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Criminal Law Politics and Punishment Theories: A Comparative Study of Retributive vs. Restorative Justice in Indonesia and Georgia

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Abstract

Introduction: *The debate between retributive and restorative justice remains a central issue in the politics of criminal law across jurisdictions. Indonesia and Georgia represent two countries undergoing legal transitions with distinct historical and socio-political contexts, yet both face similar challenges in determining the orientation of their penal policies.*

Purposes of the Research: *This study aims to analyze the differences in the application of retributive and restorative penal theories within the criminal law policies of Indonesia and Georgia, as well as to identify the factors influencing these orientations.*

Methods of the Research: *The research adopts a normative legal method with a comparative approach, examining statutory provisions, legal doctrines, and relevant judicial decisions.*

Results Main Findings of the Research: *The findings reveal that Indonesia continues to rely on its colonial legacy through the Criminal Code, which predominantly reflects a retributive paradigm, while gradually incorporating restorative principles in specific legislation such as the Juvenile Criminal Justice System Law. Conversely, Georgia, which previously enforced an extreme zero tolerance policy rooted in a retributive approach, has shifted toward restorative justice within its juvenile justice system through the enactment of the Juvenile Justice Code of 2015. The novelty of this research lies in its comparative analysis, which uncovers how historical, cultural, political, socio-economic, and legal factors shape each country's penal orientation. These findings contribute to the development of comparative criminal law scholarship and provide valuable insights for promoting more balanced penal policies that integrate both retributive and restorative justice.*

Keywords: Criminal Law Policy; Retributive Justice; Restorative Justice.

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INTRODUCTION

The criminal justice system is one of the most important instruments in maintaining social order and protecting the interests of society from the threat of legal violations.[1] Theories of punishment play a fundamental role in determining the direction and purpose of a sentence,

[1] Syamsul Bahri, "Hukum Pidana Sebagai Instrumen Penegakan Keadilan Dan Upaya Meminimalisir Pelanggaran Hukum Dalam Masyarakat," *Ameena Journal* 2, no. 4 (2024): 425–36, https://doi.org/10.63732/aij.v2i4.135.

whether it focuses more on retribution, deterrence, or the restoration of social relationships.[2] The long-standing debate regarding the paradigm of punishment never ceases, especially when faced with questions about the effectiveness of punishment in reducing crime while restoring justice. Various legal systems around the world demonstrate a diversity of orientations in formulating criminal law policies, reflecting the cultural values, history, and social context of each nation. This is what makes the discourse between retributive and restorative justice increasingly relevant for further study.

Retributive justice emphasizes the principle of retribution proportionate to the offender's wrongdoing.[3] This paradigm stems from the idea that violations of the law are violations of the order of the state that must be responded to with proportionate punishment.[4] In this approach, the main focus is directed at the perpetrator, with the state as the primary representation of the victim who has the right to impose sanctions. Conversely, restorative justice offers an alternative framework that places more emphasis on restoring the victim's losses, restoring social relations, and the perpetrator's responsibility to repair the consequences of their actions.[5] This model has grown rapidly since the late 20th century, along with increasing criticism of the effectiveness of conventional punishment in reducing recidivism and repairing social damage.[6] A comparison between these two approaches provides an important understanding of the direction of criminal law policy that a country intends to achieve.

The shift in discourse from retributive to restorative justice has become a fairly prominent phenomenon. Many countries are beginning to reconsider their sentencing orientation, especially in the face of the challenges of over-criminalization, prison overcrowding, and the increasing need for more humane solutions in dealing with legal violations. Developed countries such as Canada and New Zealand have pioneered the integration of restorative

[2] Muchlas Rastra Samara Muksin, "Tujuan Pemidanaan Dalam Pembaharuan Hukum Pidana Indonesia," *Sapientia Et Virtus* 8, no. 1 (2023): 225–47, https://doi.org/10.37477/sev.v8i1.465.

[3] Allief Fitrah Hakim et al., "Konsep Keadilan Retributif Dalam Penegakan Hukum :Tinjauan Dari Para Tokoh-Tokoh," *Nusantara: Jurnal Pendidikan, Seni, Sains Dan Sosial Humaniora* 3, no. 01 (2025): 15, https://doi.org/10.11111/nusantara.xxxxxxx.

[4] Shakira Ananda Khaerunessa et al., "Legitimasi Hukuman Mati Menurut Immanuel Kant : Teori Keadilan Retributif Dan Konfliknya Dengan Hak Asasi Manusia," *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat* 4, no. 01 (2025): 13, https://doi.org/10.11111/dassollen.xxxxxxx.

[5] Muhammad Ibnu Maulana Ruslan, "Keadilan Restoratif Bagi Anak Pelaku Tindak Pidana Siber Di Indonesia: Analisis Normatif Dan Perspektif Kriminologi," *Indonesian Journal of Intellectual Publication* 5, no. 3 (2025): 232–45, https://doi.org/10.51577/ijipublication.v5i3.711.

