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Informed Consent in Medical Practice: A Reconstruction of the Concept of Consent to Medical Procedures from Legal and Bioethical Perspectives

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Abstract: The reform of Indonesia's criminal law through the enactment of the National Criminal Code (Law Number 1 of 2023) signifies a fundamental transformation in the orientation of sentencing objectives. This shift reflects a transition from a retributive approach, which primarily emphasizes punishment of offenders, toward a more humanistic and restorative justice-oriented paradigm. This article aims to critically examine the reorientation of sentencing purposes within the National Criminal Code and its implications for the criminal justice system in Indonesia. This study employs a normative juridical method, utilizing both statutory and conceptual approaches, by analyzing relevant legal regulations and scholarly literature. The findings reveal that the objectives of sentencing under the National Criminal Code are no longer confined to the imposition of penalties, but also encompass crime prevention, offender rehabilitation, victim restoration, and social reintegration. This humanistic approach positions individuals as the central focus of criminal law, striving to balance the interests of offenders, victims, and society. Therefore, this reform is expected to foster a more equitable, responsive, and humane criminal justice system.

Keyword: Sentencing, National Criminal Code, Restorative Justice, Humanistic Approach, Criminal Law.

INTRODUCTION

Indonesia's criminal law has undergone a major transformation with the enactment of the National Criminal Code through Law Number 1 of 2023. The introduction of this new penal code not only replaces the previous Dutch colonial legacy but also marks a significant step toward developing a criminal justice system that aligns more closely with Indonesia's social, cultural, and philosophical values (Clegg et al., 2024). The former code, rooted in colonial interests, was inherently repressive and largely centered on retributive justice, emphasizing

punishment and proportional suffering for offenders without giving adequate attention to victim restoration or offender rehabilitation (Alin, 2017).

As modern society becomes increasingly complex, a purely punitive approach to sentencing is deemed insufficient. Globalization, technological advancement, and a growing recognition of human rights have prompted a shift in how criminal law is conceptualized. Rather than functioning solely as a tool for imposing punishment, the law is now expected to serve broader aims of achieving substantive and sustainable justice (Duff, 2005). This shift necessitates the development of a more humanistic penal system one that respects human dignity and prioritizes justice, balance, and societal benefit (Arafat, 2025).

The National Criminal Code responds to this need by introducing a new penal philosophy that integrates restorative and corrective approaches. Restorative justice emphasizes repairing the harm caused by crime and rebuilding relationships between offenders, victims, and the community. Meanwhile, corrective justice focuses on transforming offender behavior to support their reintegration into society (Flora, 2017). Thus, punishment is no longer seen as an end in itself but as a means to achieve broader goals, including social harmony and sustainable justice (Robensyah et al., 2026).

A concrete illustration of this paradigm shift is reflected in Article 51 of the National Criminal Code, which outlines sentencing objectives in a clear and comprehensive manner. These objectives include crime prevention, offender rehabilitation, conflict resolution, and the restoration of social balance. Such provisions indicate that punishment is envisioned not merely as a repressive instrument but as part of a broader mechanism aimed at repairing social order and maintaining stability within the community (Muksin, 2023).

This development is also influenced by modern sentencing theories that advocate an integrative approach. Under integrative theories, sentencing serves multiple complementary functions, including deterrence, societal protection, behavioral reform, and justice for victims (Erwanti, 2024). This approach is viewed as more compatible with the expectations of contemporary society, which demands a criminal justice system that is not only firm but also fair and humane (Hostettler, 2016).

The humanistic direction of the new KUHP is likewise strengthened by evolving human rights norms at both national and international levels. Respect for human rights requires that all individuals including offenders be treated with dignity and afforded fundamental protections. Consequently, sentencing must be proportionate, non-arbitrary, and oriented toward improvement rather than mere punishment (Ismawati & Hertini, 2025). This aligns with international legal principles that emphasize safeguarding individual rights within the criminal justice process (Ashworth & Kelly, 2024).

