

Integration of Economic Analysis of Law and Restorative Justice in Criminal Law Reform: An Interdisciplinary Approach for Efficiency and Humanization of the Justice System

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Abstract. *The Indonesian criminal justice system faces significant challenges in terms of effectiveness, efficiency, and substantive justice, particularly due to overcriminalization and the overcapacity of correctional institutions. This article offers an interdisciplinary approach through the integration of Economic Analysis of Law (EAL) and Restorative Justice (RJ) as the basis for formulating efficient and humane sentencing policies. Using normative juridical methods and conceptual, historical, comparative, as well as multidisciplinary approaches, this study evaluates the weaknesses of the conventional sentencing system, analyzes the substance of the 2023 Criminal Code (KUHP), and formulates a sentencing policy model based on cost-benefit and social restoration values. The novelty lies in the formulation of an integrative EAL-RJ model that can be applied to various types of crimes, including serious offenses, through an evidence-based and participatory approach. This article is expected to contribute to the development of a more contextual, just, and socially restorative-oriented Indonesian criminal justice system in the long term.*

Keywords: *Criminal; Economic; Humanization; Restorative Justice.*

1. INTRODUCTION

Criminal law reform in Indonesia demands more than mere normative revision. In the context of overcriminalization and the overcapacity of correctional institutions (Pemasyarakatan, 2003), a new paradigm is needed that emphasizes efficiency and humanity. The conventional sentencing model based on retributive thinking is now considered inadequate to address the challenges of the modern justice system (Muladi, 2002). Although the new Criminal Code as stipulated in Law No. 1 of 2023 has introduced several new principles (Indonesia, 2023), including alternative sentencing and space for restorative justice, this reform has not yet addressed the root of structural problems, namely policy orientation that remains legalistic and lacks an evidence-based approach as well as considerations of cost and social efficiency.

In addition to the Criminal Code, various sectoral laws such as the Law on the Eradication of Corruption, the ITE Law, the Narcotics Law, the Terrorism Law, and the Child Protection Law also show a high trend of criminalization (Reksodiputro, 2005). Many criminal acts are regulated in an overlapping manner without careful consideration of the socio-economic impact and the capacity of the criminal justice system. The approaches that have developed are still too focused on punitive orientation alone and have not been able to address the effectiveness of the justice system in criminal law comprehensively.

Several previous studies have highlighted the importance of economic approaches in the criminal justice system. Becker introduced the cost-benefit model in understanding criminal behavior (Becker, 1968), while Posner emphasized the importance of efficiency in the structure and implementation of criminal law (R. A. Posner, 2014). However, this approach often neglects social justice values and the interests of victims. On the other hand, the restorative justice approach developed by Zehr (Zehr, 2002), Van Ness and Strong (Ness & Strong, 2015), as well as Braithwaite, offers a more humanistic alternative oriented towards reconciliation. Unfortunately, this approach is also often implemented without considering cost efficiency and the systemic impact of policy (Tonry, 2017).

Thus, there is a research gap in the comprehensive integration between economic analysis of law (EAL) and restorative justice (RJ). So far, these two approaches have more often been positioned dichotomously, even though they can complement each other in designing an effective and just criminal justice system.

This study aims to offer a criminal law policy model that integrates the EAL and RJ approaches as a new orientation in criminal law policy (Lesmana et al., 2022). By using normative juridical methods and a multidisciplinary approach, this study seeks to formulate a sentencing policy that is not only economically rational but also socially just, contextual, and able to address the complexity of sentencing issues in Indonesia.

Based on the background description, the following are the research questions to be answered in this study:

1. How can the integration of the Economic Analysis of Law (EAL) approach and restorative justice provide solutions to the problems of effectiveness and efficiency in the reform of criminal law in Indonesia?
2. What are the advantages and disadvantages of the EAL and RJ approaches if applied in the national criminal law system?
3. How can a sentencing policy model based on the integration of EAL and RJ be formulated contextually and applicatively for the Indonesian criminal law system?

