

Reform of the Criminal Law System in Indonesia Which Prioritizes Substantive Justice



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Abstract

Indonesia is presently undergoing a reform of its criminal law system to decolonize the existing criminal legislation that persists. The existing criminal law, which the Netherlands has influenced, currently emphasizes corporal punishment and does not offer avenues for crime victims to seek compensation. However, efforts are underway to reform the criminal code and introduce provisions that allow compensation to be awarded to victims of criminal offenses. This is undertaken within the framework of Indonesia's endeavor to establish a criminal justice system that is compassionate and capable of achieving meaningful principles of fairness.

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1. Introduction

The concept of law extends beyond stated and strict borders, incorporating essential human concepts such as fairness and equality among individuals. Disputes that emerge result in retribution as if pursuing criminal vengeance is the acceptable course of action. Enforcing physical punishment or sanctions on violators is crucial for sustaining law and order.¹ Nevertheless, realizing that those who experience losses in these disputes may not necessarily have the same awareness of the societal emphasis on holding criminals accountable for their acts is vital. Implementing criminal punishment is vital since it highlights the consistent enforcement of legal certainty and serves as a deterrence against

¹ Bennett W Fletcher and others, 'Measuring Collaboration and Integration Activities in Criminal Justice and Substance Abuse Treatment Agencies', *Drug and Alcohol Dependence*, 103 (2009), S54–64 <<https://doi.org/https://doi.org/10.1016/j.drugalcdep.2009.01.001>>.

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future illegal activity by instilling dread in potential offenders.²

Corporal punishment presents a substantial threat that should not be downplayed. In addition, persons who have been convicted and fined may face long-lasting societal ramifications that linger throughout their lifetimes.³ The community enjoys a sense of satisfaction when they watch the execution of heavy punishments on individuals who have committed crimes. In this specific example, communal justice has been successfully achieved. On the other hand, the term "victim" denotes the one who endures physiological or material damage. Implementing harsh measures does not secure the attainment of contentment. Mere observation of the incarceration of the criminal is inadequate to achieve total reparation for the damage caused by illicit action.⁴

Quantifiable losses may be precisely measured using numerical values, while intangible losses cannot be defined using numerical numbers or tangible goods.⁵ Intangible damages refer to the inescapable effects of a criminal incident, including emotions such as anxiety, psychological discomfort, and pessimism that originate directly from the event. It is crucial to assess these intangible losses as a whole. Indonesia: We are adopting a new set of modifications to the criminal justice system in 2023. The New Criminal Code was established by enacting Law Number 1 of 2023, signifying the initiation of criminal law reform. This legislation aims to promote fairness and neutrality among individuals.⁶

As per the New Criminal Code, the government is not the exclusive entity accountable for dispensing punishment. Crime victims can pursue compensation as a means of pursuing retribution. The renewal of this law serves as a substitute for the previous criminal law, specifically Law Number 1 of 1946 regarding the Criminal Law, commonly

² Endro Tri Susdarwono and Alma Wiranta, 'The Effect of the District Court Judge's Verdict in the Sambo CS Case on the Level of Public Trust in the Criminal Justice System in Indonesia', *Recht Studiosum Law Review*, 2.1 (2023), 40–50 <<https://doi.org/10.32734/rslr.v2i1.11479>>.

³ Nancy Wolff and others, 'Practice Informs the next Generation of Behavioral Health and Criminal Justice Interventions', *International Journal of Law and Psychiatry*, 36.1 (2013), 1–10 <<https://doi.org/https://doi.org/10.1016/j.ijlp.2012.11.001>>.

⁴ Kathryn M Nowotny, Anastasiia Kuptsevych-Timmer, and Carrie Oser, 'Criminal Justice Contact and Health Service Utilization among Women across Health Care Settings: Analyzing the Role of Arrest', *Women's Health Issues*, 29.2 (2019), 125–34 <<https://doi.org/https://doi.org/10.1016/j.whi.2018.12.005>>.

⁵ Loraine Gelsthorpe, 'Women and Criminal Justice', in *International Encyclopedia of the Social & Behavioral Sciences (Second Edition)*, ed. by James D Wright, Second Edi (Oxford: Elsevier, 2015), pp. 616–21 <<https://doi.org/https://doi.org/10.1016/B978-0-08-097086-8.28100-2>>.

