



Prosecutorial Discretion and Restorative Justice A Comparison of Indonesia and the Netherlands in Criminal Law

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Abstract: *The purpose of this study is to analyze and compare the application of prosecutorial discretion and restorative justice in the Indonesian and Dutch criminal justice systems, as well as to assess the effectiveness of both mechanisms in realizing legal certainty, protecting human rights, and reducing dependence on imprisonment. This study also aims to formulate normative recommendations for the reform of Indonesian criminal procedure law based on best practices in the Netherlands. The method used is a normative legal research method with a comparative legal approach. The analysis was conducted on legislation, particularly Law No. 1 of 2023 concerning the Criminal Code and the Dutch Wetboek van Strafvordering, as well as legal doctrines and prosecution policies related to prosecutorial discretion and restorative justice. This study focuses on law as a written norm (law in books), not on empirical practice. The results of the study show that the Indonesian Criminal Code has recognized the principles of rehabilitation and restorative justice normatively, but this has not been supported by adequate technical regulations regarding mediator qualifications, criminal mediation procedures, and accreditation systems, thus potentially causing legal uncertainty. In contrast, the Netherlands, through Article 51h of the Wetboek van Strafvordering, provides a clear and*

structured legal basis for criminal mediation from the investigation stage to the trial, which allows for the consistent and controlled application of prosecutorial discretion. The findings show that Indonesia's orientation towards imprisonment contributes to the overcapacity of correctional institutions, while the Netherlands has succeeded in reducing the use of imprisonment through structured prosecutorial discretion and the application of non-custodial sanctions. This study recommends comprehensive reform of Indonesia's criminal procedure law in order to institutionalize restorative justice effectively and sustainably.

Keywords: *Comparative Criminal Law; Prosecutorial Discretion Restorative Justice.*

Introduction

The Dutch colonial Netherlands legacy in Indonesia's criminal justice system still has a strong influence through a retributive approach that emphasizes punishment and detention. This paradigm often overlooks the restoration of social impact for victims and perpetrators. Although the idea of restorative justice is growing as an alternative to this approach, law enforcement in the field is still dominated by the use of prisons as the main solution, which shows the incompleteness of decolonization in the criminal law culture of this country (Wayan Santoso, 2023). Based on research findings from the Institute for Criminal Justice Reform (ICJR) regarding overcrowding as of March 30, 2020, the number of detainees and prisoners in Indonesia reached 270,721, with a total capacity of only 131,931 people (Ginting 2021).

Hopes for transformation were realized with the passing of Law No. 1 of 2023 (New Criminal Code), which normatively creates space for the principles of rehabilitation and recovery. The responsibility of judges to consider remorse and apologies from victims reflects the integration of positive restorative values (Darwin Jeremia Sitinjak 2023). However, this hope is hampered by the procedural vacuum. The restorative arrangements in the new Criminal Code are considered to still lack detail in determining the criteria for mediators, mediation procedures, and accreditation systems. Without firm technical guidelines, these "pardon provisions" have the great potential to cause legal uncertainty, abuse of power, or even be unenforceable on the ground (Thayiban 2024).

However, restorative justice efforts in Indonesia face structural and cultural challenges. Empirical research shows that although technical policies that support mediation and termination of restorative justice-based prosecutions (such as Supreme Court rulings, prosecutorial policies, and police) are not widely used in the field. These difficulties are exacerbated by structural and cultural barriers. Although the Police and the Prosecutor's Office have internal provisions on restorative justice, the reality on the ground shows that law enforcement officials still prefer conventional prosecution channels due to limited mediator capacity and the absence of a formal binding mechanism (Munawwarah et al. 2025).

