



Social Reintegration after the Implementation of Restorative Justice in the Indonesian Criminal Code

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ABSTRACT

The current criminal code has been in force in Indonesia since 1918. Indonesia formulated criminal law reform in 1963 and in 2023, a law on the national criminal code was issued. The spirit of the Indonesian criminal code is reformative, progressive, and responsive to changes to the law. One of the strengths of criminal law is regulating criminal law from the perspective and achievement of justice to repair and restore the situation after the event and judicial process known as restorative justice. The desire to strengthen restorative justice programs takes a long time and is complicated. This research aims to analyze the development of the concept of social reintegration through the application of restorative justice in the criminal justice process. This research was conducted qualitatively using secondary data and doctrinal legal study methods. The results showed that changes in criminal law arrangements caused opinion differences since restorative programs are widely used as a substitute for traditional and retributive approaches. The application of restorative justice in national criminal law must be implemented. Social reintegration in the implementation of restorative justice as regulated in the Criminal Code can be successful through commitment and collaboration between the community, government and law enforcement officials.

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1. Introduction

The approval of the new criminal code signifies a significant achievement in the advancement of Indonesia's criminal law. Law No. 1 of 2023 on the Criminal Code in Indonesia has shifted from a classical criminal law paradigm to a modern one. Criminal law is oriented towards the recovery of victims and society, as well as the prevention of future criminal acts. This new paradigm includes collective, restorative, and rehabilitative justice. With this change, law enforcement is expected to be more effective, justice will be served better, and human rights will be protected more comprehensively. Criminal laws must be able to respond to emerging

challenges to remain relevant and provide significant benefits to society. The enactment of the new criminal law is an important step in strengthening Indonesia's criminal justice system. However, effective implementation, monitoring, and periodic review remain challenges that must be addressed.¹

Restorative Justice is understood as a contemporary justice mechanism.² Restorative justice is used in several types of offenses, although mostly about victimless offenses or where there is no direct victim, while its accessibility remains low overall. At the same time, the growth of training in restorative practices creates opportunities to align work cultures with restorative principles. A basis for policies aimed at making restorative justice more accessible and embedding a restorative culture within the criminal justice profession and institutions is necessary.³

A lot of research has been conducted on Restorative Justice, especially in juvenile justice.⁴ Approaches to juvenile justice have undergone significant change in recent years, shifting away from retributive models and towards a greater focus on rehabilitation and recognition of children's unique developmental needs.⁵ The Integrated Model of Juvenile Justice is a new conceptual approach to juvenile justice reform, integrating public health, social-ecological, and restorative justice models. Juvenile justice practice must consider and address the multiple needs of children.⁶

In other research, restorative justice policies are survivor-centered justice approaches that focus on repairing harm between survivors and perpetrators, which can support mental health outcomes among survivors. In addition, the impact of restorative justice policies on mental health may be influenced by the level of state support for policy implementation.⁷ The implementation of restorative justice is strongly influenced by gender-related aspects of crime and victimization, especially regarding complex and interrelated needs, differences in participation in implementation, and potential risks related to mental health, shame, and societal stereotypes regarding women's behavior.⁸ To ensure that women benefit from

¹ Parningotan Malau, 'Tinjauan Kitab Undang-Undang Hukum Pidana (KUHP) Baru 2023', *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam*, 5.1 (2023), 837-44. <https://doi.org/10.37680/almanhaj.v5i1.2815>

² Kathleen Daly, 'What Is Restorative Justice? Fresh Answers to a Vexed Question', *Victims & Offenders*, 11.1 (2016), 9-29. <https://doi.org/10.1080/15564886.2015.1107797>

³ Ian D Marder, 'Mapping Restorative Justice and Restorative Practices in Criminal Justice in the Republic of Ireland', *International Journal of Law, Crime and Justice*, 70 (2022), 100544. <https://doi.org/10.1016/j.ijlcrj.2022.100544>

⁴ Achmad Fauzi and others, 'Interpreting the Material Requirements of Recidivism: Realizing Restorative Justice in the Police Force', *Kosmik Hukum*, 23.3 (2023), 277. <https://doi.org/10.30595/kosmikhukum.v23i3.18747>

⁵ Zheng Zhou and Wan-chi Wong, 'Three- and Five-Year-Olds' Restorative Intervention in Moral Transgressions', *Cognitive Development*, 62 (2022), 101171. <https://doi.org/10.1016/j.cogdev.2022.101171>

⁶ Keisha April and others, 'Conceptualizing Juvenile Justice Reform: Integrating the Public Health, Social Ecological, and Restorative Justice Models', *Children and Youth Services Review*, 148 (2023), 106887. <https://doi.org/10.1016/j.childyouth.2023.106887>

⁷ Laurel Sharpless, Trace Kershaw, and Tiara C Willie, 'Associations between State-Level Restorative Justice Policies and Mental Health among Women Survivors of Intimate Partner Violence', *SSM - Mental Health*, 2 (2022), 100085. <https://doi.org/10.1016/j.ssmmh.2022.100085>

⁸ Marder; Jonathan Hobson and Brian Payne, 'Building Restorative Justice Services: Considerations on Top-down and Bottom-up Approaches', *International Journal of Law, Crime and Justice*, 71 (2022). <https://doi.org/10.1016/j.ijlcrj.2022.100555>

restorative justice, it is imperative to recognize and integrate the specific requirements and conditions of female offenders into the discipline and apply them to the practice of restorative justice.^{9,10}

