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New Directions for Criminal Law Politics Post-National Criminal Code Law: Between Restorative and Retributive Justice

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Abstract: The enactment of Law Number 1 of 2023 concerning the National Criminal Code (KUHP) marks a historic moment in Indonesian criminal law politics. This regulation represents a "decolonial" effort to replace the Dutch-inherited Criminal Code (Wetboek van Strafrecht) with a criminal law system rooted in the Pancasila philosophy and Indonesian values. The most fundamental change lies in the shift in the sentencing paradigm, from one originally oriented towards retributive justice (retribution) to an approach that balances corrective, rehabilitative, and restorative justice. This new approach aims to redefine the relationship between the state, perpetrators, and victims, with a focus on recovery. This study aims to analyze the new direction of Indonesian criminal law politics following the enactment of the National Criminal Code, conceptually comparing the principles of retributive justice in the old Criminal Code with the restorative justice approach in the new Criminal Code, and identifying implementation challenges in this transitional sentencing paradigm. This study uses a normative juridical method. Using a legislative and historical approach, a comparative analysis of the philosophy, principles, and norms of punishment contained in the old Criminal Code and Law No. 1 of 2023 was conducted to map the transformation of criminal law policy. It was found that the National Criminal Code explicitly abandons the philosophy of *lex talionis* and adopts a more humanistic goal of punishment, reflected in the criminal provisions and actions. Restorative justice is positioned as a complement to the conventional justice system, emphasizing the restoration of victims' losses and the social reintegration of perpetrators, rather than as a complete substitute for retributive justice. This creates a constructive tension, requiring law enforcement officials to make contextual choices between punitive and restorative approaches, rather than adopting a single approach. The greatest challenge lies not in the legal text, but in changing the culture and paradigm of law enforcement officials who have long been accustomed to a retributive system. The National Criminal Code inaugurates a more progressive criminal law policy by placing restorative justice as one of its main pillars. However, its successful implementation depends heavily on cultural transformation within law enforcement. It is recommended that the government prioritize a massive, ongoing socialization and training program for judges, prosecutors, and police to internalize this new paradigm, and encourage legal education institutions to reform their curricula.

Keywords: Criminal Law Policy, National Criminal Code, Restorative Justice, Retributive Justice, Legal Reform

INTRODUCTION

Confirmation Constitution Number 1 of 2023 concerning the National Criminal Code (KUHP) marks most important milestones in history Indonesian law after independence. Products law This is peak from effort long during dozens year (Reksodiputro 2009) for replace Wetboek van Strafrecht for Nederlansch Indie (WvS NI) Staatsblad 1915 No. 732 (Moeljatno 2019), inheritance Dutch colonialism which during more from One century become base law criminal law in Indonesia. The birth of the new Criminal Code This is manifestation from aspirations decolonization (Jimly Asshiddiqie 2014), namely liberation system law Indonesian criminal law from values colonial (Fajar Keadilan 2025) which is considered stiff and not in accordance with Pancasila philosophy and sense of justice dynamic society.

In a way philosophical colonial Criminal Code rooted in positivism law and doctrine criminalization retributive (Muladi & Arief, 1984), which places criminal as form revenge absolute on actions perpetrator. Orientation This prioritize certainty formal law (Tarigan et al., 2024), but often ignore context social opportunities rehabilitation perpetrators and recovery victim's losses. As a result the system Indonesian criminalization during dozens year face problematic serious one of which is institutional overcapacity overcrowding (Kemenkumham 2021), which shows limitations approach retributive pure in answer need justice substantive.

In context political law criminal contemporary Indonesia today move from paradigm single focused on retaliation (*lex talionis*) towards paradigm multidimensional which emphasizes function corrective rehabilitative and restorative. Shift This reflect commitment ideological for put mark humanity and Pancasila as basic norm new in system law criminal national. One of the the most important form from decolonization ideological This is development of the Principle of Legality which does not Again limited to formal aspects (only Constitution written), but also includes the Principle of Legality Material (UAD Law, 2023), which recognizes the validity of " living law " in society " (living law). This in line with Mufti Khakim's view (2022) confirms this that apparatus enforcer law must more sensitive and responsive against the living law that is developing in the midst of public.

