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Reformulation of the Concept of Restorative Justice in a Criminal Law System with Legal Certainty

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Abstract

The implementation of restorative justice in Indonesia faces a conflict of norms due to differing interpretations among law enforcement agencies. The police and the Prosecutor's Office consider restorative justice as a basis for terminating criminal proceedings without punishment, while the Supreme Court uses it as a consideration in granting conditional sentences without removing criminal responsibility. The research method used is normative juridical, with a statutory, conceptual, and case-based approach. The research findings indicate that the concept of restorative justice in Indonesia has not been able to guarantee justice and legal certainty due to differing interpretations among law enforcement agencies. Inconsistent application and the lack of a conceptual framework lead to different treatment at each stage of the criminal process, resulting in inconsistent outcomes and weakening the effectiveness of criminal case resolution

mechanisms. This legal uncertainty is exacerbated by the scattered provisions of restorative justice in various sectoral legal instruments from the Police, the Prosecutor's Office, and the Supreme Court, with differing interpretations regarding whether the success of restorative justice ends the criminal case or merely influences the form of punishment. Therefore, reformulation of restorative justice regulations is an urgent need, aiming to establish a unified, coherent, and binding national normative design. This reformulation demands a uniform understanding of law enforcement officials, integration of authority between institutions within a single framework of criminal accountability, and explicit regulation of restorative justice in criminal procedural law through legislation, so that restorative justice has legal certainty and truly functions as a mechanism for fulfilling justice.

Keywords: Restorative Justice, Criminal Justice System, Law Enforcement, Future Arrangements

Introduction

The concept of restorative justice developed as a critical response to the conventional penal system, which in practice focuses more on imposing criminal sanctions in the form of imprisonment. This penal system is considered ineffective because it often fails to achieve its objectives, particularly in preventing recurrence of crime and restoring the losses and social relationships damaged by crime.¹ In addition, the conventional approach to punishment is seen as inhumane because it tends to position the perpetrator solely as an object of punishment, while the interests of the victim, including the need for recovery, justice and recognition of their suffering, receive less attention.

Based on these conditions, restorative justice emerged as an approach to resolving criminal cases involving the perpetrator, victim, victim's family, and other relevant parties to achieve a just resolution, emphasizing the restoration of the parties to their pre-crime situation. Restorative justice is seen as a mechanism capable of reducing the burden on judicial and correctional institutions, given that not all crimes require criminal punishment. Through this mechanism, as long as the perpetrator acknowledges their mistake, they are given the opportunity to correct and compensate for the losses incurred.

Community involvement is essential to ensure that these decisions are not merely closed-door agreements but are part of social reintegration. Restorative justice is a solution to weaknesses in the criminal justice system that often result in disparate verdicts and a backlog of cases, while also strengthening the principles of legal certainty, expediency, and justice in Indonesian

¹ Yulies Tiena Masriani, *Pengantar Hukum Indonesia*, (Jakarta: Sinar Grafika, 2006), h.60.

criminal law.² The development of the concept of restorative justice has occurred since the enactment of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (hereinafter abbreviated as the SPPA Law), which stipulates that in cases committed by children for certain crimes, diversion must be attempted as an application of restorative justice. The definition of diversion is standardized in Article 1 number 7 of the SPPA Law, which states that diversion is the transfer of the settlement of juvenile cases from the criminal justice process to a process outside the criminal justice system. Therefore, restorative justice is a criminal justice system that supports the creation of a peaceful and just society, because the justice system is aimed at creating peace, not punishing.

The stages of handling criminal cases are carried out in a series of systems consisting of investigation (opspring), prosecution (vervolging), trial (rechtspraak), implementation of the judge's decision (executie), and supervision and observation of court decisions,³ known as the criminal justice system. The implementation of restorative justice in Indonesia is carried out by authorized institutions, manifested through various regulations by law enforcement agencies. Regulations on restorative justice in the police, as stipulated in Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice (hereinafter referred to as Perpol 8/2021), regulate the resolution of criminal acts based on restorative justice.

The principle of restorative justice in Article 6 paragraph (1) of Perpol 8/2021 is that there is peace between both parties (victim and perpetrator) and the fulfillment of the victim's rights and the perpetrator's responsibilities. and the successful resolution of a criminal act through restorative justice is in the form of termination of the investigation. so that the concept of resolving restorative justice at the investigation stage is to eliminate criminalization of the suspect, restore relations between the perpetrator and the victim and the community, with an emphasis on recovery of losses caused by the crime.

The practice that occurs is that the application of restorative justice that cannot be implemented or fails at the investigation stage will be attempted again at the Prosecution stage, namely as regulated in the Prosecutor's Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice (hereinafter referred to as PERJA 15/2020). Article 3 paragraph (1) of PERJA 15/2020, determines that the Public Prosecutor has the authority to close a case in the interests of law by implementing restorative justice with the conditions as in Article 4 of Perja 15/2020, which also means that the Public Prosecutor eliminates the criminal penalty for the Suspect. Failure to implement restorative justice at the prosecution stage means that the case transfer process is still carried out and at the trial the Judge will again attempt restorative justice based on Supreme Court Regulation Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice (hereinafter referred to as PERMA 1/2024) if the implementation of Restorative

Justice at the Investigation and Prosecution stage is unsuccessful. in its application it is different from the other two law enforcement agencies, as stipulated in Article 19 paragraph (1), that: "The peace agreement and/or willingness of the Defendant to be responsible for the losses and/or needs of the Victim as a result of the crime is a reason to mitigate the sentence and/or be considered for imposing a conditional/supervisory sentence in accordance with the provisions of the laws and regulations" This article emphasizes that even though peace has occurred between the defendant and the victim, it does not immediately stop the defendant's case process or eliminate the punishment, but the defendant still undergoes the trial process.