Environmental dispute resolution is another area where restorative justice is applicable. Businesses can mend strained relationships while simultaneously repairing the environment, according to the restorative justice approach when utilized in environmental dispute resolution.¹¹ Restorative justice in the energy sector focuses on addressing the needs of all affected parties, such as governments, communities, and the environment.¹² By employing restorative justice principles, efforts are made to restore these entities to their pre-harm conditions.¹³ Implementing restorative justice as an initial consideration in energy projects or activities can serve as a proactive policy approach, mitigating potential damages and conflicts within the sector.^{14,15}

Community support is critical to the successful implementation of restorative justice. For example, restorative justice approaches in China have freed many offenders from harsher prison sentences. Restorative justice reforms in China are based on a community movement that conforms to the restorative foundations of Confucianism rooted in ancient Chinese society.¹⁶

Restorative justice is committed to equality of opportunity that allows stakeholders to participate fully regardless of their class background.¹⁷ Excellence in restorative justice is nurtured by traveling through many avenues in search of useful hybrids.¹⁸ Restorative services can develop from the bottom up as community-led schemes. It can develop from the top down, i.e., as a program led by an institution or organization. Restorative projects face

⁹ Linnéa Österman and Isla Masson, 'Restorative Justice With Female Offenders: The Neglected Role of Gender in Restorative Conferencing', *Feminist Criminology*, 13.1 (2017), 3–27. <https://doi.org/10.1177/1557085117738326>

¹⁰ Jahyun Chun, 'Enforced Reconciliation without Justice: The Absence of Procedural, Retributive, and Restorative Justice in the "Comfort Women" Agreement of 2015', *Asian Journal of Social Science*, 49.2 (2021), 84–92. <https://doi.org/10.1016/j.ajss.2020.09.001>.

¹¹ Muhammad Nadeem, 'Corporate Governance and Supplemental Environmental Projects: A Restorative Justice Approach', *Journal of Business Ethics*, 173.2 (2021), 261–80. <https://doi.org/10.1007/s10551-020-04561-x>

¹² Kangyin Dong and others, 'Revisiting Energy Justice: Is Renewable Energy Technology Innovation a Tool for Realizing a Just Energy System?', *Energy Policy*, 183 (2023), 113820. <https://doi.org/10.1016/j.enpol.2023.113820>.

¹³ John F. McCarthy and others, 'Land Reform Rationalities and Their Governance Effects in Indonesia: Provoking Land Politics or Addressing Adverse Formalisation?', *Geoforum*, 132 (2022), 92–102. <https://doi.org/10.1016/j.geoforum.2022.04.008>.

¹⁴ M Hazrati and R J Heffron, 'Conceptualising Restorative Justice in the Energy Transition: Changing the Perspectives of Fossil Fuels', *Energy Research & Social Science*, 78 (2021), 102115. <https://doi.org/10.1016/j.erss.2021.102115>

¹⁵ Sufyan Droubi, Raphael J. Heffron, and Darren McCauley, 'A Critical Review of Energy Democracy: A Failure to Deliver Justice?', *Energy Research & Social Science*, 86 (2022), 102444. <https://doi.org/10.1016/j.erss.2021.102444>.

¹⁶ Yan Zhang and Yiwei Xia, 'Can Restorative Justice Reduce Incarceration? A Story From China', *Justice Quarterly*, 38.7 (2021), 1471–91. <https://doi.org/10.1080/07418825.2021.1950814>.

¹⁷ Roxana Willis, "'Let's Talk about It": Why Social Class Matters to Restorative Justice', *Criminology & Criminal Justice*, 20.2 (2018), 187–206. <https://doi.org/10.1177/1748895818804307>.

¹⁸ John Braithwaite and Yan Zhang, 'Persia to China: The Silk Road of Restorative Justice I', *Asian Journal of Criminology*, 12.1 (2017), 23–38. <https://doi.org/10.1007/s11417-017-9244-y>.

significant challenges as bottom-up projects often lack the resources that come with institutional recognition and may struggle to achieve acceptance and integration into other state services. If successful in achieving this integration, such projects risk alienating the communities from which they originate. Top-down projects may enjoy greater funding security and benefit from institutional acceptance, but they often struggle to engage community members as they lack legitimacy. Overall, both are important, as both fill a 'space' of need and contribute to the development and integration of sustainable restoration work.¹⁹ Social reintegration is a long-term process and not just a transition.²⁰

Changes to the law on criminal law that has been in effect for more than a century in Indonesia require a process for the same understanding from the government, law enforcement officials, and the community. Therefore, researchers analyzed restorative justice from the aspect of social reintegration efforts after the enactment of the new criminal code through (1) the development of the concept of restorative justice, (2) social reintegration of the application of restorative justice, and (3) the application of restorative justice in Court decisions.

The article introduces a new study on the integration of restorative justice principles in Indonesia's newly reformed criminal law framework, particularly after the enactment of the Criminal Code in 2023. The article stands out by tracing the evolution of the Indonesian criminal justice system from its colonial legacy to its current reformative stance, emphasizing the practical application and challenges of implementing restorative justice for social reintegration. The unique contribution of this study lies in its comprehensive approach, combining theoretical legal analysis with an assessment of real-world application, and focusing on the collaborative efforts required between society, government, and law enforcement to facilitate the successful reintegration of offenders. By dissecting contemporary legal reforms and highlighting the complexities and potential of restorative justice in the Indonesian context, the article offers new insights into the dynamic interplay between legal theory, policy and practice in the pursuit of a more progressive and responsive criminal justice system.

