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Paradigmatic Change in Civil Law: The Draft Civil Code Bill and the Limits of Restorative Justice

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Abstract

Indonesian civil law still rests on a colonial Civil Code, and reform discussions increasingly invoke a 'paradigm shift' toward restorative justice, a doctrine developed in criminal and juvenile justice. This article asks what has actually changed in Indonesian civil law, whether the Draft Civil Code Bill can be said to adopt restorative justice, and how restorative principles could enter civil dispute resolution without weakening legal certainty. It is normative legal research using statutory and conceptual approaches to the Civil Code, the legislation on mediation, arbitration, electronic transactions, personal data, marriage and agrarian law, and the recent restorative justice instruments in criminal law, read with the literature on restorative justice. The findings are that the real shifts lie in access to justice, court-annexed mediation, electronic transactions and the recognition of customary communities, that the Civil Code is form-neutral so that electronic contracts expose a gap in proof and harmonisation rather than in validity, and that no analysed text of the Draft Civil Code adopts restorative justice, so the claim remains a proposal. Restorative principles fit family, inheritance and neighbour disputes through mediation, but not where power is unequal. The article recommends a bounded restorative clause, protective safeguards and enforceable public participation.

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Keywords

Codification; Mediation; Restorative; Customary; Harmonisation; Indonesia

Introduction

Indonesian civil law is still largely the law of the Civil Code, the Kitab Undang-Undang Hukum Perdata (KUHPerdata), which is the Dutch Burgerlijk Wetboek extended to the Dutch East Indies in 1848 by the principle of concordance.[1] Its structure of persons, property, obligations and evidence has survived independence because the Transitional Provisions of the Constitution kept existing laws in force until replaced.[2] Parts of it have in fact been displaced: marriage by Law No 1 of 1974 and the land provisions by Law No 5 of 1960 on Basic Agrarian Principles.[3][4] The Civil Code itself, however, is more than 170 years old, and calls for a national civil code have long been heard. A Draft Civil Code Bill (*Rancangan Undang-Undang Kitab Undang-Undang Hukum Perdata*, RUU KUHPerdata) is reported to be among the priorities of the House of Representatives in 2026.[5] Reform debates describe the change in terms of a 'paradigm shift': from legal certainty and individual rights to access to justice, digitalisation, sustainability, the integration of customary law and, most strikingly, restorative justice.

Restorative justice is a doctrine of criminal and juvenile justice. It treats crime as harm to people and relationships and asks offender, victim and community to repair that harm, in contrast to a retributive model centred on punishment.[6][7] Indonesia has adopted it through several instruments in criminal law, and from 2 January 2026 the new Code of Criminal Procedure regulates a restorative mechanism at every stage of the process.[8] That it can also be a paradigm of civil law is, by contrast, asserted more often than shown. Civil disputes already have a mediation requirement in court and arbitration outside it,[9][10] and whether 'restorative justice' adds anything to these, and what the Draft Civil Code Bill actually says about it, are open questions.

Earlier Indonesian studies of restorative justice concentrate on criminal law. Akbar shows that the police, the prosecution service and the Supreme Court each adopted restorative justice with different mechanisms and conditions, which undermines

[1] R Subekti, *Pokok-Pokok Hukum Perdata* (Jakarta: Intermasa, 1986).

[2] Constitution of the Republic of Indonesia 1945.

[3] Law No 1 of 1974 on Marriage (Indonesia).

[4] Law No 5 of 1960 on Basic Agrarian Principles (Indonesia).

[5] "RUU Perampasan Aset hingga KUHPerdata Prioritas Komisi III DPR di 2026 [Asset Forfeiture Bill to the Civil Code Bill Are Priorities of House Commission III in 2026]" (2026), online: *Detik News* <https://news.detik.com/berita/d-8349628/ruu-perampasan-aset-hingga-kuhperdata-prioritas-komisi-iii-dpr-di-2026>.

[6] Howard Zehr, *The Little Book of Restorative Justice* (Intercourse, PA: Good Books, 2002) at 23–29.

[7] John Braithwaite, *Restorative Justice and Responsive Regulation* (Oxford: Oxford University Press, 2002) at 17.

[8] Law No 20 of 2025 on Criminal Procedure (Indonesia), arts 79–88.

[9] Supreme Court Regulation No 1 of 2016 on Mediation Procedure in Courts (Indonesia).