⁶ Sarah Dowling and others, 'A Clinical Investigation into the Ability of Subjects with Lung Disease to Provide Breath Specimens Using the EvidenzerIRL Evidential Breath Analyser in Alcohol Intoxicant Driving in Criminal Justice Evidence', *Journal of Forensic and Legal Medicine*, 80 (2021), 102175 <<https://doi.org/https://doi.org/10.1016/j.jflm.2021.102175>>.

referred to as the Old Criminal Code.⁷ In the previous iteration of the Criminal Code, criminal sanctions were limited to penalties enforced by the government, known as vertical punishment. The victims of crimes were denied the opportunity to propose their system of retributive measures. The current Criminal Code, known as the Old Criminal Code, is in force and scheduled to expire in 2026.⁸

An amendment to the Criminal Code is imperative as it no longer aligns with the current dynamics of Indonesian society. Ensuring the imposition of criminal penalties is essential to ensure fair and impartial outcomes for all involved parties.⁹ Currently, the justice analysis mostly centers around the government and the wider community, disregarding the adequate inclusion of the perspective of the individual who has experienced an injury. Victims seeking compensation from criminals encounter additional hurdles, as they must make individual and distinct endeavors. This presents difficulties for individuals who may not possess a thorough understanding or knowledge of the necessary protocols to commence legal proceedings.¹⁰

Particularly when the individual affected by a criminal act suffers substantial suffering, leading to the loss of a limb, incapacity, or even death. Engaging in criminal activities significantly impairs individuals' ability to generate income and sustain their livelihood. Indonesia has implemented several laws to streamline the process of victims receiving compensation from those who have committed wrongful acts.¹¹ The actions involve commencing legal proceedings by Articles 98-101 of the Criminal Procedure Code (KUHP), initiating lawsuits for unlawful acts (PMH) as defined in Article 1365 of the Civil Code, and providing compensation through the Witness and Victim Protection Agency (LPSK) as stipulated by Law Number 13 of 2006 concerning Witness and Victim

⁷ Giulia Lanza, 'The Fundamental Role of International (Criminal) Law in the War in Ukraine', *Orbis*, 66.3 (2022), 424–35 <<https://doi.org/https://doi.org/10.1016/j.orbis.2022.05.010>>.

⁸ Erika Gebo, 'An Integrated Public Health and Criminal Justice Approach to Gangs: What Can Research Tell Us?', *Preventive Medicine Reports*, 4 (2016), 376–80 <<https://doi.org/https://doi.org/10.1016/j.pmedr.2016.07.007>>.

⁹ Matthew W Epperson and others, 'Envisioning the next Generation of Behavioral Health and Criminal Justice Interventions', *International Journal of Law and Psychiatry*, 37.5 (2014), 427–38 <<https://doi.org/https://doi.org/10.1016/j.ijlp.2014.02.015>>.

¹⁰ Makoto Ibusuki, 'On Implementing a Therapeutic Jurisprudence-Based Criminal Justice System in Japan', *International Journal of Law and Psychiatry*, 63 (2019), 63–67 <<https://doi.org/https://doi.org/10.1016/j.ijlp.2018.07.007>>.

¹¹ Aprillia Krisdayanti, 'Perlindungan Hukum Bagi Justice Collaborator Dalam Pengungkapan Tindak Pidana Pembunuhan Berencana', *Jurnal Lex Renaissance*, 7.4 (2022), 803–18 <<https://doi.org/10.20885/jlr.vol7.iss4.art8>>.

Protection.¹²

However, specific illicit behaviors that result in financial detriment to victims solely result in penalties for the wrongdoer without compensating the victims who endure substantial losses.¹³ Despite not being in effect yet, the New Criminal Code has garnered significant praise from the public and legal experts for its recognition of the significance of providing reparation to victims of crimes. Currently, the Old Criminal Code lacks provisions for compensation. However, reimbursement may be granted when there have been numerous fruitless attempts, which surely require a significant investment of time and money. Implementing the New Criminal Code has introduced provisions that control the ability of crime victims to seek reparation for the harm they have suffered.¹⁴

In contrast, the former Criminal Code did not provide any measures for compensation. Implementing this New Criminal Code is expected to accelerate the achievement of significant justice, mainly by imposing extra criminal sanctions.¹⁵ The current method of compensating crime victims is inefficient due to the requirement for victims to comply with specified standards and processes in order to file a claim against the criminal.¹⁶ Despite multiple efforts to enhance the system, it remains burdensome for victims. It results in both quantifiable and unquantifiable losses. Individuals lacking legal expertise may encounter challenges while seeking compensation from a panel of judges.

2. Research Methods

This research employs a normative legal methodology, utilizing both a legislative and a

¹² Pieter Agustinus, Mikael Rondo, and Hery Firmansyah, 'Pengaruh Peran Amicus Curiae Terhadap Proses Peradilan Dan Kepastian Hukum', *UNES Law Review*, 6.2 (2023), 4463–68 <<https://doi.org/10.31933/unesrev.v6i2>>.

¹³ Bandy X Lee, Grace Lee, and others, 'Violence and Health: Merging Criminal Justice, Law, Mental Health, and Public Health - Part B: Policy and Institutional Actors as Nexuses for Criminal Justice and Public Health', *Aggression and Violent Behavior*, 47 (2019), 238–39 <<https://doi.org/https://doi.org/10.1016/j.avb.2019.07.007>>.

