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**Transformation of Indonesian Criminal Justice Paradigm: Analysis of the
Integration of Restorative Justice Principles in the National Criminal Code (Law
No. 1 of 2023)**

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ABSTRACT

This article explores the paradigm shift of criminal justice in Indonesia from a retaliatory approach to a restorative approach through the passage of the National Criminal Code Law No. 1 of 2023. This research applies a normative legal method with an approach to regulations and concepts. The findings of the study show that the 2023 National Criminal Code has adopted the principles of restorative justice through the revision of the purpose of punishment in Article 51, the introduction of a diversion mechanism in Article 112, and the strengthening of the victim's position in the criminal justice process. This shift signifies a fundamental change from a retributive paradigm to a restorative paradigm that emphasizes healing of victims, rehabilitation of perpetrators, and restoration of social relations. The implementation of this new paradigm requires the support of implementing regulations, increased human resource capacity, and changes in legal culture in the community so that the effectiveness of criminal justice practices in Indonesia can be guaranteed.

Keywords: Paradigm Transformation, Criminal Justice, Restorative Justice Principles, KUHP

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LEX JOURNAL: LAW & JUSTICE STUDIES

1. INTRODUCTION

The criminal law system in Indonesia is entering a phase of fundamental change with the approval of the National Criminal Code through Law Number 1 of 2023, which will be implemented in 2026 (Law number 1 of 2023). This change represents a paradigm shift from the punitive approach that has existed since the colonial period to a restorative approach, which is more focused on restoring social connections and solving problems as a whole (Zehr, 2015).

The punitive paradigm that has been at the core of the criminal law system in Indonesia emphasizes revenge on the perpetrator through the enforcement of penalties that are proportional to the act committed (Muladi & Nawawi 2018). Although this method provides legal guarantees and has a deterrent effect, it has shown shortcomings in solving social problems as a whole and reducing the rate of reoffending (Angkasa, 2010).

Restorative justice, as a different model, provides a more comprehensive way of involving victims, offenders, and communities in the problem-solving process (Johnstone, 2021). This approach has shown successful results in various countries around the world, such as New Zealand, Canada, and several European countries (Daly, 2017).

This research aims to evaluate the way the 2023 National Criminal Code incorporates restorative justice principles as well as analyze its impact on the shifting criminal justice system in Indonesia. The importance of this research lies in the need to understand the fundamental changes that will affect criminal justice practices in Indonesia over the next decade.

2. RESEARCH METHODS

This research applies a qualitative approach in normative legal research method. Data was obtained by conducting a literature study of primary legal sources such as laws and regulations, as well as secondary legal sources such as books and scientific journals,

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E-ISSN: 2580-9113

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LEX JOURNAL: LAW & JUSTICE STUDIES

and also tertiary legal materials such as legal dictionaries and encyclopedias (Soekanto & Mamudji, 2020).

The approaches applied include: (1) a statutory approach to examine the provisions in the 2023 National Criminal Code; (2) a conceptual approach to investigate the idea of restorative justice; (3) a comparative approach to evaluate comparisons with legal systems from other countries; and (4) a historical approach to explore the historical development of the criminal law system in Indonesia. Data analysis is conducted using a qualitative approach that utilizes systematic interpretation, purpose, and in-depth analysis to create a comprehensive understanding of the changing paradigm of criminal justice in Indonesia (Marzuki, 2019).

3. DISCUSSION

Characteristics of the Retributive Paradigm in the Indonesian Criminal Law System

a. Colonial Legacy and Retaliation Orientation

Indonesia's criminal justice system, derived from the Dutch colonial legacy, reflects Continental European retributive thinking in the 19th century (Hamzah, 2020). The Criminal Code, implemented since 1946, adopts traditional principles that emphasize the balance between the criminal act and the punishment meted out, based on the theory of absolute retribution (Moeljatno, 2017). The main characteristics of the retributive paradigm include: (a) a focus on the offender; (b) a retributive character where punishment serves as a form of retribution; (c) the existence of a structured system of sanctions based on how serious the act is; and (d) low attention to victims who only serve as witnesses (Atmasasmita, 2017).

