



A Critical Review of Restorative Justice Policy in the Indonesian Criminal Justice System Post Law No. 1 of 2023 concerning the Criminal Code

Deassy J.A. Hehanussa^{1*}, Kukun Abdul Syakur Munawar²,
Muh Fadli Faisal Rasyid³, Arianti A.Ogotan⁴, Arief Fahmi Lubis⁵
*Pattimura University¹, Islamic College (STAI) Miftahul Huda Al Azhar Banjar²,
Andi Sapada Institute of Social Sciences and Business³,
Muhammadiyah University of Luwuk⁴, Military Law College⁵*
Email: deassyhehanussa@gmail.com¹, kukunradar@gmail.com²,
fadlifaisal643@gmail.com³, ariantiogotan83@gmail.com⁴,
arieffahmilubis0@gmail.com⁵

Abstract - This research examines how the amendments introduced by Law No. 1 of 2023 have integrated restorative justice practices into Indonesia's criminal justice system. It explores key obstacles, particularly the tension between restorative justice and the traditional emphasis on punitive measures within society's legal framework. Utilizing a normative descriptive and juridical-analytical approach, the study employs the normative legal method to trace the evolution of Indonesian criminal law and assess the implementation of restorative justice through primary and secondary legal sources. Despite several existing laws supporting restorative justice, the study reveals that the 2023 Criminal Code lacks precise guidelines, resulting in legal ambiguities. Another significant barrier to the broad application of restorative justice is societal resistance, rooted in a cultural preference for punitive justice. The findings suggest that to address these challenges, there is a need to strengthen legislation, provide training for law enforcement, and increase public awareness about restorative justice.

Keywords: Restorative Justice, 2023 Criminal Code, Criminal Justice System

I. INTRODUCTION

Law No. 1 of 2023, which amends the Criminal Code, marks a pivotal moment in Indonesia's criminal law reform. By replacing the Dutch colonial-era *Wetboek van Strafrecht*, this new code not only modernizes the country's legal system but also aligns it more closely with contemporary global standards, particularly in the context of restorative justice. The reform underscores the importance of shifting away from a purely punitive approach towards a system that prioritizes healing, reconciliation, and the restoration of social harmony (Setyawan & Kurniawan, 2023). There will be some time for connected institutions and law enforcement authorities to adapt to the new provisions of Law No. 1 of 2023 before they take effect on January 2, 2026. This is the time when different government bodies are required to update their internal rules to reflect the modifications made to the National Criminal Code (Yanto & Hikmah, 2023).

The restorative justice movement is making waves in the criminal justice system as a result of these changes to the law. Instead than relying just on punishment, this method seeks to restore harm by bringing offenders, victims, and the society together in the process of resolving the issue (Latimer et al., 2001). Its use in Indonesia lacks a defined legal framework,

despite widespread recognition among legal professionals as a more compassionate paradigm and its application in several nations. So far, restorative justice and other forms of alternative dispute resolution have not been codified by a single statute. Nonetheless, a few of police departments have voluntarily adjusted their internal policies to conform to this method.

For instance, to facilitate out-of-court settlements of cases by engaging the offender and victim to attain an agreement, the Prosecutor's Office has published Prosecutor's Regulation (Perja) No. 15 of 2020 about Termination of Prosecution Based on Restorative Justice. In keeping with the idea of *dominus litis* maintained by prosecutors, this was followed by Attorney General's Guidelines No. 18 of 2021, which governs the settlement of drug cases via a rehabilitation mechanism and a restorative justice approach (Kristanto, 2022). In addition to the Prosecutor's Office, the Police have issued Police Regulation (Perpol) No. 8 of 2021 in response to the calls for change. This regulation governs the handling of criminal acts with a restorative justice focus, giving investigators a framework to help victims and offenders talk things out and find a way to resolve the conflict outside of court.

Lastly, instructions for judges to follow when hearing criminal cases using a restorative justice approach have been prepared by the Supreme Court in the form of a Supreme Court Regulation (Perma). The restorative justice process is anticipated to become a fundamental aspect of Indonesia's criminal justice system, as shown by this proposed rule, even after the case has reached the trial stage. These changes show that the Indonesian court system is becoming more flexible and accepting of new ways of applying the law.