[10] Law No 30 of 1999 on Arbitration and Alternative Dispute Resolution (Indonesia).

legal certainty and calls for a statutory basis;[11] Capera argues that sentencing still rests on a retributive model and that a restorative paradigm needs change in legal substance, structure and culture;[12] Beremanda, Hafrida and Siregar find that failed terminations of prosecution often arise from disagreement on compensation;[13] and Malau, Karjono and Ciptono examine how local values of deliberation and consensus can ground restorative justice in criminal law.[14] Internationally, Umbreit and his colleagues review the restorative movement and warn of its pitfalls.[15] None of these studies examines the civil law or the Draft Civil Code. This article attempts to fill that gap. Its novelty is to separate three claims that reform writing usually merges: that civil law has changed, that the Draft Civil Code adopts restorative justice, and that restorative principles could usefully be brought into civil dispute resolution.

The article therefore asks three questions. (1) Which changes in Indonesian civil law are documented in legislation, as against asserted? (2) Can the Draft Civil Code Bill be said to adopt restorative justice? (3) Under what conditions could restorative principles be used in civil dispute resolution without weakening legal certainty or protecting the stronger party? Its purpose is to give a critical, evidence-based account of the 'paradigm shift' and to propose a bounded role for restorative justice in civil law reform.

Research Method

This is normative (doctrinal) legal research; it reports no interviews or fieldwork. It uses a statutory approach to the primary legal materials: the Civil Code, the 1945 Constitution, Law No 1 of 1974, Law No 5 of 1960, Law No 30 of 1999, the Electronic Information and Transactions Law, Law No 27 of 2022, Law No 23 of 2004, Law No 16 of 2011, the juvenile justice law, the new Criminal Code (Law No 1 of 2023) and Code of Criminal Procedure (Law No 20 of 2025), Supreme Court Regulations No 1 of 2016 and No 1 of 2024, the police and prosecutor regulations on restorative justice,

[11] Muhammad Fatahillah Akbar, "Pembaharuan Keadilan Restoratif dalam Sistem Peradilan Pidana Indonesia [Renewal of Restorative Justice in the Indonesian Criminal Justice System]" (2022) 51:2 *Masalah-Masalah Hukum* 199, DOI: <10.14710/mmh.51.2.2022.199-208>.

[12] Brilian Capera, "Keadilan Restoratif Sebagai Paradigma Pemidanaan di Indonesia [Restorative Justice as a Sentencing Paradigm in Indonesia]" (2021) 6:2 *Lex Renaissance* 225, DOI: <10.20885/JLR.vol6.iss2.art1>.

[13] Lukas Permadi Orlando Beremanda, Hafrida & Elizabeth Siregar, "Prinsip Keadilan Restoratif dalam Penghentian Penuntutan Melalui Kompensasi dan Restitusi [The Principle of Restorative Justice in Termination of Prosecution through Compensation and Restitution]" (2023) 4:2 *Pampas: Journal of Criminal Law* 277, DOI: <10.22437/pampas.v4i2.26483>.

[14] Parningotan Malau, Arpandi Karjono & Ciptono, "Penerapan Keadilan Restoratif dalam Hukum Pidana Berbasis Kearifan Lokal [Application of Restorative Justice in Criminal Law Based on Local Wisdom]" (2024) 7:2 *Jurnal USM Law Review*, DOI: <10.26623/julr.v7i2.9571>.

[15] Mark S Umbreit, Betty Vos, Robert B Coates & Elizabeth Lightfoot, "Restorative Justice in the Twenty-First Century: A Social Movement Full of Opportunities and Pitfalls" (2005) 89:2 *Marquette Law Review* 251.

and Constitutional Court Decision No 91/PUU-XVIII/2020. A conceptual approach draws on the restorative justice literature to define the doctrine and its limits. The secondary materials are books and journal articles on civil law reform and restorative justice. The legal materials were collected from official legal databases and the secondary sources from journal websites. The text of the Draft Civil Code Bill itself was not available for article-by-article analysis, and this is a limitation of the study that is treated as a finding below. The materials were analysed qualitatively: each claimed shift was traced to a legal instrument, tested against the text of that instrument, and then assessed against the doctrine of restorative justice.

Results and Discussion

The Civil Code and the Meaning of a Paradigm Shift

The traditional paradigm of the Civil Code is one of legal certainty and the protection of individual rights. Subekti defines civil law as the law that regulates the rights and obligations between individuals in private legal relations.[16] Its core rules are few and general: agreements validly made bind the parties as statute (art 1338(1)), they must be performed in good faith (art 1338(3)), and ownership is the right to enjoy a thing fully, within the limits of law and the rights of others (art 570).[17] A valid agreement requires consent, capacity, a certain object and a lawful cause (art 1320).[18] These rules, rather than the long textbook list of 'principles', are the baseline against which any shift has to be measured.