Restorative justice in the current national criminal law system has implicitly gained a normative basis through Law Number 1 of 2023 concerning the Criminal Code, although the law does not explicitly use the terminology of restorative justice. The provisions of Article 54 paragraph (2) of Law 1/2023 stipulate that the lightness of the act, the personal circumstances of the perpetrator, the circumstances at the time the crime was committed, and the circumstances that occurred after the crime was committed can be used as a basis for consideration for the judge not to impose a sentence or not to impose measures, while still paying attention to aspects of justice and humanity. This norm indicates a shift in the paradigm of punishment from a purely repressive approach to a more substantive and contextual approach, where recovery, accountability, and the concrete conditions of the parties are important factors in determining the criminal response.

The following are judges' decisions regarding the application of restorative justice in several courts in Indonesia:

1. Decision Number 35/Pid.B/2025/PN.Mar stated that Defendant Sovyan was sentenced to 8 months in prison after being proven to have hit the victim witness Fadli I. Hunou, who caught his wife. Although the victim had forgiven him, the judge still imposed the sentence based on legal considerations and trial facts.⁴
2. Decision Number 1/Pid.B/2025/PN.Tjg stated that Defendant Abdurrahman alias Acut bin Alm. Jastan stole a bag containing important items belonging to Witness Sofiatun alias Ibu Atun. Although the victim and the perpetrator have forgiven each other, the judge sentenced him to 10 months in prison. However, this sentence does not have to be served unless there is a different decision from the judge, because the convict committed another crime before the end of the one-year probation period.⁵
3. Decision Number 35/Pid.b/2025/PN.Tul stated that the defendant, Muhusin Ngabalin alias Morgen, hit the victim, Farid Abdul alias Farid, in the jaw. However, because they had reconciled outside of court, the judge ruled that justice had been served. Therefore, the judge sentenced him to 8 months in prison, but this sentence does not have to be served unless the judge later makes a different decision, because the convict committed another crime before the 10-month probation period was completed.⁶

² Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, (Jakarta: Kencana, 2014), h. 189.

³ Tolib Effendi, *Prinsip Oportunitas dalam Sistem Peradilan Pidana Indonesia, dalam buku Bunga Rampai Kejaksaan Republik Indonesia*, (Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2015), h. 322.

⁴ Lihat Putusan Nomor 35/Pid.B/2025/PN.Mar

⁵ Lihat Putusan Nomor 1/Pid.B/2025/PN.Tjg

⁶ Lihat Putusan Nomor 35/Pid.b/2025/PN.Tul

The main differences in the application of restorative justice at the investigation, prosecution, and court levels indicate a conflict of rules. The police and prosecutors believe that the success of restorative justice means the criminal process is stopped and no punishment is necessary, while the Supreme Court believes that restorative justice does not eliminate punishment, but rather is only a consideration in imposing conditional sentences or supervision.⁷ Differences in regulatory content create legal uncertainty. Police assume restorative justice means stopping the court process, but in reality, the process continues until a verdict is issued, which can be appealed. This leads to different interpretations of restorative justice.

The conceptual problem is that each stage of the criminal justice system has a different function. However, the main issue discussed in this paper lies not in these different functions, but rather in the differences in norms and institutional interpretations regarding the successful implementation of restorative justice.⁸ In practice, police and prosecutors assume that the success of restorative justice means the criminal process can be stopped and the case not proceeded to trial. Meanwhile, the Supreme Court argues that restorative justice does not erase criminal responsibility but is taken into account when sentencing. This difference creates conflict within the justice system, where one party wants to stop the process, but the court process must continue until a verdict is reached.

Conflicting regulations in restorative justice arrangements create a lack of legal certainty. This occurs because law enforcement agencies have differing understandings of restorative justice, thus affecting justice for the community, perpetrators, and victims. Based on the explanation above, a legal issue arises, which will be formulated as follows: Does the concept of restorative justice in the criminal justice system fulfill the principles of justice? Are restorative justice arrangements at every level of criminal case examination legally certain? And how should the concept of restorative justice arrangements in the criminal justice system be reformulated in the future?

Methodology

The type of research used is normative juridical. According to Peter Mahmud Marzuki, legal research is a process of discovering legal rules, legal principles, and legal doctrines to address the legal issues faced.⁹ The approaches used are the Legislative Approach, the Conceptual Approach and the Case Approach.

Discussion

1. The Concept of Restorative Justice in the Justice System

Justice has long been considered the primary goal of law. However, the concept of justice cannot be separated from the fact that it must be realized through law, not merely as a stand-alone abstract concept. Justice is not a fixed concept

that can be defined once and for all, but rather something that is constantly changing and dependent on how law and social institutions strive to realize it in everyday life.¹⁰ This dynamic character arises because justice must always be adapted to changing social conditions, the development of values in society, and new challenges that arise along with the complexity of modern life.

Discussions about the forms and methods of realizing justice have existed since the dawn of human philosophy. Typically, justice is concerned with the fair and balanced distribution of resources. Justice is a fundamental principle that applies to all people, regardless of their culture, social status, or political affiliation. Justice for everyone is achieved when they are treated equally and without bias toward any particular group.¹¹ Justice has a fundamental principle that must be firmly held in the actualization process, namely that the reality of absolute justice is assumed to be something universal and applies to all humans, nature and the environment, there must not be a monopoly by a handful of people.

The object of another party's rights in commutative justice is what belongs to a person from the beginning and must return to him in the process of commutative justice.¹² However, this classic Aristotelian dichotomy has a significant influence on the reality of criminal offenses, which not only harm relationships between individuals or between the state and its citizens, but also undermine the broader social order. This is where the concept of restorative justice emerges as a critique and complement to the limitations of both forms of Aristotelian justice.