Ironically, the Netherlands, the country from which Indonesia's ancient legal system originated, has succeeded in modernizing its system by officially integrating restorative justice into their criminal procedure law. Article 51h of the Criminal Procedure Code gives strict legal authority to the prosecutor's office to offer mediation starting from the initial stage of the investigation, involving professional mediators, and making the results of mediation a consideration in the judge's decision. (Wolthuis 2015) The practice of criminal mediation in the Netherlands has been built in various stages ranging from the police, the prosecutor's office, to the aftermath of the court verdict and involves a professional mediator as well as a written settlement mechanism that is then considered in the court decision (Annemieke Wolthuis 2022).

In addition, the community plays an important role in tackling crime, especially by actively participating in the mediation and recovery stages and as mediators between perpetrators and victims. Communities can provide moral support, assist in the determination of appropriate sanctions, and facilitate the process of deliberation and familial problem-solving, all in accordance with their local social and cultural values (Kurniawan and Delmiati 2024).

The state must prevent criminal acts in addition to acting as law enforcers. For example, local governments can play a strategic role in instilling integrity values and providing legal education to reduce the causes of criminal acts. The central and regional governments can work together better in the eradication of crime (Buchori and Muslim 2023).

As the spearhead of the criminal justice system, the police carry out their duties as protectors, protectors, and servants of the community in order to meet the needs of law enforcement in a professional, transparent, and accountable manner. The police also started the process of handling criminal acts and became the gateway to the criminal justice system

which must be run with the principles of justice and protection of human rights (Rudy Kosasih Marlin Sembiring 2023).

The reform of the Criminal Code in Indonesia is an important lesson to uphold fairer and more transparent justice. This shows how important it is to adapt criminal procedure law to domestic and international legal developments, including strengthening the protection of the rights of suspects, defendants, victims, and witnesses (Satria Kusuma 2025).

The use of restorative, rehabilitative, and restitutive approaches in the new Criminal Code shows that a humane and sustainable criminal system is more efficient than a punishment-focused system. To avoid conflicts of interest and overlapping authority, the principle of functional differentiation between investigators, public prosecutors, judges, advocates, and community leaders is established to ensure that each of them can do the best job according to their role (Satria Kusuma 2025).

To prevent human rights abuses during the judicial process, stricter monitoring mechanisms for detention, such as the need for warrants and monitoring of the duration of detention, are important lessons. Maintaining fairness and accountability in criminal law enforcement, preliminary examining judges can strengthen their function to conduct legal examinations of the actions of investigators and public prosecutors (Gholib 2025).

This comparison is particularly important because it shows that the success of restorative justice does not only depend on "good will" in material law (Criminal Code), but must also be supported by "strict mechanisms" in formal law (Criminal Code). Research on the theme of Comparative Criminal Law between Indonesia and the Netherlands has been found. However, this research has significant novelties, such as a study entitled "Comparative Study of Restorative Justice Indonesia and the Netherlands as an Alternative to Criminal Case Resolution" and a study entitled "Prosecutor's Discretion In Handling Criminal Cases". In addition, with almost the same theme about the Comparison of Criminal Law between Indonesia and the Netherlands. The research that the author brings has a different and more specific focus of study compared to previous research

Overall, it can be said that the previous two studies stand differently between restorative justice studies and prosecutorial discretion. The first research focuses on the case resolution model, while the second research focuses on the prosecution authority. Recent research has incorporated these two elements into the analysis of criminal law enforcement mechanisms using a comparative legal approach between Indonesia and the Netherlands. This is a novelty. Therefore, recent research helps us better understand how prosecutorial discretionary policies can function as strategic tools for implementing restorative justice systemically.

Therefore, there is a need for harmony between the state's function as a law enforcer and community involvement in the recovery process. Reforming Indonesia's criminal system not only needs to change the Criminal Code to be more humanitarian-oriented, but also requires reforming the legal process that professionally separates the functions of investigators, prosecutors, and mediators, as is done in the Netherlands. This research aims to analyze how the Dutch procedural mechanism can be applied to ensure that the restorative mandate in Indonesia's New Criminal Code can function effectively,

transparently, and ensure legal certainty. In contrast to previous research, which mostly highlighted the philosophical aspects of restorative justice in the New Criminal Code, this study focuses on comparing procedural aspects (procedural law) with the Netherlands to fill the gap in technical guidance for the implementation of the New Criminal Code.

