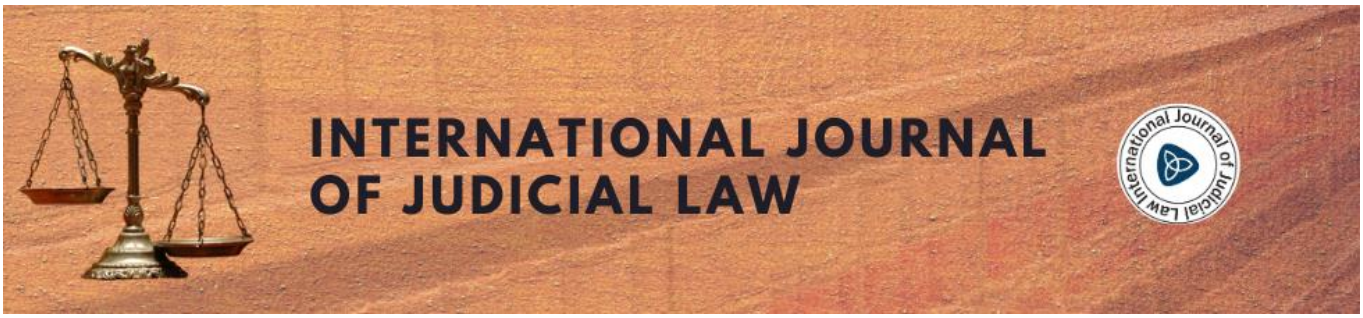




The Urgency of Integrating Restorative Justice in Indonesia's Modern Criminal Code

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Abstract

The promulgation of Law No. 1 of 2023 concerning the Criminal Code marks a shift in the historical paradigm in Indonesian criminal law towards a comprehensive modern codification framework. Nevertheless, the practical implementation of this new codification raises a fundamental normative conflict between the rigid principle of formal legality in Article 1 and the recognition of the law that lives in society in Article 2. The clash of norms triggers systemic legal uncertainty, particularly regarding the formal legitimacy and procedural applicability of restorative justice mechanisms derived from local customary practices. This normative legal research uses statutory and conceptual approaches to critically examine the doctrinal friction between formal criminal prosecution and community-based dispute resolution. The results show that the current sectoral regulations in law enforcement agencies do not have sufficient legislative force to override the formal prosecution mandate required by procedural law. Therefore, this article formulates a procedural integration framework designed to bridge formal criminal procedures with restorative mechanisms based on local wisdom at the pre-adjudication stage. This structural harmonization offers a new legal model to ensure legal certainty, uphold substantive justice, protect victims' rights, and reduce the severe overcapacity of correctional institutions in the national legal system.

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Introduction

The promulgation of Law Number 1 of 2023 concerning the Criminal Code is a historic momentum in the decolonization of the criminal law system in Indonesia. This national codification substantially replaces *the Wetboek van Strafrecht*, a legacy of the Dutch colonial government, which was rigidly oriented towards physical retribution and imprisonment. This philosophical transition marks a shift from a positivistic Western criminal law paradigm towards the formation of a national criminal law that is derived from the value of national ^[1]sovereignty. The new codification is expected to be able to present a legal unification that is adaptive to social dynamics and the legal needs of modern society. Therefore, this reorientation not only focuses on refining the formulation of delicacies, but also concerns the reconceptualization of the purpose of punishment in a more humanistic manner.

Globally, the development of modern criminal law doctrine has moved away from the paradigm of retributive justice that emphasizes punishment alone. The international legal discourse now places *restorative justice* as the main means of resolving criminal disputes holistically. This modern criminal orientation prioritizes the recovery of victim losses, constructive accountability from the perpetrators, and the restoration of disturbed social balance. The implementation of this approach has

¹ Nunung Nugroho, "THE URGENCY OF UPDATING THE CRIMINAL CODE IN THE DYNAMICS OF INDONESIAN SOCIETY," *LEGAL SPECTRUM* 14, no. 1 (13 July 2019): 39–57, doi:10.35973/sh.v14i1.1102.

proven effective in minimizing negative stigma against perpetrators and reducing the burden of dependence on correctional institutions. Nevertheless, the integration of this recovery paradigm requires doctrinal alignment with the applicable procedural law structure so as not to cause disparities in law enforcement ^[2].