¹⁴ Bandy X Lee, Maya Prabhu, and others, 'Violence and Health: Merging Criminal Justice, Law, Mental Health, and Public Health - Part A: Neuroscience, Epidemiology, and Revisionist Discourse', *Aggression and Violent Behavior*, 46 (2019), 156–57 <<https://doi.org/https://doi.org/10.1016/j.avb.2019.05.003>>.

¹⁵ Laurence Roy and others, 'Profiles of Criminal Justice System Involvement of Mentally Ill Homeless Adults', *International Journal of Law and Psychiatry*, 45 (2016), 75–88 <<https://doi.org/https://doi.org/10.1016/j.ijlp.2016.02.013>>.

¹⁶ Tonia St. Germain and Susan Dewey, 'Justice on Whose Terms? A Critique of International Criminal Justice Responses to Conflict-Related Sexual Violence', *Women's Studies International Forum*, 37 (2013), 36–45 <<https://doi.org/https://doi.org/10.1016/j.wsif.2013.01.006>>.

conceptual approach.¹⁷ The legislative goods utilized in this research encompass all the legislative products in Indonesia about the legal concerns at hand, including the Criminal Code, Criminal Procedure Code, Witness and Victim Protection Law, and Civil Code. This research examines several notions of humanism as the foundation for reforming criminal procedure legislation in Indonesia.¹⁸

3. Results and Discussion

Merging Compensation Cases Through the Reform of the Indonesian Criminal Procedure Code

Article 98 of the Criminal Procedure Code governs the consolidation of compensation cases. As per the article, if an act that forms the basis of a criminal prosecution causes harm to another person, the presiding judge in the trial can combine the claim for compensation with the criminal case.¹⁹ According to Article 99 of the Criminal Procedure Code, if the victim asks for their civil lawsuit to be combined with a criminal case, as described in Article 98, the district court will assess its jurisdiction to deal with the issue. This assessment will involve examining the truthfulness of the claims made in the lawsuit and deciding whether the aggrieved party should be reimbursed for their expenses.²⁰

According to Article 100 of the Criminal Procedure Code, when a civil action and a criminal case are combined, they will automatically merge at the appeal level review. The user's text is "(2)". Failure to appeal a criminal case results in the denial of the opportunity to appeal the verdict for compensation.²¹ Civil procedural law requirements and restrictions apply to compensation claims unless explicitly addressed by this Act. Compensation claims are governed by the rules of civil process law unless specifically declared otherwise by legislation,

¹⁷ M Zaid and others, 'Eradicating Public Official Corruption Indonesia: A Revolutionary Paradigm Focusing on State Financial Losses', *Wacana Hukum*, 29.2 (2023), 87–111 <<https://doi.org/10.33061/wh.v29i2.9564>>.

¹⁸ Tara Nadya Andiani, FX Hastowo Broto Laksito, and Jose Gama Santos, 'Evidence from Indonesia on the Legal Policy Confronting Discrimination of Minority Groups Based on Race and Ethnicity', *Wacana Hukum*, 29.2 (2023), 146–62 <<https://doi.org/10.33061/wh.v29i2.9808>>.

¹⁹ Januar Rahadian and Silas Oghenemaro, 'Monodualistic and Pluralistic Punishment Politics in Criminal Code Reform: Lessons from Indonesia', *Journal of Law, Environmental and Justice*, 1.3 (2023), 225–43 <<https://doi.org/10.62264/jlej.v1i3.17>>.

²⁰ Cahya Wulandari and others, 'Penal Mediation: Criminal Case Settlement Process Based on the Local Customary Wisdom of Dayak Ngaju', *Lex Scientia Law Review*, 6.1 (2022), 69–92 <<https://doi.org/10.15294/lesrev.v6i1.54896>>.

²¹ Ibusuki.

as outlined in Article 101 of the Criminal Procedure Code.²²

The articles above govern the compensation provisions for those who suffer damages due to criminal conduct. However, the victim is eligible for compensation only if they have submitted a formal claim to the panel of judges. If the victim fails to apply, it is considered that they have not officially lodged a compensation claim, regardless of the involvement of the party concerned.²³ The person has faced significant financial and personal challenges. Moreover, the process of seeking compensation is governed by Supreme Court Regulation (PERMA) No. 1 of 2022, which provides explicit guidelines for presenting petitions and obtaining restitution and compensation for criminal crimes committed by Koreans. This legislation was enacted to ensure that the criminal justice system prioritizes the offender's rights and places high importance on protecting the victims.²⁴

Therefore, individuals who have been victimized by specific crimes not only have the right to protection but also have the right to get compensation and restitution.²⁵ While laws have provided individuals with the right to receive restitution and compensation, they still need to adequately address the technical aspects of handling requests for these rights. This legislation governs the restoration of certain rights that the offender must give back to the victim due to the crime committed.²⁶

Individuals without legal competence or living below an acceptable standard of living may find the complex and bureaucratic requirements of the PERMA to be a significant obstacle. These limitations could be a substantial obstacle for individuals already facing adversity. This situation demonstrates a clear and unfair treatment of the victim, who is currently facing significant difficulties and is also being presented with a legal proceeding. Despite people's diligent efforts to undertake a challenging task, the pursuit of justice remains a costly venture

²² Anis Widyawati and others, 'Urgency of the Legal Structure Reformation for Law in Execution of Criminal Sanctions', *Lex Scientia Law Review*, 6.2 (2022), 327–58 <<https://doi.org/10.15294/lesrev.v6i2.58131>>.