The lack of rules that specifically govern this process as a component of the criminal justice system is the primary issue with restorative justice under Law No. 1 of 2023 pertaining to the Criminal Code. In Indonesian law, restorative justice is still in its infancy, despite widespread recognition of its humanistic principles as an approach to criminal cases that prioritizes victims' losses restoration, perpetrators' reconciliation, and community involvement. Up until recently, the policies of individual law enforcement agencies—like the Police, the Prosecutor's Office, and the Supreme Court—have had a larger role in regulating matters pertaining to restorative justice. Despite serving as a foundation for practice, these laws lack the binding authority and system-wide applicability of ideals.

Restorative justice is expected to gain a more formalized role as an alternative to case resolution under Law No. 1 of 2023, which amends the Criminal Code. However, the specific provisions for implementing restorative justice are not fully articulated within the law itself. While previous regulations have acknowledged the importance of restorative justice, this new legal framework offers an opportunity to formally integrate these practices into the criminal justice system. Nevertheless, the absence of clear guidelines in the 2023 Criminal Code leaves room for varied interpretations and inconsistent application across legal institutions. Judges and law enforcement agencies may struggle with applying restorative justice uniformly, leading to potential gaps in its implementation. Strengthening legal provisions and offering clearer directives will be crucial for ensuring the effective adoption of restorative justice in future cases. Because of this, the uniform application of restorative justice is unclear from a legal standpoint. The field application of this technique also varies depending on the interpretation and policies of each institution, since it is dependent on the internal policies of law enforcement organizations. In cases that have progressed to trial, judges do not always have a consistent reference when using this technique as part of their judgments, and this may lead to gaps in the implementation of restorative justice due to the lack of thorough legal rules.

Another issue is the criminal justice system's current emphasis on punishment as retribution, and how restorative justice procedures may be successfully incorporated into this system. A shift towards restorative justice necessitates a conceptual shift among community members, law enforcement, and the court system as a whole. While Law No. 1 of 2023 regarding the Criminal Code does a lot of good for the rule of law, it doesn't fix anything when it comes to using restorative justice to resolve specific cases. This is particularly true when it

comes to the kinds of crimes that can be resolved through this mechanism and the specific formalities that need to be followed (Manurung, 2020).

In addition, the legal culture in Indonesia, where punishment is often expected as a form of justice, poses obstacles to the implementation of restorative justice under Law No. 1 of 2023 about the Criminal Code. Many people still think that punishment and incarceration are the only ways to get justice, even though restorative justice is more about bringing victims and offenders together to resolve issues. This calls for a sea change in public perception of restorative justice, which aims to educate the public about its advantages and dispel the myth that it is a lenient punishment for offenders. Rather, it promotes restorative justice as a means to a more comprehensive and equitable society.

Solving the gap between restorative justice's ideal ideals and Indonesia's legal reality will be the next big obstacle for implementing restorative justice within the framework of Law No. 1 of 2023, which deals with the Criminal Code. It is critical that Law No. 1 of 2023, which deals with the Criminal Code, provide more thorough and coordinated rules that may give clarity of law and consistency in their implementation. Restorative justice in Indonesia has not yet established itself as a significant component of the country's criminal justice system due to a lack of a solid legislative foundation, which means it is likely to stay confined to the level of individual institutions' policies.

Problem formulation: (1) With no clear guidance from the law, how may restorative justice processes be successfully incorporated into Indonesia's criminal justice system after the implementation of Law No. 1 of 2023 pertaining to the Criminal Code? And (2) Given that Indonesian society's legal culture values punitive punishment over restorative approaches to conflict resolution, what are the key obstacles to adopting restorative justice in the country?

II. METHOD

This study employs the normative legal research technique, which delves into the normative elements of Indonesian law using a literature-based approach (Ishaq, 2017). The purpose of this normative legal study is to examine the history and current state of restorative justice within the framework of Criminal Code Law No. 1 of 2023 by reviewing relevant primary and secondary sources. The primary sources include laws, regulations, and relevant court cases, such as the 2023 Criminal Code itself and prior legislation addressing restorative justice principles in Indonesia. These legal instruments will be analyzed to identify how restorative justice is framed and applied within the legal system. Additionally, judicial decisions that reference restorative justice principles will be examined to provide insights into their practical implementation.

