

The evolution of sentencing paradigms: From retribution to restoration in modern criminal law

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Abstract

This study examines the evolution of sentencing paradigms from a retributive justice orientation toward a restorative justice approach in modern criminal law. The retributive approach, dominant since the classical era, emphasizes punishment as a proportional response to legal violations, focusing on the offender and the offense committed. Over time, this paradigm has faced criticism for its limited effectiveness in reducing crime rates and for neglecting the interests of victims. The shift toward a restorative paradigm places victims, offenders, and communities as active participants in resolving criminal cases through dialogue, mediation, and other mechanisms aimed at repairing harm and restoring social relationships. This research employs a normative legal method with historical, conceptual, and comparative approaches to analyze the driving factors behind the paradigm shift and its implementation in Indonesia and several other countries. The findings indicate that the restorative paradigm offers a more humanistic and participatory form of justice, though its application continues to face structural, cultural, and regulatory challenges.

Keywords

Sentencing, Retribution, Restorative Justice

Introduction

The criminal justice system has undergone a fundamental transformation in understanding the purpose and meaning of punishment throughout human civilization. The paradigm shift from a retributive approach, which emphasizes retaliation, toward a restorative approach, which prioritizes healing and repair, reflects the evolution of legal thought that is more humanistic and effective in addressing crime [1]. This transformation is not merely a technical change in the implementation of punishment but a profound philosophical revolution regarding how society perceives crime, justice, and the ultimate purpose of the criminal justice system itself [2].

The classical sentencing paradigm, rooted in the principle of *lex talionis* or the law of retaliation, dominated legal systems for centuries [3]. The concept of “an eye for an eye, a tooth for a tooth,” as reflected in the *Code of Hammurabi* (circa 1754 BC) and later in

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the retributive theories of Immanuel Kant, illustrates the strong influence of retributive philosophy in shaping society's response to crime [4]. However, as knowledge advanced—particularly in criminology, psychology, and sociology—this paradigm was increasingly questioned in terms of its effectiveness and relevance in creating a safer and more just society [5].

The 18th and 19th centuries marked a transitional period with the rise of utilitarian thought led by Jeremy Bentham and Cesare Beccaria, who introduced the theory of deterrence [6]. This shift reframed punishment from “punishing because one has done wrong” to “punishing to prevent future wrongdoing,” paving the way for more progressive paradigms [7]. This era also saw a growing understanding of the factors influencing criminal behavior, ranging from socioeconomic conditions to individual psychological aspects [8].

By the 20th century, the rehabilitation paradigm began to gain serious attention among criminal law practitioners and scholars [9]. This development was supported by scientific findings showing that criminal behavior can be altered through proper interventions such as education, skills training, psychological counseling, and social reintegration programs [10]. Correctional institutions evolved from being mere detention centers into rehabilitative facilities designed to prepare offenders to re-enter society as productive individuals who refrain from reoffending [11].

The most contemporary paradigm is restorative justice, which has developed rapidly since the late 20th century [12]. Inspired by traditional practices of indigenous communities around the world, restorative justice offers a revolutionary perspective by focusing on repairing the harm caused by crime rather than merely punishing offenders [13]. This approach actively involves victims, offenders, and communities in conflict resolution and healing processes, with the primary aim of repairing harm and preventing reoffending [14].

In Indonesia, the evolution of sentencing paradigms has unique characteristics shaped by its colonial history, traditional values, and post-independence sociopolitical dynamics [15]. The concept of “correctionalization” (*pemasyarakatan*) introduced by Sahardjo in the 1960s was a pioneering effort to incorporate rehabilitation into the criminal justice system [16]. Nevertheless, the implementation of modern paradigms in Indonesia continues to face structural challenges, including limited resources, overcrowding in correctional facilities, and cultural resistance rooted in retributive traditions [17].

For these reasons, this study comprehensively examines the historical evolution of sentencing paradigms, analyzing the strengths and limitations of each approach, and exploring the possibility of integrating various paradigms to establish a more effective and humanistic sentencing system. Specifically, this research seeks to answer the following problems: (1) How has the paradigm of sentencing evolved historically from retribution to restoration? (2) What challenges are faced in applying restorative justice within Indonesia's criminal law system? and (3) How can sentencing paradigms be

reoriented to create a system that is more just, effective, and aligned with universal human values?.

Method

This study employs a normative juridical research method, which examines law as a system of norms grounded in legal doctrines and principles. The approach combines historical, statutory, and conceptual perspectives to analyze the evolution of sentencing paradigms from retributive to restorative models. The primary sources of data consist of legislation, criminal law doctrines, and judicial decisions, while secondary sources include academic literature and comparative studies. Data were collected through library research and analyzed qualitatively to interpret and evaluate the philosophical, juridical, and practical dimensions of modern criminal sentencing.