Restorative justice emerged as a critique of the conventional criminal justice system, which focuses primarily on punishing perpetrators. This approach believes that criminal acts not only violate state law but also harm victims and damage relationships within the community. Therefore, restorative justice shifts the approach to resolving criminal cases from simply imposing punishment to helping restore harm and repair relationships. In this process, victims, perpetrators, and the community are all involved in seeking justice and a just solution for all parties.¹³ Restorative justice is a problem-solving approach that focuses on improving the situation of victims, perpetrators, and the community through dialogue to reach a peaceful agreement. This approach is more humane and can reduce the number of people imprisoned, ease the burden on the justice system, and strengthen the community's role in resolving legal issues.

The function of restorative justice is not a permanent function at all stages of criminal case investigation. Instead,

¹⁰ Afthonul Afif, Pemaafan, *Rekonsiliasi dan Restorative Justice*, Yogyakarta, Pustaka Pelajar, 2015, h. 341-342.

¹¹ Abdul Wahid, "Keadilan Restoratif: Upaya Menemukan Keadilan Substantif" *Jurnal Ius Constituendum*, Vol. 7, No. 2, 2022, h. 317.

¹² Riyadi, I. "Penanaman Budaya Antikorupsi Dalam Rangka Penanggulangan Korupsi di Indonesia". *Mandub: Jurnal Politik, Sosial, Hukum dan Humaniora*, Vol. 2, No. 2, 2024, h. 158.

¹³ Dedy Chandra Sihombing, dkk., "Penguatan Kewenangan Jaksa Selaku Dominus Litis sebagai Upaya Optimalisasi Penegakan Hukum Pidana Berorientasi Keadilan Restoratif", *Locus: Jurnal Konsep Ilmu Hukum*, Vol. 3, No. 2, 2023, h.66.

⁷ Brilian Capera, "Keadilan Restoratif Sebagai Paradigma Pemidanaan di Indonesia", *Lex Renaisan*, Vol. 6, No. 2, 2021, h. 226.

⁸ G. Widiartana, "Paradigma Keadilan Restoratif dalam Penanggulangan Kejahatan dengan Menggunakan Hukum Pidana", *Justicia Et Pax*, Vol. 3, No. 1, 2017, h. 3.

⁹ Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi*, (Jakarta: Prenada Media Group, 2017), h. 32.

this approach is typically used as a technical measure dependent on policy and interpretation. Therefore, the application of restorative justice often shifts from its primary goal of achieving justice to a practical means of resolving cases quickly, focusing more on efficiency than on restoring justice. This can be seen from the way criminal responsibility, on the one hand, is used as a reason to stop the case process and not prosecute, while on the other hand, it is only used as a mitigating factor or additional consideration in determining the sentence.¹⁴

Restorative justice aligns with local Indonesian values that emphasize deliberation, peace, and restoring social relations. Justice is not just about punishment, but about creating balance and harmony. This principle is suitable for application in the national criminal justice system, particularly through diversion mechanisms in the juvenile justice system, which prioritizes social justice and restoration over mere legal action. The restorative justice approach aims to repair the victims' losses, hold perpetrators accountable, and restore social relationships, emphasizing fair and equitable justice. In Indonesia, its implementation still faces significant challenges in effectively realizing these principles.

According to Lawrence M. Friedman's Legal System Theory, a legal system is effective when the elements of structure, substance, and legal culture work harmoniously. In Indonesia, the legal structure influenced by law enforcement institutions such as the police, prosecutors, and courts has not yet been unified, so restorative justice has not been fully integrated into the criminal justice system. Legal substance, including written rules, norms, and policies developed within legal practice, influences various interpretations of restorative justice. Unclear norms regarding its boundaries and impacts lead to differing understandings of restorative justice—as an alternative to punishment, a complement to criminal proceedings, or even a substitute for criminal accountability. Without clear and consistent legal regulations, this uncertainty will persist and hinder the effective implementation of restorative justice.

Legal culture, which reflects society's and officials' attitudes toward the law, is crucial for implementing restorative justice. In retributive societies, justice is seen mainly as punishing offenders, making officials hesitant to fully accept restorative justice if the community does not see it as legitimate. Restorative justice is a justice-focused approach in modern criminal law, requiring a shift in how law enforcement views crime and punishment. However, in practice, its regulations are scattered across various sectoral laws, hindering its ideal implementation.

The main problem lies not in the goals of restorative justice, but in the lack of clear regulations and differing interpretations by relevant institutions. Disparate regulations lead to uneven implementation and loss of meaning. Restorative justice must actively involve victims, perpetrators, and the community to achieve real value. Understanding the various process models is crucial for

regulations to truly implement these principles.¹⁵ According to James Digna, restorative justice is a values-based approach to resolving violations and conflicts by considering the interests of victims, perpetrators, and affected communities.

According to Tony F. Marshall, restorative justice is a process in which all parties are involved to resolve the impact of violations and prevent similar incidents, with four main elements: togetherness, involvement of all parties (including family and community), collective resolution without coercion, and a focus on consequences and prevention:

- a) VOM (Victim Offender Mediation): Direct mediation between the perpetrator and victim, facilitated by a neutral mediator. They negotiate compensation and restitution.
- b) Conferencing: Involves the perpetrator, victim, family, and other support groups from both parties. It is broader and helps create realistic agreements and provides emotional support.
- c) Circles: The most inclusive, involving law enforcement, community leaders, traditional leaders, religious leaders, and other parties. They sit in a circle of equals to resolve and restore relationships.¹⁶

Restorative justice must be participatory, voluntary, and give active participation to the victim and all parties, not just the authorities. If it relies solely on the authorities, the process is not fully restorative.

