

Application of Restorative Justice Principles in the Settlement of Minor Criminal Cases Based on the New Criminal Code

Retno Wulandari

Faculty of Law, Universitas Islam Sultan Agung, Semarang, Indonesia, E-mail:
retnowulandari.std@unissula.ac.id

Abstract. *The new Criminal Code no longer recognizes the crime-violation dichotomy, and many minor offenses are directed to be resolved through non-prison channels, making prison a last resort (ultimum remedium). However, theoretically, an analysis and study is needed to interpret how the new Criminal Code provides legal legitimacy to the functional efforts of the restorative justice concept in resolving minor criminal cases in order to provide an answer in the form of legal certainty and fulfillment of aspects of justice based on the reasoning of the legal substance contained in the latest criminal law product. The objectives of this research are (1) the urgency of using the concept of restorative justice in the Indonesian criminal law system, (2) the implementation of restorative justice in resolving minor criminal cases from the perspective of the new Criminal Code, (3) problems in implementing restorative justice in resolving minor criminal cases based on the new Criminal Code. The approach used in this research is normative juridical. The research specifications are descriptive and analytical. The data sources used are secondary data. Secondary data is data obtained from library research, consisting of primary legal materials, secondary legal materials, and tertiary legal materials. The research results and discussion can be concluded: (1) The reality of legal problems in Indonesia is rooted in a long-standing criminal system, is a very relevant view and is supported by current legal dynamics. These problems include the colonial legacy of the Criminal Code and the retributive approach (retribution) with a dominance of imprisonment, where for decades, the Indonesian legal system has relied heavily on imprisonment as the main sanction. (2) The existence of the concept of restorative justice can be implicitly found in the legal substance of Law number 1 of 2023 concerning the Criminal Code. The values of restorative justice can be seen in various articles, starting from Article 51 concerning the Purpose of Criminalization, namely that criminalization aims to resolve conflicts arising from criminal acts and restore balance.*

Keywords: *Criminal; Justice; Restorative.*

1. Introduction

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia is very clear. mentioned that Indonesia is a country based on law. The concept as a state of law (*rechtsstaat*) which is stated in the country's constitution is law the basis of the state that occupies position as law highest in orderly law.¹ With Thus, the term state of law in a way constitutional has stated in the 1945 Constitution. However use the term rule of law have difference between before done amendments and after done amendment. Before amendment to the 1945 Constitution, "Indonesia is a country based on on the rule of law". Meanwhile after he did the amendment to the 1945 Constitution states that "Indonesia is a state based on law." In essence, both of them have same goal that is make Indonesia a country based on law.²

State law is a country that runs his government based on on power law (supremacy law) and aims organize order law.³ This is give understanding that the State, including therein government and institutions others in carry out action whatever it takes based on certainty law.⁴

According to Satjipto Rahardjo⁵ work big realizing a state based on law will become small its meaning if only understood that immediately problem social must completed in a way law. In this case these are the expert law and law enforcement law, called Satjipto Rahardjo is often "hypnotized" by practical law, meaning where people break the law Constitution means violate law and must given sanctions (criminal) or undergoing the criminal process. Thinking the make man confined in something regulation written (law) and forgotten There is source other laws that apply in Indonesia which even has life before existence law in form regulation legislation.⁶

Efforts to realize a State of Law is needed means law, namely through regulation legislation arrange balance and justice in all field life society, not put aside jurisprudence. On the way nation this is almost entering the first period century, practice enforcement law until moment This Still based on philosophy retributive as well as explanation, so that only focused on the output of aspect quantity, namely How many Lots cases being processed and the perpetrators who can imprisoned by the authorities enforcer law.

¹Tafta Aji Prihandono and Sri Kusriyah, Awareness on Constitutional Rights of Citizens and Form of Protection of Constitutional Rights of Citizens in Indonesia, *Jurnal Daulat Hukum*, 1 (4), December 2018, p 1004

²Oksidelfa Yanto, *The Rule of Law: Certainty, Justice, and the Benefit of Law (In the Indonesian Criminal Justice System)*. 1st edition, Pustaka Reka Cipta Publisher: Bandung, 2020, p. 1

³SF Marbun, The State of Law and Judicial Power. *Ius Quia Iustum Law Journal*, 9 (4) 1997, p. 9.

⁴JJ von Schmid, *Thoughts on State and Law*, Jakarta: Pembangunan, 1988, h 7.

⁵Satjipto Raharjo. *Law and Society*. Bandung; Angkasa, 1980, p. 15.

⁶Teuku Rahman. Restorative Justice as an Approach to Case Resolution Criminal Law by the Indonesian Attorney General's Office. *The Prosecutor Law Review*, 01 (3) December 2023, p. 28

Paradigm System Justice Indonesian criminal law of a kind This considered success If apparatus enforcer law able and capable bring perpetrator crime to court For get punishment.⁷ Paradigm enforcement based on law philosophy retributive This No only felt No fair, but can disturbing the sense of peace and justice society. The thought that case criminal only can handled through institution courts and theories punishment (*retributive theory*) turns out Lots cause problems and impacts negative.

Required change approach, where handling case criminal offences court (non-penal) with principle approach justice restorative *justice* from the disappointment felt in society, that system the law in Indonesia that is assessed Lots injures the sense of justice, therefore That implementation justice restorative justice becomes alternative settlement case action criminal light (tipiring) for realize justice more laws humanize human in front law.