[6] L. Alfies Sihombing and Yeni Nuraeni, "Efektifkah Restoratif Justice ? Suatu Kajian Upaya Optimalisasi Sistem Peradilan Pidana Di Indonesia," *Jurnal Hukum Mimbar Justitia* 9, no. 2 (2023): 273–304, https://doi.org/10.35194/jhmj.v9i2.3952.

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justice into formal legal systems, particularly in cases involving children and adolescents.[7] This trend demonstrates a new awareness that punishment is not just about retribution, but must also be able to repair damaged social relationships.[8] This confirms that the debate regarding criminal law policy is not merely an academic discourse, but has real implications for people's lives.

Indonesia, as a country with a civil law system and the influence of customary law, has unique characteristics in regulating punishment.[9] The Criminal Code that is currently in force is still largely a legacy of the Dutch colonial era, which predominantly adopts the retributive paradigm.[10] However, social practices in Indonesia show a tendency to accommodate restorative principles, for example in resolving criminal cases through customary deliberation or penal mediation.[11] The development of the Draft Criminal Code also marks an effort to reform national criminal law, which opens up space for the discourse on restorative justice to gain stronger legitimacy. Georgia is a post-Soviet country that has undergone a major transformation in its legal system after the collapse of the Soviet Union.[12] As a country reorganizing its legal policy, Georgia faces the challenge of balancing the influence of continental legal traditions with the demands of democratic reform. In the context of punishment, Georgia also grapples with a similar dilemma: maintaining the retributive paradigm inherited from the old legal system, or shifting to a more progressive restorative approach. The judicial reforms carried out since the early 2000s reflect the seriousness of this country in reformulating the direction of criminal law.[13] Thus, Georgia's experience is interesting to compare with Indonesia, which is also in a moment of criminal law reform.

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[7] Thriveni D and P. Madhava Soma Sundaram, "The Effectiveness of Restorative Justice Practices for Juvenile in Conflict with Law," *Rigeo* 11, no. 11 (2021): 1–11, https://rigeo.org/menu-script/index.php/rigeo/article/view/2754.

[8] Sumartini Dewi et al., "Efektivitas Pemidanaan Penjara Dalam Mencegah Tindak Pidana Berulang Di Indonesia:," *Jurnal Kolaboratif Sains* 7, no. 12 (2024): 4568–73, https://doi.org/10.56338/jks.v7i12.6567.

[9] Albi Ternando, M.s Alfarisi, and Rahman Rahman, "Implementasi Hukum Adat Sebagai Penanganan Restorative Justice Dalam Membangun Sistem Alternative Penyelesaian Hukum Pidana Di Indonesia," *Legalitas: Jurnal Hukum* 15, no. 2 (2023): 204–12, https://doi.org/10.33087/legalitas.v15i2.506.

[10] Muhammad Idris Nasution, Muhammad Ali, and Fauziah Lubis, "Pembaruan Sistem Pemidanaan Di Indonesia: Kajian Literatur Atas KUHP Baru," *Judge : Jurnal Hukum* 5, no. 01 (2024): 16–23, https://doi.org/10.54209/judge.v5i02.xxx.

[11] Gina Maulida, "Korelasi Hukum Adat Dan Restorative Justice: Membangun Keadilan Berbasis Kearifan Lokal Di Indonesia," *Pikukuh : Jurnal Hukum Dan Kearifan Lokal* 2, no. 1 (2025): 20–28, https://doi.org/10.62870/PKH.V2I1.29382.

[12] mariam Mestiashvili, "From Western Aspirations to Eastern Shadows: Analyzing Georgia's Path from Perestroika to the Foreign Influence Law and Its Implications for EU Integration" (University of Padua, 2025), https://thesis.unipd.it/handle/20.500.12608/83940.

[13] Giorgi Iakobishvili, "EU-Georgia Relations and Democratization: An Analysis of Reforms and Challenges," *Georgian Journal for European Studies*, no. 7 (2025): 124–39, https://gjes.tsu.ge/index.php/gjes/article/view/64.

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A comparison between Indonesia and Georgia is relevant because both are on a legal transition path, albeit with different historical backgrounds. Indonesia departs from Dutch colonialism and faces the challenge of legal pluralism, while Georgia inherited a centralized Soviet legal system and is now trying to adapt to European legal standards. Both countries have similarities in terms of the need to adapt criminal law to be more in line with contemporary justice values, but differ in the social, political, and cultural contexts that surround them. These differences and similarities open up space for conducting a more in-depth comparative study. By understanding the dynamics of both, a picture can be obtained of how sentencing theory is applied in criminal law political practice.

The urgency of research on the comparison of sentencing theory in the context of Indonesia and Georgia also lies in its contribution to the development of global criminal law discourse. In the era of legal globalization, sentencing practices cannot be separated from international influences, whether in the form of human rights legal instruments or globally recognized judicial standards. Indonesia and Georgia, as developing countries that are consolidating their legal systems, are required to be able to respond to international demands without ignoring local values. By conducting a comparative analysis, it can be seen how each country balances between retributive and restorative demands in formulating its legal policy. This is not only academically relevant, but also strategic for policymakers.