The foundation of restorative justice in national codification obtains doctrinal legitimacy through the recognition of *living law* as stipulated in Article 2 of Law Number 1 of 2023. This rule provides juridical affirmation of the existence of living law in society, which for centuries has been realized through customary sanction mechanisms and the settlement of local deliberations. This normative recognition aims to accommodate local wisdom in resolving minor offenses outside the formal courts. Sociologically, customary mechanisms have a very strong social binding power because they prioritize the restoration of family relations and community peace ^[3]. However, the integration of unwritten norms into the formal criminal justice system requires clear juridical limitations so as not to ignore the principle of legal certainty.

Although Article 2 of the New Criminal Code opens up space for living law, the implementation of restorative justice empirically hits the limit of the rigidity of the principle of formal legality affirmed in Article 1 paragraph 1. This normative contradiction creates an antinomy between written legal certainty (*lex scripta*) and the achievement of substantive justice at the societal level. The principle of conventional legality requires that all criminal prosecutions rely absolutely on the formulation of written laws without discretion ^[4]. As a result, the settlement of criminal cases by family or through customary courts is often considered procedurally invalid by law enforcement officials. This disharmony between the principle of legality and restorative mechanisms has the potential to undermine legal certainty and kill peace initiatives at the local level.

The absence of legal unification regarding restorative justice at the legislative level has resulted in regulatory fragmentation at the operational level. So far, the guidelines for restorative case settlement have only been regulated separately through Police Regulations, Prosecutor's Regulations, and Supreme Court Circulars. The hierarchical position of sectoral regulations is very weak because it is under the law, so it does not have juridical legitimacy to override the obligation of formal prosecution. This situation triggers disparities in case handling between one region and another depending on the discretion of local law enforcement. Without a strong legal foundation in the form of laws, the practice of restorative justice will always overshadow the risk of abuse of authority ^[5].

The academic discourse on restorative justice in Indonesia has so far been dominated by sectoral empirical studies and has not touched on the root of normative problems comprehensively. Most of the previous literature has only

focused on the effectiveness of the application of penal mediation at the level of specific law enforcement agencies separately. There is still a gap in academic analysis that specifically formulates conceptual bridges to align formal legal certainty with substantive justice based on local wisdom. The absence of an integrated theoretical framework results in a pattern of restorative settlement oscillating between rigid legal certainty and procedural practicality ^[6]. Therefore, an in-depth normative study is needed to formulate a harmonized legal formulation that can be applied universally.

This research is here to fill the academic void by formulating a procedural integration framework that correlates formal criminal justice and a restorative mechanism based on local wisdom. The novelty or novelty of this article lies in the conceptual contribution regarding the formulation of harmonization that places customary agreements as a legitimate part of the criminal procedural law procedure. Through this framework, restorative justice is no longer positioned as an extraordinary discretion, but as a formal mechanism that is legally recognized by the state. The main purpose of this research is to present a legal formula that guarantees juridical certainty, upholds substantive justice, and protects the rights of victims in a balanced manner. Thus, the results of this study are expected to be a normative reference for lawmakers in improving the national criminal procedural law.

Problem Formulation

1. How is the conceptualization of the normative conflict between the principle of formal legality in Article 1 of Law Number 1 of 2023 and law-based restorative justice that lives in society based on Article 2 in the Indonesian criminal justice system?
2. How to formulate a procedural integration framework to harmonize formal criminal prosecution with a restorative mechanism based on local wisdom structurally in the national criminal procedure law?

Purpose

This research is comprehensively directed to achieve two main academic objectives within the scope of national criminal law reform. First, this research aims to conduct an in-depth normative analysis of the fundamental doctrinal friction between the rigid principle of formal legality in the modern Criminal Code and the juridical recognition of the law that lives in society that originates from community traditions. Second, this research seeks to systematically formulate a new procedural integration framework designed to bridge the formal criminal justice process with a restorative mechanism based on local wisdom, so as to be able to uphold legal certainty, formalize restorative practices, and uphold substantive justice in the Indonesian legal system.

² Sahat Maruli Tua Situmeang and Krusitha Meilan, "The Evolution of Crime and Punishment: Challenges in Law Enforcement and Modern Penology," *Res Nullius Law Journal* 7, no. 2 (4 July 2025): 87–97, doi:10.34010/mlj.v7i2.15913.

³ Dr. Ir Agus Wibowo MM M. Kom, M. Si, *REFORM OF THE CRIMINAL CODE AND CRIMINAL CODE AS A RECONSTRUCTION OF THE LEGAL SYSTEM in INDONESIA* (Publisher Foundation, 2026).