b. Limitations of the Retributive Paradigm

According to Muladi (2016), an evaluation of the criminal justice system in Indonesia shows several weaknesses in the retributive approach: First, the inability to reduce the recidivism rate. Data from the Directorate General of Corrections shows that the rate of criminal recidivism remains high, ranging from 15-20% during the

Available online: <http://ejournal.unitomo.ac.id/index.php/hukum>

E-ISSN: 2580-9113

P-ISSN: 2581-2033

LEX JOURNAL: LAW & JUSTICE STUDIES

2015-2020 period (Directorate General of Corrections, 2021). Second, the neglect of victims during the judicial process. In a retributive system, the state is considered the aggrieved party, while the need for physical, psychological, and material recovery of victims often does not receive the attention it should (Sahetapy, 2015). Third, prison overcrowding. The focus on prison sentences has resulted in some correctional institutions in Indonesia experiencing overcapacity of up to 200% (Angkasa, 2010). Fourth, communities are alienated from the dispute resolution process. Retributive thinking considers conflict as a government problem, so people lose their contribution in resolving the issues they face (Christie, 2016).

Integration of Restorative Justice Principles in the National Criminal Code 2023

a. Coordination in Inquiry and Investigation

1) Transformation of the Purpose of Punishment

The most fundamental change in the 2023 National Criminal Code can be seen from the rearrangement of the objectives of punishment in Article 51, which states:

"Punishment aims to:

- (1) To prevent the commission of criminal offenses by enforcing the rule of law for the protection of society;
- (2) To socialize the convict by guiding so that he/she becomes a good and useful person;
- (3) To resolve conflicts caused by criminal offenses, restore balance, and bring a sense of peace in society; and
- (4) Relieve the guilt of the convict."

This formulation illustrates the incorporation of the restorative paradigm with a focus on conflict resolution, restoring balance, and establishing peace within the community. The goal of "removing guilt from the convicted party" reflects a more humanitarian and rehabilitation-oriented method (Mahmud et al., 2023).

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E-ISSN: 2580-9113

P-ISSN: 2581-2033

LEX JOURNAL: LAW & JUSTICE STUDIES

2) Diversion Mechanism and Penal Mediation as Restorative Justice Instruments

The 2023 National Criminal Code in Article 112 introduces the notion of diversion as "the transfer of the settlement of criminal cases from the criminal court to a channel outside the criminal court" (Law number 1 of 2023). The diversion process can be used for crimes that have a maximum prison sentence of 7 (seven) years, provided that:

- a) The criminal offense does not result in the death of the victim;
- b) Not committed repeatedly;
- c) The value of the loss does not exceed a certain amount; and
- d) The criminal offense is not a criminal offense whose punishment is determined as a special minimum.

Diversion involves victims, perpetrators, family members, and community leaders in resolving conflicts by dialoguing, mediating, or holding deliberations. This process aims to obtain an agreement that is able to recover the losses suffered by the victim and avoid the occurrence of similar crimes in the future. Penal mediation is a mechanism for resolving criminal cases through mediation between perpetrators and victims. Although there is no specific article regulating penal mediation in the 2023 National Criminal Code, the principle of penal mediation can be accommodated through:

Article 132, paragraph (1) letter g: Which allows the termination of prosecution if there is a settlement outside the judicial process. Article 54 paragraph (1) letter j and k: Which requires judges to consider forgiveness from victims and legal values that live in the community in the sentencing process. The implementation of penal mediation is also supported by Prosecutor's Regulation No. 15 of 2020 and National Police Regulation No. 8 of 2021 on Handling Crimes Based on Restorative Justice.

Available online: <http://ejournal.unitomo.ac.id/index.php/hukum>

E-ISSN: 2580-9113

P-ISSN: 2581-2033

LEX JOURNAL: LAW & JUSTICE STUDIES

3) Strengthening the Role of Victims

The 2023 National Criminal Code emphasizes more attention to victims through several provisions: First, the right for victims to obtain compensation (Article 149), which may include reimbursement of treatment costs, loss of income, or legal fees incurred by the victim (Law number 1 of 2023). Second, active involvement of the victim in the diversion process to reveal the effects of the crime experienced, as well as the expected recovery needs (Law No. 1 of 2023). Third, there is more comprehensive legal protection through cooperation with institutions that protect victims as well as witnesses.

