

## **RESTORATIVE JUSTICE IN THE NEW CRIMINAL CODE AS A MANIFESTATION OF PROPHETIC LAW VALUES AND PANCASILA**

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### **ABSTRACT**

This research aims to explain the extent to which the principle of restorative justice in the 2023 Criminal Code reflects prophetic legal values and how their implications are for the practice of Pancasila values. This study adopts a normative juridical methodology combined with a descriptive-analytical approach. Data is collected through literature review including primary, secondary, and tertiary legal sources, and then processed qualitatively. The results show that the application of restorative justice in the 2023 Criminal Code is in line with three main values in the prophetic legal framework, namely the dimensions of divinity, humanity, and justice. This approach also reflects the practice of Pancasila values, especially in upholding human dignity, deliberation, and social justice. Thus, the 2023 Criminal Code not only represents the renewal of the national criminal law, but also becomes a forum for humanist and transformative legal transformation based on the noble values of the nation.

**Keywords:** *Restorative Justice, Prophetic Law, Pancasila.*

### **INTRODUCTION**

Indonesia stands out as a country that applies unique principles in the life of the nation and state, namely by making Pancasila the basis of the state. Pancasila is not only a symbol of national identity, but also a crucial foundation that maintains the continuity of the nation's existence. Each precept contains noble values that reflect the character and identity of Indonesia, so that Pancasila becomes the main foothold in the implementation of society, nation, and state life.<sup>2</sup> The position of Pancasila in Indonesia is imprinted as a constitutional foundation as well as a state ideology. The implementation of Pancasila values is the obligation of all components of the nation and government institutions, with the goal of forming citizens who behave and behave in harmony with the principles contained in it.<sup>3</sup>

The role of Pancasila in the formation of law in Indonesia is very important to ensure that the applicable laws reflect the noble values of the nation. Pancasila in law can be understood as *grundnorm*, which means basic norms or fundamental norms in a legal system. Grundnorm is the highest principle that is the source of legitimacy and the basis for the applicability of all other legal norms in a legal order.<sup>4</sup> Guided by Pancasila, Indonesian law is intended to uphold human dignity and social justice for all Indonesian

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<sup>3</sup> Teuku Muharam Rizqullah and Fatma Ulfatun Najicha, "The Implementation of Pancasila Ideology in the Life of the Nation and State," *Journal of Citizenship* 6, no. 2 (2022): 2630–33, <https://doi.org/https://doi.org/10.31316/jk.v6i2.3072>.

<sup>4</sup> Muhammad Husin Ali, Akhmad Saripudin, and Andi Bahri Saputra, "The Position of Pancasila as a Basic Norm in the Case of Interfaith Marriage in IndonesiaA Review of Hans Kelsen's Theory (Stufenbau Theory)," *Collaborative Journal of Science* 8, no. 1 (2025): 512–20, <https://doi.org/https://doi.org/10.56338/jks.v8i1.6766>.

people, which at the same time reflects the spirit of protecting human rights and upholding moral principles in accordance with Indonesian religious and cultural values.<sup>5</sup>

Pancasila plays a role as a basic norm (*grundnorm*) which is the most fundamental foundation in the Indonesian constitutional system. Occupying the highest position in the hierarchy of legal norms, Pancasila provides a conceptual framework and guidelines for all laws and regulations and practices of social, national, and state life. As a source of all legal sources, every legislation product in Indonesia must refer to the values of Pancasila and is prohibited from contradicting them. The five precepts of Pancasila, namely the One Godhead; A Just and Civilized Humanity; Indonesian Unity; A People's Led by Wisdom in Deliberation/Representation; and Social Justice for all Indonesian people, representing universal values that form the philosophical and ideological basis for the administration of the state. With this position, Pancasila is not only an ethical guideline in community life, but also the spirit and soul of the national legal system. The acceptance of Pancasila as a *norm* strengthens the integration between the noble values of the nation and the formal legal structure, thereby ensuring justice, certainty, and usefulness within the framework of the Indonesian legal state.