With existence transformation philosophical and normative so significant appearing need urge for do study critical to implications policy law criminal new national this. Based on background behind said research This formulate three problem main. First how direction new political law Indonesian criminal law after the ratification of the National Criminal Code reflects shift philosophical from orientation retributive going to integration justice restorative. Second how does Law No. 1 of 2023 normative adopt draft justice restorative and implementation non- punitive sanctions in the form of criminal action as complement for system retributive that has been there is. Third what just challenge the most pressing implementation issues facing apparatus enforcer law (APH) in balance paradigm retributive and restorative at the level practice.

In line with formulation problem said research This own three objective main. First to analyze direction new political law criminal national with placing the Criminal Code as instrument decolonization law and reflection Pancasila values. Second to do comparison comprehensive between principle retributive in the old Criminal Code with approach restorative in the new Criminal Code so that obtained understanding deep about shift paradigm. Third to identify various challenge transition both in terms of cultural and

institutional which is necessary overcome use ensure success implementation of the National Criminal Code effective and fair.

METHOD

Study This use type study law normative (juridical) normative) as stated by Amiruddin (2010) as well Soekanto and Mamudji (2001). Focus study law normative lies in the analysis norms laws principles and doctrine law (Zaelani 2023) which is stated in regulation legislation and literature law. With characteristic descriptive- analytical research This aim describe in a way appropriate phenomenon the law being studied in particular transformation paradigm criminalization from orientation retributive going to integration approach restorative (Sudarto 1981). Through approach this research expected capable display description comprehensive about dynamics change system criminalization in Indonesia in context of the National Criminal Code (Akbar, 2024).

For answer problems that have been formulated research This use three approach main mutual complement. First the approach statute approach, namely analysis systematic to provision in Constitution Number 1 of 2023, especially related articles with objective criminalization system sanctions in the form of criminal and action as well as other supporting provisions implementation justice restorative and aspects humanist (Amirudin & Asikin 2004; Muhammad, 2004). Second the approach conceptual (*conceptual approach*), namely analysis to concepts fundamentals that form framework renewal law criminal such as justice retributive justice restorative criminal action and philosophy political law criminal law (Sudarto 1981). Third the criminal approach historical approach which is used For browse root the philosophy of the old Criminal Code (Wetboek van Strafrecht) as product law colonial (Moeljatno 2019), at the same time compare it with runway the philosophy of the National Criminal Code which is based on values nationality.

As for the source material law in study This consists of on material primary, secondary and technical laws analysis of relevant data. Primary legal materials include Constitution Number 1 of 2023 concerning the National Criminal Code; Regulation Republic of Indonesia Police Regulation Number 8 of 2021 concerning Handling Action Criminal Based on Justice Restorative (Zaelani 2023); Regulation Republic of Indonesia Attorney General's Office Number 15 of 2020 concerning Termination Prosecution Based on Justice Restorative (Prosecutor's Office 2020); and the Director's Decree General of the General Court Number 1691/DJU/SK/PS.00/12/2020 and related PERMA guidelines application of restorative justice in the environment justice general (Supreme Court 2020). Meanwhile that material law secondary covers literature law journal scientific books text and results relevant research about renewal law criminal and philosophical criminalization in Indonesia (Muhammad, 2004).

Data analysis techniques used is analysis qualitative-normative. The data obtained from material law collected classified and processed in a way systematic logical and juridical (Muhammad, 2004). Furthermore the analysis done through interpretation law For browse transformation policy criminalization and building construction valid law and argumentative (Soekanto 2018). With method this research try produce analysis comprehensive about direction new political law Indonesian criminal law after the enactment of the National Criminal Code.