2. RESEARCH METHODS

This study uses a normative juridical method, which is legal research conducted by examining primary and secondary legal materials. The main focus of this method is the

analysis of prevailing legal norms, as well as the study of relevant doctrines, theories, and legal principles.

In its implementation, this research uses several approaches:

1. The Conceptual Approach, to dissect and formulate the basic concepts of economic analysis of law (EAL) and restorative justice (RJ), as well as how these two approaches can be integrated into the criminal law system (Cane & Kritzer, 2010).
2. The Statute Approach, to examine the substance and development of regulations, particularly the 2023 Criminal Code (KUHP) and other sectoral laws related to sentencing.
3. The Historical Approach, to trace the evolution of Indonesia's criminal law system and the characteristics of sentencing in a historical and legal-political context (Hamzah, 2008).
4. The Comparative Approach, to compare the practice of criminal law policy based on EAL and RJ in several countries such as New Zealand, Norway, the Netherlands, Germany, and Canada.

In addition to these approaches, this study also utilizes a multidisciplinary approach, involving sociological, economic, and criminological analyses to enrich the understanding of contemporary criminal law issues. The secondary data used includes official reports from correctional institutions, international empirical studies (Cooter & Ulen, 2012; University, 2020; Zealand, 2020), as well as previous academic research findings (Becker, 1968; Nasional, n.d.; Ness & Strong, 2015; R. A. Posner, 2014; Zehr, 2002).

3. RESULT AND DISCUSSION

3.1 The Economic Analysis of Law in the Context of Criminal Law

The economic analysis of law (EAL) approach positions law as an instrument to create social efficiency. Becker introduced the theory that criminals will consider the benefits and costs of every criminal act they commit (Becker, 1968). Posner expanded this theory by stating that an efficient criminal justice system will maximize social welfare by minimizing the social losses caused by crime (Posne, 2014).

Landes and Posner demonstrated how the structure of tort and criminal law can be optimized for crime prevention that is cheaper and more efficient than mere imprisonment (W. M. L. Posner & Richard, 1987). Meanwhile, Cooter and Ulen view criminal law as part of an incentive system that must be rationally structured for offenders, victims, and society (Cooter & Ulen, 2012). Robinson and Darley add that compliance with the law is often more influenced by perceptions of substantive justice than by formal sanctions (Robinson & Darley, 2004).

The EAL approach also requires evaluative instruments for the effectiveness of criminal regulations by calculating the ratio between the costs of law enforcement and the social benefits produced. For example, sentencing for minor crimes that requires large costs in

detention and court processes, but does not provide a significant deterrent effect, is considered an inefficient policy. In this context, EAL provides a rational framework for designing a criminal justice system that is not only just, but also economical, outcome-oriented, and data-based.

The application of this approach becomes increasingly important in the context of Indonesia, which faces a crisis of overcapacity in correctional institutions. By using economic analysis, policymakers can identify alternative forms of sentencing that are more cost-effective, such as fines or community service, which still have a preventive effect but do not impose additional burdens on the state. Thus, criminal law is no longer positioned as a tool of state retribution, but as an intelligent and efficient instrument of social management.

This analysis shows that criminal law must be designed not only based on retributive principles, but also on the rationality of costs and social benefits of every legal rule and sanction applied.

3.2 The Concept and Practice of Restorative Justice

Restorative justice (RJ) emphasizes the restoration of losses resulting from criminal acts and the repair of social relationships between offenders, victims, and the community. Zehr states that restorative justice is not only about resolving legal violations, but also about rebuilding trust and a sense of substantive justice within the community (Zehr, 2002). Van Ness and Strong explain that the main principles of RJ are offender responsibility, victim involvement, and the facilitation of constructive dialogue (Ness & Strong, 2015).

