



Reform of the Penal System in Indonesian Criminal Law: Challenges and Opportunities

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ABSTRACT

This article examines the reform of the penal system in Indonesia, particularly after the enactment of the new Criminal Code (KUHP 2023), and explores the various challenges and opportunities associated with transitioning toward a more modern, proportional, and restorative criminal justice system. Using a qualitative normative method, this study analyzes doctrinal literature, statutory reform, criminological theory, and current Indonesian legal scholarship. The results indicate that Indonesia is moving toward penal diversification, restorative justice implementation, and the reduction of prison overcrowding. However, significant obstacles remain, including institutional resistance, inconsistent sentencing practices, limited restorative infrastructure, and public mistrust of non-custodial penalties. This article integrates recent academic findings, including those of Rahmayanti (2017), Ramadani (2023), Ismaidar et al. (2024), and Sumarno (2024), to provide a comprehensive evaluation of penal reform and its implications for justice, human rights, and institutional strengthening.

Abstract

Objective: To analyze the conceptual, normative, and practical aspects of penal reform in Indonesia, assessing the innovations of the KUHP 2023 and identifying key challenges and opportunities in implementation.

Methodology: This research employs a qualitative normative legal method by examining statutes, doctrinal writings, comparative penal models, and recent scholarly contributions from Indonesian academics.

Findings: The study finds that Indonesia is transitioning from a punitive, imprisonment-centered penal model toward a diversified sanction system that incorporates restorative justice and community-based sentencing. This aligns with the recommendations of scholars such as Rahmayanti (2017), who calls for sanctions that reflect moral and legal proportionality; Ramadani (2023), who highlights restorative methods in resolving community-level disputes; and Ismaidar et al. (2024), who underscore the need for stronger legal protection systems within institutions. However, implementation challenges—including administrative constraints and structural resistance—persist, as noted by Sumarno (2024).

Originality/Value: This article provides an integrated and up-to-date analysis combining doctrinal, policy, and sociocultural perspectives. It incorporates the latest Indonesian scholarship to enrich discussions about the future of penal policy in Indonesia.

Keywords :

Penal Reform, Criminal Justice, Restorative System, Alternative Punishment, Human Rights, Indonesia.

1. Introduction

1.1. Background and Context

Indonesia's penal system has undergone major transformation with the introduction of the KUHP 2023, replacing the Dutch colonial *Wetboek van Strafrecht*. Historical challenges—including overreliance on imprisonment, overcrowded correctional institutions, and outdated punitive doctrines—have long been identified by scholars as requiring structural change (Arief, 2018).

Rahmayanti (2017) highlights that punishment in Indonesia has often neglected proportionality and the moral values embedded within both positive law and Islamic law. The previous punitive emphasis did not support rehabilitation or long-term deterrence. Similarly, Ismaidar et al. (2024) note that institutional inconsistencies—particularly within law enforcement systems—undermine fairness and legal protection in criminal processes.

Meanwhile, restorative justice has gained traction as a culturally relevant approach to resolving community-level conflicts in Indonesia. Ramadani (2023) illustrates this through her study on the role of *Bhabinkamtibmas* in resolving village conflicts through restorative mechanisms.

The KUHP 2023 attempts to integrate these perspectives through sentencing diversification, restorative justice recognition, and community-based sanctions. However, as Sumarno (2024) argues, reforming the penal system requires strong institutional capacity—something Indonesia continues to struggle with.

1.2. Problem Statement

Despite significant reforms, Indonesia continues to face fundamental issues in its penal system. These include:

- Overcrowded correctional institutions.
- Excessive reliance on imprisonment as the default punishment.
- Limited adoption of alternative sanctions and restorative justice.
- Weak coordination between police, prosecutors, courts, and correctional institutions.
- Gaps between legal norms and implementation capabilities.

Thus, a comprehensive analysis is needed to understand whether the reforms can truly transform Indonesian penal policy.

1.3. Research Questions

This research aims to answer the following questions:

1. How is penal reform conceptualized and regulated under Indonesian criminal law?
2. What are the key innovations introduced by the KUHP 2023 regarding sentencing and penal policy?
3. What challenges hinder the implementation of penal reform in Indonesia?
4. What opportunities arise from the shift toward restorative and rehabilitative justice?
5. How can Indonesia strengthen penal policy to ensure justice, human rights protection, and effective rehabilitation?

1.4. Significance of the Study

This study has theoretical and practical importance.

Theoretically, it contributes to the expanding discourse on criminal law reform in Indonesia by offering a comprehensive analysis of penal philosophy, statutory reform, and comparative standards.