RESULTS AND DISCUSSION

Contrast Philosophy and Decolonization Criminal Law Politics

a. Dominance Retributive in the Criminal Code of Inheritance Colonial

The old Criminal Code (WvS) which has been in force in Indonesia since in 1918 in general fundamental dominated by Absolute Theory or Retributive (retribution) (Utrecht, 1994). In philosophy this the goal criminalization is fall appropriate sanctions with error perpetrator (*lex talionis*) (Muladi & Arief, 1984). System This focus on actions criminal (*actus reus*) as object main accountability criminal (Roeslan Saleh, 1983), with emphasis strong on certainty formal law (Tarigan et al., 2024). This model is artifacts law based on thought Flow 18th Century Classic and in general inherent nature positivistic legalistic (Fajar Keadilan 2025).

b. Rejection Single Levy and Mainstreaming Aspect Humanist

The National Criminal Code Law ends hegemony retribution single with in a way explicit adopt objective multidimensional criminalization including aspect corrective rehabilitative and restorative. New directions This realize more commitment big against Human Rights Human rights and dignity humanity.

One of proof normative most important is Article 52 of the National Criminal Code, which specifically firm state that criminalization No may demeaning dignity human dignity (Wiranata, 2024) and (Supreme Court 2025). Emphasis on human dignity This functioning as order normative for apparatus enforcer law For practice law humanistic criminal law. Other visible manifestations in reform criminal dead which is now positioned as criminal alternative (special), not criminal main (Wahyuni, 2024), as well as provisions that prioritize human rights aspects such as delay execution to Mother pregnant mother breastfeeding or sick people soul (Wahyuni, 2024).

Political steps the most fundamental law is change source law That Alone through expansion of the Principle of Legality. National Criminal Code, through confession against the Principle of Legality Material (UAD Law, 2023) force system justice criminal For involving self with norms dynamic and ethical social law held by Indonesian society (Living Law in Society).

Criminal **Law Politics** interpreted as policy base state administrators in field laws that will are and have been applicable which is sourced from values that apply in society For reach the desired goals of the state (Sudarto 1986). Marc Ancel (Ancel) defines penal policy as something knowledge at a time purposeful art practical so that the regulations law positive formulated in a way more OK. Sudarto (Sudarto) explained meaning political law as business realize good appropriate rules with conditions and situations in a time and for the future come (Sudarto).

This fundamental transformation can summarized in table comparative following:

Table I: Comparison Basic Philosophy of the Old Criminal Code and the National Criminal Code

Aspect Comparison	Old Criminal Code (WvS / WvS NI)	National Criminal Code (Law No. 1 of 2023)	Significance Transformation
Philosophy Criminalization Dominant	Retributive (Absolute Theory/ Retribution)	Balance (Corrective Rehabilitative Restorative)	Shift from suffering perpetrator to victim recovery and reintegration (Capera).
Main Principles of Law	The Principle of Formal Legality (Rigid Positivism) (Tarigan et al., 2024)	Principle of Legality Material (Recognizing Living Law) (UAD Law, 2023)	Decolonization efforts source law accommodating values Indonesianness.

Human Rights Status Man	Implied often neglected	Explicit (Criminal) dead alternative Article 52 concerning dignity humans) (Wahyuni, 2024)	Humanization system criminalization and respect for human rights.
Criteria Drop Criminal	Focus on <i>Actus Reus</i> (Act Criminal) (Saleh, 1983)	Focus on Context (<i>Mens Rea</i>), Social Factors, and Victim Impact (Article 54)	Mandatory justice contextual and broad judicial discretion.

2. Transformation of the Purpose of Criminalization and Discretion in the National Criminal Code

Multidimensional Objectives of Criminalization

The National Criminal Code changes orientation criminalization in a way radical. If previously criminal mainly intended For reply (Islamic University of Indonesia, 2023), now criminal must reach various purpose: to protect society preventing crime recovery losses experienced by victims, rehabilitate actors and define repeat broken relationship between the state, the perpetrator and the victim. The essence of transformation This is emphasis on recovery victim losses and reintegration social perpetrator.

3. Judicial Discretion and Contextual Justice (Article 54)

Change philosophical This codified in a way procedural through Article 54 of the National Criminal Code. Article This functioning as bridge normative that integrates objective retributive with objective restorative and rehabilitative requiring judges to apply *contextual proportionality*. In sentencing the judge is obliged to consider factors that go beyond calculation punishment pure (Article 54 of the Criminal Code), including:

1. Form error perpetrator Action Crime and attitude inner perpetrator (Saleh, 1983).
2. Motives and goals do Action Criminal as well as method do it.
3. Attitudes and actions perpetrator after do Action Criminal such as regret or effort For restore loss.
4. Life history circumstances social and circumstances economy perpetrator Action Criminal.
5. Influence criminal towards the future perpetrator Action Criminal and influence Action Criminal towards the Victim or Victim's family (Wahyuni, 2024).