The basics draft justice restorative justice is response to existence theory attributive theory which emphasizes retribution and Neo - classical theory which focuses on equality sanctions criminal and sanctions action. Restorative justice is implemented with cooperative that includes all over party. then from corner view expert, giving definition related this concept of restorative justice among them Walgrave who defines that restorative justice is something preconditioning approach damage that occurred as consequence existence action violation, with strive mediation with shaped service community or work social with do intervention No For punish or implant return mark in public to the perpetrator, but for restore loss or the suffering experienced by the victim. While more simple. how explain if restorative justice is organize return system more criminal penalties fair for perpetrators, victims and society.⁸

In truth law Keep going move follow dynamics society, and with thus means development law of course always left behind from development civilization man or society. Because of this That justice restorative justice becomes breakthrough realize justice humanizing law man with use heart conscience. According to CST Kansil stated that" the law criminal is the laws that govern about violations and crimes to interest general, which act is punishable by with punishment which is something suffering or torture".⁹

⁷Indonesian Judicial Monitoring Society, Faculty of Law, University of Indonesia, Towards Progressive Law Enforcement through Draft Improvements Indonesian Criminal Procedure Code (RKUHAP). *Indonesian Judicial Journal: Teropong*, 8, July-December 2020, hv

⁸Andi Sukrianto, Ermania Widjajanti. Restorative Justice in the Settlement of Minor Criminal Cases in Indonesia. *Quantum Juris: Journal of Modern Law*, 07 (1) January 2025, p. 157

⁹Hambali Yusuf, Sri Suatmiati, and Sega Ortega. Law Enforcement of Minor Crimes (Tipiring) with a Restorative Justice Approach Rejected by the Victim at the Lahat Police Resort (Polres). *Rewang Rencang: Jurnal Hukum Lex Generalis*, 5 (7) July 2024, p. 2

Studies on restorative justice have Lots developed by expert law criminal, good in a way theoretical and practical. Howard Zehr¹⁰ look at justice restorative as paradigm new recovery - oriented relation damaged society consequence crime, not revenge to perpetrator. Meanwhile that, Christie¹¹ emphasize the importance of" repatriating" conflict to the parties" for resolution criminal can done through direct dialogue between perpetrator and victim. Views the become base philosophical for development justice restorative in various system modern law, including in Indonesia.

Context justice restorative as paradigm, as stated by Howard Zehr as *the grandfather of restorative justice*, policy formulative and implementative justice pragmatic restorative, and simplistic above has cause handling action criminal offenses that are not restorative in programs, processes, methods, values / principles, results achieved and goals realized which leads to not effectiveness effort realize enforcement just law.¹²

Justice restorative justice in action criminal light (tipiring) has implications for the transition focus from punishment prison become recovery condition, reduce burden court in a way significant, and accelerate settlement matter. Approach This put forward mediation For restore connection between perpetrators and victims, and reduce recidivism.¹³ Implications main justice restorative in settlement case criminal light considered can allows case completed through mediation and replacement make a loss without must through a lengthy trial process which is deep matter This create settlement case criminal in scope system justice criminal become fast and effective as well as reduce burden for each sub- system justice criminal.

Handling action criminal light (tipiring) accommodated in a way significantly by Law No. 1 of 2023 concerning the Criminal Code (New Criminal Code) as form transformation paradigm criminalization in Indonesia. Transformation This shift focus from old paradigm based reply revenge (retributive) towards a more approach humane and recovery - oriented. ¹⁴The New Criminal Code change philosophy criminalization with put forward Justice Restorative (Restorative Justice), justice corrective, and justice rehabilitative. Action criminal No Again viewed just violation the law that must be replied with prison, but rather as divisive act balance social must restored. In Overall, the new Criminal Code (Law

¹⁰Howard Zehr, *The Little Book of Restorative Justice*. Intercourse, PA: Good Books. 2002

¹¹N. Christie. Conflicts as Property. *The British Journal of Criminology*, 17(1) 1977, pp. 1-15

¹²Zulkarnein Koto, et al. The Application of Restorative Justice in Handling Criminal Acts to Achieve Just Law Enforcement. *Journal of Police Science*, 17 (1) April 2023, p. 35

¹³Imam Hakiki. Applying the Concept of Restorative Justice to Minor Crimes in Realizing Pancasila Values. Master of Laws: Islamic University of Indonesia, *Thesis*, 2025, p. 3

¹⁴Safaruddin Harefa, Sri Ismawati, Mega Fitri Hertini. Transformation of Criminal Policy in the National Criminal Code: Towards a System Just and Humanistic Sentencing. *Simbur Cahaya Journal*, XXXII (2) December 2025, p. 287

1/2023) acts as runway law more national progressive, integrating values customs and justice social to in system law Indonesian criminal law.

System criminalization in Indonesia during This Still relying on the old legacy Criminal Code Dutch colonial government which was established in 1918 and began valid since 1919. The character of the Criminal Code loaded with approach retributive, where sanctions prison become instrument main give effect deterrent to perpetrator crime, without consider in a way Serious aspect rehabilitation and reintegration social.¹⁵ In context modern society is complex and pluralistic, the system This No Again adequate answer challenge social and needs will greater justice substantial and humane. Transformation policy criminalization in Indonesia through ratification of the new National Criminal Code is milestone important in build system law more criminal just and humanistic.¹⁶ With the presence of the new Criminal Code, the state is shifting paradigm from punitive to more direction restorative and rehabilitative approach this also attempts build system punishment that reflects justice substantive in public.