The debate regarding retributive and restorative justice touches on the fundamental aspects of the purpose of criminal law: whether to punish or to repair. By examining practices in Indonesia and Georgia, this research seeks to show how these theories are implemented within the framework of criminal law politics. In a complex social context, the choice of sentencing paradigm not only has implications for individual perpetrators or victims, but also for the stability of society as a whole. Therefore, understanding the criminal law orientation of these two countries will enrich the discourse on effectiveness and justice in sentencing. At this point, the urgency of research is no longer merely academic, but also practical in answering contemporary criminal justice challenges. Research conducted by Yuliana Yuli W., et al., in Ikra-Ith Humaniora: *Journal of Social and Humanities* comprehensively discusses the paradigm

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shift in sentencing in Indonesia. This article highlights the tension between the application of retributive justice, which still dominates the Criminal Code, and efforts to strengthen restorative principles in legal practice, particularly in the realm of penal mediation and community-based justice approaches. The research results show that although the idea of restorative justice is increasingly strong, Indonesia's sentencing orientation still tends to emphasize the logic of retribution. This study provides an important foundation regarding the dynamics of sentencing in Indonesia, although it does not discuss much comparison with other countries.[14] Meanwhile, Papuna Guruli's research in Law and World examines the impact of the zero-tolerance policy in Georgia, which emphasizes harsh punishments and the imposition of severe penalties. The article highlights how the extreme retributive paradigm creates social consequences, including prison overcrowding, injustice for minor offenders, and low rehabilitation rates. Guruli asserts that the zero-tolerance policy leaves a dark legacy that hinders efforts to reform criminal law towards a more humane approach.[15] This research is important for understanding the dynamics of criminal law in Georgia, although it focuses more on policy criticism than comparing it with other systems.

The novelty of this research lies in the effort to bring together the study of sentencing theory in Indonesia and Georgia within a comparative framework. If previous research only focused on the dynamics of sentencing in Indonesia or on criticism of the zero-tolerance policy in Georgia, this research seeks to link the two to see the similarities and differences in the orientation of criminal law politics. Thus, this research offers a new perspective on how retributive and restorative justice operate in different legal transition contexts, but both face the challenge of reform.

The purpose of this research is to analyze in depth how sentencing theories oriented towards retributive and restorative justice are applied in the criminal law politics of Indonesia and Georgia. In addition, this research aims to identify the social, political, and historical factors that influence the orientation of criminal law in both countries. In this way, it is hoped that a

[14] Yuliana Yuli W et al., "Dinamika Pemidanaan Di Era Modern: Antara Keadilan Restoratif Dan Retributif," *Ikra-Ith Humaniora : Jurnal Sosial Dan Humaniora* 9, no. 2 (2025): 281–89, https://doi.org/10.37817/Ikraith-Humaniora.v9i2.4417.

[15] Papuna Guruli and in Law, "Dark Legacy of Zero Tolerance in Georgia (Criminal Punishment and Sentencing)," *Law and World* 11, no. 34 (2025): 7–16, https://doi.org/10.36475/11.2.1.

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more complete comparative understanding of the direction of criminal law reform can be obtained, while also contributing to academic discourse and the formulation of criminal law policies in the future.

METHODS OF THE RESEARCH

The research method used in this study is normative legal research with a comparative approach, which focuses on the analysis of sentencing theory in the criminal law politics of Indonesia and Georgia. Normative legal research was chosen because this study emphasizes more on the analysis of legal norms, doctrines, and theories related to retributive and restorative justice in sentencing policies. Data processing techniques were carried out through literature studies of laws and regulations, legal documents, scientific journals, and relevant literature that supports legal arguments. Furthermore, the analytical technique used is qualitative-comparative analysis by systematically examining the similarities and differences in the orientation of criminal law politics in the two countries. This approach allows the research to produce conceptual mapping as well as a critical evaluation of the application of sentencing paradigms in different socio-political contexts.

RESULTS AND DISCUSSION

A. Differences in the Application of Criminal Theory in Criminal Law Politics in Indonesia and Georgia

Modern criminal law politics no longer relies solely on one sentencing theory, but often adopts a hybrid approach that combines various philosophies.[16] Fundamentally, the two main paradigms that dominate are retributive justice and restorative justice. Retributive justice is an approach that focuses on retribution or proportionate punishment, where punishment is seen as a fitting response to the harm caused by the perpetrator to the interests of society.[17] Retributive justice views imprisonment as a form of torture or suffering that is an equal retribution for the perpetrator, and the state has the exclusive authority to impose sanctions.[18]

[16] Sahat Maruli Tua Situmeang and Krusitha Meilan, "Evolusi Kejahatan Dan Pemidanaan: Tantangan Dalam Penegakan Hukum Dan Penologi Modern," *Res Nullius Law Journal* 7, no. 2 (2025): 87–97, https://doi.org/10.34010/rnlj.v7i2.15913.