Harkristuti (Nasution et al., 2021) revealed that Article 54 of this give authority to the judge to handle case without give punishment or action certain with considering five factors. Obligations consider history life condition social and circumstances economy perpetrator (KUHP, Article 54) shows shift focus from " crime" what is done " to be " who does crime and why ". Article 54 of this give significant discretion to the judge to measure accountability criminal based on fault (*mens rea*) and context.

3. Restorative Justice and Criminal Action: Structural Integration

a. Position Justice Restorative: Complementary and Optional Contextual

Justice Restorative (RJ) in the National Criminal Code is positioned as complement important for system justice criminal conventional. The RJ principle which is defined as settlement case action criminal with involving perpetrators victims, families and other parties to look for recovery (Capera) and (UU No. 11 of 2012), implemented For cases certain. In particular general RJ is prioritized For Action Criminal Light (Tipiring) (Serui District Court 2023), case children (diversion) (Muladi, 1995), women who are facing with law (Muladi, 1995), and cases abuse narcotics (Serui District Court 2023).

This integration cause *tension constructive* demanding apparatus enforcer law For make choice contextually wise whether case need approach punitive (retributive) or approach restorative (Supreme Court 2025).

b. Procedural Legitimacy of RJ at the Practical Level

The implementation of RJ has own base strong procedural in various institution enforcer law Far before the National Criminal Code comes into effect effective (Zaelani 2023). The implementation of RJ is facilitated in three stage critical in the judicial process criminal (Supreme Court 2025):

1. **Investigation (Police):** Regulation Republic of Indonesia Police Regulation Number 8 of 2021 (Zaelani 2023) allows investigator stop the process if the victim and perpetrator reach agreement peace (Permadi 2025).
2. **Prosecution (Prosecutor's Office):** Regulation Indonesian Attorney General's Regulation Number 15 of 2020 regulates termination prosecution (*Deponering*) if achieved peace with focus on recovery (Rewang Plan 2023).
3. **Judiciary (Supreme Court):** Decisions and Regulations Supreme Court including the Director General's Decree Badilum No. 1691/DJU/SK/PS.00/12/2020 (Zaelani 2023) and PERMA 1/2024 (Santiarto 2024), arrange guidelines implementation of RJ. The Supreme Court is now required map success use justice restorative which indicates improvement formalities and recognition institutional to approach this (Santiarto 2024).

c. Criminal Action as a Restorative/Rehabilitative Instrument

Innovation structural key in the National Criminal Code is codification system sanctions dualistic: **Criminal** (punishment) imprisonment fines etc.) and Penal **Actions**. Criminal *Actions* which are regulated in Articles 103 to Article 111 (Smart Book 2025), is formal instruments for reach objective corrective and rehabilitative (Supreme Court 2025) and (Dandapala 2025).

Criminal Action functions as valve safety law giving option sanctions that are oriented towards recovery avoiding punishment prisons that are often counterproductive (Supreme Court 2025). Examples of actions include: surrender defendant to government or other parties (Article 109) (Supreme Court 2025) for interest the accused and the community as well as rehabilitation medical or social. System This in harmony with Spirit *therapeutic jurisprudence* (Permadi 2025).

Criminal Action plays a role important in overcome problem excess capacity institution *overcrowding* (community development). With offer legitimate non - imprisonment sanctions in a way law such as rehabilitation must for addict narcotics (Serui District Court 2023), the National Criminal Code provides road formal legal exit for judges to prioritize health public and recovery.

4. Cultural and Institutional Implementation Challenges

a. Cultural Resistance and Institutional Inertia

Although text law in the National Criminal Code has accommodate in a way comprehensive paradigm restorative and humanist the most crucial challenge lies in the dimension cultural and inertia institutional. Apparatus enforcer law enforcement (APH)—including judges, prosecutors, and police — has operating under philosophy rigid retributive during more from One century. Transition from *mindset* dominant punitive going to implementation justice contextual and restorative No can done only with change law (Rest Permadi 2025). There is risk resistance institutions that can cause field practice still dominated by old approaches.