2. Research Method

This research was conducted qualitatively using secondary data and doctrinal legal study methods. Normative legal research or library legal research is a term used to describe legal research methods that involve examining secondary data or library materials.²¹ Normative legal research in the form of library research is carried out by collecting primary, secondary, and tertiary legal materials related to restorative justice. Therefore, to address formulated issues, three problem-solving methodologies are employed: the statutory approach, conceptual approach, and comparative approach. This research takes on a descriptive-prescriptive nature and utilizes a literature study technique to gather materials, involving the identification of existing literature on laws and regulations pertinent to the subject under

¹⁹ Jonathan Hobson and Brian Payne, 'Building Restorative Justice Services: Considerations on Top-down and Bottom-up Approaches', *International Journal of Law, Crime and Justice*, 71 (2022), 100555. <https://doi.org/10.1016/j.ijlcj.2022.100555>.

²⁰ Satarupa Dutta, 'Institutional Care in India: Investigating Processes for Social Reintegration', *Children and Youth Services Review*, 66 (2016), 144–53. <https://doi.org/10.1016/j.childyouth.2016.05.010>.

²¹ Theresia Anita Christiani, 'Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object', *Procedia - Social and Behavioral Sciences*, 219 (2016), 201–7. <https://doi.org/10.1016/j.sbspro.2016.05.006>.

examination.

3. Result and Discussion

3.1. Development of the Restorative Justice Concept

In the era of Dutch rule, the direction of legal politics carried out by the Dutch government was to apply a number of principles, such as codification, concordance, unification, dualism, and legal pluralism. In the early stages, the use of law and its principles was intended to fulfill Dutch interests by oppressing the people. In later developments, the law was not only used as a tool for oppression, but also for profit. Then in 1915, a new codification of the Criminal Code was formed in the "*Wetboek van Strafrecht voor Nederlandsch-Indie*" which applies to all of Indonesia since January 1, 1918. Through the Criminal Code, every criminal event is resolved based on the articles corresponding to the legal event.²² During the Japanese occupation, the previous criminal law was declared to remain in force, meaning that all legal provisions listed in the *Wetboek van Strafrecht voor Nederlandsch-Indie* remained in force at that time. After Indonesia's independence, the Dutch criminal code also remained in force based on Article II of the Transitional Rules of the Indonesian 1945 Constitution. However, in 1946, through Law No. 1 of 1946, the *Wetboek van Strafrecht voor Nederlandsch-Indie*, after undergoing necessary changes, became *Wetboek van Strafrecht voor Indonesie*. Law No. 73 of 1958 stipulates the enactment of Law No. 1 of 1946 of the Republic of Indonesia on the Criminal Law of the Republic of Indonesia. This occurred after Indonesia's history shifted from the United Republic of Indonesia to the Unitary State of the Republic of Indonesia. Through this stipulation, the Criminal Code was enforced for all Indonesian people with a unification style.²³

Crime and punishment have existed since the dawn of human civilization. For example, the criminal justice system's adopted norms and practices, ranging from retributive to reformative theories of punishment, have contributed to a certain level of justice. Accordingly, restorative justice is a significant advancement and has roots in the ancient Indian Hindu tradition, the ancient Buddhist, Taoist, and Confucian traditions, as well as the ancient Arab, Greek, and Roman civilizations, which applied restorative approach even to murder. Restorative justice involves a very different way of thinking from traditional notions such as deterrence, reliability, incompetence, and crime prevention. It also means changing the foundations of criminal jurisprudence and notions of freedom, democracy, and community. Restorative justice has been the dominant criminal justice model throughout human history around the world. In the 1990s, these programs came to be conceptualized as restorative justice.

Restorative justice programs can be widely used instead of more traditional, retributive approaches. Given that participants in restorative justice programs often report high levels of satisfaction with the intervention and its potential to reduce recidivism rates is considerable, it is imperative that researchers continue to understand how these programs can best be implemented for each type of individual who could benefit from their services.²⁴

²² Yordan Gunawan and others, 'Does the Protection of Minority Groups in Xinjiang Fail?', *Sriwijaya Law Review*, 4.2 (2020), 205–20. <https://doi.org/10.28946/slrev.Vol4.Iss2.432.pp205-220>

²³ Yordan Gunawan, M. Fabian Akbar, and Eva Ferrer Corral, 'WTO Trade War Resolution for Japan's Chemical Export Restrictions to South Korea', *Padjadjaran Jurnal Ilmu Hukum*, 9.3 (2022), 408–31. <https://doi.org/10.22304/pjih.v9n3.a6>

²⁴ Jeff Bouffard, Maisha Cooper, and Kathleen Bergseth, 'The Effectiveness of Various Restorative Justice Interventions on Recidivism Outcomes Among Juvenile Offenders', *Youth Violence and Juvenile Justice*, 15.4 (2016), 465–80. <https://doi.org/10.1177/1541204016647428>

Restorative justice emerged in the late 1970s as an alternative to conventional juvenile justice and criminal justice practices. Since then, Restorative Justice has experienced rapid growth in theory and practice. At the same time, much of this growth has come from the expansion of low-end criminal justice responses to crime and the increasing use of the term "restorative" for a wide range of practices and interventions. Restorative Justice also faces issues related to its increasing institutionalization, resulting in a divergence from its previous goals and objectives. The four biggest challenges facing restorative justice in the future are issues related to the definition, institutionalization, displacement, and relevance of restorative justice practices.²⁵