[17] Faidatul Hikmah and Rio Armanda Agustian, "Konvergensi Konsep Retribusi Dan Rehabilitasi Dalam Filsafat Hukum Pidana Kontemporer Indonesia," *CREPIDO* 5, no. 2 (2023): 217–28, https://doi.org/10.14710/crepido.5.2.217-228.

[18] Khaerunessa et al., "Legitimasi Hukuman Mati Menurut Immanuel Kant : Teori Keadilan Retributif Dan Konfliknya Dengan Hak Asasi Manusia."

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This paradigm is past-oriented, demanding accountability based on the perpetrator's fault (*mens rea*).

In contrast to the retributive paradigm, restorative justice is a victim-centered approach, where crime is seen as a violation of interpersonal relationships that causes harm, not just a violation against the state.[19] The goal of restorative justice is to repair the harm done and restore the relationship between the injured party (victim) and the responsible party (offender) as well as the community.[20] This process involves facilitated dialogue between all parties concerned to reach a just resolution, rather than retaliation.[21] This approach emphasizes offender accountability, healing for victims, and the reintegration of offenders into society.

Criminal law politics in Indonesia has historically been built on the paradigm of retributive justice.[22] This paradigm views criminalization of perpetrators as the only way to achieve justice for victims and society.[23] The system possessed by Indonesia adopts the pure retribution theory and teleological retribution. Pure retributive theory equates punishment with absolute retribution, where punishment is imposed solely because of a violation of the law without considering any other purpose.[24] Conversely, teleological retributive theory mixes elements of retribution with the goal of rehabilitation, where punishment is imposed as retribution but also to educate and foster the defendant's behavior to become a better member of society.[25]

The basis for the application of retributive justice is reflected in the Indonesian Criminal Code, which was inherited from the Dutch WvS. Article 10 of the Criminal Code explicitly lists the types of principal penalties, which are inherently retaliatory, such as the death penalty, imprisonment, and confinement. Article 12 of the Criminal Code states that the existence of

[19] Henny Saida Flora, "Restorative Justice Sebagai Pendekatan Efektif Untuk Perlindungan Korban : Mengutamakan Keadilan Dan Pemulihan," *Jurnal Hukum Justice* 2, no. 2 (2025): 78–89, https://ejournal.ust.ac.id/index.php/JHJ/article/view/4643.

[20] Fadillah Heri Elfin and Fahmiron, "Tanggung Jawab Hukum Pelaku Kecelakaan Lalu Lintas Untuk Merehabilitasi Korban Berdasarkan Keadilan Restoratif," *Ekasakti Legal Science Journal* 2, no. 1 (2025): 60–70, https://doi.org/10.60034/QB93M931.

[21] Jaenudin and Rasyida Rofi'atun Nisa, "Klasifikasi Penyelesaian Perkara Pidana Dengan Sistem Restorative Justice," *Journal Scientific of Mandalika* 6, no. 3 (2025): 631–42, https://doi.org/10.36312/10.36312/VOL6ISS3PP631-642.

[22] Hikmah and Agustian, "Konvergensi Konsep Retribusi Dan Rehabilitasi Dalam Filsafat Hukum Pidana Kontemporer Indonesia."

[23] Brilian Capera, "Keadilan Restoratif Sebagai Paradigma Pemidanaan Di Indonesia," *Lex Renaissance* 6, no. 2 (2021): 225–34, https://doi.org/10.20885/jlr.vol6.iss2.art1.

[24] Mursal Anis, Fitriati Fitriati, and Bisma Putra Pratama, "Analisis Putusan Hakim Dalam Penerapan Teori Retributif Dikaitkan Dengan Rasa Keadilan Bagi Korban Pada Tindak Pidana Penganiayaan," *Unes Journal of Swara Justisia* 7, no. 2 (2023): 575–84, https://doi.org/10.31933/UJSJ.V7I2.347.

[25] Anis, Fitriati, and Pratama.

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retaliatory penalties, such as life imprisonment or a certain period of time up to 20 (twenty) years, is a clear manifestation of the dominant retributive orientation. Article 30 of the Criminal Code stipulates that if a fine is not paid, it will be replaced by imprisonment. This shows that the state's interest in retaliating against violations of the law takes precedence over efforts to recover the victim's losses.

The existing legal structure is often considered repressive and coercive, prioritizing individual criminalization that is no longer fully relevant to the development of modern crime. The logic behind this system is the provision of measurable and proportional sanctions for violations of the law, not on the recovery of losses or relationships damaged by crime. This creates a system in which judges have limited room for maneuver in sentencing considerations and only focus on the severity of the sentence, not on the impact of the crime on the victim. As a result, this can lead to a cycle of criminality, where imprisonment does not always succeed in making the perpetrator a better person.

