

Restorative Justice in the National Criminal Code: An Analysis of Probation and Community Service under Law No. 1 of 2023

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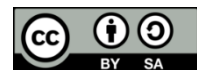
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ABSTRACT

The enactment of Law No. 1 of 2023 concerning the Indonesian Criminal Code marks a significant transformation in Indonesia's criminal justice system by introducing probation and community service as principal non-custodial sanctions. These forms of punishment reflect a shift from a predominantly retributive approach toward a more rehabilitative, proportional, and restorative-oriented sentencing policy. This study aims to analyze the legal construction of probation and community service under Law No. 1 of 2023 and to assess their consistency with the principles of restorative justice. The research applies a normative legal method using statutory, conceptual, and comparative approaches. The legal materials consist of Law No. 1 of 2023, Law No. 22 of 2022 concerning Corrections, relevant international instruments, and scholarly literature on restorative justice and non-custodial sanctions. The materials are analyzed qualitatively through descriptive, systematic, and prescriptive legal interpretation. The findings show that probation and community service provide progressive alternatives to short-term imprisonment by supporting offender rehabilitation, maintaining family and employment relationships, reducing prison overcrowding, and encouraging accountability through supervision and socially beneficial work. However, these sanctions do not fully constitute restorative justice mechanisms because victim participation, mediation, restitution, and reconciliation remain limited. Their effectiveness depends on comprehensive implementing regulations, institutional readiness, judicial consistency, qualified supervisory personnel, inter-agency coordination, and community involvement. The study concludes that Law No. 1 of 2023 establishes an important normative foundation for restorative-oriented sentencing in Indonesia, although further institutional and procedural development is required to ensure that probation and community service effectively achieve justice, legal certainty, social benefit, and public protection.

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1. INTRODUCTION

The enactment of Law No. 1 of 2023 concerning the Criminal Code (KUHP) marks

a significant reform in Indonesia's criminal justice system by replacing the Dutch colonial-era *Wetboek van Strafrecht* and shifting criminal law from a predominantly retributive model toward rehabilitation, proportionality, and restorative justice. This reform reflects Indonesia's effort to establish a criminal justice system that is responsive to contemporary social needs and consistent with Pancasila and the 1945 Constitution. Among its principal innovations are probation and community service as alternatives to short-term imprisonment. These sanctions are expected to address the longstanding problems associated with excessive reliance on incarceration, including prison overcrowding, high correctional costs, exposure of low-risk offenders to criminogenic environments, and the failure of imprisonment to support effective rehabilitation and social reintegration. The new Criminal Code integrates restorative justice principles by emphasizing victim recovery and offender rehabilitation, particularly through Articles 51 and 112 [1]. It also strengthens victims' rights to restitution and participation in judicial processes, thereby addressing their previously marginalized position within the criminal justice system [2].

Restorative justice differs from conventional criminal justice because it views crime not merely as a violation of state law but also as a social conflict that harms victims, offenders, and community relationships. Accordingly, it seeks to repair such harm through offender accountability, victim participation, reconciliation, restitution, rehabilitation, and community involvement. Internationally, this approach has gained recognition through the United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, which encourage dialogue, mediation, restitution, and community participation in appropriate criminal cases. Many jurisdictions have consequently adopted probation, community service, diversion, and other non-custodial sanctions, reflecting the principle that imprisonment should be used only as a last resort, particularly for non-violent and low-

risk offenders. Nevertheless, the implementation of Law No. 1 of 2023 continues to face challenges, including the institutional readiness of law enforcement officials, differences in legal understanding, and the need for adequate implementing regulations and operational support [3], [4].

its legal framework through policies issued by the Indonesian National Police, the Attorney General's Office, and the Supreme Court before its formal codification in Law No. 1 of 2023. However, these earlier policies were largely procedural, institution-specific, and fragmented, creating inconsistencies and legal uncertainty in their implementation. The enactment of Law No. 1 of 2023 therefore marks a significant shift by integrating restorative justice into substantive criminal law and redefining the objectives of punishment to emphasize rehabilitation, social restoration, diversion, and a stronger role for victims in the justice process [1]. This reform was preceded by instruments such as Prosecutor's Regulation No. 15 of 2020 and Police Regulation No. 8 of 2021, which provided an institutional foundation for restorative case resolution [5]. Restorative justice also promotes victim-offender reconciliation and community participation, creating a more humane and inclusive approach to criminal justice [6].