Tony Marshall adds that restorative justice should be understood as a process that allows all parties with an interest in an offense to come together to collectively resolve the consequences of the offense and its future impact (Marshall, 1999). Hoyle also emphasizes the importance of the victim's role in this process, where justice does not merely mean imprisonment, but recognition of the harm suffered by the victim and socially relevant restoration (Hoyle, 2003). Tonry even refers to this approach as an opportunity to repair social damage that cannot be addressed by the conventional justice system (Tonry, 2017).

In Indonesia, the RJ approach has begun to be recognized in various policies, including in the Juvenile Justice System Law (SPPA), Minister of Law and Human Rights Regulation No. 7 of 2022, and the 2023 Criminal Code (KUHP). Harkrisnowo and Supriyadi assess that although RJ has not yet become mainstream in the national criminal justice system, its normative foundation and practice are already available and deserve to be institutionally strengthened (Akbar, 2022). Arifin (2021) also emphasizes that the application of RJ in the Indonesian context must consider local wisdom and the capacity of law enforcement officers to manage social conflict productively.

Restorative justice is also not merely an approach for minor crimes. Various studies show that RJ mechanisms can even be applied to serious crimes such as murder, corruption, and terrorism. In South Africa, for example, the post-Apartheid reconciliation process through the Truth and Reconciliation Commission is a form of systemic application of RJ principles to serious crimes. In Rwanda, after the genocide, the Gacaca mechanism was

used as an RJ tool involving the community in resolving serious crimes with a focus on acknowledgment, apology, and social reintegration (Tutu, 2000). In Canada and several European countries, the RJ approach has also been applied in cases of murder and serious violence by involving offenders and victims' families in dialogue and recovery processes (Umbreit et al., 2005).

Theoretically, this is supported by the responsive theory developed by John Braithwaite, in which criminal law can adjust its response to crime by considering the social, psychological, and economic needs of all parties involved. The principle of reintegrative shaming he offers becomes the foundation that even serious offenders can be restored through an inclusive, responsible, and non-exclusively punitive process (Braithwaite, 2002).

Thus, restorative justice is not the antithesis of the economic approach, but rather can be a complement that focuses on reparation of social losses and reduction of the costs of punishment. from the economic approach, but rather can be a complement that focuses on reparation of social losses and reduction of the costs of punishment. from the economic approach, but rather can be a complement that focuses on reparation of social losses and reduction of the costs of punishment.

3.3 Evaluation of the New Criminal Code (Law No. 1 of 2023)

3.3.1 Substantive Changes

The 2023 Criminal Code has introduced important reforms, including the recognition of alternative sentencing, such as community service and fines. This indicates a shift from a purely retributive paradigm towards a more rehabilitative and efficient model. The Criminal Code also strengthens the principle of corrective justice by including clauses that open opportunities for penal mediation and restorative-based settlements.

Normatively, several articles in the 2023 Criminal Code also reflect efforts to internalize the principles of restorative justice and cost efficiency in sentencing. For example, Article 54 introduces conditional sentencing with a probation period as a form of reducing the use of imprisonment. This approach is consistent with the theory of general deterrence in law and economics, which states that deterrent effects can be achieved not only through the severity of punishment, but also through the certainty and efficiency of law enforcement. In addition, articles related to out-of-court settlements provide opportunities to reduce the burden on judicial and correctional institutions, while also providing space for the restoration of social relations between offenders and victims.

However, the integration of restorative justice principles and legal efficiency through the 2023 Criminal Code remains partial. Many articles do not yet include concrete operational mechanisms for the implementation of penal mediation or cost-benefit evaluation of sentencing. Moreover, a formalistic approach and the dominance of substantive criminal law still appear to dominate the structure of the Criminal Code. In other words, although the policy direction has begun to open space for the EAL and RJ approaches, the technical and institutional apparatus has not been fully prepared.