4) Expansion of Alternative Sanctions

The 2023 National Criminal Code expands the types of alternative sanctions that are more in line with the principles of restorative justice, including:

- a) Social work punishment that involves the offender in activities that benefit the community;
- b) Supervision punishment that allows offenders to continue to carry out socio-economic activities with supervision;
- c) Fines that can be adjusted to the economic capacity of the perpetrator;
- d) Revocation of certain rights proportional to the type of criminal offense.

b. Implication of Paradigm Transformation

1) Normative Implication

The transformation of the perspective on criminal justice requires adjustments to several supporting regulations: First, changes need to be made to the Criminal Procedure Code to accommodate diversion and restorative justice systems during the investigation, prosecution, and trial processes (Harahap, 2023). Second, it is necessary to draft a government regulation containing guidelines for diversion, which explains the procedures, criteria, and mechanisms for implementing diversion (Fatoni, 2023). Third, a standard operating procedure (SOP) for

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E-ISSN: 2580-9113

P-ISSN: 2581-2033

LEX JOURNAL: LAW & JUSTICE STUDIES

restorative justice is needed to provide direction to legal practitioners in implementing the new paradigm (Rifai, 2023).

2) Institutional Implications

The implementation of restorative justice requires strengthening institutional capacity: First, it is necessary to establish special units for restorative justice in law enforcement agencies such as the police, prosecutors, and courts, that have human resources with expertise in mediation and dialogue facilitation (Waluyo, 2023). Second, intensive training is needed for law enforcement officials on the principles, methods, and techniques of restorative justice (Sofyan, 2023). Third, there must be the development of supporting infrastructure, such as mediation rooms, information systems, and networks with community institutions (Kristian, 2023).

3) Legal Culture Implications

Paradigm transformation requires changes in the legal culture of society: First, the need for in-depth socialization to the public about the ideas and benefits of restorative justice to replace the view that justice can only be achieved through sanctions (Warassih, 2023). Second, strengthening the contribution of community leaders, religious leaders, and customary institutions in the restorative justice process by local norms (Widnyana, 2023). Third, strengthening the culture of discussion and deliberation as a way of conflict resolution that is more in line with the nature of Indonesian society (Irianto, 2023).

c. Implementation Challenges and Opportunities

1) Implementation Challenges

The implementation of the restorative justice paradigm has faced several hurdles: The first is the resistance of law enforcement officers who are accustomed to retributive methods. This shift in perspective requires time and a planned effort to change mindset and behavior (Huda, 2023). Furthermore, there is a lack of human resources with expertise in mediation techniques, dialogue facilitation, and conflict management (Hutauruk, 2023). Third, there is a lack of supportive facilities such as

Available online: <http://ejournal.unitomo.ac.id/index.php/hukum>

E-ISSN: 2580-9113

P-ISSN: 2581-2033

LEX JOURNAL: LAW & JUSTICE STUDIES

venues for mediation, connected information systems, and connections with community organizations (Weda, 2023). Fourth, the hesitancy of the public who may see restorative methods as a type of "less assertive justice" when compared to the usual punishment (Marpaung, 2023).

2) Opportunities and Potential

On the other hand, the application of restorative justice offers significant potential in the Indonesian context. First, it is in line with the principles of Pancasila, particularly the fourth principle, which emphasizes democracy guided by wisdom in deliberation or representation (Kaelan, 2023). Second, there is support from Indonesia's local wisdom, which is rich with traditions of dispute resolution through deliberation, for example, the Batak tradition (*uhum dalihan na tolu*), Minangkabau custom (*musyawarah nagari*), and various other forms of customary settlement (Wignjosoebroto, 2023). Third, there is support from the global community and international institutions that can provide technical assistance and share best practices from other countries (Juwana, 2023). Fourth, favorable political support with solid backing from the government and the House of Representatives in the legislative development of the National Criminal Code 2023 (Asshiddiqie, 2023).

