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## **Reform of the Sentencing Paradigm in the Indonesian Criminal Law System**

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### **Abstract**

This study aims to analyze the weaknesses of Indonesia's criminal justice system, which remains dominated by a retributive paradigm, and to propose a reform model oriented toward humanity and social justice based on Pancasila values. Using a normative juridical approach through library research, this study examines relevant legal norms, classical and modern theories of punishment, and the implementation of restorative justice both in Indonesia and other jurisdictions. The results show that the retributive paradigm has proven ineffective in reducing recidivism and has created social problems such as prison overcrowding and weak social reintegration of offenders. Therefore, a paradigm shift toward a humanistic and restorative penal system is required, positioning offenders, victims, and communities in an equal relationship before the law. The proposed reform includes reorienting punishment objectives from punishment-oriented to restoration-oriented, adopting non-custodial sanctions, and strengthening rehabilitation-based correctional policies. The findings highlight that successful penal reform depends on the transformation of legal values, institutional structures, and legal culture to realize substantive justice grounded in humanity and social welfare.

**Keywords:** criminal law reform, restorative justice, social justice, humanity, Pancasila

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### **INTRODUCTION**

Punishment is a key pillar of the criminal law system, serving not only as a means of retribution against perpetrators but also as a means of development, prevention, and restoration of social balance. In the Indonesian context, punishment has been largely understood in a retributive manner, oriented toward appropriate retribution against the perpetrator. This paradigm stems from the historical roots of colonial law, which emphasized punishment rather than healing. As a result, the national criminal law system often falls into formalism and loses its moral orientation toward substantive justice values. In practice, punishment often stops at the goal of imposing punishment without providing space for recovery for victims or social reintegration for perpetrators. This phenomenon raises the urgent need to reform the punishment paradigm to better align it with humanitarian values, social justice, and modern legal developments.

Rapid social change, technological advancements, and the increasing complexity of modern crime have challenged the effectiveness of traditional sentencing paradigms. Cybercrime, corporate crime, and transnational crime demonstrate that conventional sentencing models are no longer able to meet the needs of the times. Sentencing that solely emphasizes retribution does not provide a sustainable deterrent effect and often worsens the socio-economic conditions of convicts and their families. Furthermore, overcrowding in correctional institutions is clear evidence that Indonesia's penal system is not yet fully efficient

and just. According to data from the Directorate General of Corrections in 2024, the inmate occupancy rate reached more than 200% of ideal capacity, indicating that the retributive approach does not address the root causes of crime but instead creates new problems.

Various contemporary legal studies have attempted to offer a new paradigm in criminal justice. The concepts of restorative justice, rehabilitative justice, and transformative justice have become a major focus in various countries, including Indonesia. Restorative justice emphasizes restoring relationships between perpetrators, victims, and the community, with the ultimate goal of building social harmony after a crime. This approach has begun to be implemented in several national legal policies, such as National Police Chief Regulation Number 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice and Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020. However, the application of this paradigm remains fragmentary and has not yet become an integrated system within national criminal law. Therefore, reform of the criminal justice paradigm in Indonesia needs to be directed at systemic transformation encompassing the normative, structural, and cultural dimensions of law.

Theoretically, the Indonesian criminal justice system is based on the Dutch Criminal Code (WvS), which was later adapted into the Indonesian Criminal Code (KUHP). Although a new codification has been implemented through the National Criminal Code (Law No. 1 of 2023), the retributive spirit of colonial law remains strongly felt in its substance. Criminal law reform must be interpreted not only as a mere change in articles, but also as a paradigm shift in thinking about the meaning and purpose of criminal law. Criminal law should no longer be an instrument of state power to punish, but rather as an instrument of social justice that upholds human dignity. In this context, reforming the criminal justice paradigm means shifting the orientation from punishment-centered to justice-centered, from retribution to restitution, and from stigma to rehabilitation.