'Paradigm shift' is used in the reform literature without definition, but the term does work in the argument and must be given content. Here it means a change in the basic assumptions on which a body of law operates, shown by a change in legal instruments, not only in rhetoric. On that test the claim of a general shift is only partly supported. The Civil Code has been displaced by statute in marriage and land and supplemented in consumer protection, electronic transactions and personal data, but its core of contract and property has not been rewritten, and it is still applied under the dualist logic that the colonial government left, in which customary law governs many indigenous communities. The account of the shift therefore has to separate documented change from aspiration.

The Civil Code in Context: History, Dualism and Principles

[16] Subekti, *supra* note 1 at 3.
[17] Kitab Undang-Undang Hukum Perdata [Civil Code] (Indonesia), arts 1338 and 570.
[18] *Ibid*, art 1320.

The history explains why reform is demanded and why it is difficult. Before the Dutch, the peoples of the archipelago lived under unwritten customary law (*hukum adat*), which regulated family, inheritance and land with the emphasis on harmony and togetherness. The colonial government introduced the Burgerlijk Wetboek in 1848 but applied it dualistically: it governed Europeans and certain foreign Orientals, while customary law continued to govern the indigenous population.[19] After independence the Code was retained, with the effect that a colonial code of one legal tradition applies beside customary law, Islamic law in family and inheritance matters, and a growing body of national statutes. This fragmentation, rather than the age of the Code, is the real reason for the call for a national code: the reformers' task is to decide which of these sources a unified code should absorb and which it should leave outside.

The principles of the Code also need a closer reading than a list affords. Freedom of contract (art 1338(1) read with art 1320) gives the parties power to determine the content of their agreement within the limits of statute, morality and public order. Good faith (art 1338(3)) requires honest and fair conduct in forming and performing the agreement, and is the gateway through which courts have moderated harsh terms. The so-called principle of balance, that each right is matched by an obligation, is not an express rule of the Code but a reading of its reciprocal contracts. Legal certainty, finally, is the value that all the others serve.[20] These principles are relevant here because a restorative clause must work with them. Good faith is the natural meeting point: a duty to negotiate and to perform in good faith already has the relational content that restorative justice seeks, and a court that must apply it can take account of the parties' continuing relationship without a new doctrine. The conflict arises only if restoration is allowed to override the agreement itself, which would diminish certainty.

What Has Actually Changed: Documented Developments

Four developments can be traced to legal instruments, and Table 1 summarises them with an assessment. The first is access to justice through non-adversarial dispute resolution. Since Supreme Court Regulation No 1 of 2016, mediation is a mandatory stage in civil cases before the court, with a period of 30 days that the parties may extend by a further 30 days; the judge who skips it breaches the rules.[21] Arbitration and other forms of alternative dispute resolution are available outside

[19] Subekti, *supra* note 1.
[20] Civil Code, *supra* note 17, arts 1320 and 1338.
[21] Supreme Court Regulation No 1 of 2016, *supra* note 9.

the court under Law No 30 of 1999.[22] It follows that a shift toward consensual resolution exists, but it was made by procedural regulation and special statute, not by the Civil Code.

The second is digitalisation. The Electronic Information and Transactions Law gives electronic contracts and electronic signatures legal effect,[23] and Law No 27 of 2022 protects personal data.[24] The usual claim that the Civil Code leaves 'a legal void' because it is oriented toward physical documents and manual signatures needs correction. The Civil Code follows the principle of consensualism: its requirements for validity (art 1320) do not include writing or signature, so an electronic agreement can be valid under the Code without any amendment.[25] What was missing, and has been supplied by special legislation, is rules on evidence, authentication and platform responsibility. The problem for codification is then one of harmonisation: the Code and the special statutes overlap, and a new code must decide whether to absorb or to refer to them.

The practical meaning of the digital shift is clearest in evidence and enforcement. Under the Code, an agreement concluded by exchange of electronic messages is valid if the four conditions of art 1320 are met, so the dispute that reaches a court is seldom about validity. It is about whether the message is attributable to the person alleged to have sent it, whether the signature was affixed by the signatory, and whether the electronic record is admissible. These questions are answered by the special legislation and by the procedural law of evidence, which is a matter for the civil procedure bill mentioned below. A new Civil Code could usefully state that the form of an agreement is free unless the law requires otherwise, and refer to the special legislation for proof, rather than restate rules that will be outdated when technology changes again.[26]

The shift toward consensual dispute resolution also has a cost side that the reform literature tends to neglect. Mediation is attractive because litigation is slow and expensive, and it fits a vision of justice that is accessible to ordinary people. But a mandatory mediation stage adds a step to every case, and its benefit depends on the quality of mediators and on a genuine willingness to settle. If mediation becomes a formality, it delays the court process without improving results. The proper conclusion is that access to justice is served by consensual resolution only