²³ Alexander Testa and Daniel Semenza, 'Criminal Offending and Health over the Life-Course: A Dual-Trajectory Approach', *Journal of Criminal Justice*, 68. February (2020), 101691 <<https://doi.org/10.1016/j.jcrimjus.2020.101691>>.

²⁴ Arlie Loughnan and Tony Ward, 'Emergent Authority and Expert Knowledge: Psychiatry and Criminal Responsibility in the UK', *International Journal of Law and Psychiatry*, 37.1 (2014), 25–36 <<https://doi.org/10.1016/j.ijlp.2013.10.002>>.

²⁵ Athil Khaleel Farhan, 'Divergence in the Translation of Criminal Law: A Corpus-Based Study of Prohibition in Iraqi Penal Code and Its English Translation', *Ampersand*, 10 (2023), 100104 <<https://doi.org/https://doi.org/10.1016/j.amper.2022.100104>>.

²⁶ Lucia Manzi, 'Prosecutorial Gatekeeping and Its Effects on Criminal Accountability: The Roman Prosecutor's Office and Corruption Investigations in Italy, 1975–1994', *Justice System Journal*, 43.3 (2022), 445 – 469 <<https://doi.org/10.1080/0098261X.2022.2100727>>.

for those who have undoubtedly been victims of criminal acts.²⁷

The government should prioritize this matter by implementing legislation that guarantees a fair and impartial legal framework for all parties concerned. This demonstrates that the assembly is responsible for executing the judicial process. The high court has failed to deliver equitable and unbiased justice to all parties concerned, particularly to the victims who have suffered material and intangible damage.²⁸ The judicial process should effectively integrate a fair and balanced equilibrium between vertical justice, which pertains to justice administered by the government, and horizontal justice, which pertains to fairness among individuals.

Lawsuits for Wrongful Acts Settled in the Indonesian Civil Code.

Filing a lawsuit against the perpetrator is a viable recourse for individuals who have incurred damages due to a criminal act. The Civil Code governs certain provisions, specifically: According to Article 1234, default occurs when the debtor, despite being declared negligent, fails to fulfill an obligation or when something that should be given or done can only be given or done after the specified time has passed. In such cases, the debtor is required to compensate for costs, losses, and interest.²⁹ According to Article 1365, any action that breaks the law and results in harm to another person necessitates the person responsible for the harm to provide compensation for the damages.

According to Article 1366, individuals are held accountable for not only the damages produced by their conduct but also for damages resulting from their negligence or recklessness. According to Article 1367, an individual is accountable not only for the damages resulting from their conduct but also for the damages caused by individuals who are financially reliant on them or by things they are responsible for overseeing.³⁰ Parents and guardians are held accountable for any harm caused by their underage children who live with them and are under their parental or guardianship control. Employers and individuals who delegate authority to others to act on their behalf are responsible for any damages incurred as a result of their employees or subordinates carrying out their given tasks.³¹

²⁷ Tatu Aditya, 'Reforming Criminal Impacts in the Law of State Finance : Legal Certainty for State-Owned Enterprise', *Indonesian Law Journal*, 15.2 (2022), 125–40 <<https://doi.org/10.33331/ilj.v15i2.97>>.

²⁸ Krzysztof Szczucki, 'Ethical Legitimacy of Criminal Law', *International Journal of Law, Crime and Justice*, 53 (2018), 67–76 <<https://doi.org/https://doi.org/10.1016/j.ijlcrj.2018.03.002>>.

²⁹ Diletta Marchesi and Michele Panzavolta, 'Keep Silence for Yourself: The Protection of the Right to Silence in the Italian Criminal Justice System', *New Journal of European Criminal Law*, 12.3 (2021), 365 – 388 <<https://doi.org/10.1177/20322844211028306>>.

³⁰ Emile van der Does de Willebois and Jean-Pierre Brun, 'Using Civil Remedies in Corruption and Asset Recovery Cases', *Case Western Reserve Journal of International Law*, 45.3 (2013), 615.

³¹ Marie Gryphon, 'Assessing the Effects of a "Loser Pays" Rule on the American Legal System: An Economic Analysis and Proposal for Reform W', *Public Policy*, 8.2005 (2011), 567–613.