Although the foundation of Indonesian criminal law is retributive, there has been a significant shift towards the application of restorative justice. Restorative justice in Indonesia is oriented towards restoring the situation to its original state before the criminal event. This paradigm seeks to shift the focus from retribution to fair resolution through deliberation and agreement, emphasizing important principles such as victims receiving compensation, reconciliation, and recovery. Penal mediation, often known as Victim-Offender Mediation (VOM), is one of the main mechanisms used in this approach, especially in child cases, to bring perpetrators and victims together in search of a resolution.

This shift is supported by regulations that increasingly adopt restorative justice in their substance. Law Number 11 of 2012 on the Juvenile Criminal Justice System introduces a diversion mechanism as a transfer of the settlement of children's cases from the criminal justice process to a process outside the justice system. Attorney General Regulation Number 15 of 2020 provides a formal basis for prosecutors to terminate prosecutions based on restorative justice if the conditions are met. Supreme Court Regulation Number 1 of 2024 provides guidelines for

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judges to adjudicate criminal cases based on restorative justice, with specific criteria for certain cases.

The application of restorative justice in Indonesia is not a total revolution but a gradual and institutionally managed transition. By issuing formal regulations such as the Attorney General's Regulation and Supreme Court Regulation, the state ensures that the application of restorative justice is in accordance with the provisions and characteristics of the legal system it possesses. Strict requirements in Supreme Court Regulation Number 1 of 2024 such as the case must be a minor crime, there is reconciliation, and there is no repetition within 3 years indicate that this restorative system is only allowed in low-risk cases. This approach is a strategy to test the effectiveness of this new approach without completely abandoning the structurally established retributive mechanism.

The implementation of restorative justice is exemplified by Determination Number: 2/Pent.Pid.Sus-Anak/2016/PN.Mdn, which focuses on resolving compensation through diversion. In such cases, instead of proceeding to a formal trial, perpetrators and victims are facilitated to reach a peaceful agreement that may involve compensation, apologies, or social work. The main goal is to restore damaged relationships and prevent children from being stigmatized by the criminal justice process. Nevertheless, case studies of diversion show a gap between legal intent and legal certainty in its implementation. Law Number 11 of 2012 requires diversion, but compensation regulations are not mandatory. Law Number 11 of 2012 does not have a clear execution mechanism for promises of compensation payments. This creates difficulties for victims or their families when trying to collect compensation from perpetrators. This situation shows that without a good execution mechanism, promises made in the restorative process become difficult to fulfill and can ultimately harm victims and weaken trust in the system.

Criminal law politics in Georgia is strongly rooted in retributive theory with an emphasis on proportionate punishment and the protection of society.[26] This theory is embodied through a structured and strict sentencing system, where the severity of the punishment is proportional

[26] Guruli and Law, "Dark Legacy of Zero Tolerance in Georgia (Criminal Punishment and Sentencing)."

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to the offense committed. Georgia applies the concepts of "just desserts" and deterrence as pillars of retributivism.[27] The imposed punishment must have a measurable contribution to the acceptable goals of punishment and should not only be retribution.

This retributive foundation is very clear in the Official Code of Georgia Annotated (O.C.G.A.). Title 17, Chapter 10 governs sentencing and punishment.[28] There is a system of "*determinate sentencing*," or fixed punishment, which allows judges to set prison sentences for a specific period.[29] Georgia also has "*mandatory minimums*" provisions for seven serious crimes, known as the "*seven deadly sins*," including murder, rape, and armed robbery.[30] For repeat offenders, Georgia imposes heavier penalties and even requires 100% prison sentences without the possibility of parole for a fourth felony offense.[31]

Georgia applies retributivism in a stricter, uncompromising form, especially for serious crimes and repeat offenders. This demonstrates a strong public policy choice to prioritize punishment and deterrence over rehabilitation. The mandatory sentencing provisions for the "*seven deadly sins*" and the sentencing rules for repeat offenders indicate that for Georgia, there are some crimes so damaging that only the harshest retributive response is considered adequate. The sentencing rules for repeat offenders, where prison sentences must be served 100%, effectively negate any philosophy of rehabilitation or restoration for this group. This is a manifestation of the belief that strict punishment is just deserts for offenders and the only way to protect society.

Although the foundation of Georgia's criminal law is retributive, a restorative approach is beginning to emerge as a complement. Restorative justice in Georgia is practiced as an approach focused on victim healing and offender accountability. This theory is based on a

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[27] Thomas O. IV Rainey, "Protecting the Things That Cannot Protect Themselves: Why Georgia Must Extend Protection to Its Living Natural Assets," *John Marshall Law Journal* 5 (2011), https://heinonline.org/HOL/Page?handle=hein.journals/jmlwj5&id=189&div=&collection=.

[28] Celine R. Guenther and Addison H. Morgan, "Penal Institutions - Criminal Procedure," *Georgia State University Law Review* 41 (2024), https://heinonline.org/HOL/Page?handle=hein.journals/gslr41&id=93&div=&collection=.