In this regard, the prophetic legal approach is relevant, because it can encourage the implementation of Pancasila values in a more profound and transformative manner in the national legal system.<sup>6</sup> Prophetic law, as explained by legal scholars, is a legal paradigm that emphasizes the dimensions of divinity, justice, and humanity. These prophetic values are rooted in religious teachings that prioritize a balance between rights and obligations, as well as between existence in the world and readiness to face life in the hereafter. Prophetic law is a manifestation of moral values that prioritize a balance between the interests of individuals, society, and God.<sup>7</sup> Based on this, prophetic law can be a strong foundation in formulating legal policies that are just, humanize humans, and provide protection for individual rights.

In response to the changing times and the needs of society, Indonesia is continuously implementing reforms and improvements to its legal system, one of which is through Law Number 1 of 2023 concerning the Criminal Code which was promulgated on January 2, 2023 and is scheduled to take full effect on January 2, 2026. The law marks a new chapter in the modernization of national criminal law by replacing the old Criminal Code inherited from the Dutch colonial rule, *namely the Wetboek van Strafrecht voor Nederlandsch-Indië* (WvS) which has been applied since the Dutch East Indies period.

One of the most significant changes in the reform of the criminal law system after the 2023 Criminal Code is the application of the principle of restorative justice as a method of resolving cases. In contrast to the old Criminal Code or WvS which emphasizes more on a retributive approach or retaliation against criminal offenders, the 2023 Criminal

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<sup>5</sup> Zainudin Hasan et al., "The Application of Pancasila Values in the Formation of Legal Regulations in Indonesia," *Case: Journal of Law and Politics* 2, no. 2 (2024): 138–50, <https://doi.org/https://doi.org/10.51903/perkara.v2i2.1863>.

<sup>6</sup> Noor Rahmad, "Pancasila Prophetic Law: A Study on the Implementation of Pancasila Values in the Indonesian Legal System," in *National Seminar on Doctoral Program in Law*, 2024, 107–15.

<sup>7</sup> Fatkhul Muin, "The Paradigm of Prophetic Legal Relations: Pancasila in the Development of National Law," *Journal of Citizenship* 7, no. 2 (2023): 2169–75, <https://doi.org/https://doi.org/10.31316/jk.v7i2.5631>.

Code provides more space for the restoration of relationships between perpetrators of criminal acts and their victims. This approach focuses on peaceful conflict resolution, recovery of victims' losses, and the responsibility of the perpetrator for the impact of his actions.<sup>8</sup>

Based on these descriptions, as a country based on Pancasila, Indonesia has a responsibility to build a legal system that is not only legalistic, but also reflects values such as divinity, humanity, and social justice. It is hoped that this article will be able to enrich insights and encourage the evolution of the criminal justice system in Indonesia by focusing on the process of recovery and reconciliation rather than just revenge. This article is also expected to contribute to efforts to make Indonesian law more humane, fair, and in accordance with the values in Pancasila and prophetic law

## **METHOD**

The writing of this article is a normative juridical method or it can also be called doctrinal law research. Specifically, this article is descriptive because it aims to explain restorative justice in the 2023 Criminal Code as a manifestation of prophetic legal values based on relevant legal theories. This article uses secondary data collected through a literature review. The data includes primary, secondary, and tertiary legal sources. The primary source refers to a binding norm, namely Law Number 1 of 2023 concerning the Criminal Code. Secondary sources consist of materials that provide explanations of primary sources, such as research results, books, legal articles or journals, and the like. Tertiary legal materials are legal materials that provide instructions and explanations of primary legal materials and secondary legal materials, such as dictionaries, encyclopedias, cumulative indexes, and so on<sup>9</sup>. After all the data is collected, a qualitative analysis is carried out and presented systematically through descriptive descriptions in the form of a structured narrative.