This study addresses several critical issues in comparative criminal law. First, it explores the key factors influencing the effectiveness of criminal law enforcement in Indonesia compared to the Netherlands. Second, it examines the fundamental differences in enforcement mechanisms between the two legal systems. Finally, it investigates how the Dutch criminal justice system integrates human rights principles and efficiency into its law enforcement practices.

The research seeks to identify the main factors shaping the effectiveness of criminal law enforcement in Indonesia and the Netherlands, analyze the structural differences in their enforcement mechanisms, and evaluate how the Dutch system applies human rights and efficiency in practice.

The purpose of this study is to analyze and compare the criminal law enforcement mechanisms of Indonesia and the Netherlands, with particular attention to prosecutorial authority and the application of restorative justice within prosecution policy. The research focuses on how both systems balance legality, legal certainty, utility, and substantive justice in resolving criminal cases. It also aims to uncover the legal foundations of prosecutorial discretion in both jurisdictions and compare the implementation of restorative prosecution policies. From this comparison, the study outlines the legal consequences and provides normative recommendations for reforming Indonesia's criminal law enforcement system based on Dutch best practices.

Practically, this study contributes to the advancement of criminal law scholarship, particularly in the areas of prosecution policy and discretionary theory. It expands academic discourse on restorative justice, positioning it not merely as an alternative case resolution mechanism but as an essential component of modern criminal law enforcement. Moreover, the study serves as a reference for further comparative legal research among civil law countries, especially between Indonesia and the Netherlands.

Methodology

This study uses a normative juridical approach, namely a comparative legal approach. The normative juridical approach was chosen because this research focuses on the norms, principles, and theories that govern criminal law enforcement mechanisms; in particular, this approach focuses on the application of restorative justice in the Dutch and Indonesian legal systems. It is not the purpose of this study to investigate the actual actions of law enforcement; Instead, this research focuses on law as a written norm also known as law in books that is studied systematically, logically, and conceptually (Negara 2023; Rohman et al. 2024).

The comparative method of law is used to determine the main similarities and differences between the Indonesian criminal law enforcement system, which relies more on the principle of legality, and the Dutch legal system, which relies on the principle of opportunity, especially related to the ability of prosecutors to stop or divert prosecutions through restorative justice mechanisms. In this comparison, the two legal systems have a

similar history but develop differently in terms of criminal procedural law and prosecution policy.

Result and Discussion

Key factors that affect the effectiveness of criminal law enforcement in Indonesia compared to the Netherlands:

Using the Lawrence M. Friedman framework, the effectiveness of the law can be seen through three main components, the legal structure, the substance of the law, and the legal culture.

a. Legal Structure

In terms of legal structure, Indonesia still faces bureaucratic problems that collide with each other due to sectoral egos between police, prosecutors, and judges. In addition, correctional institutions have more than doubled their capacity. In contrast, the Netherlands has a well-coordinated system through cooperation between chain partners. The handling of cases there has been sophisticated digitization, with a balanced number of law enforcement officers compared to the population (Scott, Scott, and Scott, 2024).

b. Legal Substance,

Indonesia is undergoing a transition from the old Criminal Code (WvS) to the new Criminal Code (Law No. 1 of 2023). However, there are still many articles that are multi-interpreted or "rubber". Meanwhile, the Dutch Criminal Code (*Wetboek van Strafrecht*) continues to be updated in a modern way, adapting to new forms of crime while removing rules that are no longer relevant through the process of decriminalization.

c. Legal Culture

Meanwhile, in Indonesia, there are still integrity issues such as corrupt practices in judicial institutions, public trust that rises and falls, and the tendency of the public to prefer to punish. In contrast, the legal culture in the Netherlands is more pragmatic and egalitarian, with a high level of public trust in the judicial system.