⁴ Anis Mashdurohatun dan Joman Rabah Mahfouth Alkhatib, "Bridging Formal Legality and Living Law Public Prosecutorial Policies to Achieve Justice," *Contrarius*, 2026, doi:10.53955/contrarius.v2i2.272.

⁵ Wido Bhernard Gabriel Sihombing, "Inconsistencies in the Restorative Justice Arrangement in the Criminal Justice System in Indonesia," *Lex Generalis Law Journal* 6, no. 7 (22 July 2025), doi:10.56370/jhlg.v6i7.1344.

⁶ Sunnah Nbu dkk., *Diversion in the Criminal Code: The Future of Restorative Justice at the Police Level* (Deepublish, 2026).

Discussion

A. Norm Conflict Analysis: The Principle of Formal Legality vs. Laws Living in Restorative Justice

The erosion of the principle of classical legality in national criminal law is marked by a shift in perspective on the meaning of written legal certainty. The provisions of Article 1 paragraph 1 of Law Number 1 of 2023 concerning the Criminal Code expressly defend the doctrine of *nullum delictum nulla poena sine praevia lege poenali*. The formulation of these norms requires that every criminal act must be based on the written legal rules that existed before the act was committed. However, the application of this overly rigid principle of *lex scripta* often clashes with the rapidly growing demands of substantive justice in the midst of societal dynamics^[7]. As a result, rigidly pursued formal legal certainty often produces material injustice for the parties to the dispute.

The existence and limitations of living law in Indonesia's positive legal arena have gained new legitimacy through Article 2 paragraph 1 of Law Number 1 of 2023. This rule officially recognizes the applicability of living laws in society as the basis for determining criminal acts that are not written in the law. However, juridical analysis shows a problematic tendency when these customary norms collide directly with national positive law. The absence of explicit restriction criteria regarding the evidentiary hierarchy creates uncertainty about when customary sanctions can override state prosecution^[8]. This situation triggers juridical vulnerability because the application of laws that live in vulnerable communities is considered illegal by formal judicial structures.

The philosophical clash between retributive justice and restorative justice reveals a fundamental weakness of traditional criminal philosophy. Conventional criminal justice systems that focus on physical suffering through prison sentences have been proven to often worsen social harmony that is disturbed by crime. Prisons not only fail to recover the material and immaterial losses suffered by the victim, but also isolate the perpetrator from the responsibility of community restoration. In contrast, restorative justice offers a mediation space that prioritizes the restoration of the original state and the direct accountability of the perpetrator to the victim^[9]. Unfortunately, the retributive thinking internalized in formal criminal procedure law still places the peace between the parties only as a factor in mitigating the sentence, not as a reason for the removal of the prosecution. The problem of fragmentation of sectoral regulations is the main obstacle in the institutionalization of restorative justice at the operational level. The practice of resolving cases outside the courts has only been based on internal agency rules, such as Police Regulations and Attorney General's Regulations. In terms of legislative hierarchy, such sectoral regulations do not have the same binding force as a formal

law to abolish the authority of criminal prosecution. This separate arrangement creates legal confusion and disparity in case handling between the Police, the Prosecutor's Office, and the Supreme Court. Without unification at the legal level, the application of restorative justice will always be in the shadow of legal uncertainty and allegations of extrajudicial actions^[10].

Case studies of factual legal uncertainty can be observed in the handling of minor offenses or customary disputes in various regions of Indonesia. Cases of minor crimes that have been resolved peacefully through local customary courts are often still delegated to the district courts by law enforcement officials. The main reason considered by investigators is compliance with formal procedures of criminal procedure law that has not recognized customary peace deeds as termination of investigations^[11]. This phenomenon causes legal processes to be stagnant and overlapping because customary decisions are considered to have no formal legality in the eyes of the state. This inconsistency directly harms both parties who have actually agreed to end conflicts familially. The dilemma of law enforcement officials is at a crucial point when it comes to choosing between textual compliance or sociological justice. Judges, prosecutors, and investigators are often in the wrong position between applying the text of the law textualist or responding to the conscience of public justice. Blindly obeying the sound of written articles risks harming the sense of justice of the community who want a restorative settlement. On the other hand, law enforcement actions that accommodate peace without a clear written legal basis have the potential to be accused of procedural violations or abuses of authority. This doctrinal clamp emphasizes how urgent it is to have legal norms that are able to provide procedural protection for the discretion of law enforcement officials^[12].