Restorative justice focuses on the legal values inherent in society. These values reflect a collective sense of justice derived from social practices, customs, and community legal awareness, which are not always reflected in legislation.¹⁷ Restorative justice prevents criminal law from becoming detached from its social context. This approach asserts that the effectiveness of law is determined not only by the severity of sanctions but also by the level of social acceptance and legitimacy of the law itself. The status of victims and perpetrators is placed proportionally in restorative justice.

2. Restorative Justice Arrangements at the Criminal Case Examination Level

Restorative justice is often viewed as a mechanism focused on efficient case resolution, rather than as a tool for achieving comprehensive justice. This difference in interpretation creates the risk of legal loopholes, necessitating clear regulatory frameworks. Restorative justice does not diminish criminal responsibility, but rather serves as an approach that remains grounded in basic criminal law principles in determining the form and

¹⁴ Otto Cornelis Kaligis, "Miscarriage of Justice dalam Sistem Peradilan Pidana: Perlunya Pendekatan Keadilan Restoratif", Pidato Pengukuhan Guru Besar, Universitas Negeri Manado, Sulawesi Utara, 2008, h.34.

¹⁵ Dennis Sullivan dan Larry Tifft, *Handbook of Restorative Justice: A Global Perspective*, (London dan New York: Routledge Taylor & Francis Group, 2006), h. 556.

¹⁶ Hafrida dan Usman. *Keadilan Restoratif (Restorative Justice) dalam Sistem Peradilan Pidana*. (Sleman: Deepublish, 2024.). h 42.

¹⁷ Martika Dini Syaputri Nany Suryawati, "Harmonization of the Application of Customary Law and Positive Law in Village Communities of Malang Regency," *International Journal of Applied Business and International Management (IJABIM)* Vol. 6, No. 2, 2021, h. 6.

direction of such accountability.¹⁸ The implementation of restorative justice in the Indonesian criminal justice system requires clear normative regulations regarding its status and impact at each stage of case examination: investigation, prosecution, and trial. Although each institution, such as the Police, the Prosecutor's Office, and the Courts, has explicitly adopted the restorative justice paradigm, there is still no consensus on its function and legal consequences.

The following explains the regulations regarding restorative justice in the Indonesian Police, the Prosecutor's Office, and the Supreme Court/Court.

a) Restorative Justice Regulations at the Indonesian National Police Level

Regulation 8/2021 stipulates that restorative justice can immediately end the investigation process if a peace agreement is reached between the perpetrator and victim. This success is considered a legal end, halting the criminal process and punishment, but it remains a valid legal mechanism, not an exemption from the law. The process of terminating an investigation based on restorative justice must comply with legal provisions and be carried out according to procedure, not on a unilateral initiative. Article 15 of Regulation 8/2021 requires a written request from the relevant party to an authorized National Police official, indicating that the termination is the result of mutual agreement.¹⁹ Parties who can submit an application include the perpetrator, victim, family, or related parties by attaching a peace letter and evidence of restoration of the victim's rights, ensuring that the peace is real and does not harm the victim, as regulated in Article 15 paragraph (3) of Perkap 8/2021.

b) Restorative Justice Regulations at the Indonesian Attorney General's Office level

Restorative Justice Regulations in the Prosecutor's Office, through Perka 15/2020, state that termination of prosecution must be based on the interests of the victim and the law, not automatically for serious crimes. Restorative justice applies to first-time offenders with a maximum sentence of five years, provided there is real recovery, verified reconciliation, and community support.²⁰ Regulation 15/2020 limits the use of restorative justice to prevent its misuse to avoid punishment, particularly for serious crimes such as drug, environmental, and corporate crimes. Avoiding stigma and revenge are considered controllable factors, not the primary reasons for discontinuing prosecution. An objective analysis of the crime must be conducted before implementing restorative justice, so not all crimes can be stopped through this mechanism, especially if

the crime is serious or has a high impact. The prosecutor's decision does not automatically follow the wishes of the parties in serious crimes.

c) Restorative Justice Regulations at the Supreme Court/Court level

Perma 1/2024 states that restorative justice at the Supreme Court level is only a consideration in sentencing, not a basis for case termination or eliminating criminal liability. Peace agreements and restitution serve to mitigate or influence sentencing but do not end the case or reduce the judge's authority to impose sentences. The following are the stages of case resolution based on restorative justice applicable at the Supreme Court/Court level:

1. Procedures for Adjudicating Criminal Cases Based on Restorative Justice

Article 6 of Supreme Court Regulation 1/2024 limits judges' authority to apply restorative justice selectively, prioritizing victim interests and justice integrity. It is not mandatory but only for cases with low social danger, limited impact, or special characteristics, serving as an exception rather than the main norm in sentencing.

2. Guidelines for Adjudicating Criminal Cases Based on Restorative Justice in Crimes Involving Victims

According to Article 7 of Supreme Court Regulation 1/2024, restorative justice for crimes involving victims requires the defendant's full confession of all acts, ensuring transparency and preventing manipulation. It can only be applied in cases without evidentiary disputes; otherwise, the case reverts to normal criminal procedures.

3. Restorative Justice Mechanisms Under the New Criminal Procedure Code

Law Number 20 of 2025 introduces a paradigm shift in Indonesia's criminal justice system by emphasizing restorative justice. The new Criminal Procedure Code shifts from a repressive to a rehabilitative approach, with Article 79 regulating the mechanism aimed at restoring the original state, focusing on redressing victims' losses rather than punishment.

The application of restorative justice in the Supreme Court, under Regulation No. 1/2024, is only a consideration, not a reason to terminate a case. Cases continue until a verdict is reached, and the reconciliation process is used to strengthen sentences. Regulation No. 1/2026 adds the role of the Chief Justice of the District Court to approve or cancel the termination of an investigation, as an oversight mechanism. Otto von Gierke stated that law develops from public awareness, so legal certainty stems not only from written norms but also from the values of justice that develop naturally.²¹ Legal certainty has a formal dimension, namely clarity and predictability of legal consequences, and a substantive dimension, namely the law's conformity to the values of justice, restitution, and humanitarian needs. These two dimensions are actually divided because states assign different legal meanings to peace, which, socially and morally, has the same substance.²²

During the examination stage in court, the judge acts as a facilitator and supervisor of the restorative mechanism.

