

RECONSTRUCTION OF THE PARADIGM OF CRIMINAL CASE RESOLUTION BASED ON PANCASILA VALUES

Eva Syahidah

Universitas Jenderal Soedirman, Indonesia

eva.syahidah@mhs.unsoed.ac.id

Abstract

This research aims to examine the reconstruction of Indonesia's criminal justice system by integrating Pancasila values as the philosophical and moral foundation of national law. The current paradigm of Indonesian criminal law, rooted in the civil law system, is predominantly positivistic, viewing law merely as written norms detached from moral values and social justice. As a result, the application of law often loses its humanitarian dimension. This study employs a normative legal research method, drawing on statutory, conceptual, and comparative approaches, as well as qualitative analysis of relevant primary and secondary legal materials. The first finding reveals an urgent need to shift from a positivist to a Pancasila legal paradigm—one that is more humanistic, dynamic, and substantively just. This paradigm shift is essential to harmonize legal certainty, utility, and justice as an integrated triad of national legal values. The second finding underscores the importance of reconstructing the criminal justice system by adopting a restorative justice model grounded in humanitarian and social justice values. This model places the restoration of social relationships, the offender's accountability, and the victim's participation at the core of Pancasila-based criminal justice. The scientific contribution of this research lies in its conceptual synthesis of legal positivism and substantive justice, grounded in the Pancasila legal paradigm, as a foundation for reforming Indonesia's national criminal law.

Keywords: *legal positivism, Pancasila legal paradigm, reconstruction of criminal justice, restorative justice, substantive justice*

INTRODUCTION

The Indonesian criminal justice system, both historically and structurally, remains deeply rooted in the continental legal tradition (civil law system), inheriting the positivist legal mindset from Continental Europe, particularly from the Dutch legal tradition. Legal positivism views law as a product of human will, established by an authorized body, and its validity is independent of moral considerations or any notion of natural truth.¹ Within this paradigm, law is what has been posited—meaning that law is defined by what is enacted by the legislator, not by what ought to be just or good according to morality.

As a consequence, law is perceived as an autonomous, closed system of rules, detached from ethical considerations and humanitarian values. Within the positivist paradigm, judges are positioned merely as *la bouche de la loi*—the mouthpiece of the law—whose sole duty is to apply legal norms without any room for moral interpretation.² This results in a criminal justice process that operates mechanically and procedurally, judging right and wrong solely based on formal evidence, while disregarding the social, psychological, and moral contexts of the offender's actions.

However, such a legal system creates a paradox between legal certainty and justice. On one hand, legal certainty (*rechtszekerheit*) is achieved through the consistent application of law to every case; on the other hand, substantive justice (*gerechtigkeit*) is often sacrificed when rigid statutory enforcement produces verdicts that fail to reflect a sense of social justice. For instance, in cases involving minor offenses such as petty theft driven by economic hardship, a literal application of the law may impose harsh punishment on the offender, who, in moral and social terms, is himself a victim of structural social injustice.

The positivist paradigm also tends to exclude the dimension of social utility (*Zweckmässigkeit*) in law enforcement. The purpose of law is no longer to achieve social balance or restore relationships among citizens, but merely to fulfill the formal demands of the judicial system. This orientation renders criminal law predominantly retributive, focusing on punishing offenders rather than restoring victims or society.³ Such a condition creates tension between formal justice and social justice, as mandated by the Constitution and Pancasila's values. Formal justice measures actions solely by their conformity to written legal rules, while social justice requires a balance between law and public morality, between legal certainty and humanity. Within the context of Pancasila, the law should not stop at certainty alone—it must also embody the values of just and civilized humanity and social justice for all the people of Indonesia.

Pancasila, as the *rechtsidee* (legal ideal) of the Indonesian nation, places justice, humanity, and social balance as the fundamental values guiding the implementation of law.⁴ In the context of criminal law, the values of Pancasila should serve as a compass to balance legal certainty and humanity, protecting victims and rehabilitating offenders. However, empirical reality shows that the Indonesian criminal justice system still places primary emphasis on punishment or retribution, with little attention to the restoration of social relationships.