Results and Discussion

The Evolution of Sentencing Paradigms: From Classical Retribution to Modern Restoration

The evolution of sentencing paradigms from classical retribution to modern restorative approaches has significantly influenced contemporary criminal justice systems.

From ancient legal traditions up to the 18th century, the primary purpose of punishment was retribution for wrongdoing. This perspective was shaped by the retributive theories of thinkers such as Immanuel Kant and Hegel, who emphasized that punishment was a moral necessity to restore the violated legal order. The focus lay on the offender and the act committed, rather than on the victim or the harm suffered.

The classical paradigm of sentencing was rooted in the principle of retaliation, which had existed since ancient civilizations. The concept of *lex talionis*—"an eye for an eye, a tooth for a tooth"—as reflected in the Code of Hammurabi (1754 BC), became the foundation of retributive thought. This philosophy considered crime as a violation of moral order that must be balanced through proportional suffering imposed on the offender. Immanuel Kant, one of the most influential philosophers of retributive theory, argued that punishment was a categorical imperative that must be carried out regardless of its social consequences [18]. According to Kant, offenders had the right to be punished as rational beings responsible for their actions [19].

The shift from classical retribution to restorative approaches marked a profound change in the orientation of modern criminal justice. In the classical era, sentencing theory was dominated by the retributive approach, where punishment was seen as a proportional response to moral wrongdoing. Kant, for instance, underscored that punishment was a moral imperative to uphold justice, irrespective of any practical benefits it might generate for society. Within this framework, the interests of victims were often

marginalized, as the focus was placed primarily on the offender and the state's authority to enforce the law.

Over time, however, criticism of pure retribution grew stronger, as it was deemed ineffective in reducing crime and often worsened offenders' social conditions after serving their sentences [20]. By the 19th to mid-20th centuries, utilitarian theories emerged, viewing punishment as an instrument of crime prevention—whether through deterrence or offender rehabilitation [21]. Although more progressive than retributive theory, this paradigm remained largely offender-centered and state-oriented, with limited attention to victim restoration.

A major transformation occurred in the late 20th century with the rise of restorative justice, which positioned victims, offenders, and communities as the main actors in resolving criminal conflicts [22]. This approach views crime not merely as a violation of state law, but as a breach of social relationships [23]. Mechanisms such as penal mediation, victim–offender conferences, and community restoration programs became integral to the justice process [24]. In Indonesia, restorative justice principles have gradually been incorporated into various regulations, including the Chief of Police Regulation No. 8 of 2021 and the new Criminal Code, both of which provide greater space for dispute resolution outside formal judicial proceedings [25].

Nevertheless, implementation still faces challenges, such as the persistence of a retributive legal culture, limited institutional resources, and a lack of public awareness of restorative values [26]. Thus, the transition from retributive to restorative paradigms signifies a fundamental philosophical shift in modern criminal law. This transformation encourages the criminal justice system not only to punish offenders, but also to repair victims' harm, restore social relationships, and prevent the recurrence of crime [27].

The Application of Restorative Justice Principles in Criminal Law Practice in Indonesia and Other Countries

Restorative justice is an approach to resolving criminal cases that emphasizes the restoration of victims' losses, the repair of social relationships, and the constructive accountability of offenders, rather than relying solely on punishment [28]. This approach views crime as a violation against individuals and social relations, not merely against the state's legal order [29]. The model prioritizes dialogue, deliberation, and the participation of all parties involved, including offenders, victims, and the community [30].

In recent years, Indonesia has begun to systematically adopt restorative justice principles. Several legal instruments supporting this include:

- a. **Chief of Police Regulation No. 8 of 2021**, which provides guidelines for handling criminal cases based on restorative justice at the investigation stage;
- b. **Attorney General Regulation No. 15 of 2020**, which authorizes prosecutors to terminate prosecutions in the interest of restorative justice;

- c. **The new Criminal Code (Law No. 1 of 2023)**, which provides opportunities for certain cases to be resolved outside the courts under restorative principles.

In practice, restorative justice has been implemented in minor cases such as petty theft, minor assault, and juvenile delinquency. In some regions, investigators and prosecutors facilitate meetings between offenders and victims to reach agreements on compensation and apologies, leading to case termination [31]. However, challenges remain, including resistance from law enforcement officers still oriented toward retributive paradigms, lack of public understanding, and the potential misuse of the mechanism to protect offenders with strong social or economic power [32].