## **RESULTS AND DISCUSSION**

### **Restorative Justice in the 2023 Criminal Code and Prophetic Law**

*Restorative justice* is an integral part of the criminal justice system that focuses on the recovery of victims and efforts to create balance in responding to criminal acts, especially those that are considered to have a low level of seriousness by the community. This approach does not only focus on sanctioning, but emphasizes dispute resolution through dialogue and consensus involving perpetrators, victims, and the community. Restorative justice also actualizes the principle of speedy justice by emphasizing the effectiveness, efficiency, and affordability of costs in law enforcement.<sup>10</sup>

Restorative justice actually serves as a rebuttal to the traditional criminal law enforcement model that has made criminalization the main focus in the justice system.

<sup>8</sup> Gilang Gemilang and Ismaidar Ismaidar, "The Politics of Restorative Justice in Criminal Law Reform in Indonesia," *Semarang Law Review* 4, no. 1 (2024): 7370–7382, <https://doi.org/https://doi.org/10.31004/innovative.v4i1.8733>.

<sup>9</sup> Zainuddin Ali, *Legal Research Methods* (Jakarta: Sinar Grafika, 2022). p. 105-106.

<sup>10</sup> Adi Syahputra Sirait, "The Principle of Simple, Fast and Low Cost Justice in the Trial of Corruption Crimes in the Medan District Court," *Al-Maqasid Journal* 7, no. 1 (2021), <https://doi.org/http://dx.doi.org/10.31602/al-adl.v12i1.4328>.

The conventional approach focuses more on punishing perpetrators without considering the need for recovery for victims or the improvement of social relationships disrupted by criminal acts.<sup>11</sup> On the contrary, restorative justice offers a new, more humane paradigm, by prioritizing dialogue, responsibility, and restoration, and encouraging all interested parties to actively contribute to the process of resolving cases in a fair and dignified manner.

This shows that conventional criminal law approaches tend to deny the existence and needs of perpetrators and victims of criminal acts, which are often ignored in the law enforcement process. Excessive emphasis on *law as a text and process*, namely on written legal rules and formal procedures, makes the humanitarian aspect in a criminal case marginalized. As a result, legal settlements do not always provide a complete sense of justice for all parties, because they do not consider the social, psychological, and moral context surrounding the criminal incident.<sup>12</sup>

Restorative justice exists as an effort to rebuild the concept of modern criminal law by focusing on the importance of a balance between the position of the perpetrator, the victim, and the benefit to society. This approach aims to shift the focus from mere punishment to the return of social interaction that is disrupted as a result of criminal acts. Providing space for dialogue, confession, and agreement-based settlement, restorative justice seeks to realize justice that is more inclusive, participatory, and more centered on recovery and social harmony.<sup>13</sup>

Restorative justice is guided by substantive legal aspects and thinking as an effort to introduce true justice in the implementation of criminal law. This approach emphasizes the importance of the essence of justice which is not only seen from the procedural side, but also from the substance that touches the needs of victims, perpetrators, and society as a whole. The idea and implementation of restorative justice is one of the important aspects accommodated in the 2023 Criminal Code. The 2023 Criminal Code is designed to reflect the cultural values of the Indonesian nation's law, which places *restorative justice* as the main principle in handling criminal cases that prioritizes a more humane, fair, and sustainable approach.

A new phase in Indonesia's criminal law rules that is increasingly responsive to the development of society and Indonesian values is marked by the existence of the 2023 Criminal Code. One of the important substances reflected in the 2023 Criminal Code is the application of the principle of *restorative justice* as an alternative method of solving a criminal event. This strategy seeks to shift the paradigm of law enforcement that was previously retributive to a settlement pattern that emphasizes the return of position or status between the perpetrators of criminal acts, their victims, and the community.

