

# THE VALUE OF POLICE RESTORATIVE JUSTICE IN CRIMINAL RESOLUTION IN INDONESIA

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## Abstract

The restorative justice approach is an alternative in resolving criminal acts that emphasizes the restoration of social relations. The police, as the spearhead of law enforcement, have a crucial role in implementing the values of restorative justice in Indonesia. The problems faced in this paper are how the police value restorative justice in resolving criminal acts in Indonesia, how the legal certainty of restorative justice by the police in resolving criminal acts in Indonesia, and how restorative justice is formulated in Law Number 2 of 2002 concerning the Indonesian National Police. The research method used in this study is normative juridical legal research. The approaches used are conceptual and statutory approaches. The technique for collecting legal materials is a literature study, while the technique for analyzing legal materials in this study is a qualitative analysis using deductive reasoning. The research findings show that the implementation of restorative justice by the police reflects the principles of legality and due process of law in the Indonesian criminal justice system. Police Regulation No. 8 of 2021 provides a normative basis for out-of-court settlements through fair and transparent procedures. Police discretion can be applied in certain cases, particularly minor cases or those involving vulnerable groups, as long as it complies with legal provisions and the principle of accountability. Although Law No. 2 of 2002 does not explicitly regulate restorative justice, its spirit is reflected in the protection and service functions of the National Police. With an integrative and humane approach, restorative justice can become part of a legal system that guarantees the protection of rights, victim recovery, and the just prevention of crime.

**Keywords:** Value, Police Restorative Justice, Criminal Resolution, Indonesia.

## INTRODUCTION

Criminal law enforcement in Indonesia has tended to emphasize a retributive approach, namely punishing perpetrators as a form of retribution for their actions. This model positions the state as the primary actor in resolving criminal conflicts, while neglecting the role of victims and perpetrators in the resolution process. In practice, this approach often fails to provide comprehensive reparation, especially for victims and affected communities.

In response to the limitations of the conventional criminal justice system, a restorative justice approach was developed, which aims to create justice by involving perpetrators, victims, and the community in finding solutions to the consequences of criminal acts that have occurred. This approach emphasizes social restoration and resolution based on dialogue, responsibility, and voluntary peace. Restorative justice prioritizes not only punishment but also rehabilitation and social reintegration of perpetrators.

The Indonesian National Police (Polri), as the vanguard of the law enforcement system, plays a strategic role in the implementation of restorative justice, particularly during the investigation and inquiry stages. Indonesian National Police Regulation Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice marks a significant milestone in formalizing restorative justice values within the police force. This regulation empowers the Polri to terminate investigations in certain cases if restorative requirements are met, such as reconciliation between the perpetrator and victim and the absence of widespread social impact.

However, in its implementation, the police's application of restorative justice still faces various challenges, such as inconsistent interpretations, limited technical guidelines, and the potential for abuse of discretion. Furthermore, the lack of explicit norms in the Police Law governing the principles of restorative justice also impacts the legal certainty of its implementation.

Seeing the importance of integrating restorative justice values into a humanistic criminal justice system, this journal aims to analyze the role and challenges of the police in implementing restorative justice, as well as to evaluate the extent to which these justice values can be concretely realized in resolving criminal acts in Indonesia. Based on the description in the background section above, the formulation of the problem is:

1. How is the legal certainty of restorative justice provided by the Indonesian police in resolving criminal cases?

2. How is restorative justice formulated in Law Number 2 of 2002 concerning the Indonesian National Police?

## RESEARCH METHODOLOGY

The type of research in this writing is normative juridical legal research. The specifics of this research are descriptive and analytical, aiming to provide a comprehensive overview and uncover legal facts. This legal research employs library research as a data collection technique based on legal and non-legal materials. The research employs conceptual and legislative approaches. The legal material analysis technique employed is qualitative analysis, involving the collection, selection, and interpretation of legal and non-legal materials obtained through library sources and events that constitute legal issues, to arrive at conclusions or prescriptions.

## RESULTS AND DISCUSSION

### **Legal Certainty of Restorative Justice by the Police in Criminal Resolution in Indonesia**

Legal certainty is a fundamental principle in the Indonesian legal system, which emphasizes that every exercise of state power, including criminal law enforcement, must be based on applicable law and provide fair protection for every citizen. In this context, restorative justice implemented by the police must operate within legal boundaries, providing not only legitimacy but also ensuring substantive justice for victims, perpetrators, and the community.

The implementation of restorative justice in the resolution of criminal cases by the police has received formal legality through the Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice. This regulation emphasizes that investigators can resolve cases outside the formal justice system under the following conditions: a peace agreement between the victim and the perpetrator, the perpetrator has not been previously convicted, the crime is not a serious crime, and the penalty does not exceed five years in prison. The presence of this regulation strengthens the legality of the restorative approach implemented by the police, as part of the expansion of alternative dispute resolution mechanisms within the criminal justice system.

However, a fundamental issue that arises is the extent to which these legal instruments can guarantee legal certainty. Legal certainty is not simply based on the existence of regulations, but also on the compliance of authorities in their implementation, consistency of application, and strict oversight of investigators' use of discretionary authority. Without a strong accountability framework, a restorative approach has the potential to create uncertainty and injustice, particularly if the peace process is exploited as a transactional commodity or a form of impunity for perpetrators.

Another problem is that the legal basis for restorative justice remains sectoral and administrative in nature, not yet comprehensively regulated in national legislation such as the Criminal Procedure Code or the Criminal Justice System Law. This leads to disparities in handling across jurisdictions, as implementation is highly dependent on the institutional policies of each police unit and the capacity of officers in the field. In this regard, strengthening norms within the higher hierarchy of laws and regulations is an urgent need to ensure legal certainty, equality before the law, and non-discrimination in the restorative case resolution process.