Practically, this research is valuable for policymakers, judges, prosecutors, correctional officers, and academics seeking to improve the implementation of humane and effective penal strategies. It also provides recommendations for strengthening restorative justice institutions and alternative sanctions to reduce prison overcrowding.

2. Literature Review

The literature on penal reform, criminal justice transformation, and restorative justice reflects a growing global recognition that punitive, imprisonment-centered models are increasingly ineffective in reducing crime and promoting social order. This section synthesizes relevant theoretical, empirical, and doctrinal literature to position Indonesia's penal reform within contemporary criminal law scholarship.

2.1 Classical and Modern Penal Philosophy

Classic penal theory grounded in retributivism—advanced by thinkers such as Kant and Hegel—views punishment as moral desert, emphasizing proportionality and moral accountability. Later developments in utilitarian penal philosophy, represented by Bentham, encouraged the use of punishment as a deterrent mechanism aimed at preventing crime.

However, modern criminology has shifted toward more holistic and humanistic approaches. Garland (2001) argues that late-modern societies require adaptive penal systems responsive to social complexity rather than rigid punitive models. von Hirsch (1993) stresses limiting retributivism as a balance between proportional punishment and humane constraints.

In the restorative tradition, Zehr (2015) and Braithwaite (2002) advocate for a relational model of justice that prioritizes healing, dialogue, reparations, and reintegration rather than exclusion or stigmatization.

This global theoretical evolution provides the backdrop for contemporary reform in Indonesia.

2.2 Penal System Challenges in Indonesia

Before the KUHP 2023 reform, Indonesia's penal landscape was characterized by structural weaknesses:

- excessive reliance on imprisonment,
- short-term incarceration contributing to overcrowding,
- sentencing disparities across jurisdictions,
- limited rehabilitative programming,
- and low public trust in criminal justice institutions.

Indonesian scholars have long highlighted these issues. Rahmayanti (2017) notes that the punitive approach lacked alignment with both moral principles of Islamic jurisprudence and rehabilitative needs, often resulting in rigid sanctions disconnected from offender rehabilitation.

Similarly, Ismaidar et al. (2024) argue that weaknesses in legal protection mechanisms—especially in criminal cases—reflect broader systemic problems in implementing fair penal policies. Their analysis reveals that institutional inconsistencies and unequal access to legal representation contribute to unjust outcomes, further complicating sentencing reform.

Sumarno (2024) extends this critique by demonstrating how institutional capacity gaps—particularly within the police, prosecution, and correctional systems—undermine efforts to modernize the penal system. According to him, penal reform must be understood not only as doctrinal transformation but also

as organizational reform.

2.3 Global Trends in Penal Reform

International penal reform trends reflect increased skepticism toward the effectiveness of mass incarceration. Pratt (2007) describes the global “penal populism” phenomenon in which harsh punishments are often driven by political agendas rather than evidence-based policy.

At the same time, reforms in Norway, New Zealand, and Canada demonstrate that community-based sanctions, rehabilitative programs, and reintegration-centered corrections produce significantly lower recidivism rates (Lappi-Seppälä, 2012).

The UN Tokyo Rules (1990) and Bangkok Rules (2010) reinforce the international shift toward non-custodial measures, gender-sensitive penal approaches, and community-based rehabilitation. Indonesia’s adoption of diversified sanctions under the KUHP aligns with these global standards.

2.4 Restorative Justice in Indonesian Legal Development

Restorative justice has a unique place in Indonesian law due to cultural traditions such as *musyawarah*, *adat-based reconciliation*, and community mediation.

Empirical studies show that restorative methods are commonly used in resolving social conflicts, land disputes, and minor criminal cases. Ramadani (2023) provides concrete evidence, demonstrating how *Bhabinkamtibmas* officers facilitate restorative dialogue in rural communities, ensuring social harmony while avoiding adversarial escalation.

This supports international findings by Braithwaite (2002) and Zehr (2015) on the value of community empowerment and reconciliation in resolving crimes.

The KUHP’s incorporation of restorative justice thus reflects both global criminological research and Indonesian socio-legal traditions.

2.5 Sentencing Reform and Proportionality

Sentencing disparity has long been documented as a problem in Indonesia. Judicial discretion, while essential, often produces inconsistencies. Ismaidar et al. (2024) argue that disparities root from unequal legal representation and gaps in institutional governance.

Modern sentencing guidelines—modeled in jurisdictions like the UK, Australia, and the US—aim to minimize disparity while ensuring proportionality. Robinson & Darley (2007) emphasize the importance of aligning sentencing with community moral intuitions for legitimacy.