The school instructor or head artisan is liable for any damages caused by their students or craftsmen while under their supervision. The liability above ceases if the parent, school teacher, or head artisan can demonstrate their inability to prevent the action for which they are accountable.³² Article 1370 states that if someone intentionally kills another person or if someone's negligence causes the death of another person, the surviving spouse, child, or parent of the victim who relied on their income and job has the right to seek compensation. The amount of compensation will be determined based on the financial status and position of both parties involved, as well as the case's specific circumstances.³³

As to Article 1371, if someone intentionally or negligently causes harm or disability to another person's body parts, the victim has the right to demand reimbursement for medical expenses and compensation for any losses incurred due to the injury or disability. Moreover, the assessment of indemnification for damages is established according to both parties' relative positions and capabilities and the surrounding circumstances.³⁴ This concluding clause generally relates to assessing the harm caused by a criminal act to an individual's physical health. According to the Civil Code's explanation of compensation for losses, comparing the consequences of a criminal offense and its impact reveals that both result in losses.³⁵ These losses represent the deprivation of rights, necessitating restoration or reparation to regain those rights. The period.

Providing Compensation Through the Witness and Victim Protection Agency

LPSK offers two methods of providing recompense: compensation and restitution. The government provides compensation to crime victims as a kind of restitution. Compensation is typically provided in the event of a significant crime-related catastrophe, such as acts of terrorism, human trafficking, and other large-scale crimes.³⁶ Restitution refers to the recompense that the offender of a crime provides to the victim. Restitution in Indonesia has undergone significant advancements due to the country's vast size and diverse range of ethnicities and cultures. Restitution has long been practiced in Indonesia, namely in the context of customary law settlements. However, these settlements need more authority from

³² Ridha Aditya Nugraha, 'Improving Aviation Safety in Indonesia: How Many More Accidents?', *Hasanuddin Law Review*, 2.3 (2016), 328 <<https://doi.org/10.20956/halrev.v2i3.321>>.

³³ Sebastián A. Reyes Molina, 'Judicial Discretion as a Result of Systemic Indeterminacy', *Canadian Journal of Law and Jurisprudence*, 33.2 (2020), 369–95 <<https://doi.org/10.1017/cjlj.2020.7>>.

³⁴ Karmawan, 'Mediation in The Religious Courts of Indonesia', *Ahkam: Jurnal Ilmu Syariah*, 20.1 (2020), 79–96 <<https://doi.org/10.15408/ajis.v20i1.13249>>.

³⁵ Muh Endriyo Susila, 'The Use Of Amicable Settlement For Resolving Medical Malpractice Disputes In Indonesia', *Medicine, Law & Society*, 14.1 (2021), 119–34 <<https://doi.org/10.18690/mls.14.1.119-134.2021>>.

³⁶ Tom Daems, 'Compatible Victims? Prison Overcrowding and Penal Reform in Belgium', *International Journal of Law, Crime and Justice*, 36.3 (2008), 153–67 <<https://doi.org/https://doi.org/10.1016/j.ijlcj.2008.04.001>>.

official institutions and hence need to possess enforceable power.³⁷

Nevertheless, numerous indigenous tribes continue to advocate for the adoption of customary restitution vigorously. This demonstrates that the fulfillment of horizontal justice is a prerequisite that must be accomplished before implementing vertical justice. Moreover, as stated in Article 1 PP no. 44 of 2008, compensation refers to the financial reparation provided by the state when the offender is incapable of fully compensating for the damages they are accountable for. On the other hand, restitution refers to the compensation given to the victim or their family by the offender or a third party. It may involve returning property, compensating for losses or suffering, or reimbursing for specific actions.

The LPSK is responsible for fulfilling its tasks. According to the VII UN Congress in 1985 on "The Prevention of Crime and The Treatment of Offenders" in Milan, Italy, victims' rights should be considered an essential component of the criminal justice system.³⁸ During the UN Congress, a preliminary proposal on safeguarding victims was presented to the UN General Assembly. The draft resolution was adopted as UN General Assembly Resolution No. 40/34 on 29 November 1985. This resolution pertains to the "Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power." Victims of crime have the right to receive compensation and restitution as a form of protection.³⁹ This right was officially recognized in Indonesia through the ratification of Law Number 13 of 2006, which focuses on protecting witnesses and victims, and Government Regulation Number 3 of 2002, which specifically addresses compensation, restitution, and rehabilitation for victims of serious human rights violations.

Despite the Indonesian government's numerous initiatives, the provision of compensation to crime victims, particularly for criminal offenses, has not yielded optimal outcomes. This is evident because some victims have not received full restitution for their losses. In light of this situation, it is imperative to establish a new legal rule that mandates the supply of compensation to victims. This is necessary because the previous Criminal Code did not clarify compensating for losses.⁴⁰

³⁷ Heather Strang and others, 'Restorative Justice Conferencing (RJC) Using Face-to-Face Meetings of Offenders and Victims: Effects on Offender Recidivism and Victim Satisfaction. A Systematic Review', *Campbell Systematic Reviews*, 9.1 (2013), 1–59 <<https://doi.org/10.4073/csr.2013.12>>.