Comparisons with France, the Netherlands, the United Kingdom, and Russia show that in the Netherlands, the entire police and prosecutor's offices are under the Ministry of Justice and the Ministry of Home Affairs, so coordination between investigators and prosecutors can run well (Wicaksono 2022). In Indonesia, by contrast, law enforcement officials are spread across several departments, with the President in charge of the police, the Prosecutor's Office working alone, and the Judiciary. Indonesia's criminal law enforcement is very different and multidimensional, with irregularities that often occur in various criminal cases such as terrorism and cybercrime that allow people who should be innocent to become suspects and vice versa (Muflih 2010).

A different approach to punishment from a philosophical perspective. The Dutch criminal justice system has long been known for its lenient policies (*mildness*), with a criminal policy that is tolerant of controversial crimes such as drugs or

euthanasia, and a low incarceration rate compared to other European countries. The incarceration rate in the Netherlands remains much lower than the problem of overcrowding in correctional institutions in Indonesia. This rate increased from about 23 per 100,000 population in 1980 to about 130 per 100,000 today. One of the main differences between the Dutch and British prosecution systems is that the public prosecution service plays an important role in determining criminal policy; in the Netherlands, prosecutors have strong power to incorporate the Supreme Court's criminal policies, while the system in Indonesia remains focused on prison sentences.(Nursobah 2023)

Legal and cultural substance. Legal policy, which is part of the national legal politics, regulates criminal law enforcement and involves various parts of the country, from lawmakers, law enforcement officials, to citizens.(Petro Binsar Siregar 2024) However, in reality, the legal culture that shows how law enforcement officials carry out the law serves as a catalyst or driver of the criminal justice system, and this is Indonesia's weakness.

Criminal Procedure Code (*Code of Criminal Procedure*) The Netherlands, established in 1926, is described as "*Moderately accusatory*" and give the defendant more procedural rights to influence the course of the trial. This includes the right to be accompanied by legal counsel from the early stages of the investigation and the right to remain silent when interrogated.(Fachri 2024) Meanwhile, Indonesia has just implemented the Criminal Procedure Code (Law No. 8 of 1981), which has undergone several revisions to date, showing that its criminal procedural law system is immature.

Indonesia's criminal justice system is very inefficient and not in accordance with the principles of fast, simple, and cheap justice. On the contrary, the main reason for the arrangement of out-of-court criminal settlements in the Netherlands and the United Kingdom is to realize justice through the simplification of the criminal justice system and the application of the principle of competency.(Stefani et al. 2025)

The implementation of the restorative justice system and alternative penalties Indonesia still faces a long and bureaucratic judicial process, the Netherlands has implemented an effective transaction and diversion system to reduce the burden on the justice system. Comparative studies show the Netherlands is in the middle position for violent crimes against people and businesses, has a relatively low level of government corruption, but ranks high for petty crimes against people and businesses. Key findings from the study highlight a lack of crime prevention efforts in the private and individual sectors, low spending on law enforcement, and a lack of resources in the judicial sector.

Judicial independence without political influence. The level of independence of the judiciary sets them apart. The Dutch judicial system has developed with a strong checks and balances mechanism. There is no jury system, and criminal justice is run by professional prosecutors and legally qualified career judges. The social, cultural, and political adaptation of each country greatly affects the performance of

the judicial system in Indonesia. Lengthy and complicated judicial processes, legal loopholes exploited by criminals, and political pressures that hinder judicial independence are some of the factors that most affect the criminal justice system. Corruption cases involving political elites are often late or even fabricated, showing the weaknesses of the system and vulnerable to external intervention. (Ferina Putri Wulandari, Achmad Sulchan 2024)

Fundamental Differences in Criminal Law Enforcement Mechanisms Between Indonesian and Dutch Legal Systems

A. Principles of Legality vs Principles of Opportunity

In criminal law, there is a fundamental difference between the principle of legality in Indonesia and the principle of opportunity in the Netherlands. Indonesia has historically applied the principle of legality (*nullum delictum*) strictly, so that law enforcement officials, both police and prosecutors, feel obliged to bring every case that meets the criminal element to court. Although the practice of restorative justice has recently emerged through the internal rules of the Prosecutor's Office and the Police, its application is still limited and has not fully become an integral part of the criminal law system such as in the Netherlands. (Dedi Iskandar et al. 2024).