New Criminal Code (Law No. 1 of 2023), crime criminal light (tipiring) emphasizes justice restorative, reducing criminal prison, and more prioritize fine or action / supervision. New Criminal Code No Again know dichotomy crimes, and many minor directed completed through non- prison pathway, making prison as effort ultimate (*ultimate*) *remedium* ¹⁷).

2. Research Methods

Research methods juridical normative use approach with method learn legislation, theories and concepts the concept that relate with problems that will researched.¹⁸ Determination sample is a process in choose something representative part from all over population. Research This No use sample as material study but use studies literature as data source. Use of secondary data as raw data used as well as addition opinion expert as additional data so that processed as something results research. This research uses descriptive research specifications analysis or presentation of the research object. The purpose of descriptive research specifications is to obtain a complete picture of the legal situation in force in a particular place and at a particular time. The legal events in

¹⁵M. Nanda Setiawan, Syariffuddin, and Chindi Oeliga Yensi Afita. Criminal Law System Reform through the New Criminal Code: Challenges and Opportunities Towards Social Justice. *Jurnal Das Sollen* 11 (1) June 2025, pp. 79-94

¹⁶Eddy OS Hiariej, *Principles of Criminal Law: Adjusted Edition of the National Criminal Code*, Jakarta: Rajawali Pers, 2024. p. 50.

¹⁷Ultimum remedium is a principle in Indonesian criminal law that places criminal sanctions as a last resort or final resort in law enforcement. This principle means that criminal law is only used if other efforts, such as civil or administrative sanctions, are unable to restore the situation. See: JM Van Bemmelen. *Criminal Law 1; Material Criminal Law General Section*. Binacipta. 1984, p. 13

¹⁸Rangga Suganda, Legal Approach Method in Understanding the Dispute Resolution System Islamic Economics. *Scientific Journal of Islamic Economics*, 8 (03) 2022, p. 2861

force at a particular time are highly dependent on the situation and dynamics of the developing society.¹⁹ The data used for this research is secondary data. Secondary data is data obtained from library research, consisting of primary legal materials, secondary legal materials, and tertiary legal materials.

3. Results and Discussion

3.1. Urgency Use the Concept of Restorative Justice in Indonesian Criminal Law System

Law is something guidelines that regulate pattern life human being who own role important in reach objective peace life for society. Therefore that's the law know existence adage *ibi societates ibi ius*. Adagium This appear Because law There is Because existence society and relationships between individual in socializing. Relationships between individual in socialize is something the real thing in accordance nature human beings who do not can life Alone Because man is polis creature, social creature (*zoon politicon*)²⁰.

All connection the regulated by law, everything is connection law (*rechtsbetrekkingen*).²¹ So for that's it in arrange relationships law in society held something codification law that has objective sublime that is create certainty law and maintain mark justice from substance law said. Even though has codified, law no can be static because law must Keep going adapt self with society, especially those related to with law public Because touch direct with desire many people live and apply in a way general.

Problem criminal and criminal penalties That Alone is object study in field law the so -called crime law penitentiary (*penitentiary law*). Therefore problem law peeled off crime or discussed in law penitentiary is concerning problem criminal and criminal penalties, then law penitentiary That Alone in the narrow sense can interpreted as all regulations positive about system criminal law (*strafstelsel*).²² Whereas in a broad sense, law penitentiary can interpreted as part law criminal law that determines and provides rule about sanctions (system sanctions) in law criminal law, which includes Good *strafstelsel* and *maatregelstelsel* (system action) and wisdom. So in business maintain and organize order, as well as protect it from violations to various interest law, then the state is given rights and powers drop criminal as well as rights and powers drop action and wisdom.²³

¹⁹S. Margono, *Educational Research Methods*, Rineka Cipta, Jakarta, 2007, p. 8.

²⁰Darji Darmodiharjo & Shidarta, *Principles of Legal Philosophy, What and How is the Philosophy of Indonesian Law*, PT Gramedia Pustaka Utama, Jakarta, 1995, p. 73

²¹LJ van Apeldoorn, *Introduction to Legal Science*, PT Pradnya Paramita, Jakarta, 2000, p. 6

²²Failin. The Criminal and Sentencing System in the Reform of Indonesian Criminal Law. *Jurnal Cendekia Hukum*, 3 (1) September 2017, p. 15

²³Muladi and Barda Nawawi Arief, *Criminal Theories and Policies*, Alumni, Bandung, 2010, h.1

According to flow classic, goal law criminal is protect interest individual from arbitrariness ruler. Stream classic This born as reaction to the abrittrair ancienregime in the 18th century, in France were numerous cause uncertainty law, inequality in law, and the absence of justice. Stream This want law structured criminal law systematic and focuses on certainty law.²⁴

When originally Criminal Law intended protect interest individual from arbitrariness, modern flow in law criminal aim protect public from crime. This goal here to *the postulate le salut du people est supreme loi* which means law highest is protection society. Modern stream is also called flow positive, because look for because crime use method knowledge natural with Meaning influence perpetrator crime in a way positive as far as can repaired.²⁵

If the flow classic want law criminal actions or *daad-strafrecht*, then modern flow requires law perpetrator - oriented criminal law or *dader-strafrecht*. Deep modern flow law criminal based on three foot hold, namely First, fighting crime; Second, pay attention to other sciences;²⁶ Third, *the ultimate remedium* ²⁷.