³⁸ Sandra Wachter, Brent Mittelstadt, and Chris Russell, 'Why Fairness Cannot Be Automated: Bridging the Gap between EU Non-Discrimination Law and AI', *Computer Law and Security Review*, 41 (2021), 105567 <<https://doi.org/10.1016/j.clsr.2021.105567>>.

³⁹ Saldi Isra and others, 'Obstruction of Justice in the Effort to Eradicate Corruption in Indonesia', *International Journal of Law, Crime and Justice*, 51 (2017), 72–83 <<https://doi.org/10.1016/j.ijlcrj.2017.07.001>>.

⁴⁰ Frida and Eriksson, 'Victim-Offender Mediation in Sweden and South Africa' (University of Gothenburg, 2018).

Justice is a fundamental principle that requires maintenance. It can be achieved through the implementation of policies or the creation of legal instruments. Consequently, pursuing justice must adapt to evolving circumstances, enabling the legal instruments to keep pace with changing dynamics and generate progressive regulations. This ensures that the law can effectively serve the interests of all parties involved.⁴¹ Law enforcement officials are required to enforce all established regulations. However, in doing so, they must also uphold human values, propriety, fairness, cultural and religious values, and, of course, the value of justice must be integrated into law enforcement.⁴² The law enforcement process should adhere to written laws and consider the evolving concept of abstract justice in society.

Indonesia's New Criminal Code as an Effort to Fulfil the Horizontal Balance of Humanity

Implementing the New Criminal Code in Indonesia is a positive advancement for criminal law enforcement since it is expected to foster fair and impartial justice in various circumstances. Considering that the existing criminal law is a legal construct derived from the Netherlands, it is apparent that due to the Netherlands' colonization of Indonesia for about 350 years, it is justifiable for Dutch law to be enforced in Indonesia.⁴³ However, this application fails to evoke the required emotional impact because of the substantial differences in geographical environment and manner of life between the Indonesian and Dutch populations. Therefore, it is unsurprising that the legal regulations derived from Indonesia need to establish a proper sense of compatibility.⁴⁴

Noncompliance with the law results in conflicts, which harm Indonesian society. Imposing traditional and cultural behaviors is inappropriate when enforcing legislation from other places. This strategy can generate conflicts for Indigenous groups, who favor settling disagreements through conversation and restorative justice. As a result, they are obligated to adhere to legal requirements from other areas, leading to many cases of noncompliance with the law to maintain their customs and culture. Consequently, these behaviors are frequently

⁴¹ Masahiro Suzuki, 'Victim Recovery in Restorative Justice: A Theoretical Framework', *Criminal Justice and Behavior*, 50.12 (2023), 1893–1908 <<https://doi.org/10.1177/00938548231206828>>.

⁴² Satryo Sasono, Isharyanto Isharyanto, and Delasari Krisda, 'Child and Women Domestic Abuse Victims ' Social Health Insurance Protection : An Affirmative Justice Perspective', *Journal of Law, Environmental and Justice*, 1.2 (2023), 105–21 <<https://doi.org/10.62264/jlej.v1i2.8>>.

⁴³ Muhamad Khalif Ardi and others, 'The Imperative Is to Restrict Customary Criminal Offenses after Implementing Indonesia ' s New Criminal Code', *Wacana Hukum*, 29.2 (2023), 130–45 <<https://doi.org/10.33061/wh.v29i2.9829>>.

⁴⁴ E Lea Johnston and others, 'Diminished Criminal Responsibility: A Multinational Comparative Review', *International Journal of Law and Psychiatry*, 91 (2023), 101919 <<https://doi.org/https://doi.org/10.1016/j.ijlp.2023.101919>>.

stigmatized as legal infringements.⁴⁵

Various factors drove the development of the New Criminal Code: a) In order to enforce the national criminal law of the Unitary State of the Republic of Indonesia, which is based on Pancasila and the 1945 Constitution of the Republic of Indonesia, as well as the general legal principles recognized by the people of the nation, it is necessary to establish a new national criminal law to replace the Criminal Code inherited from the colonial government of the Dutch East Indies. The state policy functions as a mandatory framework for developing regulations, fundamental principles, and concepts that support the operation of the state. It offers a speculative or temporary resolution for the government to govern and develop a prosperous nation efficiently. b) The national criminal code should be modified to conform to legal policies, conditions, and progress in social, national, and state matters. This adjustment aims to guarantee the safeguarding and advancement of human rights, guided by a conviction in supreme authority, principles of fairness and progress, the solidarity of Indonesia, and a society propelled by its citizens. We aim to advance social justice for all Indonesian residents by employing prudent decision-making and ensuring equitable representation. c) National criminal law must also regulate the balance between the interests of the public or the state and the interests of individuals, ensuring the protection of those who commit crimes and their victims. It must also address the relationship between actions and mental states, balance legal certainty and the evolving nature of societal laws, uphold the alignment between national values and universal values, and promote harmonizing human rights with human responsibilities.⁴⁶