International experiences offer important lessons. New Zealand integrated restorative justice into its juvenile justice system through the *Children, Young Persons, and Their Families Act 1989*, with *family group conferences* as the main mechanism, involving victims, offenders, families, and communities [33]. Canada, under the *Youth Criminal Justice Act 2003*, prioritizes victim-offender mediation, group conferences, and diversion programs for young offenders [34]. In the Netherlands, restorative justice is applied through *penal mediation*, which can be carried out at all stages of the criminal process, both before and after court decisions [35]. South Africa embedded restorative principles into its post-apartheid legal reforms through the *Truth and Reconciliation Commission*, emphasizing acknowledgment, apology, and compensation for victims of human rights violations [36].

These international experiences demonstrate that the success of restorative justice depends heavily on regulatory support, training of law enforcement officers, community involvement, and supervisory mechanisms to prevent abuse. In Indonesia, despite regulatory progress such as the Chief of Police Regulation No. 8 of 2021 and the new Criminal Code, challenges persist in implementation, including resource limitations, resistance from retributive-oriented law enforcement, and insufficient public awareness.

Conclusion

The evolution of sentencing paradigms from retribution to restoration reflects the progress of human civilization in valuing human dignity and enhancing the effectiveness of justice systems. Although each paradigm carries its own strengths and limitations, a wise integration of various approaches can produce a criminal justice system that is more just, effective, and humanistic. The journey toward an ideal sentencing system requires long-term commitment from all stakeholders. The ultimate goal of the evolution of sentencing paradigms is to establish a society that is safer, fairer, and more prosperous, where every individual has the opportunity to reform and contribute positively to collective progress. The application of restorative principles in criminal law, both in Indonesia and in other countries, demonstrates a significant shift from a retributive paradigm to one that is more humane and participatory. Nevertheless, without institutional reform, legal education, and cultural transformation, the

implementation of restorative justice risks remaining merely symbolic and ineffective in achieving its intended restorative objectives.

References

- [1] Andrew von Hirsch, *Doing Justice: The Choice of Punishments* (New York: Hill and Wang, 1976), p. 3-5; Lihat juga Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* (Waterloo: Herald Press, 1990), p. 181-196.
- [2] David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Chicago: University of Chicago Press, 2001), p. 8-12; Bandingkan dengan Francis A. Allen, *The Decline of the Rehabilitative Ideal: Penal Policy and Social Purpose* (New Haven: Yale University Press, 1981), p. 1-17.
- [3] Leon Radzinowicz dan Marvin Wolfgang (eds.), *Crime and Justice, Volume I: The Criminal in Society* (New York: Basic Books, 1971), p. 15-23.
- [4] The Code of Hammurabi, translated by L.W. King (1910), Section 196-201; Immanuel Kant, *The Metaphysics of Morals*, translated by Mary Gregor (Cambridge: Cambridge University Press, 1996), p. 105-108.
- [5] Cesare Lombroso, *Criminal Man*, translated by Mary Gibson and Nicole Hahn Rafter (Durham: Duke University Press, 2006), p. 43-67; Enrico Ferri, *Criminal Sociology*, translated by Joseph I. Kelly and John Lisle (Boston: Little, Brown and Company, 1917), p. 89-112.
- [6] Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (Oxford: Clarendon Press, 1789), Chapter XII-XIV; Cesare Beccaria, *On Crimes and Punishments*, translated by Henry Paolucci (Indianapolis: Bobbs-Merrill, 1963), p. 42-52.
- [7] Johannes Andenaes, "Deterrence and Specific Offences," *University of Chicago Law Review*, Vol. 38, No. 3 (1971), p. 537-553; Daniel S. Nagin, "Deterrence: A Review of the Evidence by a Criminologist for Economists," *Annual Review of Economics*, Vol. 5 (2013), p. 83-105.
- [8] Robert K. Merton, "Social Structure and Anomie," *American Sociological Review*, Vol. 3, No. 5 (1938), p. 672-682; Edwin H. Sutherland, *Principles of Criminology* (Philadelphia: J.B. Lippincott Company, 1947), p. 234-267.
- [9] Francis A. Allen, "Criminal Justice, Legal Values and the Rehabilitative Ideal," *Journal of Criminal Law, Criminology and Police Science*, Vol. 50, No. 3 (1959), p. 226-232.
- [10] Robert Martinson, "What Works? Questions and Answers About Prison Reform," *The Public Interest*, Vol. 35 (1974), p. 22-54; Douglas Lipton, Robert Martinson, dan Judith Wilks, *The Effectiveness of Correctional Treatment: A Survey of Treatment Evaluation Studies* (New York: Praeger, 1975).
- [11] Todd R. Clear dan George F. Cole, *American Corrections*, 11th Edition (Boston: Cengage Learning, 2015), p. 156-189; Joan Petersilia, *When Prisoners Come Home: Parole and Prisoner Reentry* (Oxford: Oxford University Press, 2003), p. 87-115.
- [12] Howard Zehr, *The Little Book of Restorative Justice* (Intercourse: Good Books, 2002), p. 14-26; John Braithwaite, *Restorative Justice and Responsive Regulation* (Oxford: Oxford University Press, 2002), p. 43-71.
- [13] Kay Pranis, Barry Stuart, dan Mark Wedge, *Peacemaking Circles: From Crime to Community* (St. Paul: Living Justice Press, 2003), p. 32-54; Jim Consedine, *Restorative Justice: Healing the Effects of Crime* (Lyttelton: Ploughshares Publications, 1995), p. 78-102.
- [14] Heather Strang, *Repair or Revenge: Victims and Restorative Justice* (Oxford: Oxford University Press, 2002), p. 134-156; Mark S. Umbreit, *Victim Meets Offender: The Impact of Restorative Justice and Mediation* (Monsey: Criminal Justice Press, 1994), p. 213-235.
- [15] Muladi dan Barda Nawawi Arief, *Teori-Teori dan Kebijakan Pidana* (Bandung: Alumni, 2005), p. 145-167; Romli Atmasasmita, *Sistem Peradilan Pidana Kontemporer* (Jakarta: Kencana Prenada Media Group, 2010), p. 89-112.
- [16] Sahardjo, "Pohon Beringin Pengayoman: Dari Kepenjaraan ke Pemasyarakatan," dalam *Himpunan Pidato Menteri Kehakiman* (Jakarta: Departemen Kehakiman RI, 1963), p. 23-34.
- [17] Petrus Irwan Panjaitan dan Pandapotan Simorangkir, *Lembaga Pemasyarakatan dalam Perspektif Sistem Peradilan Pidana* (Jakarta: Pustaka Sinar Harapan, 1995), p. 156-189; C.I. Harsono H.S., *Sistem Baru Pembinaan Narapidana* (Jakarta: Djambatan, 2000), p. 78-101.
- [18] Immanuel Kant, *The Metaphysics of Morals*, Cambridge University Press, 1996, p. 105.
- [19] Andi Hamzah, *Asas-Asas Hukum Pidana*, Jakarta: Rineka Cipta, 2019, p. 58.
- [20] Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, Jakarta: Kencana, 2017, p. 122.