A key manifestation of this transformation is the recognition of probation and community service as principal criminal sanctions. Probation permits offenders to remain in the community under judicial supervision and specified legal conditions, while community service requires them to perform unpaid, socially beneficial work as an alternative to imprisonment. These sanctions are designed to strengthen accountability, rehabilitation, proportionality, and social reintegration while reducing the negative effects of incarceration. They also respond to persistent structural problems within Indonesia's correctional system, including prison overcrowding, limited rehabilitation facilities, insufficient personnel, and high state expenditures [7]. By preserving offenders' employment, family relationships, education, and social stability, probation and

community service may also reduce recidivism and support successful reintegration into society [8]

Despite their progressive character, probation and community service present substantial legal and institutional challenges. Their effective implementation requires clear implementing regulations, consistent judicial standards, coordinated institutional roles, reliable supervision mechanisms, and adequate correctional infrastructure. Courts must establish objective eligibility criteria that balance public safety with restorative justice objectives, while probation officers, prosecutors, correctional institutions, local governments, and community organizations must cooperate effectively. Without comprehensive institutional readiness, these sanctions may fail to achieve their intended rehabilitative and restorative purposes.

From a normative legal perspective, Law No. 1 of 2023 raises important questions concerning the legal construction of probation and community service, their consistency with the objectives of punishment, and their capacity to transform Indonesia's criminal justice paradigm. This study therefore analyzes their legal basis, objectives, characteristics, and philosophical foundations through statutory, conceptual, and comparative approaches. It argues that both sanctions constitute important innovations for developing a more humane, proportional, and restorative criminal justice system, although their success depends on coherent legal policies, effective institutional coordination, meaningful victim participation, and consistent judicial application.

2. METHODS

This study employs normative legal research (doctrinal legal research), which examines law as a system of legal norms, principles, doctrines, and statutory regulations governing criminal justice. This method is appropriate because the study focuses on analyzing the legal construction and restorative justice orientation of probation and community service as principal

criminal sanctions under Law No. 1 of 2023 concerning the Criminal Code. The research applies statutory, conceptual, and comparative approaches. The statutory approach examines provisions related to sentencing policy, probation, community service, corrections, and criminal procedure, while the conceptual approach analyzes doctrines concerning restorative justice, rehabilitation, proportionality, non-custodial sanctions, and modern sentencing philosophy. The comparative approach assesses Indonesia's framework against international standards, including the United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters and the United Nations Standard Minimum Rules for Non-custodial Measures or the Tokyo Rules.

The legal materials consist of primary, secondary, and tertiary sources. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law No. 1 of 2023 concerning the Criminal Code, Law No. 22 of 2022 concerning Corrections, and other relevant legislation. Secondary legal materials comprise textbooks, peer-reviewed journal articles, legal commentaries, dissertations, conference proceedings, and scholarly publications discussing restorative justice, sentencing, probation, community service, correctional law, and criminal law reform. Tertiary legal materials include legal dictionaries, encyclopedias, official explanatory notes, and other reference sources. These materials are collected through library research and selected based on their legal authority, academic credibility, relevance, and consistency with current developments in criminal law.

The collected materials are analyzed qualitatively through descriptive, systematic, and prescriptive normative analysis. Descriptive analysis explains the legal provisions governing probation and community service, while systematic interpretation examines their coherence with sentencing objectives, legal principles, and restorative justice doctrines. Prescriptive analysis evaluates whether these sanctions

adequately embody restorative justice principles and identifies potential normative and institutional challenges to their implementation. Conclusions are drawn deductively by applying general principles of restorative justice, criminal punishment, and non-custodial sentencing to the specific provisions of Law No. 1 of 2023, thereby assessing their contribution to legal certainty, proportionality, offender rehabilitation, social welfare, and reform of Indonesia's criminal justice system.

3. RESULTS AND DISCUSSION

3.1 The Paradigm Shift of Criminal Punishment under Law No. 1 of 2023

The enactment of Law No. 1 of 2023 marks a fundamental transformation in Indonesia's criminal justice system, particularly in the philosophy of criminal punishment. The previous Criminal Code, inherited from the Dutch colonial *Wetboek van Strafrecht*, largely reflected a retributive orientation in which imprisonment became the dominant response to criminal conduct. Although rehabilitative and correctional objectives gradually developed through the correctional system, these values were not fully integrated into substantive criminal law, causing sentencing practices to remain heavily dependent on custodial punishment, including for relatively minor offenses.