¹⁸ Maidina Rahmawati et al, *Peluang dan Tantangan Penerapan Restorative Justicedalam Sistem Peradilan Pidana di Indonesia* (Jakarta Selatan: Institute for Criminal Justice Reform 2022), h. 65.

¹⁹ Roychan, W., Susanto, & Rohman, T. "Reformulasi Pengaturan Restorative Justice Dalam Sistem Peradilan Pidana di Indonesia". *Jurnal Magister Ilmu Hukum*, Vol. 13, No. 2, 2023, h. 62.

²⁰ Amin, Rahman, Muhammad Fikri Al Aziz, and Iren Manalu. "Penerapan Keadilan Restoratif Dalam Penyelesaian Perkara Kecelakaan Lalu Lintas Berat di Kepolisian Resort Metro Jakarta Pusat." *Krtha Bhayangkara*, Vol. 14, No. 1 (2020), h. 22.

²¹ *Ibid*, h. 83.

²² Kemi Anthony Emina, "John Rawls Concept of Person and Society: A Critique," *Pinisi*, Vol. 1, No. 3, 2021, h. 77.

Article 204 paragraph (7) of the New Criminal Procedure Code mentions the phrase "restoration of the original state", where the peace agreement is made with one of the conditions that the Defendant has restored the original state. However, there is an inconsistency in this regulation: Article 79 places the restoration of the original state as the goal to be achieved, while Article 204 paragraph (7) letter b of the New Criminal Procedure Code requires that such restoration must have occurred before the peace agreement is finalized. This difference in perspective as to whether restoration is the "ultimate goal" or "initial condition" has the potential to hinder the smooth process in court. The following is a judge's decision whose legal settlement used restorative justice:

1. Decision Number 35/Pid.B/2025/PN Mar stated that Defendant Sovyan hit witness Sovyan (wife) in a fit of rage after seeing suspect Fadli peeping at his wife while she was bathing. The defendant was sentenced to 8 months in prison after a settlement and an apology from the witness. Based on Articles 7 and 8 of Perma 1/2024, even though the defendant confessed and there was reconciliation and forgiveness from the victim, the judge still sentenced him to 8 months in prison and did not thoroughly examine the victim's recovery needs, so that the recovery aspect of restorative justice was not optimally reflected in the decision. The judge's role should not stop at recognizing the settlement, but also ensure that the agreement is realistic, proportionate, and truly guarantees the victim's recovery. In this case, although the settlement had been implemented, the judge did not use his authority to explore the possibility of adjusting the legal consequences in the form of a conditional sentence, supervision, or other forms of non-imprisonment that would be substantially more in line with the defendant's goal of recovery.
2. Decision No. 1/Pid.B/2025/PN Tanjungkarang stated that Defendant Abdurrahman Als. Acut bin Alm. Jastan, who stole the bag and its contents from the victim, Sofiatun, had fulfilled the requirements of Article 7 of Supreme Court Regulation 1/2024, namely, the defendant's full confession of all his actions and the absence of evidentiary disputes. The defendant clearly did not deny his actions, so this case does not contain any evidentiary conflicts. The trial was also marked by reconciliation and mutual forgiveness between the defendant and the victim, which the judge considered as mitigating factors in the verdict, in accordance with the principles of restorative justice. The judge sentenced him to 10 months in prison with a one-year probationary period, which will not have to be served unless a different sentence is later issued due to the defendant committing a crime before the probationary period expires. Substantively, the victim's presence and the resulting reconciliation demonstrate that the judge actively considered the victim's interests and was not merely a formality. This reconciliation is considered a relevant legal fact and does not conflict with the sense of justice. In fact, it is seen as an integral part of the criminal justice system, not simply an alternative mechanism. This voluntary and uncoerced peace agreement also does not obscure the material truth, so the application of restorative justice in this case is legally valid. This approach aligns with Article 18 of Supreme Court Regulation 1/2024, which allows judges

to use the peace agreement and the defendant's responsibility as the basis for imposing a conditional sentence, with the aim of enhancing rehabilitation and preventing recidivism, as well as expediting the victim's recovery proportionally.

At the police level, Chief of Police Regulation No. 8/2021 establishes restorative justice as the basis for final termination of investigations. This means that peace and restoration are considered sufficient to end a case, but this decision rests with the investigator, not the entire justice system. At the prosecutor's office, Regulation No. 15/2020 states that legal certainty only applies before a case goes to trial. Meanwhile, at the Supreme Court level, based on Regulation No. 1/2024, restorative justice is not used as a basis for termination of a case, but rather as a consideration in determining sentencing. In Circular Letter No. 1/2026, the Chief Justice of the District Court is given the authority to approve or cancel termination of investigations and prosecutions, so that within the police and prosecutor's offices, a court decision is still required to implement restorative justice.

The principles of restorative justice emphasize equal treatment between perpetrators and victims, a neutral facilitator, and an admission of guilt by the perpetrator as key requirements. This strong foundation for justice stems from John Rawls' theory, which states that justice is judged based on a primary norm that is considered more important than other norms. While the law must embody the value of justice, not all legal norms reflect justice. Rawls also rejected utilitarianism, which judges the rightness or wrongness of an action based on the greatest good for the greatest number of people. During the investigation and prosecution stages, restorative justice is final, ending the criminal process once the requirements are met. However, once a case goes to court, restorative justice is only a consideration for the judge, not a final decision.²³

The legal consequences for both the perpetrator and the victim remain unclear, even if the case is resolved through restorative justice. The same case can end differently depending on the stage of the investigation. This is because the legal procedures for assessing the case differ between stages and between agencies within the criminal justice system. At the investigation and prosecution levels, a fully implemented restorative agreement is constructed as the basis for a final and binding termination of the criminal process, so that the criminal legal relationship between the perpetrator and the state is deemed to have ended by law.