Connection between Indonesia as a state of law (*rechtsstaat*) with law criminal law is very close and fundamental, where the law criminal functioning as instrument main country for uphold rules, justice, and order general. Based on Article 1 paragraph (3) of the 1945 Constitution, Indonesia affirms self as a state of law.²⁸ Draft as a state of law (*rechtsstaat*) which is stated in the country's constitution is law the basis of the state that occupies position as law highest in orderly law.

In a country of law there is the power exercised on base good law going to justice. In acting operate state power, state or apparatus enforcer law must operate law with orientation going to prosperous society. All actions of the state and apparatus law must Good as well as fair, appropriate with what the community wants. When the concept operate law with Good implemented by the state, then public will protected from various possible issues just will found moment law No executed with good and fair.²⁹

²⁴ *Ibid*, p. 25

²⁵ *Ibid*, p. 32

²⁶ Eddy OS Hiariej. *Principles of Criminal Law*, Yogyakarta: Cahaya Atma Pustaka, 2014, p. 26

²⁷ *Ultimum remedium* is a principle in Indonesian criminal law that places criminal sanctions as a last resort in law enforcement, after other legal efforts (such as administrative or civil law) are deemed ineffective. This principle aims to limit the use of criminal law so that it is not misused and prioritizes restoring the situation. See: Nur Ainiyah Rahmawati. Indonesian Criminal Law: Ultimum Remedium or Primum Remedium. *Recidive*, 2 (1) January-April 2013, p. 41

²⁸ Rayhan Farel Ramadhan, Tia Febrianti. Reforming the Criminal Code from the Perspective of Pancasila as the Source of All Sources of Law in Indonesia. *Lex Prudentium*, 2 (1) June 2023

²⁹ Basuki Rekso Wibowo. *The Rule of Law: Certainty, Justice, and the Benefit of Law (In the Indonesian Criminal Justice System)*. 1st edition, Pustaka Reka Cipta Publisher: Bandung, 2020, page 2

System law consisting of from element structure, substance, and legal culture in Indonesia began start from confession in constitution that the Republic of Indonesia is a state of law (in Explanation of the 1945 Constitution, and after amendment confirmed in Article 1 paragraph (3) of the 1945 Constitution). System law intended ensure enforcement strengthened law and justice with draft supremacy law and democracy.

Enforcement law in a state of law as if discuss life from a body that makes it life, without which the rule of law only become ideas and ideals. Enforcement law is something form concrete implementation law in society that influences feeling law, satisfaction law and needs or justice law public.³⁰ In view general, enforcement law identical with the processes that occur in institutions enforcer law, such as police, prosecutors, courts, institutions correctional (*Criminal Justice*)

System) is known as enforcement true pro - justice law just part small from A system enforcement law, namely law criminal only. Enforcement law No only speaking on the pro- justisia process, which is precisely placed as road final after enforcement various regulation field other laws are carried out. Even Possible just enforcement pro- *justice* law This No need done when enforcement non-*projusticial* law Already implemented with good that guarantees certainty law and justice.³¹

Therefore that, speaking problem enforcement law No can released from understanding system law That alone, where in it covered three components that are not inseparable One with others, namely structure law, substance law and culture law.³² So that uphold law optimally mandatory notice third component.

According to Lawrence Meir Friedman, the system law consists of from three interconnected elements influence, namely:

1) Structure law (*Legal Structure*) is patterns that show about How law That executed according to provisions formal structure includes two things, namely: institutional law and apparatus law.

2) Substance law (*Legal Substance*) includes regulations that are not only in legislation positive only, will but including norms and patterns behavior living behavior in society. The emphasis lies in the living law, not only on the rules in the law book.

³⁰Bagir Manan, *Just Law Enforcement, in Bagir Manan, Finding the Law of a Quest*, Indonesian Advocates Association, Jakarta, 2009, p. 52

³¹Rahayu Prasetianingsih, *A Just State of Law*, Center for Legal Studies State Policy of the Faculty of Law, UNPAD, First Edition, Bandung, 2011, p. 553.

³²Indonesian Judicial Commission, *Legal and Judicial Problems in Indonesia*. First Edition, Secretariat General of the Indonesian Judicial Commission, 2014, p. 123

3) Culture law (*Legal Culture*) is attitude man to laws and systems law beliefs, values, thoughts, as well his hopes.³³

Third element This each other relate between One with others and not can separated massively. As well as whatever arrangement structure law For operate rule the law is established and as good as possible whatever substance laws made without supported culture law by the people involved in system society, then enforcement law No will walk in a way effective, such as enforcement the law that occurs moment This impressive No systematic, overlapping overlapping and overlapping reactive to various violation the law that occurs. ³⁴This is No let go from various factors that influence it, especially connection between third element earlier, namely structure law, substance law and culture law.