On the contrary, the Netherlands adheres to the principle of opportunity (*principle of opportunity*) which gives broad authority to the Public Prosecutor (*Public Prosecutor's Office*). The prosecutor may choose not to proceed with the case even if the evidence is sufficient, if the prosecution is considered not to be in line with the public interest. This policy helps reduce the burden on the court and opens up room for settlement of cases outside of formal channels, for example through transactions or payment of fines. (Tazkiatul Aulia, 2024).

B. Criminal Approach

In terms of penal philosophy, Indonesia is still oriented towards a retributive approach with imprisonment as the main punishment. As a result, serious problems arise in the form of overcrowding in correctional institutions. Meanwhile, the Netherlands emphasizes rehabilitation and social reintegration, placing prison as the ultimate remedium or last resort. The effectiveness of the implementation of alternative sanctions such as social work, fines, and electronic supervision even made the Netherlands close a number of prisons due to the lack of inmates.

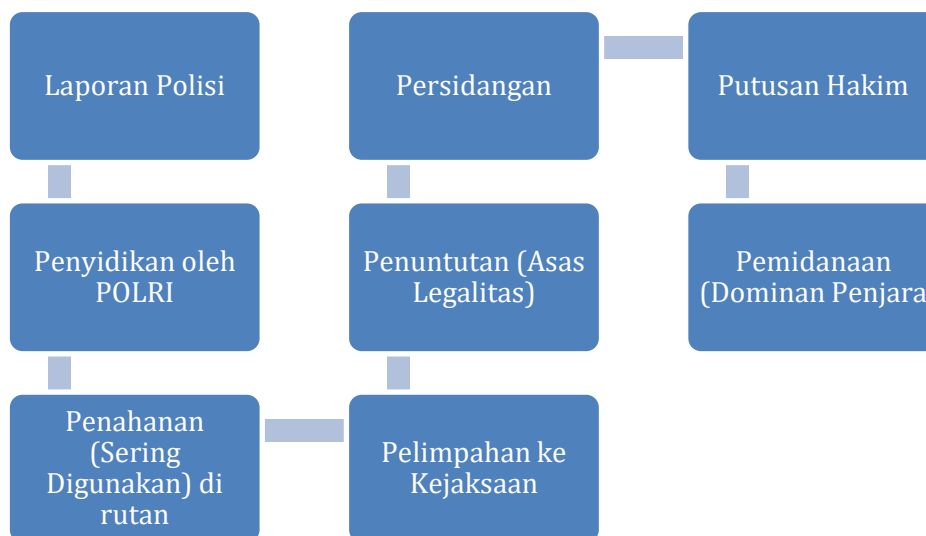
Although both countries have a civil law tradition, the Netherlands adopted a more structured European criminal enforcement system, such as a comprehensive Criminal Justice Code and strong OM/Criminal Enforcement practices. Dutch law (old Criminal Code or KUHAP) was inherited to Indonesia, but since independence, it has undergone many changes. Currently, the Criminal Code is being codified or updated.

Public Prosecution Service, OM) is the main institution in the Netherlands responsible for overseeing police investigations, determining whether cases are brought to court, and having various settlement options outside of court (e.g., sepot, transaction, and punibeschikking). OM's decision greatly determines how things will go. (2018 Service)

In Indonesia, the prosecutor's office also has prosecutorial authority and acts as a public prosecutor. However, the procedural legal framework and coordination practices between the National Police and the prosecutor's office are still in the process of reform due to the new Criminal Procedure Code Bill/codification of the Criminal Code. The reform debate focused on the rights of suspects, diversification/out-of-court settlement mechanisms, and freedom of prosecution.