[29] William C. Heffernan, "Sentencing: Surveying Current Practices," in *Social Justice/Criminal Justice* (Cham: Palgrave Macmillan, 2024), 87–101, https://doi.org/10.1007/978-3-031-75397-8_7.

[30] W. Sean McPhillip, Andrew A. Palmer, and Oren Snir, "General Provisions," *Georgia State University Law Review* 33 (2016), https://heinonline.org/HOL/Page?handle=hein.journals/gslr33&id=159&div=&collection=.

[31] Christopher Slobogin, "Preventive Justice: How Algorithms, Parole Boards, and Limiting Retributivism Could End Mass Incarceration," *Wake Forest Law Review* 56 (2021), https://heinonline.org/HOL/Page?handle=hein.journals/wflr56&id=104&div=&collection=.

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community-based process centered on victims, where facilitated dialogue between perpetrators and victims and involves community members. The goal is to repair the damage and provide an opportunity for victims to be heard while perpetrators can make amends for their mistakes. Although not fully formally integrated into the law as in Indonesia, Georgia has various restorative programs. One of them is the Pre-Trial Diversion Program created under O.C.G.A. § 15-18-80 as an alternative to prosecution. This program is intended for low-risk offenders and typically requires participants to meet requirements such as restitution, counseling, and social work. Successful participation results in the dismissal or nolle prosequi of charges and the record can be restricted from public view.[32]

The application of restorative justice in Georgia mainly occurs through diversion mechanisms, which effectively suspend or terminate the traditional criminal justice process. This shows that restorative justice operates as an "escape route" from the retributive system, rather than as an integrated part of it. Diversion programs require defendants to meet contractual requirements, and failure to do so will return the case to full criminal prosecution. This practice is a form of conditional restorative justice, where the threat of traditional punishment is used to ensure compliance with the restorative agreement.

Both Indonesia and Georgia show the same dynamics, namely the dominance of a strong retributive paradigm but balanced by the growing adoption of restorative approaches. In both countries, restorative justice is seen as an alternative for minor crimes and specific cases, not as a total replacement for the traditional criminal system. Both countries also prioritize the role of victims and the accountability of perpetrators in the restorative process. This reflects the recognition that the existing retributive system does not fully meet the needs of all parties involved in crime, and that a more humane approach is needed. Criminal law politics in Indonesia and Georgia reflect a complex balance between the dominant retributive paradigm and the growing adoption of restorative justice. The legal foundations in both countries are still very retributive, as evidenced by the existence of punitive sanctions and legal frameworks

[32] Kaylee Noorman, Julie Brancale, and Thomas G. Blomberg, "Criminal Justice Policy Reform Through Researcher–Practitioner/Policymaker Partnerships," in *Handbook of Issues in Criminal Justice Reform in the United States*, ed. Elizabeth Jeglic and Cynthia Calkins (Cham: Springer International Publishing, 2022), 231–54, https://doi.org/10.1007/978-3-030-77565-0_13.

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focused on retribution and deterrence. However, both jurisdictions recognize the limitations of the retributive approach and are gradually integrating restorative philosophies to address minor crimes and specific cases, especially in criminal acts involving children. This shows that criminal law politics in both countries is still in a process of transition towards a balance between retributive and restorative paradigms.

The fundamental difference between the two countries lies in how each country legitimizes the restorative approach. Indonesia adopted it institutionally from the top down, through formal regulations issued by the Supreme Court and the Attorney General through Supreme Court Regulation Number 1 of 2024 and Attorney General Regulation Number 15 of 2020. In contrast, Georgia implements a more organic and sporadic approach, where restorative programs are largely driven by non-governmental organizations and local-level initiatives, with government support through diversion programs. This approach reflects differences in governance structures and legal philosophies, where Indonesia prefers a centralized legal framework and Georgia relies more on decentralization and partnerships.

B. Factors Influencing the Political Orientation of Criminal Law in Indonesia and Georgia in Applying the Retributive and Restorative Justice Paradigms

The Indonesian criminal justice system is fundamentally shaped by the Dutch colonial legacy, with the enactment of the Wetboek van Strafrecht (WvS), which is an adaptation of European criminal law. The WvS was designed as a repressive legal order "*in optima forma*" oriented towards the economic and colonial power interests.[33] This system instilled a formal legality approach and a classical school of thought that focused on the act (delict) without giving judges much room to consider the conditions of the perpetrator.[34] Although legal dualism emerged during the Japanese occupation era, the codification approach and retributive framework introduced by the WvS continue to dominate to this day. Therefore, formal criminal law in Indonesia is built upon a foundation historically and philosophically oriented towards

[33] Nafi ' Mubarok, "Sejarah Perkembangan Hukum Pidana Di Indonesia: Menyongsong Kehadiran KUHP 2023 Dengan Memahami Dari Aspek Kesejarahan," *Al-Qanun: Jurnal Pemikiran Dan Pembaharuan Hukum Islam* 27, no. 1 (2024): 15–31, https://doi.org/10.15642/ALQANUN.2024.27.1.15-31.