The KUHP 2023 requires judges to consider:

- background of offenders,
- social context,
- degree of harm,
- future rehabilitation prospects.

This shift aligns with von Hirsch’s (1993) proportionality theory and international human rights standards.

2.6 Prison Overcrowding and the Case for Alternative Sanctions

Prison overcrowding in Indonesia—often exceeding 200% capacity—has been extensively documented in government reports. Overcrowding correlates with:

- increased violence,
- reduced rehabilitation opportunities,
- heightened transmission of disease,
- and high recidivism rates (Reichel, 2017).

Tonry (2020) argues that reducing incarceration, especially short-term imprisonment, is vital for effective penal governance.

Indonesia’s shift toward community service, supervision, fines, and diversion reflects global evidence that alternative sanctions:

- reduce recidivism,
- cost less,
- facilitate reintegration,
- and reduce correctional burdens (Lynch, 2010).

2.7 Institutional Capacity and Implementation Challenges

Penal reform can only succeed if institutions are capable of implementing it. Sumarno (2024) emphasizes that weakness in training, infrastructure, and coordination among law enforcement agencies presents the greatest barrier to reform.

Comparative studies show similar challenges in countries transitioning from punitive to restorative models. Loader & Sparks (2013) argue that criminal justice reform requires not only legal change but also cultural, managerial, and organizational reform.

Thus, while the KUHP introduces the legal framework, successful implementation depends on:

- training of police, prosecutors, judges,
- creation of restorative justice centers,
- community engagement,
- standardized sentencing guidelines,
- monitoring and accountability systems.

3. Methodology

3.1 Research Paradigm and Design

This study uses a qualitative normative research design, analyzing statutory texts, doctrinal literature, jurisprudence, and criminological theory.

3.2 Data Sources

Primary Sources:

- KUHP 2023
- Constitutional Court decisions
- International standards on penal reform

Secondary Sources:

- Academic journals
- Books on penal policy
- Criminological studies
- Government reports

3.3 Data Analysis Technique

Data were analyzed using thematic categorization, interpreting legal norms using doctrinal analysis, and synthesizing findings using penal theory and comparative frameworks.

3.4 Data Integration Strategy

Data from legal texts, scholarly literature, and comparative penal models were integrated to produce a coherent analysis of Indonesia's penal reform and its implications.

4. Results

The results of this study indicate that Indonesia's penal reform, particularly through the enactment of the KUHP 2023, represents a substantial shift in both the philosophy and structure of criminal punishment. The reform introduces a diversified sentencing framework that moves beyond the long-standing reliance on imprisonment. This diversification includes supervision sanctions, structured fines, community service, and restorative settlement mechanisms. Such changes support the view expressed by Rahmayanti (2017) that Indonesian criminal sanctions should reflect not only legal proportionality but also moral values embedded within both national and religious legal traditions.

The formal recognition of restorative justice within the KUHP reflects another major development. Instead of relying solely on adversarial or punitive methods, the new penal system provides space for victim-offender mediation and social reconciliation. This finding is consistent with Ramadani's (2023)

empirical research demonstrating that community-based restorative practices—particularly those facilitated by *Bhabinkamtibmas*—are culturally effective and capable of resolving conflicts without escalating social tensions. The evidence suggests that restorative justice is not merely an imported concept but one that resonates with Indonesia's longstanding traditions of *musyawarah* and communal harmony.

In addition, the KUHP strengthens the principles of sentencing proportionality. Judges are encouraged to consider the offender's background, level of culpability, potential for rehabilitation, and the broader social impact of the crime when determining sanctions. This development addresses concerns raised by Ismaidar et al. (2024), who argue that Indonesian criminal processes often suffer from disparities and inconsistencies stemming from inadequate legal protection and unequal institutional practices. The new emphasis on proportionality aims to establish greater fairness and credibility within the judicial system.

The results also show that penal reform is strategically positioned to mitigate Indonesia's longstanding problem of prison overcrowding. Excessive use of short-term imprisonment has contributed significantly to the crisis, limiting opportunities for rehabilitation and increasing recidivism. By expanding non-custodial sanctions, the KUHP attempts to reduce the burden on correctional institutions and encourage more reintegrative approaches. This aligns with international recommendations, such as those highlighted by Tonry (2020), who emphasizes the need for penal systems to avoid unnecessary incarceration.