[22] Law No 30 of 1999, *supra* note 10.
[23] Law No 11 of 2008 on Electronic Information and Transactions (Indonesia), as amended by Law No 19 of 2016 and Law No 1 of 2024.
[24] Law No 27 of 2022 on Personal Data Protection (Indonesia).
[25] Civil Code, *supra* note 17, art 1320.
[26] Electronic Information and Transactions Law, *supra* note 23.

where the process is competent, voluntary and monitored, which are the same conditions that restorative practice requires. For this reason the training of mediators and judges is not a side recommendation but the main condition of any restorative element in civil law.[27]

The third is the recognition of customary communities. The Constitution recognises and respects customary law communities and their traditional rights as long as they are alive and in accordance with societal development and the principle of the unitary state (art 18B(2)).[28] The new Criminal Code goes further by recognising the 'living law' in society as a basis for criminal liability within limits.[29] Civil law is where customary law has always survived, especially in family, inheritance and land matters, so an integration of customary and codified law in a new Civil Code would be the most consequential shift, but it is also the one that most requires proof of the content of the custom. The fourth development is substantive protection for weaker parties: statutes on domestic violence and legal aid, which give a legal footing to the idea that private law must secure justice in fact and not only in form.[30][31]

Legal pluralism deserves more attention than the reform literature gives it. The recognition of customary communities in the Constitution is conditional: customary law is recognised as long as it is alive and consistent with societal development and the unitary state. A code that integrated customary law would therefore have to state how the content of a custom is to be proved, who may speak for the community, and how the rights of members who are not in the dominant position, such as women in inheritance, are protected. Without these rules, 'integration' would transfer disputes from the Code to uncertainty. The restorative idea can assist here, because the deliberative processes of customary communities are in many places their means of resolving disputes, and the research on local-wisdom-based restorative justice in criminal law points the same way.[32] Even so, a custom that disadvantages a party cannot be adopted merely because it is traditional; the constitutional guarantees of equality and human rights remain the limit.

Table 1. Claimed shifts in civil law and the legal instruments that support them

Claimed shift	Legal instrument	Assessment

[27] Supreme Court Regulation No 1 of 2016, *supra* note 9.
[28] Constitution of 1945, *supra* note 2, art 18B(2).
[29] Law No 1 of 2023 on the Criminal Code (Indonesia).
[30] Law No 23 of 2004 on the Elimination of Domestic Violence (Indonesia).
[31] Law No 16 of 2011 on Legal Aid (Indonesia).
[32] Malau, Karjono & Ciptono, *supra* note 14.

Access to justice and consensual dispute resolution	Supreme Court Regulation No 1 of 2016; Law No 30 of 1999	Documented, but created by procedural regulation and special statute
Electronic contracts and signatures	Electronic Information and Transactions Law; Law No 27 of 2022	Documented; the Civil Code is form-neutral, so the gap is in proof and harmonisation
Customary law and local values	Constitution art 18B(2); Law No 1 of 2023 (living law, criminal law)	Documented in the Constitution and criminal law; not yet in a civil code
Protection of weaker parties	Law No 23 of 2004; Law No 16 of 2011	Documented in special statutes
Restorative justice in civil law	No civil instrument identified; criminal instruments only	Not documented; a proposal

Source: compiled by the authors from the instruments cited.

Drivers of Change and Their Legal Expression

Reform writing offers a list of drivers of legal change: changing social values, the demand for inclusive justice, technology, globalisation and environmental and collective concerns. The list is plausible but becomes useful only when each driver is tied to an instrument. Social values and inclusion find legal expression in the statutes on domestic violence and legal aid, and in the constitutional recognition of customary communities.[33][34][35] Technology is expressed in the electronic transactions and personal data statutes.[36][37] Globalisation raises the question of harmonisation with international standards, which special statutes on consumer protection and electronic transactions partly address. Environmental and collective concerns remain mainly the subject of academic argument, as in the well-known proposal to recognise legal rights of natural objects.[38] Where no instrument can be named, as with sustainability in the Civil Code, the driver is better described as pressure for reform than as a shift that has occurred.

The drivers also differ in their consequences for a new code. Technology and globalisation call for technical updating, such as rules on evidence and cross-border performance, that can be done within the existing structure. The demand for inclusion and for recognition of local values calls for a choice about the character of the code: whether it remains a code of formally equal individuals or acknowledges the different situations of the parties. Restorative justice belongs to the second group. It cannot be added as a technical update, because it presupposes a view of the dispute as a relationship, not only as a claim, and this is a policy decision that needs public debate.