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<sup>11</sup> Hwian Christianto, "Norms of Unity as a Limitation of Criminal Acts of Spreading Hate Speech Through the Internet," *Veritas and Justitia* 6, no. 1 (2020): 94–126, <https://doi.org/https://doi.org/10.25123/vej.3501>.

<sup>12</sup> Tanti Kirana Utami et al., "The Influence of Statutory Theory on the Dynamics of Legal Norms in the Indonesian Legal System," *Ius Publicum Legal Journal* 5, no. 2 (2024), <https://doi.org/10.55551/jip.v5i2.199>.

<sup>13</sup> Jonathan Hobson et al., "'Restorative Justice, Youth Violence, and Policing: A Review of the Evidence,'" *MDPI Journal Laws* 11, no. 4 (2022), <https://doi.org/https://doi.org/10.3390/laws11040062>.

In the Indonesian context, the concept and application of restorative justice is closely related to the foundation of prophetic law. Prophetic law itself emphasizes the need to integrate the three core values of divinity, humanity, and justice, which are fully integrated into every aspect of the legal system. Only by combining these three values in its entirety can a legal order be considered in accordance with the prophetic paradigm. The prophetic law-based analysis approach was chosen because it places divine values as the first principle or *causa prima*. Divine values are often considered irrelevant in the legal system, as law is often seen as the result of "pure human ijtihad" independent of theological aspects. This view raises problems, especially in relation to the ideals of Indonesian law.

All three main values have been fulfilled in restorative justice when using the prophetic legal viewpoint. In handling criminal cases, divine values are reflected in an approach that puts victims and perpetrators on an equal footing by emphasizing harmony and justice as a reflection of God's nature. Humanitarian value can be seen from the treatment of the perpetrators of criminal acts as human beings who still have rights and dignity even though they are guilty. Furthermore, the value of justice is realized through the recovery of victims and the proportionate affirmation of the responsibility of the perpetrators. Based on this explanation, restorative justice not only solves criminal problems, but also maintains social harmony in society.

The substance of *restorative justice* that has been accommodated in the 2023 Criminal Code is a progressive step in strengthening Indonesia's criminal justice system based on divine values, humanity, and justice. Based on prophetic law, these three values are the main pillars that must be realized in every legal product. In this regard, divine values are clearly reflected in the formulation of Article 51 of the 2023 Criminal Code which states that the purpose of punishment is directed to re-educate perpetrators of criminal acts so that they give birth to better individuals. This situation is in line with the concept in religious teachings, which is based on the nature of God Almighty, which is that every human being, no matter how bad his behavior, still has the opportunity to repent and transform into a better person.

Humanitarian values are also internalized in Article 52 of the 2023 Criminal Code, which explicitly states that criminalization must not degrade human dignity. This principle is particularly relevant to the idea of prophetic law that places human dignity as a central aspect and is part of God-derived law. Therefore, maintaining human dignity is not only a moral obligation, but also a form of fulfilling God's commands. A person who ignores the dignity of others is actually considered to have exceeded the limits of divine and human values.

Furthermore, the value of justice in prophetic law is not only retributive (retributive), but also restorative and distributive. Justice is not enough just to punish the perpetrators, but it is also important to touch the rehabilitation of the victim's and social conditions. The 2023 Criminal Code adopts this method through various alternative criminal forms, such as supervision crimes, social work crimes, and fulfillment of customary obligations, as stipulated in Articles 65 to 97. Social work crimes, for example, allow perpetrators to make a real contribution to society as a form of accountability for their actions, without having to serve prison sentences which in many cases are counterproductive to the rehabilitation process.

Based on these descriptions, the substance of *restorative justice* formulated in the 2023 Criminal Code has shown a close and coherent relationship with prophetic legal principles. This is an indicator that the orientation of Indonesian criminal law after the ratification of the 2023 Criminal Code does not only focus on punishment alone, but also prioritizes increasingly humane and transformative methods to adjust the noble values of the nation and the divine spirit.

