrument to improve social relations and prevent recurrence of crime.

Thus, it can be concluded that the New Criminal Code represents a progressive step in reforming Indonesian criminal law. The integration of restorative justice into the New Criminal Code reflects the state's commitment to creating a fairer, more humane, and more restorative criminal justice system, without compromising legal certainty.

### **Implications and Challenges of Implementing Restorative Justice in the New Criminal Code**

The implementation of restorative justice in the New Criminal Code has significant legal and practical implications for the criminal justice system in Indonesia. From a legal perspective, the explicit recognition of restorative justice provides a clearer legal basis for law enforcement officials to resolve criminal cases with a restorative approach, particularly for certain crimes. This marks a shift in the function of criminal law from being solely a means of punishment to an instrument for conflict resolution and restoring social balance.

In practice, the implementation of restorative justice is expected to improve victim protection, as victims are no longer positioned merely as evidence but as subjects whose interests must be restored. Furthermore, this approach also provides perpetrators with the opportunity to take direct responsibility for their actions and repair the harm caused, potentially reducing recidivism rates.

However, the implementation of restorative justice in the New Criminal Code also faces several challenges. One of the main challenges is the differing understanding and interpretation of the concept and limitations of restorative justice among law enforcement officials. Without clear implementation guidelines, there is a risk of inconsistent application or even misuse of restorative justice, potentially leading to injustice for victims.

Furthermore, the community's legal culture and institutional readiness also pose challenges. Not all victims or communities are ready to resolve criminal cases through a restorative approach, especially in cases with severe psychological impacts. Therefore, ongoing outreach and capacity building of law enforcement officials are necessary to ensure the effective implementation of restorative justice in the New Criminal Code while upholding the principles of justice and legal certainty.

## **CONCLUSION**

Based on the discussion, it can be concluded that the regulation and implementation of restorative justice in resolving criminal cases have undergone significant development between the Old and New Criminal Codes. The Old Criminal Code (Wetboek van Strafrecht) did not explicitly recognize the concept of restorative justice and was still oriented towards a retributive paradigm, namely punishment as a form of retribution for criminal acts. In this system, criminal acts are viewed as violations against the state, so that the resolution of criminal cases focuses more on punishing the perpetrator, while the interests of the victim have not become the main focus in the criminal justice process.

Despite this, the values of restorative justice in the Old Criminal Code can be found implicitly in law enforcement practices, such as reconciliation between the perpetrator and the victim and the judge's consideration of the defendant's mitigating circumstances. However, the lack of a clear normative basis means that the application of restorative justice in the Old Criminal Code is limited, inconsistent, and highly dependent on the discretion of law enforcement officials, thus failing to provide legal certainty or optimal protection for victims.

In contrast, the New Criminal Code, as stipulated in Law Number 1 of 2023, demonstrates a shift in the paradigm of criminal punishment, moving toward a more progressive and humane approach. The New Criminal Code explicitly incorporates restorative justice as part of the objectives of criminal punishment, emphasizing conflict resolution, restoring social balance, protecting victims, and reintegrating perpetrators into society. This normative recognition of restorative justice provides

a stronger and clearer legal basis for its implementation in the Indonesian criminal justice system.

A comparison of the Old and New Criminal Codes demonstrates that the integration of restorative justice into the New Criminal Code represents a crucial step in national criminal law reform. This approach is expected to not only enhance protection of victims' rights but also encourage the creation of a more effective, just, and recovery-oriented criminal justice system. Therefore, restorative justice in the New Criminal Code can be a strategic instrument in realizing an Indonesian criminal law system that is just, humane, and in line with developments in modern society.

Based on the conclusions of this study, it is recommended that law enforcement officials, including the police, prosecutors, and judges, consistently and proportionally apply the concept of restorative justice in accordance with the provisions of the New Criminal Code (Law No. 1 of 2023). Consistent implementation is necessary to effectively achieve the goals of punishment, which focus on recovery, victim protection, and the reintegration of perpetrators into society.

Furthermore, the government and lawmakers are advised to develop more detailed implementing regulations regarding the mechanisms and limitations of restorative justice in resolving criminal cases. Clear regulations are needed to prevent differences in interpretation among law enforcement officials and to ensure legal certainty and the protection of victims' rights.

For academics and legal researchers, further research is expected to empirically examine the application of restorative justice in the New Criminal Code, particularly in criminal justice practice. Such follow-up research is essential for assessing the effectiveness of restorative justice and identifying obstacles that arise in its implementation in the field.

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