In the system law there is Lots elements that are One unity that is not inseparable, mutual related between one subsystem law with subsystem other laws. In conditions like that, sometimes criticism or highlight only focused on one subsystem or only focused on one element system law. Therefore that, understanding about system law for part circles lack of law understand about enforcer law and application law as one of the element or part system law is problem secondly faced by the authorities enforcer law in enforcement law in Indonesia.

Then there is the problem of enforcement law for apparatus enforcer the law in Indonesia is not only to second the above problem. But the problem many and very complex, so the solution must also be complex. Inside public can found for example existence difference response public to the laws in force in Indonesia, and the parties apparatus enforcer law, in matter This is party police as authorized officers in do investigation and inquiry, parties prosecutor's office in do investigation and prosecution, as well as party court as determinant decision making.

When appear response public about existence error in implementation law in form decision, because free or punish defendant for example, then the problem is what is considered wrong is judge's decision ? or don't until in procedure investigation or investigation there is arrogance that tends to force something case for to be continued only for fulfil need mandatory performance existence a number of cases that must be to be continued to court during or period certain, even though according to provision procedural law not yet fulfil element for can improved in the investigation process or prosecution.³⁵

However, the opinions that arise in society are very influential in forming a view of the authorities who are authorized to handle these cases, and can give rise to

³³Lawrence M. Friedman, *American law*. First edition, New York : Norton, 1984, p 7

³⁴Indonesian Judicial Commission, *Op.Cit*, 2014, p 12 4

³⁵ *Ibid*, pp. 137-138

bad assumptions in the eyes of the public. Do the the authorized officers are able to resolve the problem which arises in the name of law, and acts as fairly as possible to the suspects without covering anything up by defending the interests of the position, the interests of the agency and other interests that are protected by the law. like this, it is also a problem for law enforcement officers in enforcing the law in society.³⁶

Problems with law enforcement in Indonesia can occur, both from within the judicial system, legal instruments, inconsistency law enforcement, intervention of power, and in matters of legal protection. One of the things that is commonly seen and felt by the general public is the uncertainty of enforcement law enforcement by law enforcement officials, such as the slow resolution process a case or matter, the lack of transparency in the legal process ongoing until it is not known whether the legal process is still ongoing continues or has been stopped. ³⁷In turn, this will give rise to questions in society about how the process law enforcement is taking place, so that it can give rise to attitudes or behavioral patterns that lack or do not trust law enforcement officers and law enforcement institutions.

Liebmann in particular simple defines Restorative justice as something system law that aims return the welfare of victims, perpetrators and communities damaged by crime, and to prevent violation or action crime more continued. ³⁸Liebmann also provided formulation principle the basis of Restorative Justice as following:

- a) Prioritize victim support and healing;
- b) Perpetrator violation responsible answer on what they do;
- c) Dialogue between the victim and perpetrator for reach understanding;
- d) There is so that for put in a way Correct losses incurred;
- e) Perpetrator offender must own awareness about How method avoid future crimes;
- f) Society should follow as well as give role help in integrate the two sides parties, both victims and perpetrator.³⁹

Action criminal according to glass eye justice Restorative, is something violation to humans and relationships between human beings. Justice restorative can implemented through mediation of the victim with offender, deliberation group family and community services that are recovery Good for both victims and perpetrators. Implementation principles justice restorative That depends on the

³⁶ *Ibid*, p. 138

³⁷ *Ibid*

³⁸ Marian Liebmann, *Op.Cit*, 2007, p 25.

³⁹ *Ibid*

system law what is adhered to by a country. If in system law That No want, then No Can forced the implementation of Restorative Justice. So that can concluded that the principle of restorative justice is choice in designing system law a country. although a country does not adhere to it, will but no close possibility for implemented principle justice restorative in order to provide justice, certainty and benefit law.

Restorative justice arrangements in law national is step progressive going to system law criminal offenses that can be deliver life man become more justice and prosperity based on recovery. Need constructed that criminal No as punishment but as medicine. Punishment as much as possible Possible No may violate dignity dignity human beings.⁴⁰Therefore that, urgency renewal substance prevention - oriented law with effort systematic and procedural is very necessary see problematic system criminalization in Indonesia which has reached a crucial limit.

Change paradigm justice retributive going to justice restorative is things that are not easy and not can done without consideration condition social society. Study of condition politics, economics and social Indonesia's diverse culture must considered in set system law criminal. Required existence law supporting material and formal enforcement justice - based law restorative so that system his punishment interest - oriented perpetrators, victims, and society. Justice restorative That No can interpreted eliminate criminal prison, but bring cases on the road outside the trial process that is peace.

Transformation policy criminalization in Indonesia through ratification of the new National Criminal Code is milestone important in build system law more criminal just and humane.⁴¹ Amendments to the Criminal Code through Law No. 1 of 2023 are moment important in history law Indonesian criminal law because For First the first time Indonesia has codification law criminal acts that are born from the legislative process national, not just adopt inheritance Dutch colonial.

The old Criminal Code which is inheritance Dutch colonialism has long been criticized Because no reflect values local as well as No capable answer dynamics modern crime in Indonesian society. Paradigm retributive law that dominated the colonial Criminal Code put criminalization as tool revenge, not as means recovery social. Renewal efforts law criminal, actually Already started since Indonesia's independence with birth awareness nationalism which also requires existence law criminal in accordance with Pancasila and the 1945 Constitution. These efforts done Good through systemic and integrated efforts namely with effort For replacing the inheritance Criminal Code colonial in a way overall with the Code of Law or codification law new, and through ad *hoc* efforts namely with form

⁴⁰Muhammad Rif'an Baihaky, Muridah Isnawati. Restorative Justice: Meaning, Problems, and Proper Implementation. *UNES Journal of Swara Justisia*, 8 (2) July 2024, p. 28 3

⁴¹Eddy OS Hiariej, *Op.Cit*, 2024, p 50.