### **Implications of Restorative Justice in the 2023 Criminal Code on Pancasila**

The first step towards national criminal law reform that reflects a new spirit in law enforcement in Indonesia is marked by the birth of the 2023 Criminal Code. One of the fundamental approaches carried out in the Criminal Code is the application of the principle of *restorative justice* as part of the option to resolve criminal cases. *Restorative Justice* in this context is not just a technical instrument in the judicial system, but has broad implications for the fundamental principles that are the foundation of the Indonesian state, namely Pancasila. Pancasila, which is the state ideology as well as the main source of law, plays a central role in shaping the direction and character of the national legal system, including in the reform of criminal law.

Restorative justice in the 2023 Criminal Code emphasizes the resolution of criminal acts with steps that include rehabilitating victims, restoring social conditions, and empowering perpetrators to proactively account for their actions. This approach is in line with the noble values of Pancasila, including emphasizing the importance of recognizing the oneness of God, respect for humanity, the spirit of unity, the principle of deliberation, and the ideals of social justice. The implementation of restorative justice in the criminal law system can be seen as a form of practicing Pancasila contextually and applicatively in legal and state life.

The first implication can be reviewed from the first precept of Pancasila, namely "The One Godhead". Based on the principle of restorative justice, there is room for the perpetrator to repent and improve himself, which reflects spiritual and religious values. This approach appreciates the potential for change in humans and provides opportunities for actors to take a better path. In this context, restorative justice does not only prioritize revenge or punishment, but rather restoration and coaching, as stipulated in Article 51 of the 2023 Criminal Code. This spirit reflects the belief that human beings as God's created beings have the potential to change, and the legal system must make room for that transformation process. Based on this explanation, the principle of restorative justice strengthens the implementation of the values of the One Godhead in national legal practice.

Furthermore, the second precept, namely "Just and Civilized Humanity" has strong relevance to the spirit of restorative justice. This approach places human beings, both perpetrators and victims, as subjects who have human rights, dignity, and values. The 2023 Criminal Code through Article 52 emphasizes that criminalization must not degrade human dignity. This means that perpetrators of criminal acts must still be treated humanely, not discriminated against, and given the opportunity to correct their mistakes. Victims are also recognized as parties who have the right to justice and restoration. Restorative justice allows for a settlement that is not only legalistic, but also moral and

ethical, which prioritizes dialogue, empathy, and a proactive attitude from all parties concerned. Based on this explanation, this approach is a tangible manifestation of the precepts of humanity that prioritizes fair and civilized values.

The next implication can be traced to the third precept, namely "Indonesian Unity". Based on restorative justice, one of the main goals is to restore social relations that have been disrupted by criminal acts. *Restorative Justice* seeks to create reconciliation between related parties, namely perpetrators, victims, and the community, so as to prevent prolonged conflicts and strengthen social cohesion. The process of dialogue and deliberation in the settlement of cases also fosters the spirit of mutual understanding and mutual cooperation, which ultimately strengthens unity in the community. In this regard, Indonesia's pluralistic society, this approach is very important because it provides space for peaceful settlement of cases while still taking into account local wisdom and cultural values.

Based on the fourth precept, namely "Democracy Led by the Wisdom of Wisdom in Deliberation/Representation", restorative justice also has significant implications. The process of resolving cases restoratively involves a deliberation mechanism between the perpetrator, the victim, the family, and community leaders. All parties in this forum are given space to express their views and reach a fair and mutually acceptable agreement. This is in line with the principle of Pancasila democracy which places deliberation as the main mechanism in decision-making. This process also reflects collective wisdom in solving social problems, as well as giving an active role to the community in maintaining order and justice.