Furthermore, the inconsistency between the intention for progressive reform and the dogmatic reality in the formulation of articles indicates a tension between the old criminal law paradigm and the spirit of reform. This can hinder the comprehensive implementation of efficiency and substantive justice principles (Direktorat Jenderal Pemasyarakatan, 2023), and reduce the effectiveness of the Criminal Code as a means of holistic criminal law reform (Posne, 2014; Shavell, 2004).

3.3.2 Structural Weaknesses

The new Criminal Code still contains a number of weaknesses. The legalistic approach still dominates the formulation of its articles. Many minor offenses are still threatened with imprisonment, without clear differentiation in sentencing objectives. This is feared to further exacerbate overcrowding in correctional institutions and ignore the principle of cost-effectiveness emphasized by the EAL approach.

Another weakness lies in the lack of integration between restorative justice principles and a law enforcement system that remains oriented towards imprisonment. Although textually the Criminal Code has opened space for penal mediation and alternative sentencing, it is not accompanied by adequate institutional design for its implementation. The lack of clear technical mechanisms, as well as the absence of national standard operating procedures regarding the involvement of victims and the community, are major inhibiting factors.

From the EAL perspective, the Criminal Code also does not yet reflect evaluative instruments that allow for the assessment of efficiency for each type of sentencing. There are no provisions requiring cost analysis and social impact assessment of the sentencing applied, even though this is the core of the economic approach to law. This condition makes sentencing policy potentially repeat past inefficiencies, even though the spirit of reform has been explicitly stated.

Thus, the structural weaknesses of the Criminal Code are not only in the substance of its articles, but also in the weak integration between legal norms and evidence-based, rational implementation practices. Without institutional reform and training of officials to support progressive thinking based on EAL and RJ, criminal law reform risks becoming merely normative cosmetics.

3.3.3 Implementation and Socialization Challenges

The government faces major challenges in socializing the substance of the new Criminal Code (KUHP) to law enforcement officers, the public, and academics. The Deputy Minister of Law and Human Rights emphasized the importance of transitioning towards a new sentencing paradigm based on restorative justice values and social efficiency (Nasional, n.d.). However, the lack of legal infrastructure and human resources who understand RJ is a serious obstacle to realizing this reform effectively.

One of the main obstacles is institutional resistance to the paradigm shift from a retributive approach to a model of restoration and efficiency. Many law enforcement officers still view sentencing as a form of retribution, not as social risk management or

community restoration. This is exacerbated by the lack of training and legal education modules that emphasize interdisciplinary approaches such as EAL and RJ.

In addition, the limited derivative regulations and the absence of technical guidelines for the implementation of alternative sentencing, such as penal mediation and community service, hinder the transformation process. The lack of integration between the judiciary, prosecution, police, and correctional institutions in managing the RJ process leads to inconsistencies in implementation in the field.

In the context of EAL, the main challenge lies in the lack of cost-benefit data on existing sentencing policies. Without accurate and evidence-based economic analysis instruments, it is difficult for policymakers to objectively and rationally assess the effectiveness of the legal system. This unpreparedness risks undermining the goals of reform, even though normatively the 2023 Criminal Code is more open to efficient and humane approaches.

Thus, the challenges of implementing the new Criminal Code lie not only in the substance of the law, but also in institutional readiness, human resources, administrative tools, and the prevailing legal culture in practice. The integrative approach between EAL and RJ requires a collaborative, data-based law enforcement ecosystem with a long-term perspective on social restoration and system efficiency.

3.4 Comparative Study

A comparative study was conducted on countries that have integrated the EAL and RJ approaches into their criminal justice systems. In New Zealand, for example, restorative justice has become an important part of the criminal justice system, especially in juvenile cases. The New Zealand Ministry of Justice notes that the level of satisfaction among victims and offenders with the RJ process is very high, and there has been a significant decrease in recidivism rates (Zealand, 2020).