Shift This demand APH to use profound and ethical discretion as required by Article 54 (KUHP, Article 54). If discretion This No accompanied with improvement integrity there is potential risk moral degradation of law enforcement law.

b. Need for Capacity Transformation and Harmonization

Success implementation of the National Criminal Code is very depends on the transformation widespread cultural awareness among APH (Suwardani 2025). Development Agency Human Resources (BPSDM) Law (Suwardani 2025) and the Supreme Court (Nur Amalia Abbas, 2025) have holding a *Training of Facilitator* (ToF) program for ensure common understanding related change fundamental including values corrective rehabilitative and restorative (Suwardani 2025).

Training This target spectrum wide starting from ranks Police Judicial Judge Prosecutor (Depok District Attorney 2024), until Organization Legal Aid (OBH) and the community root grass (Suwardani 2025). Broad socialization targets This is confession strategic that reform law must supported No only by subsystems legislative but also by subsystems cultural appropriate with system model law (Friedman, 2021).

However Thus it is necessary greater harmonization and synchronization strict inter-institutional (Police Prosecutor's Office Court). Although every institution has own internal regulations regarding RJ (Zaelani 2023), necessary existence guidelines consistent operations For ensure that mechanism restorative implemented in a way uniform and integrated in every stage justice criminal.

CONCLUSION

Based on results analysis can concluded that ratification Constitution Number 1 of 2023 concerning the National Criminal Code is milestone important in history law Indonesian criminal law that marks decolonization system law from inheritance *Wetboek van Strafrecht* colonial. Shift fundamental seen from domination paradigm previous retributive emphasize retribution and certainty formal law towards paradigm multidimensional integrating aspect corrective rehabilitative and restorative. Changes This No only expand horizon objective criminalization but also emphasizes respect to dignity human rights Humans as well as confession to living law in society (living law) as source valid law.

Transformation This reflected in codification norms including Article 52 which confirms prohibition degrading punishment dignity human repositioning criminal dead as criminal alternatives as well as Article 54 which provides discretion wide to the judge to evaluate case in a way contextual with consider aspect social economic psychological and rehabilitative perpetrator and the impact towards the victims. In addition integration justice restorative and criminal action become innovation structural expansion choice non- punitive sanctions at the same time overcome the problem of excess capacity institution correctional system. With Thus the National Criminal Code does not only function as formal regulations but rather as manifestation political law more criminal humanist inclusive and contextual.

However Thus the challenge big Still remaining at the level implementation. Resistance culture and inertia institutional among apparatus enforcer long - established law with paradigm retributive become obstacle serious. Change paradigm need transformation cultural improvement capacity as well as internalization values humanist and restorative through systematic education training and socialization. Harmonization inter-agency enforcer law also becomes need urge For ensure consistency application of restorative justice and criminal law actions throughout stages justice criminal.

With thus it can conclude that the National Criminal Code is instrument progressive and visionary law but his success very depends on commitment all parties especially apparatus enforcer law in implement paradigm new This in a way consistent and with integrity. Reform law criminal No only stop at change text law but must accompanied by with change culture law practice institutional as well as awareness collective public For make law criminal as means justice substantive protection right human rights and recovery social.