The retributive paradigm stems from absolute theories (Immanuel Kant, Hegel), which view punishment as a moral necessity rather than a means to achieve social objectives.⁵ The retributive approach, rooted in classical legal thought, interprets crime as a violation of state sovereignty (*lex talionis* or the law of retaliation). Within this paradigm, the offender is regarded as an enemy of the state who must be sanctioned or isolated to deter others (*deterrent effect*). However, this approach has been widely criticized for neglecting the restorative dimension for victims and worsening the offender's social condition after punishment. Such criticism subsequently highlighted the need for a new model of justice that emphasizes restoration over retribution and aligns more closely with the humanitarian and social justice principles of

Pancasila.⁶

As a corrective response to the retributive paradigm, the concept of restorative justice emerged—an approach oriented toward restoring social relationships and the moral balance disrupted by a criminal act. Unlike the retributive system, which views crime solely as a violation of state law, restorative justice perceives crime as a rupture in the relationship between the offender, the victim, and the community. Therefore, its resolution must involve all three parties through an open, participatory, and sincere dialogue process. Within this framework, the offender is encouraged to take moral and concrete responsibility for their actions. At the same time, the victim is allowed to express their feelings, needs, and hopes for genuine recovery.⁷

The concept of restorative justice aligns closely with the values of Pancasila, particularly the second principle, which emphasizes treating every human being with respect and dignity—even those who have committed crimes. This humanitarian value requires the legal system to regard offenders not merely as objects of punishment but as human beings with the potential for repentance and self-reformation. Meanwhile, the fifth principle underscores the need to maintain a balance among individual, societal, and state interests in law enforcement.

Although the idea of restorative justice has gained formal recognition within several national regulations, its implementation in Indonesia remains fragmented across different law enforcement institutions. These include the Chief of Police Regulation (Peraturan Kapolri) No. 8 of 2021 on the Handling of Criminal Acts Based on Restorative Justice, the Indonesian Attorney General's Regulation No. 15 of 2020 (Peraturan Kejaksaan) No. 15 of 2020 on the Termination of Prosecution Based on Restorative Justice, and the Supreme Court Regulation (Peraturan Mahkamah Agung) No. 1 of 2024 on Guidelines for Adjudicating Criminal Cases Based on Restorative Justice. This fragmented application has resulted in the absence of a uniform normative and methodological standard across all stages of the criminal justice process.⁸

In addition, the implementation of restorative justice in Indonesia still heavily relies on law enforcement officers' discretion, leaving room for subjectivity and potential abuse of authority. In many cases, offenders with higher social status are more likely to obtain restorative settlements than those from marginalized backgrounds, creating new inequalities in the enforcement of justice. This condition indicates that, in principle, Indonesia's criminal law system has not yet shifted from legalistic positivism to a humanistic legal framework grounded in Pancasila.

Therefore, there is an urgent need to reconstruct the paradigm of criminal case resolution based on the fundamental values of Pancasila, the ethical, moral, and philosophical foundation of national law. This reconstruction should not be understood merely as a procedural innovation or a technical policy adjustment, but as a philosophical transformation—a shift from a retributive approach toward a restorative-substantive justice model. The restorative-substantive approach grounded in Pancasila envisions criminal law as a means not only to punish, but also to humanize, balance, and reconcile. Within this paradigm, law serves as a tool for moral reconciliation between offenders and victims and for restoring the disrupted social order. Justice, therefore, is no longer measured by the severity of punishment, but by the extent to which social,

moral, and spiritual relationships can be healed and restored.

Based on the background described above, the research problems can be formulated as follows: (1) How are the relevance and actualization of Pancasila values as the philosophical and normative foundation reflected in the formation of a substantive and restorative justice paradigm within Indonesia's national criminal law? (2) How can the reconstruction of the criminal case resolution paradigm grounded in Pancasila values be formulated to realize humane and dignified substantive justice? This study aims to analyze and reformulate the paradigm of criminal case resolution in harmony with Pancasila values—the philosophical and normative foundation of the national legal system—to build a more humane, just, and dignified criminal justice system.

The theoretical contributions of this research include: (1) expanding the scope of criminal law theory by integrating the values of humanization, substantive justice, and moral transcendence into theoretical framework of national legal system; (2) positioning Pancasila not merely as a *grundnorm*, but as a living and dynamic legal ideal (*rechtsidee*) that manifests within the practice of law enforcement; and (3) proposing a new theoretical model that unites the principles of restorative justice and substantive justice within the philosophical framework of Pancasila law. In terms of practical benefits, this study: (1) provides a conceptual foundation for the reformulation of legislation to emphasize humanitarian values and social restoration; (2) becomes a guideline for law enforcement officers to interpret and apply restorative justice consistently and proportionally; and (3) becomes a drive for transforming legal culture and training law enforcers to understand justice not merely as procedural certainty, but as the restoration of social relationships.

The novelty of this research lies in the reconstruction of Indonesia's criminal law paradigm, which explicitly integrates the values of Pancasila into the concept of substantive and restorative justice as a unified philosophical, normative, and practical paradigm. Unlike previous studies that focused solely on the policy-based aspects of restorative justice or contrasted it with retributive approaches, this research presents a paradigmatic approach that positions Pancasila as the *grundnorm* (fundamental norm) and *rechtsidee* (legal ideal) of the national criminal law system.