- a. Restorative Justice Practices, The Netherlands has an explicit legal framework for criminal mediation through Article 51h of the *Wetboek van Strafvordering*, while Indonesia has only strengthened the restorative aspect through the new Criminal Code and Criminal Code, but its implementation is still partial and faces challenges of synchronization between institutions.
- b. Protection of Suspects and Defendants, In the Netherlands, human rights protection is realized through the *Salduz Doctrine* which ensures that suspects receive legal assistance from the moment they are first arrested. Meanwhile, in Indonesia, the fulfillment of suspects' rights still encounters various obstacles in daily practice.

Indonesian Flow Chart (Simplified)



Law Enforcement Flow Diagram in the Netherlands



Fundamental Differences in Criminal Law Enforcement Mechanisms Between Indonesian and Dutch Legal Systems

Indonesia is a former Dutch colonial country whose criminal law system is adopted from the Dutch legal system, where the Indonesian Criminal Code (KUHP) is a legal product of the legacy of the Dutch colonial state which is codified into the Indonesian criminal law system. Although both are rooted in tradition *Romano Germanic Legal Family* (Civil Law) There are fundamental differences in the implementation and evolution of the system.(Annisa Berliani 2023)

The similarity of characteristics can be seen from the use of written books or laws, the adherence to the principle of legality and the distinction between crime and violation.(Annisa Berliani 2023) However, the Netherlands has a strong democratic tradition where the government and legal institutions create a system that is responsive to the needs of the community, while in Indonesia social, cultural, and political factors are often a challenge in the implementation of the criminal justice system.(Muflih 2010)

Differences in Out-of-Court Case Settlement Mechanisms

The ratio legis arrangement of criminal cases outside of court in the Netherlands is to realize justice through the simplification of the criminal justice system and the application of the principle of feasibility, while different circumstances occur in the Indonesian criminal justice system because it is very inefficient and not in accordance with the principles of fast, simple, and low-cost justice.(Muhammad Fadhel Febriansyah, 2025) The Netherlands has various mechanisms, such as:

1. A transaction is the settlement of a case with the payment of a certain amount of money.
2. Postponement of prosecution with conditions.
3. *A criminal order* is a criminal order.

The Netherlands applies prosecutorial discretion to prosecutors in the form of *conditional disposal* (Suspension of prosecution with conditions), and *Penal Order* (Similar Criminal Orders *Penalbefehl* in Germany, *Penalty order* in the Netherlands). Meanwhile, in Indonesia, these mechanisms have not been comprehensively adopted in the Criminal Code, although there have been efforts to implement restorative justice in certain cases. (Fachri 2024)

The criminal justice system in the Netherlands implements the principles of human rights principles and efficiency in law enforcement

a. ZSM system (*as soon as possible*)

The Netherlands is often used as an example in balancing the efficiency of the criminal justice system with the protection of human rights. One of the innovations that stands out is the implementation of ZSM (*As Soon as Possible*) or As Fast as Possible. Through this mechanism, prosecutors, police, probation agencies (*Reclassering*), and victims' lawyers immediately sit together after the arrest, even in a matter of hours, to determine the direction of the settlement of the case. The decision can be in the form of a fine, diversion, or delegation to the court. This approach has proven effective in reducing the burden of cases in court.

b. Legal Aid From the Beginning

In addition, protection for suspects is guaranteed from the beginning of the process. According to the Salduz doctrine, everyone has the right to legal aid immediately after being arrested. This is in contrast to Indonesia, where access to lawyers is often only available during formal examinations or even ignored in minor cases. Pre-trial detention in the Netherlands is also regulated with strict conditions, while in Indonesia detention is often used as a standard investigative procedure and is sometimes used as a negotiation tool. (F H Avdi, 2021).

c. The Role of *Probation*

This institution compiles a social report on the suspect's background for judges and prosecutors to consider before making a verdict. In Indonesia, the role of the Correctional Center (Bapas) is still limited, especially only in children's cases, while in adult cases the contribution is relatively small.