The practice of restorative justice is not considered imported and completely unknown in Indonesia. The term restorative justice does come from the West, but the practice of restorative justice has been ingrained in Indonesian society substantially. Restorative justice viewed in the Indonesian aspect actually has relevance to the legal ideals of Pancasila. There are three correlations between restorative justice and the legal ideals of Pancasila, namely: (1) restorative justice emphasizes the resolution of a criminal case by optimizing the balance of interests between the values that develop in society, the recovery of victims, and treating perpetrators proportionally. This is in line with the value of humanity in Pancasila, especially the second principle, which emphasizes that humanity must be an important value and orientation in the life of the nation and state. Restorative justice has an effort to implement the second principle of Pancasila, especially the value of humanity; (2) Restorative justice emphasizes the implementation of criminal settlements that refer to community values. Restorative justice implements the populist value in the fourth principle. The fourth principle of Pancasila contains several important substances, including the value of populism, wisdom, and deliberation. The three substances in the fourth precept become things that are implemented through the practice of restorative justice; (3) Restorative justice places victims and perpetrators like a "family" who try to solve problems together. Compared to the settlement in court by litigation, the settlement in court is *vis-à-vis*, or the victims and perpetrators of criminal acts are considered "opponents" and face each other. The practice of restorative justice does not consider the relationship between victims and perpetrators as confrontational, but between victims and perpetrators are considered as part of a "big family," so the settlement also emphasizes the family dimension. If associated with the value of Pancasila, the family settlement is a form of implementation of the third principle, namely the unity of Indonesia.²⁶

In relation to Restorative Justice, the Supreme Court in November 2021 established a Working Group for the Preparation of Guidelines for Handling Cases Based on the Principles of Restorative Justice through the Decree of the Chief Justice of the Supreme Court Number 238/KMA/SK/XI/2021. The results of the series of discussions show that the intention to strengthen the application of the concept of restorative justice is not a simple matter. It requires synergistic cooperation between law enforcers to realize the ideal application of the concept of restorative justice. The concept of restorative justice has become a reference for the Supreme Court in developing case handling guidelines. In the most basic sense, it is how the judicial process can repair the relationship between the perpetrator and the victim. Restorative justice seeks to restore the losses suffered by victims and society in general as a result of criminal acts committed by the suspect/defendant.

²⁵ William R Wood and Masahiro Suzuki, 'Four Challenges in the Future of Restorative Justice', *Victims & Offenders*, 11.1 (2016), 149–72. <https://doi.org/10.1080/15564886.2016.1145610>

²⁶ Henny Saida Flora, 'Restorative Justice in the New Criminal Code in Indonesia: A Prophetic Legal Study', *Rechtsidee*, 11 (2022), 7–13. <https://doi.org/10.21070/jjhr.v11i0.836>

The Supreme Court identified several principles and mechanisms that are prerequisites and must be applied in the judicial process. These principles aim to implement restorative justice, namely: (1) Dynamic communication between victims, perpetrators, and the community about the causes, circumstances surrounding the crime, the impact of the crime, and the needs of each party for crime resolution; (2) Identifying efforts to overcome both tangible and intangible losses caused by criminal acts; (3) Motivating perpetrators to take direct responsibility for their criminal acts to victims and the community; (4) Identifying the potential and seeking to prevent the division or alienation of perpetrators in the community (disintegration).²⁷

3.2. Social Reintegration Application of Restorative Justice

Indonesia boasts a rich tapestry of ethnicities, cultures, religions, and languages, which should ideally serve as the nation's asset and source of power. This diversity has the potential to cause disparities and tensions within society. Therefore, fostering social cohesion and reintegration becomes imperative to foster a sense of unity, peace, and communal well-being. The challenge of implementing the new National Criminal Code lies not only on the legal side but also involves better education and understanding among the public. People need to understand their rights and obligations and have the awareness to comply with the law. Collaboration and synergy between various parties will help build a strong, transparent, and accountable legal system. Through active participation and mutual support, the community can play a role in building a better justice system that ensures justice for all.

Restorative justice as a social movement is a loosely organized but sustained collective effort of individuals and groups seeking to change social structures, institutions, and individuals. Healing interpersonal wounds requires a commitment to changing the context in which they occur: the socio-historical conditions and institutions structured precisely to perpetuate the wounds. This commitment may mean viewing restorative justice not only as healing individual harm but also as transforming the social structures and institutions that cause massive harm. Not adopting a broader view risks that restorative justice offers a quick fix, addressing the symptoms but not the causes. The effectiveness of restorative justice hinges on its capacity to initiate significant changes within the system. Restorative justice can effectively repair damaged or broken relationships within organizations, as inspired by the principles of compassion or mercy.²⁸

Basically, public policies and the implementing regulations that follow them contain general directions and provisions that govern society. In this regard, all public policies and regulations require public support to be effective. Empirically, public rejection of a number of existing policies and regulations is mostly due to the lack of public involvement in the policy-making stage, such as Law No. 3 of 2020 on Mineral and Coal Mining, Law No. 4 of 2023 on Financial Sector Development and Strengthening, and Law No. 13 of 2022 on the Formation of Legislation. If this is left unchecked, the greater the desire of the people to always reform, but the people do not know the direction, so it will be easily out of control and emotional. People tend to want to form a forum with their own policies. As a result, conflicts arise that threaten

²⁷ Yordan Gunawan, 'Arbitration Award of ICSID on the Investment Disputes of Churchill Mining PLC v. Republic of Indonesia', *Hasanuddin Law Review*, 3.1 (2017), 14–26. <https://doi.org/10.20956/halrev.v3i1.948>

²⁸ Guglielmo Falchetta, 'When Relationships Are Broken: Restorative Justice under a Levinasian Approach', *Philosophy of Management*, 18.1 (2019), 55–69. <https://doi.org/10.1007/s40926-018-0094-1>

national unity. On the other hand, if openness and justice are always nurtured and considered, it will produce public policies and laws that govern society well.

Changes to the criminal code that have been in effect for more than a century in Indonesia can certainly lead to social disintegration. Therefore, social reintegration efforts are needed. Reintegration can be understood as an effort to rebuild social trust after social disintegration. Reintegration has various important goals for people in the social system, namely:

1. Restoring the situation

Reintegration is needed after social disintegration in the social system of society. Therefore, reintegration is needed to form a return to the original state or, as before, the conflict that caused social disintegration.