The findings of this research reveal that the positivist criminal law paradigm has failed to achieve substantive justice by neglecting the law's moral and social dimensions. The Pancasila-based reconstruction asserts that: (1) humanity and social justice values must serve as the essence of every criminal law process, (2) punishment should be oriented toward the restoration of social relations, rather than mere retribution, (3) law enforcement officials are obligated to internalize the values of humanization and proportionality at every stage of case handling, (4) criminal law system model is thereby formed—one that balances Radbruch's three values: legal certainty, justice, and expediency —within a single system that embodies the spirit of Pancasila.

The implications of this research are as follows: For legislators, there is a need to codify the values of substantive and restorative justice within the Criminal Code (KUHP), the Criminal Procedure Code (KUHAP), and their implementing regulations. For judicial institutions, particularly the Supreme Court, it is necessary to issue interpretative guidelines grounded in Pancasila, so that judges have a consistent moral and normative foundation for applying substantive justice. For law enforcement agencies, there should be an enhancement of legal enforcement capacity and ethics through training programs that emphasize integrating

humanitarian and social justice values. For the academic community, the findings of this research can serve as a foundation for developing the Indonesian legal theory curriculum grounded in the legal ideals of Pancasila.

LITERATURE REVIEW

Legal Paradigms and Criticism of Legal Positivism

The Indonesian criminal law system is rooted in the civil law tradition, which is inherently positivistic, viewing law as a written, autonomous norm detached from moral values. This paradigm positions the judge as *la bouche de la loi*—merely the mouthpiece of the law—who interprets legislation without moral discretion. Legal positivism creates a dissonance between *rechtszekerheit* (legal certainty) and *gerechtigkeit* (substantive justice), as law is measured solely by formal legality rather than by the value of justice itself. In this regard, Helmi critiques the limitations of the positivistic paradigm through the constructivist approach to law, in which judges are not merely law-appliers but also law-creators, shaping legal meaning through contextual and value-oriented interpretation.⁹ This critique of positivism aligns with Satjipto Rahardjo's view, which underscores the necessity of progressive law—a law that serves humanity rather than demands that humanity serve the law.¹⁰

Pancasila as the Grundnorm and Rechtsidee of the National Legal System

Pancasila serves as both the *grundnorm* (fundamental norm) and the *rechtsidee* (legal ideal) that provides the moral legitimacy and normative direction for the entire Indonesian legal system.¹¹ Within Hans Kelsen's theoretical framework, the *grundnorm* represents the highest norm that legitimizes all subordinate norms. However, in the Indonesian context, Pancasila is not merely an abstract principle but a living and dynamic legal ideal (*living ideology*) that continuously guides and shapes the evolution of national law. A legal system grounded in the Indonesian legal ideal (*cita hukum Indonesia*) must integrate Gustav Radbruch's three core legal values: legal certainty (*rechtszekerheit*), justice (*gerechtigkeit*), and expediency or utility (*zweckmassigkeit*). These three must be harmonized and implemented in accordance with the values of humanity and social justice, as embodied in the second and fifth principles of Pancasila.

Substantive Justice Theory and Restorative Justice Theory

Substantive justice serves as a corrective to rigid legalism, emphasizing that justice does not end with legal certainty but also aims to restore moral values and social balance.¹² In the context of criminal law, substantive justice demands that the application of law take into account social conditions, public morality, and the common good, rather than relying solely on the formalities of legal provisions. As a counterpoint to the classical retributive paradigm (as proposed by Kant and Hegel), the theory of restorative justice emerged, viewing crime not merely as a violation of the state but as a fracture in social relationships. Restorative justice encourages moral and social restoration through open dialogue among the offender, victim, and community.¹³ This approach aligns closely with the values of Pancasila, particularly the principles of deliberation and consensus (*musyawarah mufakat*), and just and civilized humanity

(kemanusiaan yang adil dan beradab). International studies further reinforce this theory. John Braithwaite (2018)¹⁴, in *Restorative Justice and Responsive Regulation*, asserts that true justice cannot be achieved without participation and social reconciliation. Similarly, Howard Zehr (2015)¹⁵, in *Changing Lenses*, emphasizes that restorative justice is not designed to punish, but to heal—a concept often referred to as healing justice.