In the Netherlands and Belgium, even the constitution must be set aside if necessary to avoid violating the provisions of international treaties that have direct effect, including *European Convention on Human Rights (ECHR)*, where international treaties can be part of the law of the country, This demonstrates the Netherlands' commitment to the supremacy of international human rights norms. (Risqi 2024) The Netherlands is a signatory to all relevant international human rights instruments such as *European Convention on Human Rights, Rome*

statute for the International Criminal Court, Universal Declaration on Human Rights, European Convention on Torture and European Social Charter.(Risqi 2024)

The efficiency of the prosecution service has been improved, the judiciary has been expanded and prison capacity has been increased, but the Netherlands has maintained a tradition of mildness with a relatively low incarceration rate compared to other countries.

Alternatives to prison sentences applied:

- a. *Community service (social work/community service).*
- b. *Electronic monitoring (electronic monitoring with ankle bracelet)*
- c. *Curfews (curfew/house arrest).*
- d. *Conditional sentences .*
- e. *Purposes (fine) (Leon Caesar, Angkasa 2021)*

The Netherlands implements the Juvenile Criminal Law (*Act On Adolescent Criminal Law*) in 2014, which made it possible to sentence young adults up to the age of 23 at the time of committing a crime as a juvenile, which is a flexible approach to sentencing adolescents and young adults taking into account scientific insights on developments *neurobiological.*(Annisa Berliani 2023)

Fines are an available accessory, but judges usually do not impose fines on juveniles because they are not considered appropriate sanctions, where three percent of juvenile detention is unconditional, and juvenile detention is usually conditional and concurrent with social distancing orders.(Azis 2023)

Lessons and Best Practices

Multi-Stakeholder Approach, Restorative Justice Strategies for change is a 5-year project that aims to promote the implementation of restorative justice in 10 participating countries in Europe, where in each country a group of researchers, policymakers and practitioners gathers a larger group of professionals to jointly create a national strategy to advance restorative justice in criminal justice.(Wicaksono 2022).

The project is founded on the view that restorative justice reforms require collaboration among various actors rather than isolated efforts. For this reason, each participating country forms a core group consisting of researchers, policymakers, and practitioners, who then involve a wider circle of criminal justice professionals to collectively design a national strategy for advancing restorative justice.

An important lesson from this project is the value of participatory and coordinated engagement in shaping restorative justice policies. The inclusion of stakeholders from different institutional backgrounds helps align perspectives, reduce fragmentation in policy implementation, and foster a shared commitment to reform. In addition, the project highlights the role of research-based knowledge in supporting informed decision-making and ensuring that restorative justice practices are grounded in both legal principles and empirical evidence.

As a best practice, the initiative prioritizes sustained collaboration, institutional capacity development, and flexibility to accommodate each country's legal framework and social context. This comprehensive approach contributes to the long-term integration of restorative justice within criminal justice systems and enhances the credibility and

effectiveness of justice reform processes. comprehensive approach contributes to the long-term integration of restorative justice within criminal justice systems and enhances the credibility and effectiveness of justice reform processes

Conclusion

The results of this study highlight crucial implications for Indonesia's criminal justice system, showing that the absence of clear technical guidelines and structured prosecutorial discretion hinders the effective application of restorative justice, perpetuates prison overcrowding, and weakens legal certainty. In contrast, the Dutch experience demonstrates that a well-established legal framework for mediation combined with regulated prosecutorial authority can enhance efficiency, safeguard human rights, and reduce dependence on custodial sanctions. These findings underscore the urgent need for Indonesia to reform its Criminal Procedure Code by institutionalizing restorative mechanisms, strengthening mediator accreditation, and enforcing stricter oversight of prosecutorial discretion to achieve fairness and sustainability. Future research should investigate the socio-cultural aspects of restorative justice in Indonesia, including community acceptance, victim-offender relations, and the role of local institutions, while also assessing the long-term impact of non-custodial sanctions on recidivism. On a practical level, policymakers are advised to adopt Dutch best practices, invest in mediator training, and foster a legal culture that prioritizes rehabilitation and restorative outcomes over punitive measures, thereby advancing a more humane and effective criminal justice system.