The new Criminal Code introduces a broader philosophy of punishment by recognizing that criminal sanctions should not merely inflict suffering but should also promote crime prevention, offender rehabilitation, social restoration, conflict resolution, public protection, and substantive justice. This orientation is reflected in Article 51, which incorporates restorative justice principles by emphasizing victim recovery and offender rehabilitation [1]. The reform also expands judicial discretion through individualized sentencing and judicial pardon, thereby allowing judges to avoid disproportionate punishment in minor cases [10]. In addition, the new framework strengthens victims' rights by supporting

their participation in judicial proceedings and access to restitution [2].

This philosophical shift is further manifested in the introduction of probation and community service as non-custodial sanctions that emphasize accountability, rehabilitation, and social reintegration without relying on imprisonment. These alternatives allow sentencing decisions to consider the seriousness of the offense, the offender's characteristics, victim interests, and broader social considerations. By reducing excessive reliance on incarceration and positioning imprisonment as an ultimatum remedium, particularly for minor and non-violent offenses, Law No. 1 of 2023 aligns Indonesia's criminal policy with contemporary legal systems that increasingly prioritize proportionality, rehabilitation, and restorative justice.

3.2 Probation as a Manifestation of Restorative Justice

Probation is one of the principal sentencing innovations introduced by Law No. 1 of 2023. Unlike imprisonment, probation permits eligible offenders to remain within the community under judicial supervision and specific conditions imposed by the court. From a restorative justice perspective, this sanction promotes accountability because offenders must comply with legal obligations, while also supporting rehabilitation and social reintegration by preserving their relationships with family, employment, education, and the wider community. It also reduces unnecessary incarceration and ensures that punishment remains proportionate to the seriousness of the offense and the offender's prospects for rehabilitation.

The application of probation requires an individualized judicial assessment. Before imposing this sanction, judges must evaluate the offender's criminal history, personal circumstances, motives, level of culpability, risk of recidivism, and willingness to comply with supervision requirements [7]. Such an assessment reflects the restorative justice principle that offenders should be treated as

individuals capable of behavioral change rather than merely as objects of punishment. Clear and structured monitoring mechanisms are also necessary to ensure compliance, evaluate behavioral progress, and determine whether the rehabilitation objectives are being achieved [11].

The effectiveness of probation ultimately depends on adequate institutional support. Correctional officers must possess sufficient competence, training, and resources to supervise and assist offenders throughout the probation period [12]. Strong coordination among courts, prosecutors, correctional institutions, local governments, and community organizations is equally important to provide comprehensive support and address institutional gaps [13]. Without effective supervision and coordination, probation may become merely symbolic and fail to promote accountability, rehabilitation, or meaningful behavioral change.

3.3 Community Service as an Alternative to Short-Term Imprisonment

Community service (*pidana kerja sosial*) constitutes a significant innovation under Law No. 1 of 2023 by requiring eligible offenders to perform unpaid work for the benefit of society as an alternative to imprisonment. Rather than isolating offenders, this sanction enables them to fulfill their legal responsibilities while contributing directly to the public interest. It reflects restorative justice principles because it emphasizes repairing social harm, strengthening offender accountability, promoting social reintegration, and potentially reducing recidivism [13], [14].

The restorative orientation of community service also minimizes the adverse consequences of incarceration. Offenders can maintain employment, continue their education, support their families, and preserve social relationships while serving their sentences. In addition, community service improves criminal justice efficiency by reducing prison overcrowding and correctional expenditures. Its effective application, however, requires clear

operational frameworks, including pre-sentencing assessments, appropriate judicial discretion, defined working hours, suitable forms of community work, and measurable evaluation procedures [14], [15].

Practical implementation further depends on adequate supervision, occupational safety standards, and clear institutional responsibilities to protect both offenders and the community during service activities [14]. Strong coordination among courts, prosecutors, correctional institutions, local governments, and community organizations is therefore essential to provide appropriate placements, monitor compliance, and evaluate rehabilitative progress [14], [15]. Without coherent guidelines and institutional cooperation, community service may fail to achieve its intended restorative, rehabilitative, and economic benefits.

3.4 Consistency between Probation, Community Service, and Restorative Justice Principles

The introduction of probation and community service demonstrates substantial consistency with internationally recognized restorative justice principles because both sanctions seek to repair social harm, strengthen offender accountability, support rehabilitation, involve the community, and reduce unnecessary imprisonment. Probation requires offenders to comply with judicial supervision and behavioral conditions, while community service obliges them to perform meaningful work for the public benefit. Community service can strengthen offenders' sense of responsibility [14], and research indicates that it may produce lower recidivism rates than conventional incarceration [16].