Furthermore, the humanistic approach places greater emphasis on the rights and needs of crime victims. Traditional sentencing frameworks often relegated victims to passive participants in the legal process. By contrast, restorative justice gives victims a more active role, such as engaging in dialogue or mediation with offenders (Sugama et al., 2024). This allows victims to obtain not only formal justice but also psychological and social healing (Braithwaite, 2002).

Nonetheless, implementing a humanistic sentencing model presents several challenges. Resistance may arise among law enforcement personnel who are accustomed to the traditional repressive model. Transforming long-standing legal culture and mindsets requires time and sustained effort. In addition, limitations in infrastructure such as inadequate rehabilitation programs hinder the effective implementation of these new approaches.

Another challenge involves balancing legal certainty with substantive justice. In some cases, restorative practices may raise concerns regarding inconsistency or potential misuse of authority. Therefore, clear guidelines and robust oversight mechanisms are essential to ensure

that the humanistic approach functions within the parameters of established legal norms (Robinson, 2008).

From an academic standpoint, the reorientation of sentencing objectives in the National Criminal Code offers a rich subject for further study. Such analysis is crucial not only for understanding the evolution of Indonesia's criminal law but also for assessing the extent to which these reforms can enhance justice and law enforcement in society. Accordingly, this research aims to examine the reorientation of sentencing objectives within the National Criminal Code through the lens of a humanistic approach. The study is expected to contribute to a more comprehensive understanding of this paradigm shift and support efforts to develop a criminal justice system that is fair, humane, and responsive to societal needs.

METHOD

This study adopts a normative juridical method, a legal research approach that emphasizes the examination of existing legal norms as reflected in statutory regulations, legal doctrines, and scholarly literature. This method is selected because the research aims to conduct an in-depth analysis of the reorientation of sentencing objectives within the National Criminal Code as a form of legal policy. Accordingly, it requires a thorough assessment of the governing legal provisions as well as the underlying conceptual frameworks. The normative juridical approach also enables the researcher to evaluate the extent to which current legal norms align with the development of modern sentencing theories and evolving societal notions of justice (Saebani, 2023).

The research employs both a statutory approach and a conceptual approach. The statutory approach involves a detailed review of legislation related to sentencing, with particular emphasis on Law Number 1 of 2023 concerning the National Criminal Code, especially provisions regulating the purposes and guidelines of punishment. In addition, this approach encompasses the analysis of other relevant legal instruments, including those governing the criminal justice system and correctional institutions.

Meanwhile, the conceptual approach is utilized to explore various theories and concepts associated with sentencing, such as retributive theory, utilitarian theory, rehabilitative theory, and restorative justice theory. This approach seeks to uncover the philosophical and theoretical foundations underlying the shift in sentencing objectives within the National Criminal Code. Through this lens, the study also examines and compares the perspectives of criminal law scholars from both domestic and international contexts, thereby providing a comprehensive understanding of the global evolution of sentencing paradigms.

The data used in this research consist of primary, secondary, and tertiary legal materials. Primary legal materials include statutory regulations, particularly the National Criminal Code as the main object of analysis. Secondary legal materials comprise legal literature such as textbooks, national and international journal articles, prior research findings, and other academic publications relevant to criminal law and sentencing. Tertiary legal materials include legal dictionaries, encyclopedias, and additional references that support and clarify primary and secondary sources.

Data collection is conducted through library research, which involves gathering and reviewing relevant written sources related to the research topic. This process includes identifying, classifying, and systematically organizing legal materials associated with sentencing objectives and the humanistic approach in criminal law. Library research is deemed appropriate given the normative nature of the study, which relies on authoritative written sources rather than empirical field data.

The data analysis technique applied in this study is qualitative analysis. The collected materials are systematically processed, interpreted, and examined based on relevant legal theories and concepts. The analysis is carried out by critically assessing applicable legal

provisions, linking them to established sentencing theories, and evaluating their implementation within the Indonesian criminal justice system. Additionally, this research incorporates a comparative perspective by examining the sentencing framework in the National Criminal Code alongside contemporary developments in international criminal law, particularly those related to humanistic and restorative justice approaches.