Striking a balance is crucial when developing legal regulations, as it embodies the concept of fairness. When a crime occurs, it creates a state of disequilibrium and leads to deprivation. Hence, it is crucial to administer meaningful justice in criminal law.⁴⁷ The New Criminal Code incorporates compensation, which is seen as a further type of criminal penalty. Compensation may be enforced in addition to the main penalty as one of the supplementary criminal sanctions. Enhanced criminal penalties are imposed when an individual has been proven to have committed a criminal act and is subject to a criminal penalty. If an individual is not assigned a significant criminal sanction, they cannot be subjected to additional criminal

⁴⁵ Inma Valeije Álvarez, 'The Prosecution of Fisheries Crime in Spanish Criminal Law: The Impact of European Union Regulations', *Marine Policy*, 147 (2023), 105327 <<https://doi.org/https://doi.org/10.1016/j.marpol.2022.105327>>.

⁴⁶ Dewa Gede Giri Santosa and Karell Mawla Ibnu Kamali, 'Acquisition and Presentation of Digital Evidence in Criminal Trial in Indonesia', *Jurnal Hukum Dan Peradilan*, 11.2 (2022), 195 <<https://doi.org/10.25216/jhp.11.2.2022.195-218>>.

⁴⁷ Christine E Grella and others, 'A Scoping Review of Barriers and Facilitators to Implementation of Medications for Treatment of Opioid Use Disorder within the Criminal Justice System', *International Journal of Drug Policy*, 81 (2020), 102768 <<https://doi.org/https://doi.org/10.1016/j.drugpo.2020.102768>>.

penalties.⁴⁸

The New Criminal Code contains several provisions regarding compensation. These provisions can be found in Article 66, paragraph 1. Additional penalties mentioned in Article 64 include deprivation of specific rights, seizure of specific goods and/or documents, public announcement of the judge's decision, payment of compensation, revocation of specific permits, and compliance with local customary obligations. b) Article 70, paragraph 1: If the following circumstances are present, incarceration should be minimized as much as possible, in line with Articles 51 to 54: The defendant has compensated the victim. According to Article 94, paragraph 1, a person found guilty in a court case may be obligated to compensate the victim or the victim's heirs as an extra punishment, as outlined in Article 66, paragraph (1). The character "d".

Compensation is commonly used to resolve disputes. The demonstration of forgiveness is proof that the disagreement has ended. Nevertheless, obtaining an apology from the victim requires labor and effort. The paya functions as compensation, as it is unreasonable to anticipate an apology without a price, particularly when the victim has experienced substantial detriment and anguish. Hence, it is necessary to make serious attempts to repair the damages that have been caused.⁴⁹ The objective of developing the New Criminal Code is to replace the Old Criminal Code, which has undergone numerous revisions. This replacement is part of the efforts to update national legislation with an emphasis on emphasizing substantive justice.⁵⁰

An intentional decision was made to recognize and respect the diverse cultural norms that exist in Indonesia. In light of the country's varied ethnicities, faiths, and cultures, it is imperative for the government to formally acknowledge and safeguard this diversity by integrating traditional cultural customs into the New Criminal Code.⁵¹ The logic of the New Criminal Code encompasses the goal of decolonizing or eliminating elements of colonialism's legacy, as specified in its elucidation. There is still a substantial amount of work yet to be done in the process of decolonization, and one part that is still being implemented is the usage of

⁴⁸ Eva Nave and Lottie Lane, 'Countering Online Hate Speech: How Does Human Rights Due Diligence Impact Terms of Service?', *Computer Law & Security Review*, 51 (2023), 105884 <<https://doi.org/https://doi.org/10.1016/j.clsr.2023.105884>>.

⁴⁹ Ildir Peçi and Eelke Sikkema, 'Corruption and Legal Certainty; the Case of Albania and the Netherlands Implementation of the Criminal Law Convention on Corruption in a Transitional and Consolidated Democracy', *Utrecht Law Review*, 6.1 (2010), 101 <<https://doi.org/10.18352/ulr.117>>.

⁵⁰ MARK FINNANE, "'Payback'", Customary Law and Criminal Law in Colonised Australia', *International Journal of the Sociology of Law*, 29.4 (2001), 293–310 <<https://doi.org/https://doi.org/10.1006/ijsl.2001.0153>>.