Both sanctions also support rehabilitation and social reintegration by allowing offenders to maintain employment, education, family relationships, and community connections. Probation relies on community-based supervision, while community service creates direct interaction between offenders and society. These mechanisms distinguish restorative-oriented

sanctions from imprisonment, which often isolates offenders and disrupts positive social networks. Community participation in probation and community service can facilitate reintegration [17], while programs designed according to restorative justice principles may improve offenders' social outcomes [18].

However, probation and community service do not fully embody restorative justice because they remain sanctions imposed by courts and provide limited opportunities for direct victim participation, mediation, restitution, reconciliation, and voluntary agreement [19]. Although victims may benefit indirectly from offender rehabilitation and reduced recidivism, the absence of comprehensive victim-offender dialogue limits the restorative character of these sanctions [18]. Therefore, probation and community service should be understood as restorative-oriented sanctions that strengthen restorative values in sentencing policy but should be complemented by broader mechanisms that involve victims and communities more directly.

3.5 Legal and Institutional Challenges in Implementing Probation and Community Service

Although Law No. 1 of 2023 provides a strong normative foundation for non-custodial sentencing, its implementation may be hindered by incomplete procedural regulations. Probation and community service require detailed rules concerning judicial discretion, offender eligibility, supervision standards, sanctions for non-compliance, and institutional responsibilities. The absence of codified procedures may lead to inconsistent application across law enforcement institutions and undermine legal certainty and equal treatment before the law [8]. Clear eligibility criteria and supervision standards are therefore necessary to improve consistency and transparency in sentencing practices [20].

Institutional capacity and inter-agency coordination also remain major concerns. Effective probation requires

professionally trained correctional officers who can conduct risk assessments, monitor compliance, and support rehabilitation, while community service requires structured systems for work placement, attendance monitoring, performance evaluation, and occupational safety. However, many institutions, particularly courts and prosecutors' offices, still face limitations in human resources and technical competence [8]. Investment in correctional training and the development of coordinated work-placement systems are therefore essential to support rehabilitation and social reintegration [21]. Strong collaboration among judges, prosecutors, correctional institutions, local governments, social welfare agencies, educational institutions, and community organizations is also required to prevent administrative delays and inconsistent supervision [8].

Public perception and judicial consistency further determine the legitimacy of these reforms. Non-custodial sanctions may be perceived as excessively lenient because many members of society continue to equate criminal justice with imprisonment. Public education concerning the objectives and benefits of restorative justice is therefore important to strengthen social acceptance and confidence in alternative sanctions [8]. At the same time, judges must apply objective sentencing guidelines that balance proportionality, rehabilitation, public safety, and victims' interests. Consistent and transparent judicial standards are essential to prevent sentencing disparities and ensure the fair implementation of restorative criminal justice policies [20].

3.6 Future Prospects for Restorative Justice under the New Criminal Code

The incorporation of probation and community service into Law No. 1 of 2023 provides a strong legal foundation for advancing restorative justice in Indonesia by emphasizing rehabilitation, proportionality, social restoration, legal certainty, and public protection. Effective implementation requires comprehensive regulations, adequate

correctional resources, professional training, judicial education, technological support, and active cooperation with local governments and community organizations. Indonesia should also strengthen mediation, victim-offender dialogue, restitution, and community-based conflict resolution so that restorative justice extends beyond sentencing. Despite existing institutional and regulatory challenges, these sanctions offer progressive alternatives to imprisonment that can reduce prison overcrowding, promote rehabilitation and reintegration, and support a more humane and effective criminal justice system.

4. CONCLUSION

Law No. 1 of 2023 concerning the Indonesian Criminal Code marks a fundamental shift from an imprisonment-centered and predominantly retributive system toward a more proportional, rehabilitative, and restorative-oriented sentencing framework. The recognition of probation and community service as principal sanctions expands judicial discretion by

allowing punishment to reflect the seriousness of the offense, the offender's circumstances, rehabilitation prospects, and broader social interests. Probation supports reintegration by preserving offenders' family, employment, educational, and community relationships, while community service promotes accountability through unpaid work that benefits society. Both sanctions may reduce short-term imprisonment, prison overcrowding, correctional costs, and exposure to criminogenic prison environments. Nevertheless, they remain restorative-oriented sanctions rather than complete restorative justice mechanisms because they do not automatically ensure victim participation, mediation, restitution, dialogue, or reconciliation. Their effectiveness therefore depends on detailed implementing regulations, objective eligibility criteria, reliable risk assessments, adequate correctional personnel, consistent judicial practice, effective supervision, institutional coordination, public understanding, meaningful community participation, and stronger protection of victims' interests.

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