Secondary sources will include legal commentaries, books, peer-reviewed journals, and academic papers that discuss the evolution of criminal law, the concept of restorative justice, and its application both in Indonesia and internationally. By combining these sources, the research aims to present a comprehensive understanding of how restorative justice has been integrated into Indonesia's legal framework and the challenges that may arise in its future application. Law No. 1 of 2023 pertaining to the Criminal Code and other important legislative instruments regarding the implementation of restorative justice in Indonesia will primarily serve as the subjects of this research. The examination of the evolution of criminal law systems and the idea of restorative justice in Indonesia and other countries will be supplemented by secondary legal resources, including books, scientific papers, journals, and other scholarly works.

The first problem formulation is addressed by using a descriptive normative research method. This method seeks to map the application of restorative justice in various internal regulations of Indonesian law enforcement and to better integrate its application within the framework of the 2023 Criminal Code. The purpose of this research is to examine preexisting rules, such as those pertaining to the police and the prosecutor, and to determine whether or not they might be included into the National Criminal Code. In order to fully and sustainably incorporate restorative justice into the criminal justice system, this research will focus on identifying normative problems and possible answers.

The second issue formulation is addressed using a juridical-analytical approach. This technique seeks to investigate the societal and legal barriers to restorative justice's acceptance as a valid method of criminal case resolution. The public's openness to restorative justice and the ways in which reforms to Indonesian law could meet cultural opposition that places a premium on punitive measures are the foci of this research. Examining the public's perceptions of restorative justice in relation to legal documents and laws, this research will center on how national legal policy might support a more comprehensive restorative approach. Following the implementation of the 2023 Criminal Code in Indonesia, this research aims to provide a thorough understanding of the potential opportunities and obstacles for integrating restorative justice into the country's criminal justice system via the use of these two methodologies.

III. RESULT AND DISCUSSION

1. Restorative Justice Mechanisms Effectively Integrated Into Indonesia's Criminal Justice System After the Enactment of the 2023 Criminal Code

In contrast to the punitive approach that focuses on punishing offenders, the restorative justice paradigm seeks to heal broken relationships as a means of resolving conflicts and crimes. The idea behind this is to prioritize conversation, restitution, and social reintegration in order to establish a judicial system that is more inclusive and takes into account the interests of everyone concerned. In addition to holding offenders accountable, restorative justice works to repair harm done to victims and promotes community involvement in finding solutions to issues (Wenzel et al., 2008). The offender is seen in this light not only as a thing deserving of punishment, but also as a person with the potential for personal growth and redemption by involvement in the restorative justice process.

Theoretically, restorative justice holds that breaking the law is only one kind of broken connection; crime also violates the bonds between people and their communities. As a whole, this idea disagrees with methods that see retribution and punishment as the exclusive means of reducing criminal activity. Rather, the focus of restorative justice is on helping victims heal from their injuries while offenders go through the process of self-reproach and reconciliation (Flora, 2018). In order to find a solution that works for everyone involved, this procedure is designed to make the offender feel responsible and provide victims a chance to express their needs.

Reparation of damage, social reintegration, and active involvement of victims, offenders, and the community are some of the essential components of restorative justice philosophy. Victims' participation in the resolution process, where they may voice their needs, hopes, and emotions about the trauma they've endured, is a crucial part of the idea. The retributive approach, on the other hand, prioritizes punishing the perpetrator over including victims in the justice process. The goal of restorative justice is to restore harmony and stability to broken social connections by addressing the needs of victims and the communities they represent.

Offenders also gain from restorative justice because it gives them a chance to fix their mistakes, make amends, and get back on their feet after a period of incarceration. Mediating between the victim and the offender is one option; this gives the perpetrator a chance to see how their actions have affected the victim and allows them to collaborate with them to discover a fair solution. Offenders who take part in this process often get a better understanding of the repercussions of their behavior and are better able to refrain from doing it again.

Recidivism rates, social ties, and victim satisfaction with remedies have all been shown to decrease in nations that have implemented restorative justice approaches. In offender-victim conferences, a neutral third party mediates a meeting between the offender and victim; in community forums, members of the community discuss and vote on how to address crime; and in community-based mediation, members of the community are actively involved in making decisions. Instead of resorting to inflexible, uniform formal regulations, these methods enable agreements that are centred on people's and communities' needs.