2. Fixing the Main Causes of Conflict

Various societal conflicts cause social disintegration and require a reintegration process to bring it back to its original state. This reintegration process can help to fix the main causes of conflict in various ways, for example, by conducting deliberations and making agreements between the parties experiencing social disintegration.

3. Realizing Social Integration

The purpose of reintegration is also to realize social integration. Social integration is the process of adjusting different elements in social life to produce a pattern of community life that has harmony in function. The reintegration process carried out later can help realize social integration so that social life can run normally in accordance with the goals to be achieved.

4. Building Trust

The social reintegration process is also carried out to build community trust in those who help achieve these goals, for example, from the government. Successful reintegration will help make social life return to normal without conflict. So, if a party can help this reintegration process, it will be able to build trust in the community that previously experienced social disintegration.

5. Improving the Security Situation

One of the causes of social disintegration is conflict between tribes, religions, and beliefs in society. This conflict will cause discomfort and insecurity in the community in a social system. The process of social integration aims to improve the security situation in society after the conflict that caused social disintegration. Social integration in communities experiencing conflict will help resolve conflicts and make people feel safe.

Social integration is the process of adjusting different elements in society into a harmonious whole. These different elements include differences in social position, race, ethnicity, religion, language, values, and norms. Social integration aims to achieve common goals, overcome social problems, and prevent conflict. Social reintegration is the process of rebuilding social trust after social disintegration. Social disintegration is the process of rift, division, or conflict in society due to rapid or unbalanced social change. Social reintegration aims to correct the main causes of conflict, establish new norms or values, and restore a peaceful and prosperous society.²⁹

²⁹ Rama Fatahillah Yulianto and Ali Muhammad, 'Eksistensi Institusi Pemasayarakatan Dalam Mewujudkan Reintegrasi Sosial Kepada Warga Binaan Pemasayarakatan', *Yustitia*, 7.2 (2021), 173–84. <https://doi.org/10.31943/yustitia.v7i2.139>

Efforts in resolving social conflicts and realizing social reintegration are (1) respecting others, namely recognizing and respecting the differences that exist between conflicting parties as part of the diversity of society; (2) Strengthening identity, namely building awareness and pride in self- and group identity as Indonesian citizens who have Pancasila as the basis of the state; (3) Conducting dialog and deliberation, namely conducting constructive and democratic communication between conflicting parties to find fair and peaceful solutions, (4) Resolving conflicts, namely taking legal action or enforcing justice against conflict perpetrators who violate the law or human rights. Social reintegration has a positive impact on society. The positive impacts include increasing the sense of unity and solidarity between different community members, increasing the sense of security and comfort in social life, increasing the sense of tolerance and mutual respect for differences in society, and improving the quality of life and general welfare of society.³⁰

The Dutch Criminal Code is a regulation that is time-limited in use, not eternal, only transitional, designed for a certain time and not for permanence. Therefore, the ratification of the law on the criminal code becomes very urgent as transitional rules are realized.³¹ The condition of national criminal law as a legacy of Dutch Colonialism is seen as not in line with the values of Pancasila so that efforts to reform criminal law continue to be voiced through reformulation of criminal law policies, namely (1) National criminal law reform is based on the objectives of Decolonization through "recodification", democratization of criminal law, consolidation of criminal law to avoid norm clashes, adaptation and harmonization of criminal law in accordance with the development of criminal law science (2) Transformation of Pancasila ideas/paradigms/values can be pursued through a penal reform strategy that requires: Identification of problems in the form of assessment of old norms that are considered no longer in accordance with the social conditions of society, Reevaluating the basic ideas/values behind the old article (ideas/paradigms of individualism/liberalism) and changing/replacing them by applying the ideas/paradigms/values of Pancasila and transforming Pancasila values into the formulation of new articles and revoking the formulation of ideas/paradigms of values contained in the old article.³²

The establishment of national criminal law is based on the objectives, namely (1) Decolonization through "recodification" which is considered not in accordance with the noble values of the Indonesian nation (2) Democratization of criminal law aims to protect human rights from abuse of power (3) Consolidation of criminal law which results in legal unification and to avoid clashes of norms (4) Adaptation and harmonization of criminal law with several legal changes that occur both as a result of the development of criminal law science and the development of values, norm standards recognized by civilized nations in the international world.³³

Restorative justice practices seek to restore broken relationships, shift from confrontation to conciliation, and involve alternative dialogic practices. These practices were developed

³⁰ Muhamad Haris Aulawi and others, 'Governing Indonesia's Plan to Halt Bauxite Ore Exports: Is Indonesia Ready to Fight Lawsuit at the WTO?', *Bestuur*, 11.1 (2023), 26–42. <https://doi.org/10.20961/bestuur.v11i1.69178>

³¹ Akhmad Khalimy, 'Makna Aturan Peralihan Sebagai Politik Hukum RUU KUHP (Transformasi Dari Hukum Kolonial Ke Hukum Nasional)', *Jurnal Hukum Progresif*, 8.2 (2020), 121–36. <https://doi.org/10.14710/jhp.8.2.121-136>

³² Ade Mahmud, 'Transformasi Nilai-Nilai Pancasila Dalam Pembaharuan Hukum Pidana Nasional', *Jurnal Hukum Mimbar Justitia*, 4.1 (2018), 1–21. <https://doi.org/10.35194/jhmj.v4i1.352>