Through this methodological framework, the study aims to provide a comprehensive and in-depth understanding of the reorientation of sentencing objectives in the National Criminal Code, while also identifying its strengths, limitations, and implementation challenges. Consequently, the findings are expected to be not only descriptive but also analytical and evaluative, thereby contributing to the advancement of criminal law scholarship and the ongoing reform of Indonesia's criminal justice system.

RESULTS AND DISCUSSION

The Shift in Sentencing Paradigm within the National Criminal Code

The enactment of the National Criminal Code through Law Number 1 of 2023 signifies a fundamental transformation in Indonesia's sentencing paradigm. This change extends beyond a mere normative adjustment, reflecting a deeper philosophical shift in understanding the purpose and function of criminal law. Under the previous Criminal Code, inherited from the Dutch colonial era, sentencing was predominantly grounded in retributive justice, emphasizing punishment as a form of proportional retaliation against offenders. In this framework, punishment primarily served to impose suffering on the perpetrator, with limited consideration given to the interests of victims or the possibility of offender rehabilitation (Faisal et al., 2024).

In contrast, the National Criminal Code introduces a more comprehensive approach by incorporating restorative and humanistic principles. The focus of sentencing is no longer confined to penalizing the offender but extends to repairing the social harm caused by criminal acts. This restorative perspective recognizes offenders, victims, and the broader community as equally significant stakeholders in the resolution of criminal cases. Consequently, criminal law is no longer viewed solely as a coercive instrument but also as a social mechanism aimed at restoring balance and harmony within society (Pande et al., 2026).

Furthermore, this paradigm shift is closely linked to the evolution of modern sentencing theories, which have increasingly challenged the limitations of purely retributive approaches. Relative theories, for instance, emphasize crime prevention as the primary goal of punishment, whether through deterrence or through safeguarding society. Meanwhile, rehabilitative theories focus on reforming offenders so they can reintegrate into society as productive individuals. These perspectives are subsequently synthesized within an integrative framework, which views sentencing as a means of achieving multiple objectives simultaneously, including retribution, prevention, and rehabilitation (Nelson et al., 2023).

Within the context of the National Criminal Code, this integration is reflected in the formulation of sentencing objectives that are no longer singular but multidimensional. Punishment is designed not only to deter criminal behavior but also to facilitate behavioral change in offenders, ensure justice for victims, and maintain social order and equilibrium. This demonstrates that Indonesia's criminal law system is evolving toward a more adaptive and responsive model that aligns with the needs of contemporary society.

Additionally, the shift in paradigm is influenced by globalization and the growing impact of international legal thought, particularly the concept of restorative justice. In many jurisdictions, restorative approaches have been adopted as alternative mechanisms for resolving criminal cases, especially for certain types of offenses that allow settlement outside formal court proceedings through mediation or dialogue between offenders and victims. Through the National Criminal Code, Indonesia has begun to incorporate these approaches into its legal

system, while still adapting them to local cultural values that emphasize deliberation, consensus, and communal harmony.

On the other hand, this transformation also has significant implications for the role of law enforcement authorities. Under the traditional paradigm, law enforcement officials tended to act as rigid enforcers of formal legal rules. However, within the new framework, they are expected to adopt a more flexible and responsive approach, taking into account substantive justice and social utility. Judges, for example, are no longer merely regarded as “the mouthpiece of the law,” but are entrusted with greater discretion in determining appropriate sentencing, based on the specific circumstances and background of each case.

Nevertheless, this paradigm shift does not imply the complete abandonment of retributive principles. Retribution continues to play a crucial role, particularly in addressing serious crimes that require firm legal responses to ensure public order and security. Therefore, the National Criminal Code adopts an integrative approach in which various sentencing theories are applied in a balanced manner, depending on the nature and context of each case. In other words, sentencing under the new code is no longer one-dimensional but pluralistic and context-sensitive.