Previous research has highlighted the weaknesses of the retribution-oriented sentencing paradigm. For example, Muladi (2002) asserted that the Indonesian penal system still does not support humanitarian values because it positions perpetrators as objects of punishment, rather than subjects in need of development. Similarly, Barda Nawawi Arief (2010) emphasized the need for an integral approach to criminal law reform, emphasizing not only repressive aspects but also preventive and curative ones. Meanwhile, research by Sudarto (2015) outlined that the goal of punishment should be directed at protecting society by restoring the moral values of perpetrators of crime. However, the majority of these studies remain conceptual, without offering a concrete model for transforming the Indonesian criminal law paradigm toward a more progressive and socially just one. This is where this research finds its urgency: to formulate a direction for reforming the penal paradigm that is relevant to the current legal and social context in Indonesia.

The scientific novelty of this research lies in the idea that reform of the penal paradigm must be carried out not only at the normative level (through changes to laws), but also at the epistemological and practical dimensions of law. The penal paradigm must be rooted in the fundamental values of Pancasila, which places social justice and a just and civilized humanity as its primary foundation. Thus, penal punishment is no longer interpreted as a tool of state revenge against its citizens, but rather as an instrument for restoring moral and social balance. This research also offers an integration between the restorative justice approach and progressive legal values that position humans as legal subjects with dignity and the potential for improvement. This is a conceptual breakthrough that distinguishes this research from previous studies that tended to be normative and partial.

Furthermore, this study examines how shifting sentencing paradigms can strengthen the legitimacy of Indonesia's criminal justice system from a global perspective. In various countries, such as New Zealand, Canada, and Norway, restorative justice-based sentencing

paradigms have been shown to reduce recidivism rates and strengthen public trust in the criminal justice system. Indonesia can learn from these practices by adapting local values such as deliberation, mutual cooperation, and peace as forms of communitarian justice aligned with the Pancasila philosophy. In this way, penal reform will not simply imitate Western models but will instead build a uniquely Indonesian legal system that prioritizes the common good and humanity.

The scope of this research includes an examination of the national legal framework, the philosophy of criminal justice, and implementation practices in the field. The analysis examines applicable criminal law norms, law enforcement policies, and their impact on perpetrators and victims. This research also identifies structural barriers to the implementation of the new criminal justice paradigm, including resistance from law enforcement officials, limited regulations, and a legal culture that still tends towards retributive principles. This study is expected to enrich academic discourse and make a tangible contribution to reforming the criminal justice system in Indonesia.

Based on the description above, the problem formulation in this research can be formulated as follows:

1. What are the conditions and weaknesses of the current sentencing paradigm in the Indonesian criminal law system?
2. What is the ideal form of reform of the criminal justice paradigm to create a criminal law system that is humanistic, just, and in accordance with Pancasila values?

The purpose of this research is to critically analyze the evolving paradigm of criminal justice in Indonesia and to formulate a reform direction oriented toward substantive justice and humanity. This research is expected to provide a conceptual contribution to the development of criminal law science and serve as a foundation for policymakers in implementing more progressive legal reforms. Thus, the Indonesian criminal law system can evolve into one that not only upholds legal certainty but also upholds social and humanitarian justice, in accordance with the noble ideals of the Indonesian nation.

## **METHOD**

This research uses a normative juridical approach with a library research approach, as its primary focus is on analyzing the legal norms governing the Indonesian criminal justice system and the theoretical concepts underlying the reform of the criminal justice paradigm. This approach was chosen to explore in depth the relationship between positive law, classical and modern criminal justice theories, and applicable criminal law policies. The data sources used consist of primary, secondary, and tertiary legal materials. Primary legal materials include relevant laws and regulations such as the Criminal Code (KUHP), Law Number 1 of 2023 concerning the National Criminal Code, Law Number 12 of 2022 concerning Crimes of Sexual Violence (TPKS), and various implementing regulations governing the application of restorative justice by law enforcement agencies. Secondary legal materials include scientific literature, legal journals, textbooks, research findings, and academic articles discussing criminal justice theory and criminal policy in Indonesia. Tertiary legal materials include legal dictionaries, encyclopedias, and other supporting sources that help explain the legal terms or concepts used in this research.