³³ Andi Lala, 'Implementasi Nilai Kemanusiaan Yang Adil Dan Beradab Dalam Pembangunan Hukum Pidana Nasional', *Syntax Literate*, 4.5 (2019), 1–13. <https://doi.org/10.36418/syntax-literate.v4i5.604>

pragmatically to stop violence and crime and repair damage and disorder. This has developed as a reaction to the dominating retributive justice paradigm. Retributive justice is institutionalized and aims to reduce crime through deterrence, sanctions, and incapacitation. The conception of restorative justice includes encounters, reparative, and transformative. Forms include restitution, circles, conferences, rituals, and courts. It can occur at local, national, and international levels and in mixed and hybrid forms. Further research, theory, and experimentation can strengthen restorative justice practices for crime prevention, healing social relations, and contributing to justice as the foundation for a more peaceful society.³⁴ Memory reconsolidation processes are a unique tool in the restorative justice 'black box.' While the use of restorative justice in Western criminal justice systems is routine for minor offenders, greater attention should be paid to victim-focused models as a result of traumatically experienced criminal offenses, including post-conviction practices.³⁵

The implementation of restorative justice should also take into account the process of social reintegration in the community. Since 2009, more than 300 Somali pirates have been prosecuted and imprisoned in East Africa using the United Nations Office on Drugs and Crime (UNODC) "regional model for prosecuting pirates." Most of these pirate prisoners have been repatriated to Somalia and are scheduled to complete their sentences and return home within the next five years. However, members of Somalia's coastal communities continue to express anger and resentment towards the former pirates, raising questions about the feasibility of reintegration. Previous counter-piracy programs have helped foster an anti-piracy environment that may have also inadvertently created barriers to the reintegration of former pirates.³⁶ The use of Restorative Justice as a process within the criminal justice system has led to the development of restorative cultures in a wide variety of settings through the implementation of restorative practices. This has identified the importance of ensuring that basic values and principles are adhered to when restorative practices are offered to an increasingly wide range of environments.

3.3. Application of Restorative Justice in Court Decisions

The development and dynamics of society are very complex. This complexity also includes law enforcement in Indonesia. There are so many problems: firstly, prison overcapacity; secondly, the handling of minor offenses and legal action against children; and narcotics problems are a series of problems that exist in Indonesia. Restorative Justice is here to make a difference in all these legal issues.³⁷ Restorative justice aims to restore the status and heal the relationships and wounds of victims and the wider community following ethical violations. A

³⁴ Yordan Gunawan and Yovi Cajapa Endyka, 'The Protection of Small and Medium Enterprises in Yogyakarta: The Challenges of ASEAN Economic Community', *Pertanika J. Soc. Sci. & Hum*, 25 (2017), 199-206.

³⁵ Jane Bolitho, 'Inside the Restorative Justice Black Box: The Role of Memory Reconsolidation in Transforming the Emotional Impact of Violent Crime on Victims', *International Review of Victimology*, 23.3 (2017), 233-55. <https://doi.org/10.1177/0269758017714549>

³⁶ Brittany V Gilmer and Britanee E Kane, 'Counter Piracy Programming and Potential Barriers to Reintegrating Somali Pirates: An African Restorative Justice Critique', *International Journal of Law, Crime and Justice*, 58 (2019), 12-21. <https://doi.org/10.1016/j.ijlcrj.2019.07.002>

³⁷ Hariman Satria, 'Restorative Justice: Paradigma Baru Peradilan Pidana', *Jurnal Media Hukum*, 25.1 (2018), 111-23. <https://doi.org/10.18196/jmh.2018.0107.111-123>

just culture approach needs to provide these foundations for a truly just safety culture conducive to safety reporting, engagement, and improvement.³⁸

Restorative justice offers a different approach to responding to moral harm. Its core values emphasize volunteerism, safety, inclusion, dignity, respect, responsibility, accountability, truth-telling, and honesty. This approach focuses on addressing harm, offering people who have committed or been harmed by a crime the opportunity to safely discuss the nature and consequences of the offense, ask questions, provide answers, and agree on what to do to make amends and avoid further harm. It draws a distinction between dialogue and deliberation in restorative justice practice, explores the role of restorative justice in enabling reparation, rehabilitation, avoidance, and restoration, and critically reflects on the importance of context in relation to restorative justice and practice frameworks more generally.³⁹

From the rise of restorative justice to evidence-based approaches to reducing recidivism, the intellectual landscape of criminal justice has undergone many changes in recent decades. The result is that more and more countries are tackling the task of transforming pre-existing political institutions to confirm these new understandings. This is, of course, not easy. Many challenges confront willing policymakers, a reality that often puts philosophy at odds with practicality. Moreover, the process of political change is subject to the influence of cultural and institutional norms.⁴⁰

Restorative justice is an approach that focuses more on the conditions for creating justice and/or balance for the community with a method of restoring justice that actively involves offenders, victims, and their communities in the criminal process. This indicator is measured by comparing the number of cases resolved with restorative justice with the number of cases that can be resolved with restorative justice.

Table 1. Percentage of Decisions that Use Restorative Justice Approach in the Supreme Court

Performance Indicators	Target	Realizations	Achievements				
			2022	2021	2020	2019	2018
Percentage of decisions that use a restorative justice approach in the Supreme Court	4%	1.16%	28,92	166,5	107,5	128,5	79,08

The number of cases that can be resolved with restorative justice is 64,483 and those resolved with restorative justice are 746 so that the realization is 1.16% with an achievement of 28.92%. The percentage of decisions using a restorative justice approach in the Supreme Court is lower than last year because the measurement in 2021 was only taken from juvenile criminal cases, while the measurement in 2022 also measured minor crimes, namely theft, fraud, embezzlement and hoarding with criminal threats regulated in Articles 364, 373, 379, 384, 407,

³⁸ Sidney W A Dekker and Hugh Breakey, "Just Culture: Improving Safety by Achieving Substantive, Procedural and Restorative Justice", *Safety Science*, 85 (2016), 187-93. <https://doi.org/10.1016/j.ssci.2016.01.018>