[33] Law No 23 of 2004, *supra* note 30.
[34] Law No 16 of 2011, *supra* note 31.
[35] Constitution of 1945, *supra* note 2, art 18B(2).
[36] Electronic Information and Transactions Law, *supra* note 23.
[37] Law No 27 of 2022, *supra* note 24.
[38] Christopher D Stone, "Should Trees Have Standing?—Toward Legal Rights for Natural Objects" (1972) 45 *Southern California Law Review* 450.

The Draft Civil Code Bill: What Can and Cannot Be Said

A central claim of the reform literature is that the Draft Civil Code Bill adopts the principles of restorative justice, emphasising the repair of relationships and not only material compensation. This claim cannot be sustained on the evidence available. No article of the draft was cited for it, and a published account of the status of the draft says only that the Civil Code Bill is among the priorities of Commission III of the House of Representatives in 2026, without describing its contents.[39] A separate bill on civil procedure is also on the 2026 national legislation programme, which matters because mediation and other forms of dispute resolution are rules of procedure, not of substantive civil law.[40] Where restorative techniques enter civil dispute resolution, they are more likely to do so through the procedural bill than through a code of substantive rules.

This matters for the argument in two ways. First, any statement that the draft 'recognises restorative justice' should be treated as a hypothesis until the authors or the legislators identify the provision. Second, the reform proposals that follow in this article are framed as recommendations for the drafting stage, not as descriptions of a text. Civil procedure is sometimes said to be governed by the Code of Criminal Procedure (KUHAP); this is wrong, since that Code regulates criminal procedure and was replaced on 2 January 2026 by Law No 20 of 2025.[41] Civil procedure in the courts still follows the colonial-era procedural regulations, supplemented by Supreme Court regulations, which is why a new civil procedure law is being prepared.

Restorative Justice as a Concept and Its Indonesian Instruments in Criminal Law

Restorative justice is an approach that emphasises the restoration of relationships between offender, victim and community, with a primary focus on repairing the harm caused by crime. Zehr describes it as not only about law but about repairing broken relationships and preventing the recurrence of harm, with dialogue, accountability and restoration as its main concepts.[42] It gives offenders a chance to take responsibility, make amends through restitution or community service and return to society, and gives victims a voice that the retributive process does not.[43]

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[39] "RUU Perampasan Aset hingga KUHPerdata", *supra* note 5.

[40] "Wamenkum Sebut RUU Hukum Acara Perdata Masuk dalam Prolegnas 2026 [Deputy Minister of Law Says the Civil Procedure Bill Is Included in the 2026 National Legislation Programme]" (20 November 2025), online: *Kompas* <https://nasional.kompas.com/read/2025/11/20/14071421/wamenkum-sebut-ruu-hukum-acara-perdata-masuk-dalam-prolegnas-2026>.

[41] Law No 20 of 2025, *supra* note 8.

[42] Zehr, *supra* note 6 at 23–29.

[43] Braithwaite, *supra* note 7 at 17.

Umbreit and colleagues describe the practice as built on dialogue between the parties, but caution that the movement has pitfalls, among them uncritical enthusiasm and weak safeguards.[44]

The conventional contrast between retributive and restorative justice, widely repeated in Indonesian writing, needs qualification. Retributive justice is portrayed as 'an eye for an eye', but retributive theory in its modern form is a theory of proportionate punishment, not of vengeance, and reliance on Bentham as a source for it is misplaced, since Bentham's theory of punishment is utilitarian, based on deterrence. Garland's sociological account shows that modern punishment pursues several aims at once, including control, deterrence and expressive condemnation.[45] The contrast is useful as a heuristic, but not as a description of how criminal courts reason.

Indonesia has adopted restorative justice piecemeal in criminal law, and the instruments differ in scope. Table 2 summarises them. The juvenile justice law of 2012 made diversion with a restorative approach mandatory for children.[46] The prosecution service and the police then issued their own regulations in 2020 and 2021,[47][48] and the Supreme Court issued Regulation No 1 of 2024 for courts, which allows a judge to treat a restorative agreement as a mitigating circumstance but, according to published commentary, does not allow the trial to be ended on that ground.[49] Some writing refers to Supreme Court 'Restorative Justice Guidelines in Child Case Resolution' of 2019; no such instrument has been identified, and the child justice rules are those of the 2012 law. Akbar's criticism that these regimes differ in conditions and lack a statutory basis was the leading objection in the literature.[50]

That objection is now partly answered. The new Criminal Code, in force since 2 January 2026, introduces supervision and community service penalties and directs judges to consider the victim's forgiveness among the matters bearing on a sentence.[51] The new Code of Criminal Procedure regulates the restorative mechanism in a single chapter, at the stages of inquiry, investigation, prosecution and trial. As reported, it limits the mechanism to offences punishable by a fine of