The implications of the lack of certainty of integration have a negative impact on the emergence of a sense of legal insecurity for the community. Perpetrators of criminal acts who have fulfilled the obligation to recover losses and pay customary sanctions still imagine the risk of being formally criminalized by the state^[13]. This condition undermines the basic essence of restorative justice, which emphasizes the certainty of permanent restoration and closure of conflicts. Victims are also harmed because formal settlement in court rarely guarantees the return of the losses that have been suffered in real terms. As a result, the uncertainty of integrating these norms weakens the authority of customary courts and erodes public trust in positive law.

An analysis of the principle of opportunity and the use of discretionary authority shows significant operational limitations. The principle of opportunism inherent in the Attorney General to set aside cases in the public interest has not been optimally utilized to formalize restorative justice. The discretion of law enforcement at the lower levels is also

⁷ Renaldy Saputra Arianti, Suyanto, and Ika Ayudyanti, "The Principle of Legality for the Application of Living Law in Law Number 1 of 2023 concerning the Criminal Code," *Judge : Legal Journal* 6, no. 07 (6 February 2026): 2083–92, doi:10.54209/judge.v6i07.2065.

⁸ Ibid.

⁹ Bona Fernandez Martogi Tua Simbolon dkk., "The Prosecutor's Promise in Executing the Claim Cessation Based on Restorative Justice," *Journal of Social and Environmental Management*, 2024, doi:10.24857/rgsa.v18n7-023.

¹⁰ Afriandi Sikumbang dan Rineke Sara, "Harmonization of Restorative Justice Regulations within the Indonesian Criminal Justice System," *Greenation International Journal of Law and Social Sciences*, 2025, doi:10.38035/gijlss.v3i2.426.

¹¹ Rusjdi Ali Muhammad, "Reconciliation for the Settlement of Criminal Cases: Reactualization of Local Wisdom in Indonesian Criminal Law," *Legitimacy: Journal of Criminal Law and Legal Politics* 10, no. 2 (December 26, 2021): 171–88, doi:10.22373/legitimasi.v10i2.11339.

¹² Eko Saputra, *The Role of Law Enforcement in the Indonesian Criminal System* (Pt Keras Media Literasi Indonesia, 2025).

¹³ Reski Anwar and Eko Ari Wibowo, "Integration of Living Law in National Criminal Law: Between Legal Certainty and Customary Law Pluralism," *Indonesian Journal of Criminal Law and Criminology (IJCLC)* 7, no. 2 (August 4, 2026), doi:10.18196/ijclc.v7i2.31953.

often limited by concerns about administrative sanctions or allegations of indications of corruption. This situation proves that discretionary authority alone is not strong enough to cover the void of integrative legal norms in the crimin system^[14]. Therefore, a measurable criterion mechanism is needed and regulated in the law to direct the implementation of such discretion.

Sociocultural barriers in the judicial bureaucracy have also slowed down the institutionalization of the restorative justice approach. The mentality of law enforcement, which has long been formed in a positivistic legal culture, tends to measure performance success based on the quantity of cases delegated to the courts. Indicators of judicial bureaucratic efficiency are still greatly influenced by the orientation of sentencing and imprisonment of criminals. Such a legal culture is reluctant to accept the deliberation mechanism because it is considered to prolong the bureaucracy and does not provide statistical certainty of prosecution. The transformation of the bureaucratic legal culture is thus an absolute requirement so that the value of restorative justice values can be effectively internalized^[15].

The conflict between the principles of formal legality and restorative justice is a profound structural crisis. This conflict can no longer be resolved only by issuing a partial and temporary Circular or Ministerial Regulation. The inconsistency between Article 1 and Article 2 of Law Number 1 of 2023 requires procedural harmonization bridged through legal instruments at the legislative level. Law-making intervention is urgently needed to develop an integrated framework that provides formal legitimacy for living law without sacrificing the principle of legality. Only through the reform of the integrated criminal procedure law can the antinomy between legal certainty and substantive justice be resolved permanently.