Constitution criminal specifically outside the Criminal Code. The Government Already do effort for compile something codification law criminal new with form committee the drafting of the Criminal Code in turn change from time to time with give birth to various formulation draft the draft Criminal Code which was then Already set become A Constitution namely Law No. 1 of 2023 concerning the Criminal Code which hereinafter called the New Criminal Code.⁴²

The meaning of criminal acts in restorative justice is basically the same as the view criminal law in general, namely attacks towards individuals and society and relationships community. However, in the approach restorative justice, the main victim of the incident a criminal act is not a state, as in the current criminal justice system. Therefore, crime creates an obligation to repair the damaged relationship due to the occurrence of a crime. While justice interpreted as the process of finding solutions to problems that occur in a criminal case where the involvement of victims, the community and the perpetrators so it is important in the repair and reconciliation efforts and ensuring the continuity of repair efforts the.

3.2. Implementation Justice Restorative in Settlement Case Criminal Light in New Criminal Code Perspective

The issuance of Law No. 1 of 2023 concerning the Criminal Code as representation from legal reform criminal law. Reform law criminal started in a way literally the word reform etymological perspective means something that is "old" and ongoing in the process of being renewed. The word reform comes from from *reformare* (Latin) which means: (1) improvement through change form or with eliminate the wrong; (2) end unkindness with use good new method (way); (3) update procedural - instrumental. In life dynamic society (nation), so reform is the part that is not inseparable.⁴³ It has been explained at the beginning that criminal law policy is an effort to make (criminal) regulations towards that better, not just doing regulation of social behavior, but also create a society prosperous. This means that criminal law reform is an integral part of criminal law policy.

The aim of punishment (*The Aim of Punishment*) is based on from thinking that system law criminal is One unity purposive system or *teleological system*) and criminal only is tools / means reach purpose, then in new Criminal Code concept formulate objective punishment based on the balance of two targets the main thing, namely " protection" community" (*general prevention*) and " protection / development" individual" (*special prevention*).⁴⁴

⁴²Yoserwan. The Existence of Customary Criminal Law in National Criminal Law After the Ratification of the New Criminal Code. *Unes Law Review*, 5 (4) June 2023, p. 2001

⁴³Oman Sukmana. Reform and the Indonesian Political Agenda. *Bestari*, (27) September-December 1998, p. 94

⁴⁴Failin. *Op.Cit*, September 2017, p 24

The policies adopted by the Indonesian nation in implementing legal reform criminal, through two channels that is:

- 1) Concept Reform Draft National Criminal Code, which means for replaces the old Criminal Code.
- 2) Legislative reform criminal offense which means change, add to, and complete the New Criminal Code.⁴⁵

If the goal criminalization depart from balance of two targets principal, then condition criminalization according to in the the concept of the new Criminal Code also departs from mono- dualistic balance between interest society and interest individual. Therefore that, the condition criminalization based on two pillars or a very fundamental principle, namely" the principles legality" (which is principles society) and" principles error or culpability" (which is principles humanity or individual).⁴⁶

Due to That the concept of a new Criminal Code whose idea is is balance, then effort for reach another goal, namely justice and utility will also be accommodated, one of which is Actually Can in form arrangement criminalization structural. Even when pay attention to one idea main system criminalization in new Criminal Code concept is the idea of prioritizing justice from certainty law.

Change Constitution is commonplace, even it can also be said must, when Constitution That Alone will it is said meaningful for public. The law already exists left behind Far from need public The same very No meaningful for public users Constitution That alone. Development earlier in public demanding that the law already be There is That adjusted to minimal road changed or even revoked. Thus case in point with the original Criminal Code originate from the colonial era in 1918, although Because Indonesia's condition is not yet capable produce codification alone, need There is adjustment partially, according to with Indonesia's needs as a country that has No colonized Again.⁴⁷

There are four aspects that underlie the need for total reform. in criminal law, especially codification, namely political, philosophical, sociological, and practical. From the aspect political, we see it from aspects of the Indonesian state that have is an independent, sovereign country full, no again below the power of another country. A irony for an independent country Still show oneself to the laws of other countries, especially countries that have colonize it. This is give something

⁴⁵ *Ibid*

⁴⁶Andi Hamzah, *Criminal System and Criminalization in Indonesia: from Retribution to Reformation*. Pradnya Paramita, Jakarta, 1986, p. 45

⁴⁷Vinita Susanti, *Existence and Essence of Criminal Law Indonesia. PKNI4418/Module 1*, 2017, p. 19

impression Not yet or No Indonesia was founded as a country that has independent.⁴⁸

From the aspect Philosophically, the Indonesian state has mark base different self with other countries. In the preamble to the 1945 Constitution, paragraph fourth stated that Pancasila as the basis of the state. Next in MPRS Decree No. XX/MPRS/1966 it is stated that Pancasila is source from all source law This have meaning that system the laws applicable in Indonesia must materially based on the values of Pancasila, including therein rules law criminal.⁴⁹