The Humanistic Approach in Sentencing Objectives

The humanistic approach embodied in the National Criminal Code represents a defining feature of Indonesia’s criminal law reform, placing human beings at the center of the criminal justice system. Within this framework, punishment is no longer viewed solely as a means of imposing sanctions on offenders, but rather as a mechanism aimed at transforming offender behavior, restoring victims, and maintaining social equilibrium. In this sense, the humanistic perspective seeks to shift criminal law away from a predominantly punitive orientation toward a more just and humane model.

Under this approach, offenders are no longer treated merely as objects of punishment, but as individuals with the capacity for change and improvement. Consequently, sentencing policies emphasize rehabilitation and social reintegration, enabling offenders to return to society as constructive members and reducing the likelihood of reoffending. This perspective aligns closely with rehabilitative theories of punishment, which stress the importance of reforming offenders as a central objective of sentencing (Nasution, 2025).

At the same time, the humanistic approach gives greater attention to the position of victims. In traditional criminal justice systems, victims were often reduced to passive participants, serving primarily as sources of evidence, with limited recognition of their needs and interests. In contrast, the humanistic model acknowledges victims as parties who deserve both material and psychological restoration. This is reflected in the application of restorative justice principles, which emphasize dialogue, mediation, and peaceful conflict resolution between offenders and victims.

In this context, restorative justice is not merely a procedural alternative for resolving criminal cases, but also a means of repairing the social relationships disrupted by criminal acts. Through processes such as mediation and direct communication, offenders are encouraged to acknowledge their wrongdoing, express remorse, and take responsibility for their actions. Meanwhile, victims are given the opportunity to voice their experiences, achieve a sense of closure, and obtain a more meaningful form of justice. As a result, this approach promotes not only formal justice but also emotional and social reconciliation (Bagaric, 2025).

Furthermore, the humanistic orientation of the National Criminal Code is closely linked to the protection of human rights. From a human rights perspective, all individuals including offenders are entitled to fundamental rights that must be respected and safeguarded. Therefore, punishment must be proportionate, non-discriminatory, and consistent with human dignity.

This principle is in line with international legal standards that emphasize the protection of individual rights within the criminal justice system.

In addition, the humanistic approach encourages the use of alternative sanctions beyond imprisonment, such as probation, community service, or rehabilitation programs. This shift is particularly important given the well-documented negative consequences of incarceration, including prison overcrowding, social stigmatization, and its limited effectiveness in preventing recidivism. By introducing alternative forms of punishment, the criminal justice system can become more flexible and responsive to the specific characteristics of offenders and the nature of the offenses committed.

Nevertheless, the practical implementation of a humanistic approach presents several challenges. One of the primary obstacles lies in the persistence of societal perceptions that equate justice with harsh punishment and deterrence through severe penalties. Moreover, law enforcement officials must possess a thorough understanding of humanistic principles in order to apply them consistently in practice. Without a comprehensive shift in legal culture and mindset, there is a risk that the humanistic approach will remain merely a normative concept without effective realization in the field.

Implications of the Reorientation of Sentencing on the Criminal Justice System

The reorientation of sentencing objectives in the National Criminal Code has far-reaching and fundamental implications for the entire criminal justice system in Indonesia. The transition from a retributive model toward a restorative and humanistic approach not only affects the formulation of legal norms but also reshapes the operational practices, institutional roles, and underlying mindsets of key actors within the system, including investigators, prosecutors, judges, and correctional institutions. This transformation requires adjustments at structural, cultural, and functional levels to ensure that the newly established objectives of sentencing can be effectively realized.

A fundamental distinction between the traditional and the contemporary sentencing paradigms can be illustrated as follows:

Table 1. Fundamental Distinction Between The Traditional and the Contemporary Sentencing Paradigms Can be Illustrated

No	Aspect	Traditional Paradigm	Contemporary Paradigm (National Criminal Code)
1	Objective	Retribution	Restoration and rehabilitation
2	Role of victims	Passive	Active participation in the process
3	Role of offenders	Object of punishment	Subject of reform and development
4	Approach	Retributive	Restorative and humanistic
5	Social impact	Stigmatization	Social reintegration

The comparison above demonstrates that the shift in sentencing philosophy is not merely theoretical but has tangible consequences for legal practice. Under the traditional framework, the criminal justice system primarily focused on punishment, often marginalizing the role of victims in the judicial process. In contrast, the new paradigm provides victims with opportunities for active engagement, such as through penal mediation or restorative justice mechanisms. As a result, the legal process is not limited to producing judicial decisions but also contributes to repairing social relationships disrupted by criminal acts (Jonathan, 2017).