B. Formulation of Procedural Integration Framework for Restorative Justice Based on Local Wisdom

The urgency of designing a conceptual bridge or bridging solution is a fundamental philosophical basis in an effort to unite the formal criminal justice system with restorative justice based on local wisdom. This unification does not aim to abolish the principle of formal legality, but rather to expand its scope to accommodate a recovery mechanism recognized by the community. Through procedural integration, the living law norms contained in Article 2 of Law Number 1 of 2023 obtain formal legal channels to operate legally. This integration model creates a harmonious synthesis between the value of substantive justice that lives in the community and the legal certainty demanded by the state^[16]. Thus, the antinomy between written law and unwritten law can be resolved through an integrated procedural framework.

The design of the criteria and limitations of the offense is rationally prepared to determine the types of criminal acts

that are worthy of being transferred to the path of restorative justice. This integration framework focuses on misdemeanors, complaint offenses, and crimes without massive victims whose criminal threat is less than five years in prison. This objective qualification is very important to prevent the abuse of the peace mechanism in serious crimes such as corruption, terrorism, or sexual violence^[17]. In addition to objective criteria, subjective conditions such as voluntary consent from the victim and the status of the perpetrator who has committed a crime for the first time are absolute requirements. This strict setting of limits ensures that the termination of prosecution for the sake of the law remains within the corridor of positive legal accountability. The institutionalization of customary institutions or local facilitators positions community leaders as an official part of the national criminal justice pre-adjudication ecosystem. In this framework, customary forums are no longer seen as isolated entities outside the judiciary, but are recognized as equal partners for investigators and public prosecutors. The involvement of indigenous leaders who understand the sociology of local communities increases the legitimacy of the criminal mediation process and facilitates honest communication between perpetrators and victims. This institutional position is strengthened by a facilitator certification scheme to ensure that the deliberative process runs in a transparent and balanced manner. This institutionalization step is an important instrument in formalizing the role of local wisdom without distorting the formal judicial order^[18].

The law-based formal diversion mechanism is designed by integrating the criminal mediation process directly into the investigation or prosecution phase with a measurable time limit. This integration gives normative authority to investigators and public prosecutors to temporarily stop the case in order to provide room for deliberation for the parties. The mediation process must be limited in duration for a maximum of thirty days to prevent protracted legal uncertainty. If the deliberation succeeds in reaching a peaceful agreement, the investigator or public prosecutor is obliged to issue a letter of termination of the legal process^[19]. On the other hand, if the deliberation fails, the case is continued to the formal judicial stage without prejudice to the legal rights of the parties.

The standardization of restorative agreements and judicial control mechanisms are designed to provide executory legal force and prevent inequality in power relations. A peace agreement deed containing a form of recovery of losses must be registered with the local district court to obtain a determination of ratification from the judge. Judicial supervision by the district court serves as an instrument of checks and balances to ensure that the agreement is made without coercion, collusion, or any form of oppression against the weaker party. The appointment of the judge automatically converts the customary agreement into a

¹⁴ Muhammad Kenan Lubis, G. Gunarto, dan Anis Mashdurohatun, "Legal Reconstruction of the Authority of Deponing Implementation by the Prosecution Office Based on Justice Value," *Scholars International Journal of Law, Crime and Justice*, 2023, doi:10.36348/sijlcj.2023.v06i03.006.

¹⁵ Moh Riziq, "A Critical Analysis of Restorative Justice in Indonesia's Criminal Justice System: From Punishment to Restoration," *International Journal of Law Dynamics Review*, 2025, doi:10.62039/ijldr.v3i1.82.

¹⁶ Mashdurohatun dan Alkhatib, "Bridging Formal Legality and Living Law Public Prosecutorial Policies to Achieve Justice."

¹⁷ MM, *REFORM OF THE CRIMINAL CODE AND CRIMINAL CODE AS A RECONSTRUCTION OF THE LEGAL SYSTEM in INDONESIA*.

¹⁸ Dr. Lilik Mulyadi, M.H., S.H., *Penal mediation in the Indonesian criminal justice system* (Alumni Publisher, 2022).

¹⁹ Matthew Marcellinno Gunawan, Pujiyono Suwadi, dan Muhammad Rustamaji, "Comparison of Restorative Justice Implementation in Indonesia, Usa, Germany, Poland and Switzerland," *Journal of Social and Environmental Management*, 2024, doi:10.24857/rgsa.v18n1-055.

judgment that has permanent legal force and can be formally executed. This supervision mechanism ensures equal legal protection for victims and locks legal certainty so that cases cannot be reopened arbitrarily ^[20].