In a way sociologically Pancasila is system extracted values from customs customs, culture, and lived religions in life Indonesian society since the time of our ancestors ancestors Indonesian nation, by leader nation, such as Soekarno, Mohammad Yamin and Soepomo who later made into the basis of the state until now this. This thing prove that the values of Pancasila always used guidelines for life society and life state administration. Therefore that, the arrangement legislation that is inspired by Pancasila is appropriate demands with aspirations mark Indonesian nation.⁵⁰

In a way practical from lived it the values of Pancasila by Indonesian society then No except structure and pattern culture society is also imbued with the values of Pancasila. If it is said that good laws must capable express prevailing values in public so question next, what in codification law criminal legacy colonization the Already contain prevailing values in life Indonesian ⁵¹society with see development the situation in Indonesia in the era of modernization moment This Still creation problematic criminalization that is still shackling and restrictive crucial become axis legal reform considerations criminal become absolute thing.

New Criminal Code No only revise provision technical law criminal, but also targets aspect philosophical and ideological in system law national. Paradigm previous criminalization based on *deterrence* now directed at social recovery and justice. The values of Pancasila are included in a way explicit as foundation ethical from policy criminalization. This is show that law criminal now No Again seen solely as mechanism control, but also as tool coaching and empowerment citizens. In other words, the law start move from paradigm power going to paradigm strengthening public.⁵²

From a theoretical perspective, this change in approach also aligns with progressive thinking in modern criminology. Theories such as *restorative justice* and *social reintegration* emphasizes that justice must touch all elements: the

⁴⁸ *Ibid*, p. 41

⁴⁹ *Ibid*

⁵⁰ *Ibid*

⁵¹ *Ibid*, p. 42

⁵² Safaruddin Harefa, Sri Ismawati, Mega Fitri Hertini. *Op.Ci t*, December 2025, p 290

perpetrator, victims, and society.⁵³ The new Criminal Code provides sufficient space for develop this approach systematically. Not only normatively, but also procedurally through the involvement of non-state actors in the settlement process This criminal approach marks a new chapter in the national criminal justice system, where justice is no longer viewed vertically, but as a participatory and inclusive process comprehensive.

The transformation of the paradigm of criminalization in the new Criminal Code is also seen in the drafting of a more tiered system of sanctions. In the previous system, imprisonment seemed to be become the default sanction, even for minor crimes. The new Criminal Code introduces a penal structure that allows for more supervised or community service sentences prioritized for minor crimes. This is a recognition of the principle of proportionality as the basis for the formation of modern criminal law.⁵⁴ It is hoped that, this approach is able to reduce the negative impact of imprisonment on the perpetrators. should be able to be fostered without being confined. The emphasis on substantive justice is greater prioritized over simply fulfilling legalistic elements.

Reviewing minor crimes or abbreviated Tipiring from a legal interpretation perspective, there is no article in the Criminal Code that contains a single definition regarding minor crimes. However, the Criminal Code regulates the categorization of what can be called a minor crime. The term minor crime literally provides the diction, parameters, and severity of the penalty in a criminal act, outlined in the legal substance of each article, along with the criminal elements inherent in a criminal act categorized as such. action oppose law criminal with consequence criminal in the form of sanctions low criminal penalties Because customized with impact actions the criminal nature of small (in terms of material, immaterial) to the victim.

Description interpretation the interpret that action criminal light No can defined in a way general Because compound word properties the (tipiring) is a parameter of a actions crimes which in the Criminal Code only arranged categorized types as action criminal light based on weight impact his actions as well as weight sanctions which crime in this" light" context refers to gradation small sanctions.

When referring to the interpretation the expert, according to M. Yahya Harahap, stated that action criminal light is type action criminal offenses that can be classified to during the inspection action criminal light.⁵⁵ Opinion Harahap that is

⁵³Eva Achjani Zulfa, Restorative Justice and the Revitalization of Customary Institutions. *Indonesian Journal of Criminology*, 6 (2), 2010, p. 184.

⁵⁴Fauziah Nuraini, The Principle of Proportionality in Criminalization. *Journal of Law and Society*, 4 (1), 2024, 89-102

⁵⁵M. Yahya Harahap, *Discussion of Problems and Implementation of the Criminal Code*, Sinar Grafika. Jakarta, 2009, p. 99

the essence of minor is matters of level the danger low, so that the judicial process simplified for effectiveness law.

As for the interpretation action criminal light emphasized in Law No. 20 of 2025 concerning the Criminal Procedure Code (New Criminal Procedure Code) as source law criminal formal arranged that inspection to action criminal light as intended in the Criminal Code done through inspection events fast. Cases examined according to the inspection report fast is threatened case with criminal imprisonment for a maximum of 6 (six) months and/ or criminal the biggest fine category II.⁵⁶KUHAP only continue distribution existing cases / examinations known previously in Law No. 8 of 1981 (old Criminal Procedure Code) and HIR (*Herzien Inlandsch Regulation*). This is also evident from corner its placement, namely Action Criminal Light entered to in the Examination Event Hurry up, together with case violation Then cross road.