The absence of normative standards regarding restorative justice is not only a regulatory issue, but also a conceptual one that touches on fundamental aspects of the criminal justice system. As long as restorative justice is positioned as an alternative policy dependent on institutional interests, the goal of establishing a recovery-based justice paradigm will be suboptimal. Therefore, there is a need to reformulate the regulation of restorative justice as an integral part of criminal procedural law, with a clear position, function, and legal consequences at every stage of the judicial process.

²³ Rizki Maulana Azhar. "Keadilan Restorative Justice Sebagai Upaya Mewujudkan Peradilan Yang Humanis". *Amnesti: Jurnal Hukum*, Vol. 4, No. 2, 2022, h. 115.

3. Reformulation of the Concept of Restorative Justice Regulations in the Criminal Justice System in the Future

One development in criminal law in Indonesia is the restorative justice approach. This approach uses criminal law as a means to repair and restore the situation after a crime or offense has occurred. Unlike retributive justice, which emphasizes retribution without focusing on the recovery of the victim or perpetrator, restorative justice focuses on restoration and justice, addressing social and humanitarian aspects.²⁴ The concept of restorative justice is a new approach to resolving criminal cases or crimes. This approach, known as restorative justice, differs from the traditional criminal justice system. Restorative justice emphasizes the direct participation of all parties involved, including victims, perpetrators, their families, and the community, in the process of resolving crimes or criminal cases.

The concept of restorative justice differs from the traditional criminal justice system and in Indonesia faces challenges due to regulatory disharmony between law enforcement agencies. The lack of a single standard leads to differing interpretations, making restorative justice regulatory reform crucial within the criminal justice system. The ideal concept of restorative justice in Indonesia lies not in favoring one stage, such as investigation, prosecution, or trial, but rather in standardizing legal consequences across all stages uniformly. Currently, all three stages implement restorative justice with varying mechanisms, but the most fundamental and problematic difference lies in the legal consequences, not the mechanisms. The Indonesian National Police, through Chief of Police Regulation (Perkap) 8/2021 and the Attorney General's Office (Perja) 15/2020, have already adopted restorative justice as a basis for final case dismissal. Meanwhile, the Supreme Court, through Perma 1/2024, only considers restorative justice a mitigating factor in sentencing. This situation cannot be allowed to continue, as it creates legal uncertainty, substantive injustice, and fragmentation of the criminal justice system.

Restorative justice according to the new Criminal Procedure Code has the same core as that regulated by Regulation of the Chief of Police 8/2021 and Regulation of the Chief of Police 15/2020. According to Article 1 number 21 of the Criminal Procedure Code, restorative justice is an approach to handling criminal acts that involves all related parties, such as the victim, the victim's family, the suspect, the suspect's family, and other parties, with the aim of restoring the situation to its original state. Article 79 paragraph (1) of the new Criminal Procedure Code explains the forms of this restoration, such as forgiveness, returning goods, reimbursing medical costs, paying compensation, or repairing damage. Restoration must be outlined in an agreement signed by all parties and implemented within a maximum of 7 days. A complaint can only be withdrawn after the perpetrator fulfills the agreement. If all agreements are implemented, the case must be stopped and decided by the court. If not, the investigator must prepare a report containing the identity of the parties, the contents of the agreement, evidence of implementation, and the reasons for

its failure. This report becomes part of the case file and is used as a basis for continuing the judicial process.

In the New Criminal Procedure Code, the restorative justice mechanism is at the investigation stage, according to Article 79 paragraph (8) letters a and b. This regulation states that restorative justice is carried out during the investigation and inquiry through an agreement to resolve the case before the investigator. This agreement is made in a letter signed by the perpetrator, victim, and investigator. Based on this letter, the investigator issues a letter terminating the investigation and inquiry. This letter of termination is then notified to the Public Prosecutor and submitted to the district court for a decision, no later than three days after the letter is issued.

At the prosecution stage, the restorative justice mechanism is facilitated by the public prosecutor at the Prosecutor's Office, in accordance with Article 85 paragraph (1) of the Criminal Procedure Code. This mechanism is implemented through an agreement to settle the case before the public prosecutor, evidenced by a letter signed by the suspect, victim, and public prosecutor. The public prosecutor then issues a letter terminating the prosecution. This letter must be submitted to the district court within a maximum of three days and then issued by the chief justice.

During court proceedings, the judge acts as a facilitator and supervisor of the restorative justice mechanism. If this mechanism cannot be implemented during the investigation, inquiry, and prosecution, it can be implemented during the trial through a court decision and its implementation. Therefore, restorative justice is implemented not only before the trial but also throughout the judicial process until the final verdict. Court decisions not only punish the perpetrator but also focus on restoring the relationship between the perpetrator, victim, and community. Judges are given the opportunity to consider peaceful resolution and restitution, provided they comply with the law.