The conversion of customary sanctions into alternative penalties is directly aligned with the modern penal system regulated in the New Criminal Code. Traditional forms of sanctions such as the obligation to pay customary compensation, village cleaning, or community work are transformed into the categories of fines, supervision penalties, or social work crimes. This alignment provides juridical certainty that the fulfillment of customary obligations is legally counted as the implementation of state punishment ^[21]. Perpetrators who have completed customary sanctions are considered to have completed all their criminal responsibilities in full. This conversion approach proves that customary law can be synergized adaptively with the reform of national criminal law.

The protection of victims and vulnerable groups is placed as the main pillar so that this procedural framework does not harm the rights of women, children, and marginalized groups. The restorative deliberation process must ensure that the victim's position is protected from psychological pressure or manipulation by perpetrators and community leaders. The victim's right to appropriate compensation and trauma recovery should be a key consideration in any form of peace agreement ^[22]. If indications of intimidation or gender discrimination are found in the mediation process, the facilitator has the right to stop the diversion process and return the case to a formal judicial channel. This principle ensures that restorative justice is not used as a means of impunity for perpetrators.

The empirical projection of this procedural integration model has a significant impact on reducing the burden of overcapacity of correctional institutions and the efficiency of the state budget. The transfer of minor crime settlement to the restorative path based on local wisdom drastically reduces the number of inmates who must enter prisons. The reduction in prison occupancy rate directly reduces the burden of financing judicial operations and the consumption of the state budget for prisoner care. Strategically, this new framework is an important roadmap for lawmakers in refining the revision of the national Criminal Procedure Law in the future. The promulgation of this integration framework will strengthen Indonesia as a country that successfully combines modern legal certainty with local wisdom in a dignified manner.

Closing Conclusion

A comprehensive analysis in this study concludes that there is a fundamental normative contradiction between the principle of formal legality regulated in Article 1 paragraph 1 and the recognition of living law in Article 2 of Law Number 1 of 2023. The rigidity and strictness of the principle of *lex scripta* on the principle of conventional legality tends to limit the space for resolving criminal cases through restorative justice based on local wisdom. Sectoral regulations issued by the police and prosecutor's offices have so far proven to lack

a strong enough hierarchical position to permanently abolish formal prosecution authority. As a result, this legal uncertainty triggers disparities in case handling and threatens the legal position of the parties who have agreed to make peace customarily. The disharmony of these norms proves that there is a structural crisis that cannot be solved simply through the discretion of law enforcement in the field.

As an answer to the void of these legal norms, this article constructs a procedural integration framework that connects the formal criminal justice system with a structurally local wisdom-based restorative mechanism. This new framework offers a pre-adjudication diversion scheme that is limited by rational criminal criteria, the institutionalization of indigenous leaders as official facilitators, and the standardization of peace deeds. The existence of judicial supervision by district courts ensures that peace agreements have executory legal force equivalent to court decisions. The transformation of customary sanctions into alternative crimes as stipulated in the New Criminal Code provides juridical validity for the recovery of real victims' losses. Thus, this procedural integration model succeeds in providing legal certainty without sacrificing the value of substantive justice that grows in the community.

Suggestions

Based on the above conclusions, the researcher recommends concretely to the House of Representatives and the Government to immediately incorporate this framework of procedural integration of restorative justice into the content of the revised Criminal Procedure Code. Lawmakers need to formulate a special chapter on the mechanism of diversion and mediation of penalties based on local wisdom so that it has a legal basis that binds all law enforcement institutions. In addition, the Government needs to draft implementing regulations that regulate the standardization of the qualifications of customary facilitators and procedures for the ratification of restorative agreement deeds in court. This regulatory step is very important to realize the unification of criminal procedural law that is modern, fair, humanist, and firmly rooted in the cultural values of the Indonesian nation.

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²⁰ M. Muslikah dan Alip Rahman, "The Implementation of Restorative Justice In Criminal Proceedings At The Cirebon District Court," *Legisci Journal*, 2026, doi:10.62885/legisci.v3i6.1179.

²¹ Anwar and Wibowo, "Integration of Living Law in National Criminal Law."

²² Siti Aminah, Arif Sugitanata, dan Suud Sarim Karimullah, "Restorative Justice for the Survivor of Sexual Violence," *Restorative : Journal of Indonesian Probation and Parole System*, 2024, doi:10.61682/restorative.v2i1.10.

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