The fifth precept, namely "Social Justice for All Indonesian People", is the culmination of Pancasila values that emphasize the importance of equitable distribution of justice for all citizens. The *restorative justice* approach does not solely focus on perpetrators and victims, but also considers the interests of the wider community. Through restoration, mediation, and reparation, restorative justice aims to create social balance and substantive justice. Avoiding the dominance of retributive approaches that tend to be repressive and exclusive, the restorative justice-based legal system will provide more inclusive and affordable access to justice, especially for vulnerable groups. This contributes to the reduction of legal and social inequalities, as well as the realization of a more just and civilized society.

The implementation of restorative justice in the 2023 Criminal Code also reflects the spirit of transformative justice that is oriented towards social and legal cultural change. In many cases, the conventional criminal justice system does not provide space for the recovery of victims or the effective rehabilitation of perpetrators. The restorative approach driven by the 2023 Criminal Code offers a new paradigm that not only resolves cases formally, but also touches on the psychological, moral, and social aspects of the parties involved. Based on this explanation, restorative justice is not only a legal strategy, but also an instrument of sustainable social transformation, which is very relevant to the spirit of Pancasila as a dynamic and adaptive ideology to the development of the times.

In practice, the implementation of restorative justice does face challenges, ranging from resistance from law enforcement officials, limited resources, to lack of understanding among the community, however, with the support of strong regulations such as the 2023 Criminal Code and strengthening institutional capacity and community

legal literacy, the principles of restorative justice can be applied effectively. This requires cooperation between the state, civil society, academics, and law enforcement officials to ensure that restorative justice is truly the main alternative in the criminal justice system in Indonesia.

Based on these descriptions, it can be emphasized that restorative justice in the 2023 Criminal Code has profound implications for the realization of Pancasila values in regulations or the national legal system. Each precept of Pancasila finds its relevance in this approach, both in the aspects of divinity, humanity, unity, deliberation, and social justice. By making restorative justice an integral part of the national criminal system, the Indonesian state not only strengthens the humanist and contextual legal character, but also affirms Pancasila as a philosophical and ideological basis in realizing a just, dignified, and civilized legal order.

## **CONCLUSION**

The implementation of restorative justice in the new Criminal Code as stipulated in Law Number 1 of 2023 reflects concrete efforts to realize prophetic legal values in Indonesia's criminal law order. The prophetic legal approach becomes particularly relevant because it emphasizes the balance between the transcendental and humanitarian dimensions in law enforcement. Prophetic principles such as justice, compassion, and respect for human dignity are accommodated in the concept of restorative justice, which is one of the hallmarks of the 2023 Criminal Code. This approach not only shifts the orientation of criminal law from retribution to recovery, but also emphasizes the importance of dialogue, moral responsibility of perpetrators, and recovery of victims, in line with the noble values contained in Pancasila and religious teachings. Based on this description, the 2023 Criminal Code is more than just a means of formally reforming the criminal law, but also a forum for value transformation, where the law functions as a medium that humanizes humans and reflects the prophetic spirit in the life of the nation and state.

Based on these conclusions, there are several suggestions that can be submitted to strengthen the implementation of this concept in the Indonesian criminal law system. First, it is necessary to increase the capacity and understanding of law enforcement officials, especially the police, prosecutors, and judges regarding the principles of restorative justice and its relevance to prophetic values and Pancasila. It is important that the application of related articles is not purely textual, but also reflects a substantive and contextual approach. There is a need to develop clear technical guidelines and mechanisms for the implementation of restorative justice that ensure the protection of victims' rights and encourage active community participation. Institutional strengthening, such as the establishment of community-based or customary-based criminal mediation forums, can also be a strategic step so that the restorative spirit seriously functions in the community. Furthermore, value-based legal studies are important to be immediately optimized, both in the form of formal educational institutions and community legal literacy programs. This is important to form a legal culture that views law not only as a controlling tool, but also as a means of moral development and social transformation. These steps will bring the implementation of restorative justice in the 2023 Criminal Code

not only to be a normative innovation, but also to an ethical and philosophical force that reflects the spirit of prophetic law in the Indonesian criminal law system.

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