The effectiveness of restorative justice as a criminal justice alternative has been well-recognized, although its use has not always been consistent across nations. Even though the

legal system is mostly focused on punishment, certain judicial systems are still trying to figure out how to include restorative techniques (S. Arief et al., 2023). In this setting, the difficulty is in establishing rules that permit the official application of restorative justice and in guaranteeing that everyone engaged in the process gains something from it. Integrating restorative justice into a criminal justice system that is still primarily focused on punishment calls for a radical rethinking of justice and the function of the law in our society.

Consequently, the community is seen as an active participant in the conflict resolution process in restorative justice, in addition to the offenders and victims themselves. Communities with strong social values, whose members play an integral part in preventing and responding to criminal activity, are more likely to find success with this strategy. According to the Criminal Code, Indonesia is obligated to include restorative justice into its contemporary criminal law system. This presents a problem in terms of developing a fair legal framework that addresses both retributive justice and the demands of social healing and justice for all parties concerned.

The lack of a clear and thorough legislative framework for the execution of restorative justice is the primary obstacle to its integration into the Indonesian criminal justice system after the passage of the 2023 Criminal Code. Despite restorative justice's reputation as a more compassionate option, the specifics of its successful implementation across the board remain unclear under Law No. 1 of 2023, which governs the Criminal Code (Malau, 2023). This makes one wonder where restorative justice fits into a judicial system when the retributive worldview is still in power. Currently, the Prosecutor's Office Regulation, the Police Regulation, and the proposed Supreme Court Regulation govern restorative justice. However, without explicit laws, this method runs the danger of becoming optional and confined to the internal policies of law enforcement organizations.

There may be regional variations in the use of restorative justice in Indonesia due to the lack of clear regulations in the 2023 Criminal Code. Due to the lack of a federal statute governing this process, restorative justice programs are mostly at the mercy of individual police departments' rules and the discretion of individual officers working in the field (Arifin, 2023). This may cause variations in the use of restorative practices in case resolution; for example, certain areas may be more eager to adopt these practices than others, or they may lack clear standards. Therefore, it's possible that not all Indonesian jurisdictions will be able to fully realize restorative justice's primary objective, which is to repair relationships among victims, offenders, and the community.

Indonesian legal system, which has always seen punishment and retaliation as primary tools for maintaining order, presents a further obstacle to restorative justice's incorporation into the 2023 Criminal Code. Punishing criminals appropriately is the only way to establish justice in Indonesian society, particularly in regions where traditional beliefs persist (Fadhila, 2024). Because of its focus on communication and reconciliation, the restorative justice method has the potential to disappoint victims and the community at large because of the impression it gives of being too lenient on the offender. The teaching and socialization process in Indonesia on the advantages and aims of restorative justice still requires substantial improvement, which poses a difficulty to its implementation.

Furthermore, the sorts of offenses that may be handled via the restorative justice procedure in the 2023 Criminal Code should still be taken into account. Cases involving extreme violence, human rights breaches, or crimes with far-reaching societal effects are not good candidates for restorative justice resolution. While drafting rules for Indonesia, it is crucial to establish explicit limits on the types of offenses that may be addressed via restorative justice. There has to be clear guidance for law enforcement to determine whether a matter should be settled via this process. Otherwise, there is a risk of unfairness or inconsistent implementation of the law.

Another aspect that affects the use of restorative justice in Indonesia is the systemic limitations of the criminal justice system. Alternative methods, including restorative justice, may be more difficult to implement in a court system that is too bureaucratic and formal (H. Arief & Ambarsari, 2018). The restorative justice concepts of direct communication and quick

resolution are at odds with the lengthy, convoluted, and formal legal features of many Indonesian criminal judicial processes. As a result, restorative justice reforms that are more efficient and successful need changes to the criminal justice system's procedural parts as well.

Here, law enforcement authorities play a crucial role in bolstering restorative justice's broader adoption (Rumadan, 2017). To overcome this obstacle, internal rules must be revised to better align with the ideas of the Criminal Code of 2023 and law enforcement must be better equipped to comprehend and use the restorative approach. To enhance Indonesia's criminal justice system, restorative justice must be accepted and supported by society and legal institutions. This is the key to the approach's success.