[44] Umbreit et al, *supra* note 15.
[45] David Garland, *Punishment and Modern Society: A Study in Social Theory* (Chicago: University of Chicago Press, 1990) at 45.
[46] Law No 11 of 2012 on the Juvenile Criminal Justice System (Indonesia).
[47] Prosecutor's Regulation No 15 of 2020 on the Termination of Prosecution Based on Restorative Justice (Indonesia).
[48] Police Regulation No 8 of 2021 on the Handling of Crimes Based on Restorative Justice (Indonesia).
[49] Supreme Court Regulation No 1 of 2024 on Guidelines for Adjudicating Criminal Cases Based on Restorative Justice (Indonesia).
[50] Akbar, *supra* note 11.
[51] Law No 1 of 2023, *supra* note 29.

category III or imprisonment of up to five years for a first offence, excludes nine types of offence, and requires the investigator to seek a court determination when stopping an investigation; further technical rules are delegated to a government regulation.[52] Whether the earlier police, prosecutor and Supreme Court regulations remain in force alongside it, and how they are to be harmonised, should be checked against the official texts. The relevance for the present topic is that the criminal-law instruments contain features that a civil regime would need to reproduce, namely voluntariness, a ceiling on the seriousness of the matter, exclusions for the most serious cases and judicial control.

Table 2. Restorative justice instruments in Indonesian criminal law

Instrument	Body	Main features
Law No 11 of 2012	Parliament	Mandatory diversion with a restorative approach in child cases
Prosecutor's Regulation No 15 of 2020	Prosecution service	Termination of prosecution; conditions include a first offence, a ceiling on penalty and loss
Police Regulation No 8 of 2021	Police	Termination of investigation after a settlement; excludes several serious categories
Supreme Court Regulation No 1 of 2024	Supreme Court	Guidelines for judges; settlement relevant to sentence, trial not ended on that ground
Law No 1 of 2023 and Law No 20 of 2025	Parliament	Supervision and community service penalties; restorative mechanism at all stages from 2 January 2026

Source: compiled from the instruments cited; the content of Law No 20 of 2025 is taken from published commentary and should be checked against the official text.

Retributive and Restorative Models Compared

The comparison between the two models is often the longest part of writing on restorative justice, and it is worth stating precisely because the civil-law claim depends on it. Table 3 sets out the five points on which the models are usually distinguished. The retributive model treats a wrong as a violation of the law and of the state, aims at proportionate punishment and deterrence, gives the victim the role of a witness and the community the role of an observer, and measures success by the imposition of the sanction. The restorative model treats the wrong as a violation of people and relationships, aims at repair of harm and reintegration, gives the victim and the community active roles, and measures success by the restoration of relationships.[53][54]

Each of these contrasts is a simplification. The victim is not always passive in a retributive system, as restitution and victim participation show; and restorative processes can disadvantage victims when they are pressed to forgive. The claims

[52] Law No 20 of 2025, *supra* note 8, arts 79–88.
[53] Zehr, *supra* note 6 at 28.
[54] Braithwaite, *supra* note 7 at 17.

commonly made for the restorative model, that it reduces recidivism and raises victim satisfaction, are empirical claims that require empirical support, and none of the Indonesian sources reviewed here supplies it. Umbreit and colleagues present dialogue-based practice as promising but also point to the dangers of overstating its results.[55] This study therefore treats the superiority of the restorative model as a hypothesis, not as a premise, and bases its case for a limited civil role on the fit of the process and not on promised outcomes.

Table 3. The retributive and restorative models compared

Point of comparison	Retributive model	Restorative model
View of the wrong	A violation of the law and the state	A violation of people and relationships
Aim	Proportionate punishment and deterrence	Repair of harm and reintegration
Role of the victim	Witness; the state prosecutes	Active participant who states the harm
Role of the community	Observer	Participant in repair and reintegration
Measure of success	Sanction imposed	Relationship and harm repaired

Source: compiled from the works cited in this section; the contrasts are simplified.

Can Restorative Principles Enter Civil Law?

The core of the argument is whether, and how, a doctrine of crime can work in private law. A civil dispute has no 'offender' or 'victim' in the criminal sense, and the remedy is compensation or performance rather than punishment. Yet the underlying idea of restorative justice, that the parties themselves take part in finding a solution that repairs a relationship, is not foreign to civil law; it describes what a good mediation does. The civil law already provides the machinery: mediation under the Supreme Court regulation, arbitration and negotiated settlement.[5657] The question for reform is therefore narrower than the usual one: whether a new Civil Code should add anything of substance, for example an obligation to consider the relational harm of a breach, or a preference for restoration of the relationship in family and inheritance matters.