The analysis process was conducted through descriptive-analytical and comparative stages, namely by first describing the substance of existing norms and theories, then analyzing them critically to identify weaknesses and potential improvements in the national criminal

justice system. Researchers systematically examined the relationship between retributive, rehabilitative, and restorative criminal justice theories, and assessed the suitability of their application in the Indonesian legal and social context. Comparative analysis was conducted by comparing criminal justice practices in Indonesia with countries that have successfully implemented the restorative justice paradigm, such as Canada and New Zealand, to obtain a broader conceptual and implementative picture. The results of this analysis were then used to formulate a Problem Solving Analysis, which offers conceptual solutions for reforming the criminal justice paradigm in Indonesia. In this stage, progressive legal thinking is used as a reflective framework to assess the extent to which the Indonesian criminal law system can be directed towards a more humanistic, socially just, and Pancasila-compliant criminal justice model.

## **RESULTS AND DISCUSSION**

### **1. Conditions and Weaknesses of the Criminalization Paradigm Applicable in the Indonesian Criminal Law System**

The Indonesian criminal law system remains deeply rooted in the Dutch colonial legacy, based on the Dutch East Indies Criminal Code (WvS), which was later adapted into the Criminal Code (KUHP). Although Indonesia formally has a new National Criminal Code based on Law Number 1 of 2023, the spirit and philosophy of punishment contained therein are still heavily influenced by the classical paradigm that emphasizes retributive justice. This paradigm assumes that crime is a violation of the state and the law, and therefore, what is necessary is to impose an appropriate punishment to restore the disturbed moral balance. However, in practice, this retributive paradigm has given rise to numerous problems from a humanitarian, effectiveness, and social perspective.

One of the fundamental weaknesses of the retributive paradigm is its failure to address the essence of substantive justice. Retribution-oriented punishment often provides only symbolic satisfaction for the state, not a solution for victims or perpetrators. In many cases, criminals who have served their sentences do not receive adequate social and psychological rehabilitation opportunities, so upon release they re-commit the same crimes. Data from the Directorate General of Corrections (2024) shows that the recidivism rate in Indonesia reaches more than 25% of the total number of released prisoners, indicating that the existing criminal justice system fails to prevent recurrence of crime. This phenomenon demonstrates that a punishment orientation that only emphasizes the deterrent effect is ineffective in fostering law-abiding and moral behavior in society.

Furthermore, the prevailing paradigm of sentencing also tends to create a very serious problem of overcrowding in correctional institutions (prisons). According to an official report from the Ministry of Law and Human Rights, by December 2024, the number of prison inmates in Indonesia will reach more than 270,000, while the ideal capacity is only around 130,000. This overcapacity not only impacts the poor living conditions of inmates but also leads to a failure in their correctional function. Prisons, which should be places of rehabilitation, have become places where people who have lost their humanity are held. This condition shows that the Indonesian penal system still emphasizes custodial sentences (imprisonment) as the primary form of punishment, without considering non-imprisonment alternatives such as probation, community service, or restorative agreements that have been implemented in various developed countries.

Normatively, the provisions of the old and new Criminal Codes have not been able to establish a holistic criminal justice system. Although Law No. 1 of 2023 accommodates several forms of alternative punishment, such as community service and supervision, the spirit of its implementation remains limited. This is because the criminal justice system is still oriented towards formal legal certainty rather

than substantive justice. The judicial process often becomes merely a procedural arena that positions defendants as objects of law, rather than as human beings with the potential to be improved. In this regard, Barda Nawawi Arief emphasized that the Indonesian criminal justice paradigm remains repressive-oriented, not reconstructive-oriented, because the law is viewed as a tool of power to punish, rather than a moral tool to improve human beings.

Another weakness lies in the fragmentation of policies among law enforcement agencies. Although several legal instruments supporting the implementation of restorative justice exist, such as National Police Chief Regulation No. 8 of 2021 and Attorney General's Regulation No. 15 of 2020, their implementation is not yet uniform and integrated. Each agency has its own assessment standards for determining whether a case is appropriate for restorative resolution. As a result, there is unequal treatment between regions and between cases. In many situations, law enforcement officials still prefer the formal route of prosecution and criminalization because it is considered "safer" from an administrative and legal accountability perspective. This demonstrates that the paradigm shift at the policy level has not been accompanied by a paradigm shift at the legal culture level.