³⁹ Steve Kirkwood, 'A Practice Framework for Restorative Justice', *Aggression and Violent Behavior*, 63 (2022), 101688 <https://doi.org/10.1016/j.avb.2021.101688>

⁴⁰ Taufik Mohammad, Azlinda Azman, and Ben Anderstone, 'The Global Three: A Malaysian Lens on the Challenges and Opportunities Facing Restorative Justice Planning and Implementation', *Evaluation and Program Planning*, 72 (2019), 1-7. <https://doi.org/10.1016/j.evalprogplan.2018.09.007>

and Article 482 of the Criminal Code with a loss value of no more than IDR 2,500,000. Although the value of the loss is less than IDR 2,500,000, there is still a legal process in court using the speedy trial system. Actions categorized as minor crimes can be resolved with restorative justice.

Table 2: Criminal Cases that Can be Resolved with Restorative Justice

Number	Case Classification	Remaining Initial	Go to	Caselo ad	Disconnect	Remaining Now
1	Crimes against public order	63	434	497	440	57
2	Crimes against the origin of marriage	4	67	71	67	4
3	Crime of Gambling	438	4,639	5,077	4,254	823
4	Crimes/leaving people who need help	-	4	4	4	-
5	Crime/insult	9	71	80	60	20
6	Crime/persecution	742	5,906	6,648	5,987	661
7	Crime/theft	2,824	24,827	27,651	24,642	3,009
8	Crime of harming a debtor or person with rights	2	4	6	6	-
9	Crime of Property Damage	62	346	408	337	71
10	Occupational crime	5	5	10	7	3
11	Narcotics	3,227	21,628	24,854	21,557	3,297
12	Miscellaneous	300	2,523	2,823	2,320	503
13	Traffic	174	1,372	1,546	1,372	174
14	Domestic Violence	146	1.180	1,326	1,178	148
15	Taking or Possessing Property of Another	3	7	10	8	2
16	Unauthorized House Occupancy	4	3	7	7	-
17	Unpleasant Actions	16	99	115	98	17
18	Brawling Causing Minor Injury, Serious Injury	194	1,566	1,760	1,558	202
19	Defamation	15	55	70	61	9
20	General Criminal/performing Illegal Transportation Services	-	1	1	-	1
21	Threatening	30	220	250	226	24
22	Violations	1	3	4	2	2
23	Crime/Fraud	45	182	227	191	36
24	Public Order Violations	1	14	15	13	2
25	Offenses against public authorities	-	1	1	1	-
26	Land, Plant and Yard Violations	13	43	56	45	11
27	Population Administration	1	26	27	22	5
28	Local Taxes and Retribution	4	17	21	20	1
		8,322	65,242	73,565	64,483	9,082

Restorative justice is any action to establish justice by repairing the damage caused by a criminal offense. Restorative justice bases the type of punishment on community service, compensation, and other forms of punishment other than imprisonment by allowing the convicted person to remain active in society.

Restorative justice and social reintegration are innovative approaches to criminal justice that emphasize repairing the harm caused by crime, rather than solely punishing the offender. These strategies focus on the needs of the victims, the community, and the offenders themselves, aiming to promote healing and reduce recidivism. Implementing these approaches involves several steps, requires diverse resources, and faces specific challenges. Implementing restorative justice and social reintegration requires careful planning, significant resources, and ongoing commitment to overcoming challenges. However, the potential benefits, including reduced recidivism, community healing, and more effective reintegration of offenders, can contribute significantly to a more holistic and humane justice system.

Restorative justice methods are influenced by the legal customs, political legacies, and identities within the criminal justice frameworks where they originate. Our proposal advocates for a method of implementing restorative justice techniques rooted in comparative criminology, traditions of restorative justice, and legal customs. This proposition not only contributes theoretically to the field but also holds practical implications for designing public policies.⁴¹

Substantial advancements have occurred in various nations regarding engaging communities in risk management, as well as overseeing and reintegrating offenders back into society. Specifically, designed community-based initiatives and programs have been established for juvenile offenders, significantly contributing to deterring delinquency and aiding in their successful social reintegration. Many of these programs rely on the expertise of trained community volunteers. Attaining positive reintegration outcomes for young offenders involves a comprehensive approach that addresses various factors influencing them, while also meeting their physical and social needs. Following a post-care strategy, numerous interventions can be employed to support the reintegration of juvenile offenders into their families and communities. When detained, these offenders can receive support upon release, facilitating their challenging transition and ensuring community readiness to accept them. Throughout these scenarios, restorative justice emerges as a highly beneficial component.

The four challenges facing restorative justice in the future are issues relating to the definition, institutionalization, displacement and relevance of Restorative Justice practices.⁴² The definition of restorative justice continues to evolve. Restorative Justice is conceptualized as a set of practices that involve face-to-face interactions between victims, offenders, and other parties. Restorative Justice also deals with the increasing issue of institutionalization as a way to better meet the needs and recovery of victims as well as offender accountability and reintegration.⁴³

⁴¹ Ariefulloh Ariefulloh and others, 'Restorative Justice-Based Criminal Case Resolution in Salatiga, Indonesia: Islamic Law Perspective and Legal Objectives', *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 23.1 (2023), 19–36. <https://doi.org/10.18326/IJTIHAD.V23I1.19-36>.

⁴² Pangestika Rizki Utami, 'Konsep Diversi Dan Restorative Justice Sebagai Pergeseran Tanggung Jawab Pidana Pada Sistem Peradilan Pidana Anak', *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 1.1 SE-Articles (2018), 95–106. <https://doi.org/10.24090/volksgeist.v1i1.1691>.