REFERENCES

- Akbar FMA (2024). QUALITATIVE AND QUANTITATIVE METHODS IN ISLAMIC STUDIES. *Ar Rasyiid: Journal of Islamic Studies* 2 (2), 95-112.
- Amirudin. (2010). *Introduction to Legal Research Methods*. Rajawali.
- Development Agency Human Resources for Law and Human Rights. (2025). *Ready Welcoming the New Criminal Code: BPSDM Conducts Legal Training Reliable Facilitator*.
- Capera, B. (2021). Justice Restorative As Paradigm Criminal Justice in Indonesia. *Lex Renaissance* 6 (2).
- Dandapala. (2025). *Justice Restorative Innovative Steps New National Criminal Law*.
- Dawn of Pancasila Justice: Reconstruction of the Human Spirit. (2025). *Supreme Court of the Republic of Indonesia*.
- Attorney's Office. (2024). *All Depok District Attorney's Office Prosecutors Participate Socialization of the New Criminal Code*.
- UAD Law. (2023). *Expansion of the Principle of Legality Formal To the Principle of Legality Material in the National Criminal Code: Controversy and its Existence*.
- Supreme Court of the Republic of Indonesia. (2020). Decree of the Director General of the General Court Number 1691/DJU/SK/PS.00/12/2020 concerning Enforcement Guidelines Implementation Justice Restorative.
- Supreme Court of the Republic of Indonesia. (2024). Supreme Court Regulation Number 1 of 2024 concerning Guidelines Implementation Justice Restorative in the Environment General Court.
- Supreme Court of the Republic of Indonesia. (2025). *Paradigm New National Criminal Code*.
- Supreme Court of the Republic of Indonesia. (2025). *Transformation System Justice Indonesian Criminal Law Through*.
- Moeljatno. (2019). Reform of the Criminal Procedure Code. *Proceedings homepage*.
- Muhammad, A. (2004). *Law and Legal Research*. Citra Aditya Bakti.
- Muladi, & Arief, BN (1984). *Theories and Policies Criminal*. Alumni.
- Muladi. (1995). *Selected Chapters on Criminal Law*. Diponegoro University Publishing Agency.
- Nasution, MI et al. (2021). Update System Criminalization in Indonesia: A Literature Review on the New Criminal Code. *Judge Journal* 9 (1).
- Serui District Court. (2023). *Justice Restorative (Restorative Justice)*.
- Regulation Prosecutor's Office Republic of Indonesia Number 15 of 2020 concerning Termination Prosecution Based on Justice Restorative.
- Regulation Republic of Indonesia National Police Regulation Number 8 of 2021 concerning Handling Action Criminal Based on Justice Restorative.
- Permadi R. (2025). *Transformation System Justice Indonesian Criminal Law Through the Supreme Court of the Republic of Indonesia*.
- Reksodiputro M. (2009). *Aligning Legal Reform*. National Law Commission of the Republic of Indonesia.
- Rewang Rancangan. (2023). *Justice Restorative As Paradigm Criminalization in Indonesia*.
- Saleh, R. (1983). *Deeds Criminal Procedure and Responsibility Criminal Law Two Basic Concepts in Criminal Law*. Akasara New.
- Santiarto HDB (2024). Getting to Know Updates Justice Restorative Justice in Court. *Supreme Court of the Republic of Indonesia*.
- Soerjono Soekanto & Sri Mamudji. (2001). *Normative Legal Research: A Review Short*. Raja Grafindo.
- Sudarto. (1981). *Selected Chapters on Criminal Law*. Alumni.

- Sudarto. (1986). *Law and Criminal Law*. Alumni.
- Suwardani GAP (2025). Ready Welcoming the New Criminal Code: BPSDM Conducts Legal Training Reliable Facilitator. *BPSDM Kemenkumham*.
- Mr (2021). Restorative Justice, A Solution to Overcapacity *South Sulawesi Ministry of Law and Human Rights Prison*.
- Tarigan EK et al. (2024). Review Juridical Comparison of the Old and New Criminal Code. *Juwarta: Journal of Law and Social Sciences* 18 (3), 590-604.
- Constitution Republic of Indonesia Number 1 of 2023 concerning the Criminal Code.
- Constitution Republic of Indonesia Number 11 of 2012 concerning System Justice Child Crime.
- Utrecht, E. (1994). *Series of Lectures on Criminal Law I*. Pustaka Tinta Mas.
- Wahyuni, L. (2024). Direction of Criminal Law Policy in Facing Implementation of the National Criminal Code in the Era of Disruption. *Jurnal Delicti: Kajian Hukum Pidana* 9 (1), 1-14.
- Wiranata, A. (2024). Digging The Substance of Restorative Justice in Law Law Number 1 of 2023 concerning the Criminal Code. *Journal Rechtsidee* 11 (1).
- Zaelani. (2023). Justice Restorative As Criminal Law Policy. *Indonesia Contemporary Law Review* 4 (2), 1-20.