Three fields fit best, and Table 4 summarises the fit and the safeguards each field needs. In family disputes, the relationship continues after the dispute, so repair has value that money damages do not. In inheritance disputes, where Islamic, customary and Civil Code rules coexist, deliberation among heirs is the usual way to a result acceptable to all and is consistent with customary approaches. In disputes between neighbours or members of a community over land, restoration of the relationship matters because the parties must continue to live together. In these fields a restorative clause would direct courts and mediators to value the parties'

[55] Umbreit et al, *supra* note 15.
[56] Supreme Court Regulation No 1 of 2016, *supra* note 9.
[57] Law No 30 of 1999, *supra* note 10.

own settlement and relational repair, and would recognise forms of reparation such as an apology, which is sometimes presented as a form of civil sanction.

There are also limits, and they are the reason for caution in importing the doctrine. First, power imbalance: the restorative process presupposes the voluntary participation of parties on a reasonably equal footing, and this fails in consumer contracts, standard-form agreements and domestic violence. Consumer disputes are not suitable for informal 'dialogue' if the stronger party sets the terms, and the law on domestic violence exists precisely because private settlement can reproduce abuse.[58] Second, legal certainty: the Civil Code protects the predictability of agreements, and a power to override an agreement in order to 'restore relationships' would conflict with art 1338, unless it is limited to defined situations.[59] Third, enforceability: a restorative agreement in a civil case has legal force only if it is in a form that a court can enforce, such as a settlement recorded by the court. These limits mirror those that the criminal instruments set, as Table 2 shows: voluntariness, a ceiling on seriousness, exclusions and judicial control.

What would a restorative clause in a Civil Code look like? The analysis above suggests five elements. It would state its aim as the repair of the parties' relationship and harm, subordinate to the validity and enforcement of agreements. It would be confined to family, inheritance and community disputes, and would not apply to consumer or standard-form contracts or to cases of violence. It would make participation voluntary and provide that no party may be required to settle. It would require a settlement to be recorded and approved by the court so that it can be enforced, which is the condition that the criminal instruments impose in their own way. And it would be integrated into the mediation stage that already exists under the Supreme Court regulation, so that it does not create a second track.[60] A worked example shows the difference it would make. In an inheritance dispute among siblings over the family home, a court mediator today seeks agreement on shares. Under a restorative clause the mediator would also be directed to allow each heir to explain the harm and the history of the dispute, and the settlement could include non-monetary terms such as an apology, shared use of the home for a period, or a role for a respected elder. The settlement would still be tested against the mandatory rules of inheritance.

[58] Law No 23 of 2004, *supra* note 30.
[59] Civil Code, *supra* note 17, art 1338.
[60] Supreme Court Regulation No 1 of 2016, *supra* note 9.

The relationship between the criminal and civil systems deserves a final comment, because the new Code of Criminal Procedure makes the recovery of the victim's loss a condition of the restorative termination of a criminal case: the investigation can be stopped only after the offender has performed the agreed recovery.[61] In practice, many conduct that is a crime is also a civil wrong, and a victim may reach a restorative settlement in the criminal process and later sue in the civil court for the same loss. The two regimes should be coordinated so that an agreement made in a criminal restorative process is recognised in civil proceedings and the victim is not required to litigate twice. This coordination, and not the importation of a criminal doctrine into the Code, may be the most useful point of contact between restorative justice and civil law.

Table 4. Fit of restorative principles with fields of civil law

Field	Fit	Safeguard needed
Family disputes	High: continuing relationship	Exclude violence; protect children and the weaker spouse
Inheritance	High: deliberation among heirs, customary practice	Respect mandatory shares and the rights of absent heirs
Neighbour and community land disputes	Medium to high	Court approval of the settlement; proof of custom
Consumer and standard-form contracts	Low: unequal power	Rely on consumer law; no informal pressure to settle
Commercial contracts between equals	Medium	Respect freedom of contract and the arbitration clause

Source: compiled by the authors from the analysis in this section.

Implications for Social Justice and the Community

The reform literature links the paradigm shift to social justice through the protection of vulnerable groups, redistribution, participation and access to justice. Several of these links rest on identifiable instruments. Law No 16 of 2011 on Legal Aid guarantees legal aid to the poor,[62] Law No 23 of 2004 protects victims of domestic violence,[63] and Article 18B(2) of the Constitution recognises customary communities.[64] Social justice here means that a civil code written in the language of equal individuals has to look at the positions of the parties. A code that treats the consumer, the tenant farmer and the large company alike will produce unjust results in fact, which is why special statutes have grown up around it.