Law as a Living Law and the Social Justice of Pancasila

The concept of the living law, introduced by Eugen Ehrlich, holds that true law resides in society rather than merely in written regulations. Therefore, the implementation of the law must adapt to the community's social dynamics and prevailing moral values. In the Indonesian context, this living law is reflected in the values of gotong royong (cooperation), musyawarah (deliberation), and social balance—principles that align with the fourth and fifth precepts of Pancasila. Manurung, through a comparative study of Indonesia's criminal justice system, found that the application of a restorative justice model yields higher social satisfaction than that of a retributive model.¹⁶ However, its implementation still lacks a solid paradigmatic foundation, as it remains dependent on the discretion of law enforcement officers and has not yet been systematically integrated into the Criminal Code (KUHP) or the Criminal Procedure Code (KUHAP).

RESEARCH METHOD

This research is a normative legal study (juridical-normative research). The primary focus is on the prevailing positive legal norms, legal principles, and philosophical values underpinning the Indonesian criminal law system, particularly in the context of reconstructing the paradigm of criminal case resolution grounded in Pancasila values. Several complementary legal approaches are employed in this study: the Statutory Approach is used to examine various laws and regulations relevant to the criminal law paradigm and the implementation of restorative justice, including the 1945 Constitution of the Republic of Indonesia (particularly its *Preamble* and *Article 28D*), the Criminal Code (KUHP), the Criminal Procedure Code (KUHAP), the National Police Regulation No. 8 of 2021 on the Handling of Criminal Acts Based on Restorative Justice, the Indonesian Attorney General's Regulation No. 15 of 2020No. 15 of 2020 on Termination of Prosecution Based on Restorative Justice, and the Supreme Court Regulation No. 1 of 2024 on Guidelines for Adjudicating Criminal Cases Based on Restorative Justice. This approach helps identify and ensure consistency and harmony among legal norms with the fundamental values of Pancasila, serving as both the *grundnorm* (fundamental norm) and *rechtsidee* (legal ideal) of the national legal system. The Conceptual Approach is used to explore philosophical and doctrinal concepts, such as substantive justice, restorative justice, the humanization of criminal law, and the living law. This approach allows the researcher to construct a new legal paradigm grounded in the values of Pancasila, rather than being confined solely to the dogma of legal positivism. The Philosophical and Historical is employed to understand the ontological, epistemological, and axiological foundations of the Indonesian criminal law system. The historical component traces the genealogical roots of the national legal

system, which is influenced by Dutch civil law. It examines how Pancasila emerged as a corrective to the colonial positivistic character of that system. The Comparative Approach involves comparing retributive and restorative justice paradigms, both in Indonesia and in other legal systems (e.g., restorative justice practices in Canada and New Zealand), to identify universal principles that align with the values of Pancasila.

The data sources for this research consist of two types: primary data and secondary data. Primary data are obtained from laws and regulations, official court documents, and court decisions relevant to the paradigm of criminal case resolution grounded in restorative justice and Pancasila values. Secondary data are gathered from various legal literature, including primary legal materials such as laws and regulations, and jurisprudence; secondary legal materials such as books, national and international journal articles, seminar proceedings, and previous research; and tertiary legal materials such as legal dictionaries, encyclopedias, and indexes of laws and regulations. Data were collected through library research, involving the study, citation, and interpretation of legal documents, academic literature, and jurisprudence. The data analysis was conducted systematically and critically to connect legal theory, legal principles, and positive norms with the philosophical context of Pancasila. The analytical technique used is normative qualitative analysis, employed to explore the philosophical values of Pancasila as the *grundnorm* and *rechtsidee* in the criminal law system, as well as to assess the extent to which positive norms (KUHP, KUHAP, Police Regulations, the Indonesian Attorney General's Regulation, and Supreme Court Regulations) align with or contradict this legal ideal.

RESULT AND DISCUSSION

The Relevance and Actualization of Pancasila Values as a Philosophical and Normative Basis in the Formation of Substantive and Restorative Justice Paradigms in National Criminal Law

Pancasila occupies the most fundamental position within Indonesia's legal system because it functions as both the *grundnorm* (basic norm) and the *rechtsidee* (legal ideal) of the entire national legal framework. In Hans Kelsen's legal theory, the *Grundnorm* is the highest norm that serves as the source of legitimacy for the validity of all subordinate norms. In the Indonesian context, Pancasila functions not merely as a political idea but as a source of normative legitimacy for all laws and regulations, meaning that every applicable legal product must be traceable to its conformity with the values embedded in Pancasila. As a *rechtsidee*, Pancasila acts as a guiding star for the direction and purpose of the national legal system. In this position, every creation of positive law must be oriented toward the embodiment of the ideal values contained in Pancasila. Furthermore, Pancasila serves as a normative benchmark for evaluating whether a law or regulation aligns with the principles of justice and the nation's fundamental values. Pancasila not only guides how law should be made (*lawmaking*), but also how law should be enforced (*law enforcement*) and interpreted (*law understanding*). It functions integratively, both as a normative ideology and a practical philosophy, throughout every stage of the national legal system.¹⁷