[34] Agam Ibnu Asa et al., "Aliran Filsafat Hukum Sebagai Cara Pandang (Worldview) Hakim Dalam Menjatuhkan Putusan Pidana," *Jurnal Pembangunan Hukum Indonesia* 7, no. 2 (2025): 199–227, https://doi.org/10.14710/JPHI.V7I2.20-48.

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retribution and control. Historical factors are one of the main determinants of Indonesia's criminal law political orientation. The Criminal Code, which is still in effect today, is a product of the Dutch colonial era from 1918, which explicitly reflects a retributive paradigm. Colonial criminal law positioned the state as the primary victim, whose authority must be upheld through severe sanctions against offenders.[35] Although legal dualism emerged during the Japanese occupation era, the codification approach and retributive framework introduced by the WvS continue to dominate to this day. Therefore, formal criminal law in Indonesia is built upon a foundation historically and philosophically oriented towards retribution and control.

Historical factors are one of the main determinants of Indonesia's criminal law political orientation. The Criminal Code, which is still in effect today, is a product of the Dutch colonial era from 1918, which explicitly reflects a retributive paradigm. Colonial criminal law positioned the state as the primary victim, whose authority must be upheld through severe sanctions against offenders.[36] The zero-tolerance policies implemented after the collapse of the Soviet Union reinforced patterns of harsh punishment with the aim of restoring state authority.[37] This background made retributivism the main basis of criminal law politics in Georgia until the early 2000s. These historical factors explain why both still show the dominance of the retributive paradigm. In addition to history, cultural factors also shape the orientation of criminal law politics. In Indonesia, the values of deliberation, mutual cooperation, and customary-based conflict resolution have long been ingrained in society.[38] Customary legal traditions such as *village peace or village deliberation* is a form of restorative justice that is contextual to local culture. [39] This makes it easier for society to accept the concept of restorative justice rather than mere retribution. However, because the formal legal culture is still influenced by the colonial Criminal Code, these restorative values have only been partially

[35] Alam Suryo Laksono and B. Patmawanti, "Politik Pembaruan Hukum Pidana Berkarakter Pancasila," *Unes Journal of Swara Justisia* 8, no. 4 (2025): 913–26, https://doi.org/10.31933/07495384.

[36] Tabinda Rani, Aamir Mushtaq Cheema, and Sabeela Gul, "From Socialism to Sovereignty: A Comparative Study of 1918 Constitution of Russian Socialist Federation Soviet Republic and 1993 Constitution of Russian Federation," *Annual Methodological Archive Research Review* 3, no. 6 (2025): 26–45, https://doi.org/10.63075/X0FKCW66.

[37] Guruli and Law, "Dark Legacy of Zero Tolerance in Georgia (Criminal Punishment and Sentencing)."

[38] Fikriyah Iftinan Fauzi, Ira Kesuma Dewi, and Selamat Riadi, "Penguatan Mindset Kolektif Dalam Membangun Komunikasi Melalui Gotong Royong Berbasis Budaya Lokal Masyarakat Gantang Rani," *Jurnal Pengabdian Masyarakat IPTEK* 5, no. 2 (2025): 227–34, https://doi.org/10.53513/ABDI.V5I2.11782.

[39] Maulida, "Korelasi Hukum Adat Dan Restorative Justice: Membangun Keadilan Berbasis Kearifan Lokal Di Indonesia."

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accommodated. Integrating local culture with positive law is one of the major challenges in Indonesian criminal law politics.

In Georgia, cultural factors differ significantly. The Soviet legal tradition, which emphasized strict discipline, shaped the social mentality that violations of the law must be met with severe punishment.[40] Society in the post-Soviet transition period also supported harsh criminal policies as a symbol of social order.[41] This culture reinforces the legitimacy of the retributive paradigm, although in the long term it has negative impacts such as injustice and prison overcrowding. As European influence began to enter, the legal culture began to change, opening up space for restorative values. However, resistance to change remains strong among law enforcement and parts of society. Political factors also play an important role in shaping sentencing orientation. In Indonesia, criminal policy is often used as a political instrument by the government to assert state authority.[42] For example, the use of severe criminal penalties in corruption or narcotics crimes becomes a symbol of the state's seriousness in enforcing the law.

This pattern reinforces the retributive paradigm because it emphasizes the aspect of deterrence. On the other hand, the post-1998 legal reform politics began to open up space for restorative justice discourse, especially for juvenile cases. Indonesian criminal law politics thus reflects a push and pull between populist and reformist demands. In Georgia, post-Soviet politics influenced the orientation of criminal law in a different way. The government used zero-tolerance policies as a symbol of political stability and law enforcement.[43] This reinforced a very harsh retributive paradigm, leading to criticism from international organizations. However, as Georgia sought closer ties with the European Union, external political pressure prompted criminal law reform. Commitment to international human rights standards led the country to begin adopting restorative principles, particularly in the juvenile justice system.