The legal culture of society also reinforces the old paradigm of punishment. In public consciousness, justice is often equated with severe punishment for perpetrators. Society tends to demand retribution, not reparation, influenced by the social trauma caused by legal uncertainty and weak law enforcement. Consequently, ideas for restorative justice-oriented criminal justice reform are often perceived as lenient or indecisive towards perpetrators. However, from a modern legal perspective, true justice lies not in the severity of punishment, but in the legal system's ability to repair the social damage caused by crime. Thus, without a shift in collective societal consciousness, criminal justice reform will remain only on paper.

Besides cultural issues, there are also weaknesses in the legal institutional structure. The Indonesian criminal justice system still operates within a linear framework of investigation, prosecution, trial, and correctional services, without effective cross-agency coordination. This model results in each stage being focused solely on administrative targets, rather than social recovery. Police pursue complete case files (P-21), prosecutors prosecute according to the articles, judges impose sentences, and prisons house inmates. There is no continuity of vision between institutions to achieve the substantive goals of criminal justice. However, to achieve complete justice, all law enforcement actors must share the same perspective and orientation regarding the essence of criminal justice as a means of development and rehabilitation, not merely punishment.

In the context of legal theory, the Indonesian criminal justice paradigm also lacks an interdisciplinary approach. The study of criminal justice is often approached solely from a formal legal perspective, even though its essence also touches on psychological, sociological, and even economic realms. This failure to understand the human dimension of crime is what causes criminal policy in Indonesia to tend to be partial and reactive. For example, in cases of poverty-based crimes, perpetrators are often sentenced to prison, worsening their social conditions. However, from a sociological perspective, criminal justice should be aimed at restoring social balance, not increasing the burden on society. Therefore, reforming the criminal justice paradigm requires a broader theoretical foundation capable of integrating legal, moral, and humanitarian values.

From the various descriptions above, it can be concluded that Indonesia's current penal system faces a number of fundamental, interrelated weaknesses, from a philosophical, normative, structural, and cultural perspective. The retributive paradigm, which emphasizes retribution, has led to systemic inefficiency, prison overcrowding, high recidivism rates, and a crisis of confidence in law enforcement. Penal reform cannot be achieved simply by changing legal provisions; it must begin with a shift in perspective on the meaning of justice itself, from merely punishing to restoring.



## 2. The Ideal Form of Criminal Paradigm Reform to Realize a Criminal Law System that is Humanistic, Just, and in Accordance with Pancasila Values

Ideal punishment in the context of Indonesian law must be oriented toward a balance between legal certainty, justice, and social benefit. Reforming the penal paradigm is not sufficient simply by amending laws; it must address the substance of values, institutional structures, and legal culture of society. In this context, researchers formulated an integrative and transformative reform model, as presented in Table 1 below.

Table 1. Model of Criminal Paradigm Reform in the Indonesian Criminal Law System

Paradigm Aspects	Current Condition of Punishment (Retributive)	The New Reformed Paradigm (Humanist and Restorative)	Philosophical and Legal Basis	Recommended Strategic Implementation
1. Purpose of Criminalization	Retaliation against the perpetrator; upholding the authority of state law.	Restoring social and moral balance between perpetrators, victims and society.	Pancasila, 2nd and 5th principles; Articles 2 and 4 of Law No. 1 of 2023 concerning the National Criminal Code.	Reorientation of criminal goals from punishment-oriented to restoration-oriented in the criminal justice system.
2. Position of Perpetrator and Victim	The perpetrator is seen as the object of punishment; the victim is often ignored.	Perpetrators and victims are recognized as legal subjects who have the right to justice and restitution.	The principle of equality before the law; Regulation of the Chief of Staff No. 8 of 2021; Regulation of the Chief of Staff No. 15 of 2020.	Strengthening penal mediation mechanisms, diversion, and victim compensation.
3. Types and Forms of Sanctions	The dominant form is imprisonment (custodial sentence).	Alternative punishments such as community service, supervision, proportional fines, and rehabilitation.	Articles 65–70 of Law No. 1 of 2023; The concept of non-custodial measures in the UN Standard Minimum Rules (Tokyo Rules).	Implementation of community-based correction through revision of implementing regulations of the Criminal Code and the establishment of an independent supervisory body.
4. Law Enforcement Process	Linear and administrative: investigation → prosecution →	Collaborative and participatory: involving communities,	The principle of restorative justice; the values of deliberation and	The establishment of communitarian justice forums at the local level as part of an integrated