- [21] Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*, Oxford: Clarendon Press, 1907, p. 178.
- [22] Howard Zehr, *Changing Lenses: Restorative Justice for Our Times*, Herald Press, 2015, p. 31.
- [23] John Braithwaite, *Restorative Justice & Responsive Regulation*, Oxford University Press, 2002, p. 55.
- [24] Tony F. Marshall, "Restorative Justice: An Overview", *Home Office Research Development and Statistics Directorate*, 1999, p. 5.
- [25] Republik Indonesia, *Peraturan Kepala Kepolisian Negara Republik Indonesia Nomor 8 Tahun 2021 tentang Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif*, Lembaran Negara RI Tahun 2021.
- [26] Mahrus Ali, *Hukum Pidana: Teori dan Praktik*, Jakarta: RajaGrafindo Persada, 2021, p. 210.
- [27] Muladi & Barda Nawawi Arief, *Teori-Teori dan Kebijakan Pidana*, Bandung: Alumni, 2018, p. 89.
- [28] Howard Zehr, *The Little Book of Restorative Justice*, Good Books, 2015, p. 15.
- [29] John Braithwaite, *Restorative Justice & Responsive Regulation*, Oxford University Press, 2002, p. 55.
- [30] Tony F. Marshall, "Restorative Justice: An Overview", *Home Office Research Development and Statistics Directorate*, 1999, p. 5.
- [31] Mahrus Ali, *Hukum Pidana: Teori dan Praktik*, Jakarta: RajaGrafindo Persada, 2021, p. 210.
- [32] Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, Jakarta: Kencana, 2017, p. 135.
- [33] Gabrielle Maxwell & Allison Morris, *Family, Victims and Culture: Youth Justice in New Zealand*, Victoria University Press, 1993, p. 23.
- [34] Nicholas Bala, "Youth Criminal Justice Law in Canada", *Canadian Journal of Criminology and Criminal Justice*, Vol. 46, No. 2, 2004, p. 165.
- [35] André Hoekema, "Penal Mediation in the Netherlands", *European Journal on Criminal Policy and Research*, Vol. 8, 2000, p. 13.
- [36] Desmond Tutu, *No Future Without Forgiveness*, Doubleday, 1999, p. 52.