Several laws regulate coordination in the investigation and prosecution stages between the KPK, the Attorney General's Office, and the Police. Article 50 of Law No. 19/2019 stipulates that the KPK can collaborate and supervise the investigation, prosecution, and prosecution of corruption crimes carried out by the Police and the Attorney General's Office. In the context of supervision, the KPK is authorized to:

- a) Conduct supervision, research, or review of agencies that carry out their duties and authorities relating to the eradication of criminal acts of corruption.
- b) Request information about the investigation, prosecution, and prosecution of corruption activities carried out by the Police or the Attorney General's Office.

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E-ISSN: 2580-9113

P-ISSN: 2581-2033

LEX JOURNAL: LAW & JUSTICE STUDIES

c) Provide guidance and advice in investigations, prosecutions, and prosecutions carried out by the Police or the Attorney General's Office.

The Police and Attorney General's Office must also report every investigation and investigation of corruption crimes to the KPK within 14 (fourteen) working days of commencement. This is made to ensure that the process of handling corruption cases is carried out in a transparent and coordinated manner (Rohcahyanto, 2020).

d. Coordination in Case Takeover

In addition to regulating coordination in investigations and investigations, the KPK Law also regulates how the KPK takes over corruption cases from the Police or the Attorney General's Office. Based on Article 12, paragraph (1) of Law No. 19 of 2019, the KPK has the authority to take over the investigation or prosecution of corruption offenders currently handled by the Police or the Prosecutor's Office for the following reasons:

- 1) Public reports on corruption crimes are not followed up on.
- 2) The process of handling corruption crimes is protracted or delayed without justifiable reasons.
- 3) The handling of corruption crimes is aimed at protecting the real perpetrators of corruption crimes.
- 4) Handling of corruption crimes contains elements of corruption.
- 5) There are obstacles to handling corruption crimes due to interference from the executive, judiciary, or legislature.
- 6) Other circumstances that, according to the considerations of the Police or the Attorney General's Office, the handling of corruption crimes is difficult to be carried out properly and accountably (Law Number 19 Year, 2019).

Although the KPK can take over cases, there are many problems in carrying out this mechanism, especially related to the ability of the Police and Prosecutors' Office to hand over cases that are of public concern or involve high-ranking officials.

Available online: <http://ejournal.unitomo.ac.id/index.php/hukum>

E-ISSN: 2580-9113

P-ISSN: 2581-2033

LEX JOURNAL: LAW & JUSTICE STUDIES

e. Corruption Eradication Coordination Forum

The Corruption Eradication Coordination Forum, which consists of members from the KPK, the AGO, and the Police, was established to improve inter-agency cooperation. The forum discusses issues concerning the handling of corruption crimes, such as corruption eradication strategies, division of tasks, and resolution of cases involving more than one Institution (Makarao, 2018). Coordination forums are usually held periodically and are led alternately by the leaders of the three institutions. Some of the issues discussed at the coordination forum include:

- 1) Coordination in handling corruption cases involving complex networks
- 2) Division of handling corruption cases based on the level of difficulty and regional coverage
Exchange of information and data related to indications of corruption crimes
- 3) Capacity building of investigators and prosecutors in handling corruption cases.

Evaluation of the effectiveness of corruption eradication strategies (Corruption Eradication Commission 2021).

4. CLOSING

The transformation of the perspective on criminal justice in Indonesia from retributive to restorative in the National Criminal Code Law No. 1 of 2023 shows an important shift in the criminal law system in Indonesia. The integration of restorative justice principles through a review of the purpose of punishment, the application of diversion mechanisms, the affirmation of the role of victims, and the development of alternative sanctions reflects Indonesia's determination to adopt a more humane and comprehensive method of solving criminal problems. This transformation has a significant impact on the dimensions of norms, institutional structures, and legal culture that require planned and thorough preparation. Despite these hurdles, the implementation of a just recovery paradigm has great potential to create a more efficient, just, and humane

Available online: <http://ejournal.unitomo.ac.id/index.php/hukum>

E-ISSN: 2580-9113

P-ISSN: 2581-2033

LEX JOURNAL: LAW & JUSTICE STUDIES

criminal justice system, in line with the principles of Pancasila and local wisdom in Indonesia.

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