Another significant implication concerns the changing perception of offenders. Previously, offenders were largely viewed as passive recipients of punishment, with little regard for their personal circumstances or capacity for reform. Under the new paradigm, however, offenders are recognized as individuals capable of change and are given opportunities

to undergo rehabilitation and reintegration programs. This approach reflects a more forward-looking and humane perspective, aimed at reducing the likelihood of recidivism.

The paradigm shift also directly affects the roles of law enforcement officials. Judges, for instance, are no longer confined to imposing sentences strictly based on statutory provisions; they are now expected to consider broader aspects of substantive justice and human values in their decisions. This includes evaluating the background of the offender, the impact on victims, and the potential application of restorative approaches in resolving cases. Consequently, judicial decisions are not only guided by legal certainty but also by considerations of fairness and social utility.

Similarly, prosecutors and investigators experience a notable transformation in their functions. Within the new framework, their responsibilities extend beyond proving the guilt of the to facilitating more restorative forms of dispute resolution, such as diversion or penal mediation in appropriate cases. This indicates a shift away from a rigidly adversarial system toward a more flexible and adaptive model that accommodates peaceful conflict resolution.

In addition, one of the most significant implications of this reorientation is the transformation of the correctional system. Correctional institutions are no longer viewed merely as places of confinement but as centers for rehabilitation and personal development. This approach aims to equip inmates with the skills and values necessary for successful reintegration into society. As such, the correctional system is expected to play a crucial role in reducing recidivism rates while also addressing persistent issues such as prison overcrowding.

Furthermore, the reorientation of sentencing carries important social implications. Under the traditional paradigm, punishment often resulted in social stigma, making it difficult for former offenders to be accepted back into society after serving their sentences. In contrast, the more humanistic and restorative approach seeks to minimize such stigmatization and promote social reintegration. By fostering successful reintegration, former offenders are more likely to lead productive lives and avoid reoffending, thereby contributing to broader social stability.

Challenges in Implementing the Humanistic Approach

Although the humanistic approach embodied in the National Criminal Code offers a more progressive framework oriented toward substantive justice, its practical implementation faces a range of structural, cultural, and normative challenges. These obstacles must be carefully examined to ensure that the transformation of the sentencing system does not remain merely conceptual, but can be effectively translated into real practices within Indonesia's criminal justice system.

One of the primary challenges lies in the absence of comprehensive and standardized technical guidelines for the application of restorative justice principles. While this approach has been formally recognized in various regulations including the National Criminal Code and implementing rules within the police, prosecution, and judicial institutions its application remains fragmented and lacks systemic integration. The lack of clear standard operating procedures has resulted in inconsistencies across regions. Law enforcement officials often interpret differently the types of cases eligible for restorative resolution, the procedures for mediation, and the criteria used to evaluate successful case settlement (Khatib et al., 2013). Consequently, without careful implementation, restorative justice may lead to legal uncertainty or even create new forms of injustice.

In addition, the shift toward a humanistic paradigm requires a significant transformation in legal culture among law enforcement authorities. Historically, Indonesia's criminal justice system has been shaped by a positivistic orientation that emphasizes legal certainty and formal procedures. Within this framework, investigators, prosecutors, and judges have typically focused on strict textual application of the law, often overlooking the sociological and psychological dimensions of criminal cases. The move toward a humanistic approach demands

a fundamental change in mindset, where legal actors are not only enforcers of the law but also facilitators of justice who can balance the interests of offenders, victims, and society.

However, transforming legal culture is not an instantaneous process. It requires continuous education and training to enhance the capacity of law enforcement personnel in understanding and applying restorative justice principles and humanistic values. Without proper internalization, there is a risk that the humanistic approach will be reduced to a procedural formality without meaningful substance. In some cases, it may even be misused as a means to evade criminal accountability, particularly in the absence of effective oversight mechanisms.