Next is Norway, which implements sentencing policies emphasizing social reintegration and rehabilitation, including for adult offenders. This policy has a direct impact on the low recidivism rate in the country (Norwegian Ministry of Justice, 2016). In the Netherlands, restorative justice is developed through recovery law (*herstelrecht*) policies, with active support from the courts and civil society organizations (Hoyle, 2003), and is empirically supported in reports from Utrecht University (University, 2020).

A similar approach is also found in the legal systems of Canada and Germany. In Canada, the RJ model is used primarily in cases involving indigenous communities and juvenile offenders, and is implemented within a formal legal framework that supports flexible out-of-court settlements. Meanwhile, in Germany, a responsive and rehabilitative approach based on restorative values has become part of the national crime prevention strategy without always resorting to imprisonment (Ali, 2012).

In this regard, the concept of justice and peacebuilding put forward by Sukawarsini Djelantik strengthens the argument that the resolution of social conflict and legal violations needs to be placed within the framework of social transformation and the restoration of intergroup relations. Gillespie also emphasizes the importance of adopting

participatory approaches in international criminal law, which aligns with the spirit of RJ and EAL.

3.5 Integration Model: Economic-Restorative Criminal Policy

The integrative model offered in this article is based on the combination of economic rationality principles and social restoration values in criminal law policy. This approach is referred to as Economic-Restorative on Criminal Policy, which is a model that places cost efficiency, reduction of social impact, and reconciliation between offenders and victims as a logical unity in handling minor offenses as well as crimes that do not have a broad impact on the public.

This model emphasizes that sentencing does not always have to take the form of imprisonment, but can be replaced with compensation mechanisms, community service, or penal mediation that simultaneously consider efficiency and restoration. This idea is in line with the progressive legal approach proposed by Achmad Ali (Direktorat Jenderal Pemasyarakatan, 2023), as well as criticism of the dominance of moralistic approaches in criminal law policy as put forward by Bentham (Bentham, 1789).

Within this framework, justice is not separated from economic considerations, but is instead expanded with the aim of creating greater social value for society. This concept is also influenced by Vermeule's thinking regarding the legal system as an institutional construction that must serve both social stability and adaptability (Vermeule, 2011).

In the future, it is possible that this model can also be implemented to address serious crimes such as corruption, murder, and even terrorism—provided that the mechanisms built are based on the principles of prudence, proportionality, and strict supervision. Several international studies show that involving victims and communities in the resolution process of serious crimes can provide a deterrent effect, a more substantive sense of justice, and strengthen the social reintegration of offenders who have served their sentences. In this context, the hybrid approach based on EAL and RJ becomes increasingly relevant for building a future criminal justice system that is adaptive, inclusive, and oriented towards long-term outcomes (Ness & Strong, 2015; Tonry, 2017; Zealand, 2020).

In addition, the implementation of this model requires a reformulation of legal instruments that are more flexible towards non-penal approaches, as well as a paradigm shift among law enforcement officers, judges, and policymakers. Strengthening institutional capacity for penal mediation, cost-benefit evaluation systems in sentencing policy, and community involvement in social restoration must become an integral part of the national strategy. In this way, the integration of EAL and RJ is not only a theoretical discourse, but can be manifested in a concrete and sustainable policy framework.

4. CONCLUSION

This article shows that Indonesia's criminal justice system faces serious challenges in terms of effectiveness, efficiency, and substantive justice. The conventional retributive-oriented sentencing model has proven unable to address the complexity of contemporary crimes, especially in the context of overcriminalization and the overcapacity of

correctional institutions. The Economic Analysis of Law (EAL) and Restorative Justice (RJ) approaches, which have so far operated separately, can in fact be combined to present a more rational, just, and humane criminal justice system. The 2023 Criminal Code has opened opportunities towards a new paradigm of criminal law by incorporating a number of corrective principles and alternative sentencing. However, the integration of EAL and RJ in this Criminal Code remains normative and is not yet accompanied by adequate institutional support, technical tools, and human resources. Legal culture resistance and limited understanding among justice system actors also become obstacles in implementing an efficient and humane sentencing model.

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