According to Sudarto, reformulation in criminal law policy is a conscious, rational, and planned effort to create sound criminal regulations. These regulations must not only be formally valid but also be in accordance with social conditions, prevailing values in society, and the legal objectives to be achieved within a given period. This reformulation is not simply a matter of technically changing the wording of regulations, but must be understood as a strategic state policy, implemented by authorized institutions to determine the direction of criminal law development.²⁵

Based on the thinking of Sudarto and Marc Ancel, the reformulation of restorative justice as formulated is theoretically and normatively inevitable in criminal law policy. According to Sudarto, criminal law policy is a conscious state policy to formulate good criminal law, in line with social values and legal objectives, so that the formation of criminal law should not be sectoral, partial, or left to the institutional discretion of law enforcement. The explicit placement of restorative justice in criminal procedure law is a direct manifestation of rational criminal law policy, because criminal procedure law as public law demands certainty, uniformity, and the same binding force for all law enforcement officials. As long as restorative justice is only regulated through internal regulations of the

²⁴ Raden Sinambela, Dian Anggraini, dan Junifer Dame Panjaitan. "Transformasi Fundamental Sistem Peradilan Pidana: Restorative Justice dan Perlindungan Hak Korban Dalam KUHP Nasional". *Causa: Jurnal Hukum dan Kewarganegaraan*, Vol. 15, No. 6, 2025, h. 92.

²⁵ Ayu Agustin dan Achmad Sulchan. "Dualisme Keadilan Retributif dan Restoratif dalam Sistem Peradilan Pidana Indonesia". *Jurnal Sosial Teknologi*, Vol. 5, No. 10, 2025, h. 3991.

police, prosecutors, or the Supreme Court, its systemic position will always be below national criminal procedure law and treated as a discretionary policy, so that its meaning and legal consequences are variable and difficult to predict. This condition contradicts Sudarto's idea that criminal law must be designed in a unified policy design to be able to guarantee certainty and justice.

Marc Ancel's thinking emphasizes that criminal law policy is both a scientific discipline and an art form for formulating criminal law rationally and with a goal in mind. Criminal law must be structured so that the entire law enforcement process—investigation, prosecution, and trial—is carried out within a consistent policy.²⁶ The principle of equality of legal consequences in restorative justice must be affirmed normatively, so that the achieved recovery outcome determines the legal consequences, not the procedure. If victim recovery, perpetrator accountability, and social balance are met, there is no reason to treat cases differently based on the forum or phase of the investigation. An ideal restorative justice reformulation must meet three main characteristics:

1. The policy must provide equal space for the interests of victims, perpetrators, and society, not just the interests of the state.
2. The legal consequence of a successful restorative process should be restoration, not punishment or retribution. If the victim has been restored, the perpetrator has been held accountable, and society has accepted the perpetrator, then there is no justification for continuing to impose criminal penalties.
3. The policy must be consistent across all stages of criminal case investigations, because the value of restorative justice does not change simply because a case moves from investigation to prosecution or to trial.

First, the main foundation of reformulation, the determination of the position of restorative justice must be carried out by placing it firmly as an integral part of national criminal procedural law which is regulated directly in the law, no longer depending on internal regulations of law enforcement agencies or administrative policy instruments that are sectoral and partial. Normative placement in the law has a strategic meaning because criminal procedural law, as a public law that regulates the relationship between the state and citizens in the context of criminalization, demands certainty, uniformity, and the same binding power for all law enforcement officers.²⁷ As long as restorative justice is regulated solely through police regulations, prosecutorial regulations, or Supreme Court regulations, its systemic position will always be subordinate to national criminal procedure law and will tend to be treated as a discretionary policy that can be used or set aside according to the institutional interests of each institution. This condition conceptually positions restorative justice not as a binding legal norm, but rather as a flexible administrative instrument, making its meaning and legal consequences inconsistent and difficult to predict.

Restorative justice needs to be constructed as a distinct criminal procedural law regime with a clear normative identity, both in terms of function, application parameters, and resulting legal consequences. As a procedural law regime, restorative justice must be understood not simply as

a method of resolving cases, but as a legal mechanism that regulates how the state exercises its criminal authority once the goal of restoration has been achieved.²⁸ The function of restorative justice is to end criminal conflicts through just recovery, not simply to expedite case resolution or reduce the burden on judicial institutions. Restorative justice must have measurable normative parameters, such as the types of crimes that can be resolved, the quality of victim recovery, the form of perpetrator accountability, community involvement, and the guarantee that restorative agreements are made voluntarily and free from coercion. These parameters must be explicitly formulated in law to serve as a single reference for all law enforcement agencies.²⁹

The construction of restorative justice as a criminal procedural law regime must be accompanied by an affirmation of legal consequences that span across stages, from investigation and prosecution to court hearings. This means that if the normative requirements of restorative justice have been met and the restoration has been fully implemented, the resulting legal consequences must be consistent, namely the legal and final end of the criminal process, without distinction based on the procedural stage of the case.³⁰ This affirmation is important to avoid a situation where restorative justice has full binding power during the pre-trial phase, but loses its normative significance once the case has entered the adjudication phase. In a rational legal system, the legal consequences of a case resolution mechanism should be determined by the substance of the justice achieved, not by differences in forums or phases of the examination.

The inclusion of restorative justice in the law also serves to end the normative differences that have been a major source of legal uncertainty. These differences are reflected in the construction of restorative justice between agencies, where the police and prosecutors position it as the basis for final case termination, while the courts only consider it as a non-determining consideration.³¹ This lack of synchronicity not only creates disparities in the treatment of similar cases, but also creates conceptual tension within the criminal justice system, as the same mechanism produces different legal consequences depending on the institution implementing it. By making restorative justice part of national criminal procedural law, all law enforcement agencies are forced to adhere to the same normative construct, eliminating any room for institutional interpretations that deviate from the systemic design.

Concretely, the regulations in the law must contain provisions which explicitly state that restorative justice is a legitimate way of ending a criminal process, with a status equal to a court decision within certain limits.³² Judges are no longer positioned merely as those who "consider" the results of restorative justice, but rather as the final verifier of whether normative standards of restitution have been met. If

²⁸ Deni Ardiansyah dan Marzuki Noor. "Peningkatan Sumber Daya Manusia Polri Sebagai Kunci Keberhasilan Restorative Justice". *The Juris*, Vol. 8, No. 2, 2024, h. 484.

²⁹ *ibid*, h. 484.