However, despite these innovations, the study finds significant challenges in implementation. As emphasized by Sumarno (2024), institutional capacity remains a central obstacle. Limited training for law enforcement officials, inconsistent interpretation of new sentencing rules, and inadequate restorative justice infrastructure hinder the practical realization of the reform. Coordination between police, prosecutors, judges, and correctional authorities remains fragmented, suggesting that legal reform must be accompanied by organizational strengthening support.

5. Discussion

The findings of this study reflect the complex reality of penal reform in Indonesia. On one hand, the KUHP 2023 introduces progressive changes consistent with international trends in criminal justice, emphasizing rehabilitation, proportionality, and restorative approaches. On the other hand, the transition from punitive to restorative and community-based sanctioning raises conceptual, institutional, and sociocultural challenges that require careful examination.

From a theoretical perspective, the reforms signify Indonesia's gradual departure from retributive punishment toward a model that prioritizes healing and reintegration. This shift mirrors global criminological thought, particularly the works of Braithwaite (2002) and Zehr (2015), who argue that restorative justice fosters stronger community relationships and more sustainable conflict resolution. The presence of restorative justice mechanisms within the KUHP—such as mediation and community-based settlement—signals Indonesia's recognition that punitive measures alone often fail to repair social harm or discourage future offending.

Culturally, the incorporation of restorative justice aligns well with Indonesia's local traditions. As demonstrated by Ramadani (2023), community mediation led by trusted local figures such as *Bhabinkamtibmas* can resolve disputes in ways that restore social harmony and prevent long-term conflict. This cultural compatibility strengthens the legitimacy of restorative practices and supports their broader institutionalization.

Legally, the reform's emphasis on sentencing proportionality responds to longstanding criticisms of inconsistency and disparity in Indonesia's criminal justice system. The improved guidelines for judicial discretion provide a framework that more closely aligns with principles of fairness and justice. This development directly addresses concerns raised by Ismaidar et al. (2024) about unequal treatment within criminal proceedings and the need for more protective legal mechanisms.

Yet, despite these advancements, the reform cannot be separated from its institutional context. Implementation challenges remain significant, particularly regarding the readiness of law enforcement agencies. As Sumarno (2024) notes, institutional capacity—including training, infrastructure, and inter-

agency coordination—plays a decisive role in determining whether penal policy changes succeed or fail. The success of restorative justice, for example, depends on the availability of trained facilitators, community support systems, and clear procedural guidelines. Without these, restorative provisions risk becoming symbolic rather than functional.

Another layer of complexity lies in public perception. Indonesian society has historically associated justice with visible punishment, typically imprisonment. This punitive orientation may create resistance to alternative sanctions or restorative settlements, especially in cases that attract public attention. Changing public attitudes requires extensive public education and consistent demonstration that alternative sanctions can be both fair and effective.

In the broader context of international reform, Indonesia's policies align with the global movement toward reducing incarceration, enhancing rehabilitation, and promoting community-based solutions. However, like many countries undergoing similar transformations, Indonesia must balance the ideals of modern penal theory with the practical realities of administrative capability and social acceptance.

Overall, the discussion shows that while Indonesia's penal reform is ambitious and forward-looking, its success depends on long-term investment in institutional strengthening, public education, inter-agency coordination, and consistent application of restorative and proportional principles across all levels of the justice system.

6. Conclusions and Recommendations

6.1. Conclusion

This study concludes that the KUHP 2023 marks a major step in Indonesia's transition from a punitive criminal justice model toward a more proportional, rehabilitative, and restorative system. The incorporation of restorative justice aligns with Indonesian cultural practices, as highlighted by Ramadani (2023), while the emphasis on sentencing proportionality responds to concerns regarding fairness and consistency raised by Ismaidar et al. (2024). These reforms also reflect the moral and doctrinal principles discussed by Rahmayanti (2017). However, effective implementation remains a key challenge, particularly due to institutional capacity gaps identified by Sumarno (2024). Thus, the success of the penal reform depends not only on legal innovation but also on the readiness of law enforcement institutions and sustained government commitment.

6.2. Study Limitations

This study is limited by its reliance on normative and literature-based analysis without empirical data from courts, prisons, or law enforcement agencies. The early stage of KUHP implementation also restricts the availability of measurable outcomes. Additionally, the study does not examine regional variations or the financial implications of adopting restorative and non-custodial sanctions.

6.3. Recommendations for Future Research

Future studies should include empirical field research to observe how the KUHP is implemented in practice, especially regarding restorative justice and alternative sanctions. Comparative studies with other countries undergoing similar reforms would also be beneficial. Researchers should explore public perceptions of non-custodial sanctions and examine the administrative and financial feasibility of implementing restorative justice on a national scale..

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