In criminal law, the role of Pancasila becomes increasingly significant because it is the branch of law most closely connected to moral, humanitarian, and social justice. Pancasila places humans at the center of the legal orientation, not merely as objects of law enforcement but as

dignified subjects (*dignus humanus*). The second principle, which emphasizes just and civilized humanity, affirms that law enforcement must be grounded in respect for human dignity and conducted in a civilized manner. Meanwhile, the fifth principle, which emphasizes social justice for all Indonesians, stipulates that every application of law must aim to create balance and welfare for all levels of society. These two principles form the normative foundation for a humanistic criminal law paradigm oriented toward substantive justice. This paradigm rejects reducing law to merely an instrument of state coercion, as Satjipto Rahardjo critiqued, because law fundamentally serves as a means to realize humanitarian values and social justice. Therefore, penal policies grounded in Pancasila should not only pursue legal certainty (*legal justice*) but also consider moral and social justice (*substantive justice*), in which humanitarian values and public welfare determine the measure of legal correctness.

Furthermore, Indonesian criminal law should no longer rely solely on legal positivism, a perspective that separates law from moral values. The positivistic paradigm, which emphasizes the formal enforcement of written rules, often produces substantive injustice by disregarding the ethical and social dimensions of law. In contrast, Pancasila promotes the formation of living law, as articulated by Eugen Ehrlich, who argued that the essence of legal development lies in the dynamics of society itself, not merely in the legal products created by the state, judicial decisions, or theoretical constructions of legal scholars. He emphasized that society is the primary source of law's emergence and validity, as law grows and evolves in accordance with social needs and interactions. Therefore, law cannot be separated from the realities of the society that gives it life.¹⁸

Until now, the Indonesian criminal justice system has been heavily influenced by the legal positivist paradigm, which views law as written norms that must be enforced procedurally, without regard for the moral and humanistic values that underlie them. This paradigm emphasizes legal certainty (*rechtszekerheit*), yet it often sacrifices substantive justice (*gerechtigkeit*) and social utility (*zweckmassigkeit*). As a result, criminal law enforcement is frequently oriented toward retributive justice rather than restorative justice, creating a paradox between formal justice and social justice as envisioned by Pancasila. Such a paradigm does not align with Indonesia's legal ideals, which are grounded in humanity and social justice. The concept of substantive justice offers a corrective to the shortcomings of a purely legalistic approach. It underlines that justice is not merely the enforcement of formal rules but also requires attention to moral values, social purposes, and a balance of human interests in every legal decision. Implementing the values of Pancasila demands a substantive-oriented criminal law rather than a merely formalistic one.

Criticism of the retributive paradigm in modern criminal law arises because this approach tends to treat the offender solely as the object of punishment. At the same time, the victim and society are sidelined from the restoration process. The retributive model, rooted in classical legal philosophy such as that of Kant and Hegel, emphasizes *lex talionis*—the principle of *proportional retribution*—where punishment is regarded as a moral obligation to uphold the violated law.¹⁹ However, in practice, this paradigm often fails to deliver substantive justice because it neglects the social and psychological dimensions of crime, focusing instead on proportional punishment. In response to the rigidity of the retributive system, the concept of

restorative justice emerged, oriented toward restoring relationships among the offender, the victim, and society. This approach does not eliminate the offender's responsibility; instead, it situates accountability within a broader moral and social framework by repairing harm, restoring the dignity of the victim, and reestablishing disrupted social harmony. Restorative justice is a paradigm that emphasizes social healing rather than retribution. Philosophically, this concept aligns intrinsically with the values of Pancasila, particularly the second principle (just and civilized humanity) and the fifth principle (social justice for all Indonesians).

The principle of Just and Civilized Humanity (Sila Kemanusiaan yang Adil dan Beradab) embodies respect for human dignity, both for the offender and the victim, and requires that every legal process uphold humanistic values and moral justice. Meanwhile, the principle of Social Justice for All Indonesians (Sila Keadilan Sosial bagi Seluruh Rakyat Indonesia) demands a balance between individual and collective interests, as well as between legal certainty and social utility. Therefore, restorative justice represents a concrete manifestation of integrating humanistic values and social justice within the national criminal justice system. Within the context of Indonesian legal culture, the restorative approach is not an alien concept; rather, it is the actualization of deeply rooted Indonesian values that have long been present in social traditions. Values such as deliberation and consensus (musyawarah mufakat), customary peace settlements, and mutual cooperation (gotong royong) reflect the spirit of reconciliation and social harmony, which lie at the heart of restorative justice. For example, in customary law across various regions of the Indonesian archipelago, criminal cases are often resolved through customary forums aimed at restoring social balance rather than merely punishing the offender. This demonstrates that the concept of restorative justice has long existed as living law within Indonesian society.