³⁰ *ibid*, h. 485.

³¹ Eko Ari Wibowo, dkk, "Kebijakan Formulasi Hukum Terhadap Restorative Justicedi Indonesia Dalam Korelasi Hukum Progresif," *Jurnal Serambi Hukum*. Vol. 19, No. 01, 2026, h. 110.

³² *ibid*, h. 110-111.

²⁶ *ibid*, h. 311.

²⁷ *ibid*, h. 57.

these standards are met, judges have the legal authority to declare the case legally settled.

Second, the reformulation of the concept of restorative justice must firmly place the principle of equality of legal consequences as a binding principle that applies to all stages of criminal case investigations, so that restorative justice is no longer understood as a mechanism whose binding power changes according to procedural flow, but rather as a substantive legal instrument whose consequences are determined by the quality of the recovery that has been achieved. If recovery has been implemented in its entirety, which normatively includes compensation or restitution of the victim's losses, an admission of guilt and real responsibility from the perpetrator, and the restoration of the social balance disturbed by the crime, then the legal consequences that arise must be equal and binding, whether the restorative justice is applied at the investigation, prosecution, or court examination stages.

Restorative justice should not be determined by when or in which forum the mechanism is implemented, but rather by the fulfillment of normative standards of recovery that are explicitly formulated in law as an objective measure of the success of restorative justice. Criminal procedural law no longer differentiates the legal value of peace based on procedural entry points, but rather assesses the substance of justice that has been realized, so that every case that is factually and normatively similar receives equal legal consequences.³³ This affirmation of the principle of equality of legal consequences directly strengthens legal certainty, because the parties can rationally predict the consequences of the restorative resolution options they choose, while simultaneously closing the space for disparities in treatment that have arisen due to differences in the stages of application of restorative justice.

Third, restorative justice regulations must be realized through the establishment of a single normative standard that applies nationally and binds all law enforcement officials without exception, so that there are no longer differences in interpretation, procedures, or legal consequences between institutions and between stages of the criminal justice process. This normative standard must be formulated comprehensively in law as part of criminal procedural law, objective criteria regarding the level of seriousness of the offense, the value of the loss, and the resulting social impact.³⁴ Furthermore, the standard must include normative measures regarding the quality of reparation, which is assessed not only by the existence of formal reconciliation but also by actual reparation of the victim's losses, the fulfillment of the victim's psychological and social needs, and the restoration of the balance of disturbed social relations. The victim's status and consent must be considered as essential conditions, free, conscious, and without coercion.

Restorative justice regulations restructure the authority structure among law enforcement actors in determining,

testing, and establishing the legal consequences of restorative justice to create a coherent and integrated stream of authority. The discretion of investigators and public prosecutors needs to be positioned as a limited and measurable initial authority, which can only be exercised as long as it meets the normative parameters that have been limitedly determined by law, and is subject to effective judicial oversight and ratification mechanisms.³⁵ Such discretion should not stand as a final decision that is completely closed to testing, but rather should be able to be tested objectively based on clear legal criteria regarding the type of crime, the quality of the recovery, the victim's consent, and the form of the perpetrator's responsibility.

The concept of restorative justice consequently demands a comprehensive harmonization of the internal regulations of law enforcement agencies and national criminal procedural law as a unified and coherent normative system. Police Regulations, Prosecutor's Office Regulations, and Supreme Court Regulations should no longer be formulated based on the logic of their respective sectoral authorities, but rather should be designed and interpreted within a common conceptual framework with direct reference to general, binding, and cross-institutional criminal procedural law norms. Policy instruments such as the Supreme Court Circular Letter should serve as an integrative tool that bridges the application of restorative justice across all stages of the criminal process, rather than reinforcing the dichotomy of legal consequences between the final pre-trial stage and the non-final adjudication stage. This will ensure legal certainty and ensure the fulfillment of justice.

Conclusion

1. The concept of restorative justice in the Indonesian criminal justice system does not fully meet the principles of justice, as there are still differing interpretations of restorative justice-based legal resolutions among law enforcement agencies. This is due to the lack of a common conceptual framework that serves as the primary reference for restorative justice resolutions. Therefore, restorative justice resolutions lack uniform binding force at every stage of the criminal justice process, creating room for disparities in legal treatment and uncertainty in the outcomes of cases resolved based on restorative justice.
2. The current regulation of restorative justice in the Indonesian criminal justice system does not provide legal certainty, as the legal application of law varies between the police, the prosecutor's office, and the Supreme Court in resolving cases for perpetrators and victims. This difference touches on a fundamental aspect: whether the success of restorative justice results in the termination of the criminal case or is merely a consideration in sentencing.
3. Future reformulation of restorative justice regulations in the criminal justice system must be directed toward the formation of a unified, coherent, and binding normative design for each law enforcement agency, from the police, the prosecutor's office, to the Supreme Court. Restorative justice needs to be repositioned from a discretionary alternative policy to an integral part of national criminal procedure law, regulated directly by law. This encompasses the types of crimes that can be

³³ Moh Thamsir, Bahrul Ulum, Robi'atul Adawiyah, "Reformulasi Peran Kejaksaan dalam Penyidikan Tindak Pidana Korupsi Berdasarkan Prinsip Keadilan Islam" *Jurnal USM Law Review*, Vol. 8, No. 3, 2025, h. 1275.

³⁴ Syaifullah Noor, Kamil Ismail Banapon, Tamboa Ketum Levis, "Distorsi Praktik Restorative Justice dalam Penegakan Hukum Pidana di Indonesia" *Peradaban Hukum Nusantara*, Vol. 2, No. 1, 2025, h. 24.

³⁵ *ibid*, h. 26.

resolved restoratively, the quality and form of victim recovery, the form of perpetrator accountability, and the victim's freely given consent without coercion.

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