Substances were also found the laws that govern action criminal light in form Regulation Supreme Court (Perma) namely Regulation Supreme Court Decree Number 2 of 2012 concerning Action Limit Adjustment Criminal The light and amount of fines in the Criminal Code through Article 1 provides categories included action criminal light that is theft light, darkening light, fraud light, fraud light, destruction light, and catchment light with action parameters criminal with the victim's losses are not exceeding Rp. 2,500,000.00 (two million five hundred thousand rupiah).⁵⁷

As for the the requirements of the norm must fulfil provision that No valid when action criminal the is action The threatened crime with criminal 5 (five) years imprisonment or more, follow the criminal penalties that are threatened with special minimum sentence, crime criminal certain very dangerous or harm society, and actions detrimental crimes finance or national⁵⁸economy like corruption and money laundering. This means that this article confirm that only category action criminal light that can restorative justice is attempted.

1) Article 71

If someone do Action The only crime threatened with criminal imprisonment under 5 (five) years, while the judge is of the opinion No need drop criminal prison after consider objective criminalization and guidelines criminalization as intended in Article 51 to with Article 54, the person can only sentenced criminal fine.⁵⁹

⁵⁶ Article 258 paragraphs (1) and (2) of the Law Number 20 of 2025 concerning the Criminal Procedure Code

⁵⁷ Article 1 of the Regulations Supreme Court Decree Number 2 of 2012 concerning Action Limit Adjustment Criminal Light and Amount of Fines in the Criminal Code

⁵⁸ Article 70 paragraph (2) of the Law Number 1 of 2023 concerning the Criminal Code

⁵⁹ Article 71 paragraph (1) of the Law Number 1 of 2023 concerning the Criminal Code

However criminal fine only can dropped if: (a) without a victim; (b) the victim does not take issue with; or (c) not repetition action criminal (recidivist).⁶⁰

2) Article 112

The child who did Action The threatened crime with criminal imprisonment under 7 (seven) years and not is repetition Action Criminal must attempted which diversion⁶¹ which diversion⁶² is effort divert or put perpetrator action criminal child go out from system justice crime in which the transfer settlement case child from track formal justice to outside court, which acts as form real (representation) of restorative justice restorative). The goal is restore connection between the victim and the perpetrator, avoiding child from criminal prison, and prioritize rehabilitation than punishment.

4. Conclusion

Reality problematic law in Indonesia is rooted in the system long - term imprisonment is a very relevant view and supported by dynamics law moment this. Problems the among others (1) Inheritance colonial and approach retributive (revenge) with domination prison, during which dozens year, system Indonesian law relies heavily on criminal law prison as sanctions main, legacy from Wetboek van Strafrecht colonial which although experience various change, basically still reflect values, orientation, and interests colonial; (2) High *overcriminalization*, phenomenon *overcriminalization* in Indonesia is use law criminal in a way exaggeration, where the actual action No worthy convicted or crime without any victims criminalized. System law Still too depend on prison as road go out main, even For action the crime that should be Can completed through non-imprisonment approach; (3) Accumulated burden matter, height number criminalization in a way significant increase burden accumulation matters in each sub- system justice Indonesian criminal law, namely institution Police, Prosecutors, Courts, and Correctional Institutions; (4) Chronic overcapacity of prisons, data from the Ministry of Immigration and Correctional Services as of April 2026 shows amount The number of inmates in prisons and detention centers across Indonesia has reached 271,602. The total ideal capacity of prisons and detention centers is only capable accommodates 147,376 residents. This show condition real occurrence excess residents reached 85%, namely more of 130,000 people. Based on problematic system criminalization in Indonesia, the application of restorative justice (restorative justice) restorative) in Indonesia is urgent done as response on crisis in system criminalization too conventional emphasize on reply revenge (retributive). Urgency This driven by need overcome problem

⁶⁰ Article 71 paragraph (2) of the Law Number 1 of 2023 concerning the Criminal Code

⁶¹ Article 112 of the Law Number 1 of 2023 concerning the Criminal Code

⁶² Tomalili, Rahmanuddin and Agus Ariadi. Implementation of Diversion Through a Restorative Justice Approach Carried Out by Juvenile Judges at the Unaaha District Court. *Sibatik Journal*, 1 (5) April 2022, p. 545.

systemic system justice criminal law, recovering victims, and for action criminal light can finish case more fast, cheap, and reduces accumulation matter. The existence of draft justice restorative in a way implicit can found in substance Law Law 1/2023 of the Criminal Code values from restorative justice can seen in various article, start from Article 51 concerning the Purpose of Criminalization that is criminalization aim For finish the conflict that arises consequence action criminal and recovery balance, Articles 53 and 54 concerning Guidelines Criminalization Where in judges are required to adjudicate uphold law and justice as well as consider forgiveness from the victim and or the victim's family, then in Articles 70 and 71 concerning Criminal and Action, where criminal prison as much as possible Possible No dropped among them If defendant new first time doing action criminal, act criminal only threatened with criminal prison under 5 (five) years, the victim's losses and suffering are not too large, then Article 112 concerning Diversion and Article 132 concerning One of the reasons for the lapse of the authority to prosecute is if has There is settlement outside the judicial process. See substance laws that are formed in the National Criminal Code above with norms that are full of will paradigm new in criminalization give description concrete that system law criminal national currently attempted For change in a way systemic, paradigmatic and cultural For achievement balance in system criminalization in Indonesia with prioritize justice the highest law.

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