The actualization of Pancasila values in criminal law can be carried out through three channels: (1) Philosophical Channel, by positioning Pancasila as the source of moral orientation for criminal law. The legal paradigm must be based on the view of humans as moral and social beings, not merely as objects of sanctions. (2) Normative Channel, through the reformulation of laws and regulations to incorporate restorative justice and substantive justice values. (3) Structural and Cultural Channel, by strengthening the capacity of law enforcement officials and fostering a societal legal culture that enables the Pancasila paradigm to be effectively implemented in legal practice. Through this actualization, Pancasila functions as a normative foundation guiding the reform of criminal law toward a system that is more humane, just, and oriented toward social restoration.

The reconstruction of the criminal case resolution paradigm based on Pancasila values is not merely a procedural reform, but a philosophical transformation of the legal perspective. This new paradigm integrates substantive justice (grounded in moral truth and social purpose) with restorative justice (focused on recovery and reconciliation). Consequently, criminal law is expected to move beyond merely emphasizing legal certainty, aiming instead to balance the values of legal certainty (*rechtszekerheit*), justice (*gerechtigkeit*), and usefulness (*zweckmassigkeit*) as articulated by Gustav Radbruch in his theory of the priority of legal values.²⁰ This paradigm aligns with the *rechtsidee* of Pancasila, reflecting a law imbued with humanity, upholding social justice, and maintaining dignity for all the people of Indonesia.

The Concept of Reconstructing the Criminal Case Resolution Paradigm Based on Pancasila Values to Realize Humane and Dignified Substantive Justice

The reconstruction of the criminal case resolution paradigm must begin with the recognition that Pancasila serves as both the *grundnorm* and *rechtsidee* of Indonesia's entire national legal system. As the philosophical foundation of the state, Pancasila functions not only as a moral guide but also as a source of values that animate the formation, interpretation, and enforcement of law. In the context of criminal law, Pancasila embodies a worldview that regards humans as dignified beings living in a personal, social, and transcendental balance. The historically dominant criminal law paradigm—legal positivism—has treated criminal law mechanistically, as a formal instrument of the state. As a result, law enforcement has often emphasized legal certainty (*rechtszekerheit*) over substantive justice (*gerechtigkeit*). Therefore, reconstructing the paradigm is essential: it restores the moral core of criminal law by reintegrating the values of humanity, social justice, and deliberation as enshrined in Pancasila.

The criminal law paradigm based on Pancasila values is built on five fundamental principles: (1) The Principle of Humanization stems from the second principle, which emphasizes just and civilized humanity. This principle requires that criminal law does not view offenders merely as objects of punishment but as human beings with the potential to reform and have their dignity restored. Punishment is not to be understood as a retributive instrument of the state, but as a means to educate, rehabilitate, and socially reintegrate the offender. Thus, the orientation of criminal law shifts from mere punishment toward restoration and rehabilitation. (2) The Principle of Substantive Justice and Social Balance derives from the fifth principle, which emphasizes social justice for all Indonesian people. This principle implies that justice in criminal law should not stop at formal or legalistic aspects (legal justice) but must encompass substantive justice. Substantive justice allows judges to deviate from normative provisions when the rigid application of the law would eliminate a sense of justice. Nevertheless, judges must still adhere to formal legal and procedural principles, provided these provisions align with justice and ensure legal certainty (*rechtszekerheit*) for the parties involved.²¹ The application of this principle is evident in the concept of restorative justice, which seeks to balance the interests of the individual, society, and the state, with criminal sanctions serving as the ultimate goal. Therefore, the criminal law paradigm based on Pancasila rejects the retributive view that dichotomizes offender and victim, replacing it with an approach grounded in moral and social balance. (3) The Principle of Deliberation and Participation comes from the fourth principle, which emphasizes democracy guided by wisdom in deliberation/representation. This principle embodies deliberative democracy, positioning consultation and participation as ethical methods for resolving social conflicts. Criminal law encourages the application of participatory mechanisms in case resolution by involving victims, offenders, families, and communities. This is achieved through penal mediation forums, restorative conferences, or community justice mechanisms that emphasize restoring social relationships through dialogue and mutual agreement. Deliberation does not imply compromising on crime but serves as an ethical means to restore social harmony while considering the interests of all parties. (4) The Principle of Proportionality and Utility asserts that every criminal sanction must consider a balance between legal certainty (*rechtszekerheit*),