This research finding has important implications for updating Indonesia's criminal justice system, especially in integrating prosecutorial discretion with restorative justice mechanisms in a more structured and accountable way. Comparing with the Netherlands shows that clear legal basis, standardized mediation procedures, and oversight of prosecutorial discretion can improve legal certainty, protect the rights of all parties involved, and reduce reliance on prison sentences, which have contributed to overcrowding in Indonesia's correctional facilities. Therefore, in practice, it is recommended that lawmakers and law enforcement agencies in Indonesia develop detailed regulations governing the qualifications and accreditation of criminal mediators, the stages and standards of restorative mediation, and mechanisms for overseeing prosecutorial discretion, along with strengthening coordination between law enforcement agencies and shifting the approach from a retributive to a restorative model. Future research is also recommended to conduct an empirical study on the effectiveness of applying restorative justice and prosecutorial discretion at the investigation and prosecution levels, including an analysis of perceptions from victims, offenders, and law enforcement officers, to complement the normative findings and provide a more comprehensive basis for formulating criminal justice policies that are just, humane, and sustainable.

Fundamental philosophical variations in the way of looking at criminal law enforcement. Indonesia has a strict legal system with a retributive orientation that emphasizes imprisonment as the main sanction, resulting in overcrowding of correctional institutions, reaching 270,721 prisoners, with a capacity of only 131,931 people. On the other hand, the Netherlands uses an opportunity system, which allows prosecutors to avoid

prosecution in the public interest, and a penal philosophy that emphasizes rehabilitation and social reintegration.

Three main factors based on the Lawrence M. Friedman framework affect the performance of criminal law enforcement: (1) The legal structure in Indonesia faces institutional fragmentation due to sectoral egos between police, prosecutors, and judges, while the Netherlands has a more coordinated system through a network of digital peers; (2) The legal substance in Indonesia is transitioning from the old Criminal Code to the New Criminal Code (Law No. 1 of 2023), which still contains multi-interpretation articles; and (3) Customs in Indonesia.

Many mechanisms work together to ensure that human rights are implemented and that the Dutch criminal justice system is functioning properly. Case settlement in a matter of hours through the coordination of prosecutors, police, probation, and victims' lawyers through the ZSM (Zo Spoedig Mogelijk) system. The Salduz doctrine, which provides protection to suspects from the moment of arrest, is different from Indonesia, where legal aid is only available at the formal examination stage. The suspect's social report is made by the Reclassering institution for consideration by the judge, while in Indonesia, a similar function is still limited to child cases.

Article 51h of the Criminal Code provides a clear legal framework that supports restorative justice in the Netherlands. This article combines criminal mediation from the investigation stage to the post-conviction stage and involves professional mediators with a written mechanism considered by the court. In contrast, Indonesia's New Criminal Code (Law No. 1 of 2023) normatively allows restorative justice by requiring judges to consider the victim's regret and apology. However, the technical process regarding the criteria for mediators, mediation procedures, and accreditation systems is still incomplete. The practice of restorative justice in Indonesia is still partial and faces the challenge of synchronization between institutions. Due to the limited capacity of mediators and the lack of formal binding mechanisms, law enforcement officials are more likely to use conventional prosecution methods.

The substance of the material law and the procedural mechanism, the two systems do not work well together. Through integrated institutional coordination, digitization of processes, and diversification of non-custodial sanctions, the Netherlands has succeeded in balancing the efficiency of the judicial system with the protection of human rights. Although Indonesia has a progressive New Criminal Code, important reforms are still needed in the Criminal Code to ensure that the restorative mandate can operate properly, clearly, and provide legal certainty.

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