[40] Elena N. Trikoz, "Model of the Soviet Criminal Law Codification: Methodological, Legal and Technical Features," *RUDN Journal of Law* 26, no. 4 (2022): 890–920, https://doi.org/10.22363/2313-2337-2022-26-4-890-920.

[41] Kristina Trykhlib, "The Implementation of the Rule-of-Law Principle in Post-Soviet States: Myth or Reality," in *Constitutional Traditions and Constitutional Transitions* (Edward Elgar Publishing, 2024), 133–59, https://doi.org/10.4337/9781035345410.00014.

[42] Ewaprilyandi Fahmi Saputra and Hery Firmansyah, "Politik Hukum Dalam Upaya Pemberantasan Tindak Pidana Korupsi Melalui Pembaharuan Pengaturan Tindak Pidana Korupsi Sebagai Extraordinary Crime Dalam KUHP Nasional," *UNES Law Review* 6, no. 2 (2023): 4493–4504, https://doi.org/10.31933/UNESREV.V6I2.1284.

[43] Guruli and Law, "Dark Legacy of Zero Tolerance in Georgia (Criminal Punishment and Sentencing)."

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International politics thus became a catalyst for changing the orientation of sentencing in Georgia.

Socio-economic factors influence the application of sentencing paradigms. In Indonesia, issues of prison overcrowding, high recidivism rates, and limited resources have driven the need for a restorative approach.[44] Purely retributive sentencing has proven ineffective in resolving the root causes of crime, especially those related to poverty and social inequality. Restorative justice is considered more appropriate because it emphasizes recovery and social reintegration. Thus, socio-economic conditions are a gradual driver for the shift in the orientation of Indonesian criminal law. Georgia also faces complex socio-economic problems, mainly due to the transition from a centrally planned economy to a market economy. The high crime rate after the collapse of the Soviet Union prompted the implementation of harsh punishments as a quick response to social instability.[45] However, these policies worsened the conditions of overcrowded and inhumane correctional facilities. In the long term, socio-economic pressures actually pushed Georgia to seek alternatives through a restorative approach. The reforms reflect an awareness that harsh sentencing does not solve crime problems rooted in social instability.

Legal factors are also an important differentiator. In Indonesia, the existence of new legal instruments such as the Juvenile Criminal Justice System Law normatively opens up space for the application of restorative justice. However, the provisions in the old, retributive Criminal Code are still the main legal umbrella, so the application of restorative justice is only partial. This creates a dualism of regulations in criminal law politics. Meanwhile, the discussion of the Draft Criminal Code also shows the legislator's efforts to include more humane sentencing principles. These legal factors explain why Indonesia is in a period of transition in sentencing orientation. In Georgia, legal factors are evident in the difference between the retributive Criminal Code of Georgia and the restorative Juvenile Justice Code. This regulatory dualism creates a dual orientation in criminal law politics. On the one hand, serious crimes are still

[44] Situmeang and Meilan, "Evolusi Kejahatan Dan Pemidanaan: Tantangan Dalam Penegakan Hukum Dan Penologi Modern."
[45] Alex Knorre et al., "The Lull Before the Storm? Criminal Justice, Crime and Incarceration in Russia (2000–2020)," *Europe-Asia Studies* 76, no. 8 (2024): 1229–52, https://doi.org/10.1080/09668136.2024.2374558.

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handled with severe penalties; on the other hand, juvenile cases are directed to mediation and diversion. Pressure from international organizations is driving regulatory changes to be more in line with international human rights standards. Thus, legal factors are an important instrument reflecting the change in Georgia's criminal policy orientation from retributive to restorative.

The orientation of criminal law politics in Indonesia and Georgia cannot be separated from the influence of historical, cultural, political, socio-economic, and legal factors that shape the direction of sentencing in each country. Although both still show the dominance of the retributive paradigm, the developing dynamics show an openness to the principle of restorative justice as an answer to the weaknesses of the traditional punishment system. This transition confirms that sentencing is not just a matter of imposing sanctions, but also a reflection of the values, needs, and direction of legal development that a nation wants to achieve. Thus, the analysis of these factors is key to understanding the complexity of choosing a sentencing paradigm in the modern era.

CONCLUSION

Criminal law politics in Indonesia and Georgia are still rooted in the retributive paradigm, but both are moving towards strengthening restorative principles, albeit with different transitional contexts. Indonesia started from a colonial system that emphasized retribution, then gradually integrated restorative mechanisms into specific regulations, while Georgia moved from a harsh zero-tolerance policy towards more humane criminal law reform. Historical, cultural, political, socio-economic, and legal factors have proven to be determinants that shape the direction of sentencing in each country. The findings in this study can encourage the strengthening of the restorative role in criminal law through legislative revisions, expansion of diversion practices, and strengthening the capacity of law enforcement in implementing recovery-based justice. Thus, both have the opportunity to develop a more balanced, effective sentencing model that meets the demands of contemporary justice.

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