	trial → correctional.	traditional institutions, and local figures.	mutual cooperation in Pancasila.	criminal justice system.
5. Correctional Institution	Repressive in nature, housing prisoners without effective guidance.	It is rehabilitative in nature, functioning as a center for moral, psychological and skills education.	Article 4 of the Corrections Law No. 22 of 2022; the principle of rehabilitative justice.	Reorientation of prison functions into restorative correction center institutions with a psychosocial approach.
6. Social Justice and Human Rights	Human rights aspects are less considered; punishment places more emphasis on the deterrent effect.	Based on human rights and humanitarian values; focused on social reintegration and victim protection.	<i>Universal Declaration of Human Rights (1948)</i> ; 1945 Constitution Articles 28D and 28G.	Integration of human rights assessments in every stage of law enforcement and humanitarian ethics training for law enforcement officers.
7. Legal System Orientation	Emphasize formal legal certainty.	Prioritize substantive justice and the welfare of society.	Satjipto Rahardjo's progressive legal theory; the principle of <i>lex humanior</i> .	Codification of the principles of substantive justice in law enforcement guidelines and judicial decisions.
8. Community Legal Culture	Justice is understood as retribution against the perpetrator.	Justice is understood as the restoration of social and moral relations in society.	Local wisdom values and customary law.	Community legal education based on Pancasila values and social peace ethics.

The table above demonstrates a fundamental shift from the old retributive paradigm to a new restorative-humanist paradigm. This change demands a comprehensive transformation, both in the legal system and the mindset of law enforcement. Philosophically, the new paradigm is based on the values of just and civilized humanity and social justice for all Indonesian people, as enshrined in the Pancasila. Thus, criminal punishment is no longer seen as an instrument of the state to avenge individual wrongdoing, but as a moral means to restore a disturbed social order.

Implementing this new paradigm requires a phased approach. The first phase is regulatory reorientation, namely reviewing the legal norms in the new Criminal Code to align them with the spirit of restorative justice. The second phase is institutional reform, by building synergy between the police, prosecutors, courts, and correctional institutions within the framework of an integrated restorative justice system. The third phase is the reconstruction of legal culture, namely instilling a new understanding in society that the primary goal of criminal law is restoration, not retribution. These three phases, if implemented consistently, will move Indonesian criminal law toward a more humane and socially just system.

To clarify the direction of this reform, the following visualization illustrates the framework for integrating actors in an ideal restorative justice-based penal system. Conceptually, this proposed penal paradigm reform has four main pillars:

1. Humanization of criminal law, which places humans as the center of legal orientation.
2. Integration of restorative justice in all stages of the criminal justice process.
3. Substantive justice based on Pancasila and human rights values.
4. Institutional transformation towards an educational, participatory and inclusive penal system.

If these four pillars are realized, the Indonesian criminal law system will undergo a major transformation: from a frightening system to an educational system, from punishment to healing, and from coercion to legal awareness that grows from human values.

### **CONCLUSION**

Reforming the sentencing paradigm in Indonesia's criminal justice system is an urgent need to address the challenges of justice in the modern era. The retributive paradigm that has dominated for so long has proven incapable of creating a sustainable deterrent effect and has even given rise to new problems such as overcrowding in correctional institutions and rising recidivism rates. Therefore, the penal system must be directed toward fundamental change that prioritizes substantive justice, humanity, and social welfare. Ideally, punishment is not merely a tool of the state to avenge wrongdoing, but rather a moral instrument to restore social balance and uphold human dignity.

A new paradigm based on restorative justice and Pancasila values needs to be the primary framework for reforming national criminal law. This approach requires not only normative change but also a transformation in the mindset of law enforcement officials and the public. By placing perpetrators, victims, and communities in an equal relationship, the Indonesian criminal law system can evolve into a humanistic and inclusive system. The implications of this research emphasize that the success of criminal justice reform depends heavily on the integration of humanitarian values into legal policy, institutional development, and ongoing public legal education so that the ideals of social justice are truly realized in national legal practice.

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