

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

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Abstract

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

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

Introduction

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

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

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