Statements about the public reaction to such changes, for example that restorative justice was 'well received' by local communities and that conservative groups resist the recognition of women's and children's rights, are usually offered without data.

[61] Law No 20 of 2025, *supra* note 8, arts 79–88.
[62] Law No 16 of 2011, *supra* note 31.
[63] Law No 23 of 2004, *supra* note 30.
[64] Constitution of 1945, *supra* note 2, art 18B(2).

This study uses no empirical data and does not adopt them; they are better treated as hypotheses for later research. What can be supported by law is the requirement of participation. The Constitutional Court has held that the law-making process must involve meaningful public participation, and found the Job Creation Law conditionally unconstitutional for want of it.[65] A code of the size of a Civil Code, touching marriage, inheritance, property and contract, cannot be enacted without public consultation that is documented and answered. The same goes for the new Criminal Code, which was contested for the manner of its preparation before it came into force.[66]

Comparison with Earlier Research

Compared with earlier work, this study differs in subject and conclusion. The Indonesian restorative justice literature reviewed above is almost entirely about criminal law. Akbar's call for a statutory basis for restorative justice is supported by the developments in Law No 20 of 2025, and the present study adds that the same lesson applies to any civil regime: a restorative mechanism needs a statute, defined conditions and judicial control.[67] Capera's view that a restorative paradigm requires changes in legal substance, structure and culture fits the finding here that rules alone (procedural regulations) have changed more than the Code itself.[68] Beremanda and colleagues found that the failure of criminal restorative settlements is often about compensation; in civil disputes, where compensation is the primary remedy, this suggests that restorative dialogue will be easier but may also be reduced to bargaining over money.[69] Malau and colleagues propose that local values of deliberation provide the foundation for restorative justice; this study agrees that customary practices can be a bridge into civil law, but adds that their content must be established, not presumed.[70] Finally, the warnings of Umbreit and colleagues about pitfalls are borne out by the limits identified above, especially where power is unequal.[71] The main difference is therefore that this article tests the 'paradigm shift' against legal instruments, finds that only some of the claimed shifts are documented, and treats restorative justice in civil law as a proposal needing safeguards.

[65] Constitutional Court of the Republic of Indonesia, Decision No 91/PUU-XVIII/2020 (25 November 2021).
[66] Law No 1 of 2023, *supra* note 29.
[67] Akbar, *supra* note 11.
[68] Capera, *supra* note 12.
[69] Beremanda, Hafrida & Siregar, *supra* note 13.
[70] Malau, Karjono & Ciptono, *supra* note 14.
[71] Umbreit et al, *supra* note 15.

A last difference concerns the environment and collective rights. Sustainability and corporate social responsibility are often named as part of the shift. Collective and environmental claims have long been argued for in comparative scholarship; Stone's argument for legal rights of natural objects is the best known.[72] In Indonesian civil law, however, the instruments identified here do not show that sustainability has become a principle of the Civil Code, and the claim should be read as an aspiration.

Conclusion

The article asked what has changed in Indonesian civil law, whether the Draft Civil Code Bill adopts restorative justice, and how restorative principles could enter civil dispute resolution. First, the documented changes are in access to justice through mediation and arbitration, electronic transactions and personal data, recognition of customary communities, and protection of weaker parties; but they were made by special statutes and procedural regulation, and the Civil Code itself, which is form-neutral, has not been rewritten. Second, the claim that the Draft Civil Code adopts restorative justice cannot be confirmed: no article was identified, and the claim should be treated as a proposal until the text is analysed. Third, restorative principles fit family, inheritance and community disputes, if they are bounded by voluntariness, protection of the weaker party, exclusion of violence, and judicial control, as in the new criminal law.

Four recommendations follow. The drafters should publish the draft and explain, provision by provision, how it relates to the special statutes and to customary law. If a restorative clause is included, it should be limited to family, inheritance and community disputes, with safeguards against coercion and with court approval of settlements. Mediators and judges should be trained in the restorative techniques that the new Code of Criminal Procedure now requires. Public participation should be made enforceable, with duties to publish drafts and to respond to submissions. The study has limits: it analyses legislation and secondary sources, not the draft text or empirical data, and its statements on the new Code of Criminal Procedure rely on published commentary. Further research should analyse the draft once it is published and test the claims about community response empirically.

Ethics and Data Availability

[72] Stone, *supra* note 38.

This normative legal research did not involve human participants or personal data, so ethical approval was not required. All legal materials used are publicly available.

Use of Generative AI

Generative AI was used only to improve the language of this article (grammar, clarity and style). The authors reviewed the output and are responsible for the content of the article.

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