⁴³ Sukardi Sukardi and Hadi Rahmat Purnama, 'Restorative Justice Principles in Law Enforcement and Democracy in Indonesia', *Journal of Indonesian Legal Studies*, 7.1 (2022), 155–90. <https://doi.org/10.15294/jils.v7i1.53057>.

The extent to which these issues are actively incorporated into restorative processes is the subject of controversial debate, with restorative justice being positioned as 'an easy way out for perpetrators and risky for victims and as a genuinely desirable avenue for justice that is less traumatizing and gives survivors a greater voice. However, it requires very specific procedures to protect consent and specialist service providers equipped to recognize and address coercive tactics and other indicators of power differentials occurring in the process.⁴⁴

The role of social dialogue has proven effective in encouraging social harmony, peace and social reconciliation. An example is the case in Nepal, namely between former combatants and community members. Social dialogue is also used in other countries to reconcile formerly hostile groups into the same community.⁴⁵ However, restorative justice has also received significant criticism, for example in cases of sexual violence. Evaluation of restorative justice programs for crimes of sexual violence and family violence is needed. Evaluation of restorative justice programs that accept cases of sexual violence and family violence is an urgent matter.⁴⁶

By critically exploring Restorative Justice practices through a gender lens. There are issues of power and control in Restorative Justice conferences used against girls who commit offenses.⁴⁷ Although practitioners argued that the dynamics of power and control between victims, perpetrators, supporters and facilitators were neutralized during the conference, due to the Restorative Justice script, the girls' experiences increasingly demonstrated an opposing perspective.⁴⁸ The experience of the dynamics of power and control that occur in the Restorative Justice conference arena challenges practitioners' opinions regarding Restorative Justice as a neutral process.⁴⁹

A 'just' culture aims to respond to concerns about an error-free approaches on the one hand and concerns about people's continued willingness to report safety-related issues on the other. A just culture establishes conditions that legitimize managerial intervention in sanctioning or returning individuals to the organization. Moral and safety issues need to be considered. This includes substantive justice, which regulates how the rules, regulations, and procedures themselves are fair and legal; procedural justice, which establishes a process for determining regulatory violations, provides protection for defendants, and regulates who should make those decisions; and restorative justice which aims to restore the status of the individuals

⁴⁴ Shirley Jülich and Natalie Thorburn, 'Sexual Violence and Substantive Equality: Can Restorative Justice Deliver?', *Journal of Human Rights and Social Work*, 2.1 (2017), 34–44. <https://doi.org/10.1007/s41134-017-0029-0>

⁴⁵ Bambang Tri Bawono and Henning Glaser, 'The Urgency of Restorative Justice Regulation on Hate Speech', *Bestuur*, 11.2 (2023), 364–83. <https://doi.org/10.20961/bestuur.v11i2.82508>.

⁴⁶ Daye Gang and others, 'A Call for Evaluation of Restorative Justice Programs', *Trauma, Violence, & Abuse*, 22.1 (2019), 186–90. <https://doi.org/10.1177/1524838019833003>

⁴⁷ I. Gede Adhi Mulyawarman, Putu Gede Arya Sumerta Yasa, and Lamberton Cait, 'Blocking Dangerous Content in Electronic Communications Networks: Evidence from Netherlands, United States and Singapore', *Journal of Human Rights, Culture and Legal System*, 4.1 (2024), 237–62. <https://doi.org/10.53955/jhcls.v4i1.216>.

⁴⁸ Tongat Tongat, 'Death Penalty in Indonesia: Between Criminal Law and Islamic Law Perspectives', *Legality: Jurnal Ilmiah Hukum*, 32.1 (2024), 90–104. <https://doi.org/10.22219/ljih.v32i1.32335>.

⁴⁹ Jodie Hodgson, 'Offending Girls and Restorative Justice: A Critical Analysis', *Youth Justice*, 22.2 (2020), 166–88. <https://doi.org/10.1177/1473225420967751>

involved and restore relationships and the pain experienced by victims and the wider community.⁵⁰

The tradition of restorative justice is a characteristic of civil law legal systems and common law legal systems. Restorative justice practices are shaped by the legal culture, political traditions, and criminal justice identity of the systems in which they develop. This approach to transferring restorative justice practices is based on comparative criminology, the restorative justice tradition, and legal culture, making theoretical contributions to the field, as well as having practical implications at the level of public policy design.⁵¹

4. Conclusion

The Dutch criminal code has been in force in Indonesia since 1918, or 105 years to date. The spirit of the renewal of the codification of Indonesian criminal law is a reformative, progressive, and responsive law change. One of the strengths of criminal law is the regulation of criminal law from the perspective and achievement of justice to repair and restore the situation after the event and judicial process known as restorative justice. Changes in criminal law arrangements that have been going on for a long time have caused pros and cons in society. Indonesia is a country with a diversity of ethnicities, cultures, religions, and languages. This diversity should be the wealth and strength of the nation, but it can also lead to differences and social conflicts. Social reintegration is the process of forming new norms or values as a form of adjustment to institutions or organizations that have undergone changes. A social reintegration program is needed in the application of restorative justice, which must be supported by the community and all law enforcement officials.

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⁵⁰ Mohammad Hazyar Arumbinang, Yordan Gunawan, and Andi Agus Salim, 'Prohibition of Child Recruitment as Soldiers: An International Regulatory Discourse', *Jurnal Media Hukum*, 30.1 (2023), 21–32. <https://doi.org/10.18196/jmh.v30i1.19322>

⁵¹ Alejandra Díaz Gude and Iván Navarro Papic, 'Restorative Justice and Legal Culture', *Criminology & Criminal Justice*, 20.1 (2018), 57–75. <https://doi.org/10.1177/1748895818796549>

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