justice (*gerechtigkeit*), and utility (*zweckmassigkeit*). Criminal law should not become an excessively repressive instrument; instead, it must provide social benefits through crime prevention, moral education, and community protection. Proportionality means that the criminal sanction must correspond to the severity of the offender's wrongdoing and the consequences caused. Sanctions that are excessively harsh or irrelevant to the objectives of punishment contradict the humanistic and just values of Pancasila. Meanwhile, utility requires that criminal law produce positive social effects, such as crime prevention, offender reintegration, and the restoration of public trust in the law. Therefore, the Pancasila-based criminal law paradigm ensures that every sanction is not only legally valid but also morally and socially meaningful. (5) The Principle of Moral Transcendence is derived from the first principle, Belief in One Supreme God, which places law within the framework of divine ethics. This means that criminal law must not lose its spiritual dimension, which serves as the foundation of public morality. This principle asserts that the state's power to punish is not absolute but a moral mandate bounded by justice, compassion, and humanity. Law enforcement officials are obligated to uphold honesty, responsibility, and integrity as manifestations of divine values in legal practice. This principle also rejects the secularization of law that separates legal norms from moral values. In contrast, Pancasila-based criminal law serves as moral guidance for both individual and state behavior, ensuring that justice is upheld without compromising conscience or the divine values that underpin it.

Reconstruction of criminal case resolution paradigm based on Pancasila values requires changes at three levels: (1) Conceptual-Philosophical Level: The new paradigm positions restorative justice and substantive justice as an integral unity. Restorative justice emphasizes the restoration of social relationships, while substantive justice guarantees moral and humanistic justice. This paradigm rejects the dualistic view of offender versus victim, replacing it with a humanistic relational approach in which both parties contribute to mutual restoration. (2) Normative – Juridical Level: Reconstruction of legislation, particularly the Criminal Code (KUHP) and the Criminal Procedure Code (KUHAP), is necessary to provide a solid legal foundation for mechanisms such as diversion, penal mediation, and termination of prosecution based on restorative justice. Furthermore, the principles of Pancasila need to be positivized into legal norms through provisions that affirm human dignity, social balance, and community participation in case resolution. (3) Practical-Institutional Level: This new paradigm also demands institutional reform, including the training of law enforcement officials—police, prosecutors, and judges—so that they understand and internalize Pancasila values in every decision-making process. In addition, community-based restorative justice centers and mediation mechanisms are needed as platforms to implement the values of deliberation and mutual cooperation (*gotong royong*).

The success of a Pancasila-based criminal law paradigm can be measured by several indicators: an increase in public trust in law enforcement institutions due to transparency and substantive justice; a decrease in recidivism and prison overcrowding as offenders are guided toward rehabilitation and social reintegration; greater victim satisfaction as legal processes provide space for psychological and social recovery; and a reduction in social disparities and legal discrimination, reflecting the realization of social justice.

CONCLUSION

Based on the discussion, it can be concluded that the Indonesian criminal law system requires a paradigmatic reconstruction to align more closely with the fundamental values of Pancasila as the *grundnorm* and *rechtsidee* of the nation. The positivistic paradigm that has long dominated law enforcement practice tends to emphasize legal certainty (*rechtszekerheit*) at the expense of substantive justice (*gerechtigkeit*) and social utility (*zweckmassigkeit*). As a result, criminal law often loses its humanistic dimension and becomes an instrument of retribution rather than restoration. The reconstruction of the criminal case resolution paradigm based on Pancasila values requires a fundamental shift in orientation, methodology, and the praxis of criminal law. Pancasila provides a philosophical direction for establishing a legal system that centers on humans, not merely as objects of law enforcement. Just and civilized humanity demands respect for human dignity; social justice requires a balance between the interests of individuals, society, and the state; deliberation requires participation in conflict resolution; and Belief in One Almighty God serves as the moral foundation for ethical and civilized law enforcement. The Pancasila-based criminal law paradigm is built upon five main principles: humanization, substantive justice and social balance, deliberation and participation, proportionality and utility, and moral transcendence. These five principles form the moral and philosophical framework for a legal system that is humanistic, participatory, and just. By integrating restorative and substantive justice, the Indonesian criminal law system can evolve into one that is more humane, civilized, and dignified. Justice is no longer measured by the severity of punishment but by the extent to which the law can restore social balance, humanize offenders, and restore the dignity of victims. Thus, the reconstruction of the criminal law paradigm based on Pancasila represents a strategic step toward realizing a rule of law that embodies substantive justice, is rooted in national values, and is oriented toward the welfare of humanity.