In order to address issues surrounding the incorporation of restorative justice into the Indonesian criminal justice system after the passage of the 2023 Criminal Code, it is imperative to provide a more precise and explicit legislative framework for its execution. One possible course of action is to establish governing rules outlining the parameters, processes, and constraints of restorative justice via legislation or executive orders. To make sure that all relevant institutions are on the same page about the restorative approach and its goals, these rules should lay out specific instructions for law enforcement, police, prosecutors, and judges (Rizqiqa et al., 2024). By establishing a more robust legislative framework, Indonesia can ensure that restorative justice is applied consistently across the country, eliminating the need for various internal rules.

Furthermore, specific standards for the kinds of offenses that may be addressed via restorative justice processes must be set. For more severe offenses like murder, sexual assault, or human rights breaches, conversation and reconciliation may not be the best way to resolve the case (Diharjo et al., 2024). For this reason, rules for its implementation should classify some types of criminal behavior as being amenable to this method, such as situations involving kids or less serious offenses. In order to safeguard victims' and the community's best interests, this rule will provide police officers with clear instructions on how to address each case individually.

Massive community education and socialization on the idea and advantages of restorative justice is required to overcome cultural opposition that favors punishment as a kind of justice. It is important for the society to know that punishment is not the only method to achieve justice; sometimes, mending broken relationships and making amends are just as necessary. The public's view of this method may be shifted via media campaigns, seminars, workshops, and community initiatives that include religious and community leaders as well as social activists. To ensure that restorative justice is recognized as a valid component of Indonesia's criminal justice system, this education must be ongoing and inclusive of all segments of society.

Another option would be to provide police with specialized training on restorative justice so they can better comprehend and use it in their work. Within the framework of restorative justice, law enforcement, prosecutors, and judges should get training in mediation, negotiation, and effective communication. In addition to the legal considerations, this training program will address the social and psychological elements involved in resolving disputes involving community members, victims, and offenders. If police officers get proper training, they will be better equipped to handle cases with a restorative focus and will feel more comfortable using this method. Over time, this training will promote restorative justice practices and enhance the whole criminal justice system.

Lastly, there has to be a framework in place to oversee and assess the efficiency of restorative justice's incorporation into the criminal justice system, as well as sufficient backing from the law. To ensure that restorative justice is applied uniformly throughout Indonesia, the government should establish an impartial organization or task force to monitor its implementation. The appropriate and equitable application of restorative justice concepts, as well as the evaluation and improvement suggestions provided by this institution, are essential functions of this body. Transparency and accountability in restorative justice implementation, together with the prevention of abuse or diversion from the approach's fundamental aims, may be ensured with a robust supervisory organization. Following these measures, Indonesia may

create a criminal justice system that is more accommodating to all parties involved, with restorative justice serving as both an option and a component of the larger movement toward justice.

2. Challenges of Legal Culture in the Implementation of Restorative Justice in Indonesia

Major obstacles to restorative justice's adoption in Indonesia arise from the society's legal culture, which has traditionally prioritized a punitive approach. Punishment, according to a retributive legal system, is anything the offender must go through in order to make up for their transgressions. This kind of thinking is deeply embedded in Indonesian legal culture, where the severity of the penalty is often used as a yardstick for justice. People believe this because they know that breaking the law is a breach of the state's authority and that punishment serves as a means of controlling the population and discouraging future criminal behavior.

People in the community don't really grasp what restorative justice is, which is a major obstacle. Justice has not been completely maintained, according to many, if the offender does not receive a jail term or bodily punishment. Actually, the main goals of restorative justice are making amends to the victim and the community for whatever harm has been done, and reintegrating the offender into society in a positive light. Instead of being seen as a way to resolve conflicts in a way that allows for reconciliation and the restoration of social relations, restorative justice is frequently undervalued and seen as a type of punishment for the offender due to a lack of awareness and education regarding its advantages.

A further major roadblock to restorative justice is the mentality of police personnel, who are still focused on retributive measures. Instead of using conflict resolution strategies that center on discussion between offenders and victims, law enforcement officials often choose formal and legalistic punishment programs. This is a result of the norms and practices prevalent in law enforcement organizations that have historically relied on formal justice systems, where the emphasis is on swift case resolution and sanctions that match the seriousness of the offense (Rahmadianto, 2023). While this less harsh approach is often more successful in resolving conflicts, police officers often lack the training and exposure to restorative justice techniques, making it difficult for them to use them.