⁵¹ Nieke Elbers and Iris Becx, *Secondary Victimization as Problem. Restorative Justice as Solution?: A Research into the Scope of Secondary Victimization and Restorative Justice in a Criminal Law, Civil Law and Administrative Law* (Netherlands: Boom Juridisch, 2020).

the Civil Code. The relationships between individuals and other individuals and the natural world are still regulated by the Civil Code, which is a vestige of the legal system implemented during the era of the Dutch East Indies.⁵²

Indonesia still struggles with ethnic and religious divisions as a result of the long-lasting impacts of colonialism, which make the nation susceptible to vulnerabilities. These dividers can be utilized to erode unity and integrity. The forthcoming goal is to establish a system of democratization within the criminal justice system, namely a system that not only highlights the utilization of punishment delivered by authorities but also prioritizes humanism and interpersonal relationships.⁵³ Creating damage and apologizing is a fundamental aspect of natural law that emerges spontaneously in law enforcement.⁵⁴

Objects that have incurred damage must be restored to their initial condition, objects that have been annihilated must be returned to their original state, and objects that are in a state of ruin must be restored to their original state.⁵⁵ The principle of natural law stipulates that every confiscated item must be restored to its rightful owner. This concept is essential in guaranteeing substantial fairness. The forthcoming mission focuses on the integration of traditional law in Indonesia. The New Criminal Code incorporates the significance of local customary law into its application.⁵⁶

In particular, when a crime occurs in a customary community with a strong customary law system, preference will be given to implementing customary law. The main goal of establishing customary law is to reestablish connections among individuals.⁵⁷ Matter encompasses any entity that possesses both mass and occupies a volume in space. It can manifest in different states, including solid, liquid, or gas. This approach is being introduced in response to the frequent incidence of confrontations among different indigenous

⁵² Susan ROSE-ACKERMAN, 'Corruption and the Criminal Law Legalization and Criminalization', *Forum on Crime and Society*, 2.1 (2002), 20.

⁵³ Paweł Marcin Nowotko, 'AI in Judicial Application of Law and the Right to a Court', *Procedia Computer Science*, 192 (2021), 2220–28 <<https://doi.org/https://doi.org/10.1016/j.procs.2021.08.235>>.

⁵⁴ Lynette Feder and Samantha Angel, '11 - Criminal Justice Research: Incorporating a Public Health Approach', in *Three Facets of Public Health and Paths to Improvements*, ed. by Beth Ann Fiedler (Academic Press, 2020), pp. 295–316 <<https://doi.org/https://doi.org/10.1016/B978-0-12-819008-1.00011-0>>.

⁵⁵ Otwin Marenin, 'The Tragic Core of Criminal Justice: Coercive Social Control and the Loss of Innocence', *International Journal of Law, Crime and Justice*, 58.April (2019), 91–99 <<https://doi.org/10.1016/j.ijlcj.2019.04.003>>.

⁵⁶ Renze Salet and Jan Terpstra, 'Criminal Justice as a Production Line: ASAP and the Managerialization of Criminal Justice in the Netherlands', *European Journal of Criminology*, 17.6 (2020), 826–44 <<https://doi.org/10.1177/1477370819828332>>.

⁵⁷ Bram Meyer, Tessa van Roomen, and Eelke Sikkema, 'Corporate Criminal Liability for Corruption Offences and the Due Diligence Defence a Comparison of the Dutch and English Legal Frameworks', *Utrecht Law Review*, 10.3 (2014), 37–54 <<https://doi.org/10.18352/ulr.283>>.

populations. Hence, it is imperative to implement appropriate measures and protocols during the resolution process.⁵⁸

To successfully address disputes arising from cultural differences within communities, it is crucial to adopt a careful approach, as mishandling these conflicts can substantially influence security and stability. It is imperative to approach these issues with caution and a profound consideration for mutual respect towards traditions. Given that the formation of the Indonesian country was based on a common goal, namely the pursuit of prosperity, it is crucial to prioritize the preservation of all forms of societal differences and variety without any form of bias or prejudice based on ethnicity or social group.

4. Conclusion

Implementing the new criminal law legislation in Indonesia indicates a growing willingness within Indonesian society to foster stronger connections between individuals and their country. This is exemplified by the emphasis placed on providing reparations or restorative measures for victims of criminal offenses in resolving criminal disputes. However, it is important to note that this approach has yet to be implemented, and its position is still pending. Compensation is currently regarded as an extra punishment, although this represents a significant advancement for Indonesian society, resolving penalties and prioritizing mutually beneficial solutions and restorative justice. In light of the progress of contemporary society and the intricate nature of human interactions, there is a pressing need for a settlement mechanism that may offer advantages to all involved parties. Implementing a system of punishment that focuses not only on physical discipline but also on restorative measures is a necessary solution to handle the intricate dynamics of human relationships effectively. Given Indonesia's vast size and diverse population, the Indonesian government must establish a comprehensive system that can effectively embrace and respect all forms of variety. This will foster unity while ensuring that societal demands are met and mindful of cultural traditions.

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⁵⁸ Will Jennings, Stephen Farrall, and Shaun Bevan, 'The Economy, Crime and Time: An Analysis of Recorded Property Crime in England & Wales 1961–2006', *International Journal of Law, Crime and Justice*, 40.3 (2012), 192–210 <<https://doi.org/https://doi.org/10.1016/j.ijlcj.2012.03.004>>.

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