The implications of this research are as follows: For legislators, there is a need to codify the values of substantive and restorative justice into the Criminal Code (KUHP), the Criminal Procedure Code (KUHAP), and their implementing regulations. For the judiciary, specifically the Supreme Court, it is necessary to issue Pancasila-based interpretative guidelines so that judges have a consistent moral and normative foundation in applying substantive justice. For law enforcement officers, there should be capacity-building and ethics training that emphasize integrating humanitarian values and social justice into legal practice. For academics, the findings of this research can serve as a basis for developing an Indonesian legal theory curriculum grounded in the *rechtsidee* of Pancasila.

This research has several limitations: (1) the normative approach employed focuses on doctrinal and philosophical analysis, and thus does not empirically test the effectiveness of the restorative–substantive paradigm in practice; (2) the study of case law is limited, as it only examines a few court decisions that are representative of restorative justice implementation; (3) no quantitative measurement has been conducted to assess the impact of applying Pancasila values in criminal law practice on public trust or victim satisfaction. These limitations do not diminish the strength of the conceptual argument but instead open the door to more comprehensive future research.

Recommendations for future research include using empirical juridical methods to measure the extent to which Pancasila values and restorative justice have been internalized by law enforcement officers (police, prosecutors, judges). This requires measurable instruments (indicators) that quantify the level of substantive justice in the law enforcement process, for example, through an index that balances legal certainty, morality, and social welfare. Further studies could also examine the effectiveness of Police Regulation No. 8 of 2021, the Indonesian Attorney General's Regulation No. 15 of 2020, and Supreme Court Regulation No. 1 of 2024 in reflecting Pancasila values and achieving the goals of substantive justice.

REFERENCES

Anazif, Said, dkk. (2025). "Eksistensi Hukum dalam Perspektif Filsafat: Antara Positivisme dan Naturalisme." *Nusantara: Jurnal Pendidikan, Seni, Sains dan Sosial Humaniora*, Vol. 3, No. 1.

Braithwaite, John. (2018). *Restorative Justice and Responsive Regulation*. Oxford: Oxford University Press.

Hadi, Syofyan. (2017). "Hukum Positif dan The Living Law (Eksistensi dan Keberlakuannya dalam Masyarakat)." *DiH: Jurnal Ilmu Hukum*, Vol. 13, No. 26.

Helmi, Muhammad. (2020). "Penemuan Hukum oleh Hakim Berdasarkan Paradigma Konstruktivisme." *Kanun: Jurnal Ilmu Hukum*, Vol. 22, No. 1, April.

Manthovani, Reda, dkk. (2023). *Politik Hukum Restorative Justice terhadap Praktik Penanganan Perkara Pidana di Indonesia*. Jakarta: Pusat Kajian Kejaksaan Fakultas Hukum Universitas Pancasila.

Manurung, Imelda Christie. (2025). "Perbandingan Sistem Pemidanaan Restoratif dan Retributif dalam Menangani Tindak Pidana di Indonesia." *JIHHP: Jurnal Ilmu Hukum, Humaniora dan Politik*, Vol. 5, No. 5.

Martono. (2022). "Implementasi Nilai Keadilan Sosial oleh Hakim dalam Memutuskan Perkara Pidana." *LEGAL: Journal of Law*, Vol. 1, No. 1.

Nahor, T. Banjar. (2025). "Restorative Justice: Saat Hukum Mendengarkan Korban." *Collegium Studiosum Journal*, Vol. 8, No. 1, Juni.

Noya, Ekberth Vallen, dkk. (2022). "Hukum Berparadigma Cita Hukum Indonesia demi Tercapainya Keadilan." *SANISA: Jurnal Kreativitas Mahasiswa Hukum*, Vol. 2, No. 2, Oktober.

Nurohim, Muhammad, dkk. (2025). *Hukum Pidana: Asas, Teori dan Praktek*. Medan: PT Media Penerbit Indonesia.

Putri, Sekar Balqis Safitra Rizki Wahyudia. (2024). "Analisis Teori Tujuan Hukum Gustav Radbruch dalam Kedudukan Majelis Penyelesaian Perselisihan Medis dalam Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan." *SANGAJI: Jurnal Pemikiran Syariah dan Hukum*, Vol. 8, No. 2.

Rahardjo, Satjipto. (2017). *Hukum Progresif: Hukum yang Membebaskan*. Jakarta: Kompas.

Rivanie, Syarif Saddam, dkk. (2022). "Perkembangan Teori-Teori Tujuan Pemidanaan." *Halu Oleo Law Review*, Vol. 6, No. 2, September.

Wagiman, dkk. (2023). "Cita Hukum Pancasila: Fondasi Hukum dalam Berbangsa dan Bernegara." *Prosiding Seminar Nasional Konsorsium UNTAG Se-Indonesia*, Vol. V.

Zehr, Howard. (2015). *Changing Lenses: Restorative Justice for Our Times*. New York: Herald Press.