Having to contend with a culture that is fundamentally conservative in its understanding of justice is another obstacle. Serious punishment for criminals is often seen in many parts of Indonesia as a way to show respect for the laws and social standards that are in place, particularly in places where traditional practices and rigid social mores are still prevalent. Restoration of social order is not necessarily seen as a viable goal in this culture when it comes to the process of rehabilitation or reconciliation. Society may rather see criminals punished severely to demonstrate its commitment to justice and the efficacy of law enforcement (Samuel & Howard, 2023). People worry that crimes will be treated lightly if the offender does not face severe punishment under the restorative method, which undermines the power of the law.

A retributive attitude is reinforced in part by public opinion and in part by the media. While the media often emphasizes the harshness of the penalties meted out to offenders as a measure of the effectiveness of law enforcement, the effects on victims' and the community's ability to heal are hardly mentioned. The media's penchant for glamorizing violent or serious crime stories contributes to the widespread belief that severe punishment is the only appropriate response. This sort of reporting in the media perpetuates the idea that jail and physical punishment are the best ways to resolve criminal cases, which makes restorative justice less likely to gain traction.

It will need a paradigm change on many fronts to solve the problems with the legal culture. Both legislative changes and significant cultural and societal shifts are necessary for restorative justice to be implemented. There needs to be a concerted effort to get the word out about the positive effects of restorative justice, which prioritizes healing, reparation, and addressing problems in the long run. So that they may accept restorative justice as a valid and efficient means of handling criminal behavior, law enforcement officials also need training to

identify and use this strategy in case resolution. But the community also needs time and space to learn that punishment isn't the only way to get justice; a more inclusive social healing may work just as well.

Changes in the legal framework, stricter rules, and more all-encompassing education are some of the proposed strategic approaches to overcome obstacles to restorative justice implementation in Indonesia. The first step in incorporating restorative justice practices into the criminal justice system is for the government to establish more explicit and thorough rules. Law enforcement must have access to these rules outlining the steps to take, the kinds of crimes that can be solved using this method, and how to implement them. So that it is not dependent on the internal rules of each law enforcement agency, restorative justice may be systematically integrated across Indonesia with explicit legislation.

Second, police personnel must have access to specialized training and instruction. The proper use of restorative justice principles in pertinent criminal cases requires rigorous training on the part of law enforcement, prosecutors, and judges in both theory and practice. Mediation, negotiation, and community engagement strategies for victims, offenders, and survivors should all be part of this education.

Third, changing the attitude that prioritizes retributive measures requires more extensive and long-term community indoctrination. Law enforcement, nonprofits, and the state must collaborate to disseminate information on restorative justice. Methods such as community-based initiatives, public lectures and workshops, and the media may help achieve this goal. This training needs to stress that restorative justice isn't a soft approach, but rather a better way to get justice for everyone.

Fourth, a specialized body or task force must be formed to oversee and assess the restorative justice program's rollout throughout Indonesia. This organization can keep an eye on how rules are being put into play, suggest ways things may be better, and make sure that restorative justice concepts are being used appropriately and in line with rehabilitation objectives. Community members and law enforcement agencies may provide feedback on restorative justice efforts via this institution's reporting hub. The adoption of restorative justice in Indonesia may be improved by the application of these tactics, which can lead to a shift in society's perception of justice away from punishment and toward inclusion and rehabilitation.

IV. CONCLUSION

This research highlights several significant obstacles to the incorporation of restorative justice into Indonesia's criminal justice system, particularly following the passage of Law No. 1 of 2023. While the 2023 Criminal Code introduces restorative justice as a more humane approach to handling criminal cases, the absence of clear and detailed guidelines hampers its consistent application. Law enforcement agencies in certain regions, particularly rural areas, struggle with the lack of training and resources, leading to inconsistent practices across the country. Additionally, societal resistance, especially in regions where traditional punitive justice is deeply ingrained, further complicates its implementation.

A combination of targeted measures is necessary to overcome these challenges. Stricter regulations with clearly defined procedures for restorative justice, extensive training for law enforcement personnel, and ongoing public education campaigns to promote the benefits of restorative justice will be crucial. Addressing these regional disparities and resistance will ensure that restorative justice can more effectively fulfill its goal of repairing relationships between victims, offenders, and the wider community, ultimately leading to a more compassionate and functional justice system in Indonesia.

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