Another critical issue concerns the tension between legal certainty and substantive justice. In modern criminal justice systems, these two principles often exist in a delicate balance. On one hand, the law must provide predictability and consistency to ensure fairness in enforcement. On the other hand, the humanistic approach requires flexibility so that legal decisions can accommodate the specific circumstances of each case, including the background of the offender, the impact on the victim, and the broader social context.

This tension becomes even more pronounced in sensitive cases, such as violent crimes, sexual offenses, and corruption. In such cases, the use of restorative approaches often sparks debate, as it may be perceived as undermining deterrence or compromising the rights and interests of victims. Therefore, it is essential to establish clear limitations regarding which types of offenses may be addressed through humanistic or restorative mechanisms, along with strict criteria to ensure that victims' rights remain a central concern.

From a structural perspective, challenges also arise in relation to the condition of correctional institutions in Indonesia. Prison overcrowding has long been a persistent issue. In principle, the humanistic approach through its emphasis on rehabilitation and social reintegration offers potential solutions by promoting alternatives to imprisonment, such as conditional sentencing, community service, or diversion programs. However, without adequate infrastructure and sufficient resources, these alternatives cannot be implemented effectively.

Moreover, the success of the humanistic approach is closely tied to active community participation. Within the framework of restorative justice, society plays a crucial role in facilitating conflict resolution and restoring social harmony. In practice, however, public awareness and understanding of this approach remain relatively limited. Many people still equate justice with severe punishment for offenders. This perception presents a significant barrier, as it may lead to resistance against policies that are perceived as being overly lenient toward criminal behavior.

Further challenges arise in ensuring adequate protection for victims. Although the humanistic approach seeks to position victims as active participants in the justice process, not all victims possess equal bargaining power. In certain situations, victims may face social or psychological pressure to accept restorative settlements, even when such outcomes do not fully reflect their interests or wishes. Therefore, strong protective mechanisms are necessary to guarantee that victim participation in restorative processes is genuinely voluntary and free from coercion.

Finally, the advancement of technology and the forces of globalization introduce new complexities in implementing a humanistic approach. Contemporary forms of crime such as cybercrime, terrorism, and transnational offenses often involve actors and victims across multiple jurisdictions, making restorative processes more difficult to apply due to limited opportunities for direct interaction and dialogue. Accordingly, innovative models of restorative justice must be developed to adapt to these evolving challenges.

CONCLUSION

The reorientation of sentencing objectives under the National Criminal Code reflects a fundamental paradigm shift in Indonesian criminal law, moving away from a retributive model centered on punishment toward a more comprehensive framework grounded in restorative and humanistic principles. This transformation indicates that sentencing is no longer solely intended to penalize offenders, but also aims to prevent crime, promote rehabilitation, and restore social relationships among offenders, victims, and the broader community. In this sense, criminal law evolves into a more equitable instrument that prioritizes humanitarian values.

The humanistic approach adopted in the National Criminal Code places individuals at the core of the criminal justice system. This is evident in the strengthened role of victims, the repositioning of offenders as subjects of reform rather than mere objects of punishment, and the increased involvement of the community in resolving cases through restorative justice mechanisms. Furthermore, this approach aligns with the principles of human rights protection, thereby fostering substantive justice that goes beyond legal certainty to include considerations of social benefit and fairness.

Nevertheless, the implementation of this humanistic framework continues to face significant challenges across normative, structural, and cultural dimensions. The lack of detailed technical guidelines, limited capacity and understanding among law enforcement officials, and the persistent tension between legal certainty and substantive justice remain key obstacles. Therefore, sustained efforts are required, including strengthening regulatory frameworks, enhancing the competence of legal practitioners, and increasing public awareness to support the effective application of this new paradigm. Through these measures, Indonesia's criminal justice system is expected to develop into a more just, humane, and adaptive system that is responsive to the complexities of modern society.

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