Therefore, legal certainty in restorative justice can only be achieved through synergy between normative and practical aspects. Normatively, national criminal law reform is needed to explicitly regulate restorative justice as part of a legitimate criminal procedure system and equal to formal litigation. Meanwhile, from a practical perspective, it is necessary to increase the capacity of investigators, standardize restorative case resolution procedures, and provide monitoring and evaluation mechanisms to ensure that every application of restorative justice is carried out accountably and in accordance with the principles of legal justice.

Thus, the legal certainty of restorative justice by the police will significantly contribute to the creation of a more inclusive, humane, and recovery-oriented criminal justice system, as long as this approach is carried out with transparency, fairness, and a strong legal basis. This also represents a concrete manifestation of the rule of law, which upholds the principle of social justice in every law enforcement process.

The strategic move to make restorative justice a pillar of criminal justice practice is not merely a policy choice, but rather an urgent need to address the limitations of the conventional criminal justice system, which places too much emphasis on retributive justice and formalistic proceduralism. Within the national legal framework, the emphasis on restorative justice by the police marks a paradigm shift from a repressive approach to a more humanistic, inclusive, and socially rehabilitative approach. Legal certainty regarding the implementation of restorative justice by the police will significantly contribute to the establishment of a criminal justice system that prioritizes not only punishment but also ensures that all legal processes deliver substantive justice for all parties, especially victims and perpetrators of crime.

The legally regulated application of restorative justice is not simply an innovation in criminal case resolution mechanisms, but rather a fundamental transformation in how we view law and justice itself. By strengthening the

positions of victims and perpetrators and encouraging deep reconciliation, restorative justice makes a tangible contribution to the restoration of social harmony, the primary goal of a just and humane criminal justice system. In practice, restorative justice has begun to be adopted by law enforcement agencies such as the police, prosecutors, and courts. Mechanisms such as judicial termination of investigations, diversion, and penal mediation are instruments for its implementation. For example, the Indonesian National Police (Polri), through National Police Regulation No. 8 of 2021, has established a criminal case resolution system involving victims, perpetrators, families, community leaders, and facilitators in a voluntary deliberation forum that prioritizes recovery. Cases such as minor assaults, minor thefts, or domestic violence without serious injuries are often resolved through this approach.

Restorative justice emerges as an alternative paradigm in criminal case resolution, emphasizing efforts to restore social relations between the perpetrator, victim, and community. From this perspective, case resolution does not solely rely on punishing the perpetrator (retributive justice), but rather focuses on dialogue, active participation by all parties, and comprehensive recovery from the impacts of the crime. As an approach increasingly accepted in various legal systems worldwide—including Indonesia—restorative justice has several key principles that must serve as a reference in its implementation within the criminal justice system.

The first principle is restoration. This restoration addresses not only material losses but also the emotional, psychological, and social damage experienced by victims. The recovery process must be holistic, taking into account the victims' needs to feel safe, heard, respected, and acknowledged for their suffering. Within this framework, the resolution of criminal cases should not be limited to sentencing alone, but must also provide a space for victims to obtain true justice.

The second principle is voluntary participation. All parties involved in the restorative process victims, perpetrators, and the community (including families and traditional/religious leaders) must be actively and voluntarily involved. There should be no coercion in this process, as restorative justice can only be achieved through openness and a willingness of all parties to communicate and find solutions together. This participation allows victims to express their perspectives, perpetrators to understand the impact of their actions, and the community to play a role in healing.

The third principle is perpetrator accountability. In restorative justice, perpetrators are not absolved of responsibility for the crimes they have committed. Instead, perpetrators are encouraged to acknowledge their actions, understand the consequences of their actions on the victim and the community, and strive to repair the damage caused. This accountability does not take the form of punishment alone, but rather constructive accountability such as apologies, compensation, community service, or other forms of agreement agreed to by all parties.

The fourth principle is the prevention of further conflict and social reintegration. Restorative justice goes beyond resolving the case; it also aims to prevent revenge, subsequent conflict, and social alienation. Therefore, the restorative process is aimed at reconciliation between the perpetrator and the victim and the perpetrator's reintegration into society. This is crucial for breaking the chain of crime, which often stems from social exclusion and disconnection within the community.

The fifth principle is the recognition of contextual and substantive justice. Restorative justice respects local values, customary norms, and community wisdom, which can serve as sources for peaceful dispute resolution. This is particularly relevant in Indonesia's pluralistic and multicultural context. As long as these norms do not conflict with human rights and national legal principles, community-based resolutions can be used as a means to achieve more contextual and down-to-earth justice.

In the Prosecutor's Office, the implementation of SEJA 15/2020 allows prosecutors to discontinue prosecution of cases based on restorative justice considerations if certain conditions are met, such as: reconciliation between the victim and the perpetrator, the losses have been recovered, and the perpetrator is not a repeat offender. This measure not only eases the burden on the judicial system but also creates space for more humane and efficient justice. However, its implementation still faces challenges, such as a lack of understanding among law enforcement, the absence of an integrated database system, and the failure to develop a legal culture that supports a dialogical process between victims and perpetrators.

The paradigm shift from a repressive to a restorative approach has had a significant impact on national criminal law reform. Philosophically, restorative justice broadens the goals of criminal law from mere retribution and deterrence to the restoration of social relations damaged by criminal acts. This aligns with the goals of law, as stated by Gustav Radbruch, namely justice, certainty, and legal benefit.

Sociologically, restorative justice responds to societal dynamics that do not always fit neatly into the formalities of the conventional criminal justice system. In a communal society that values deliberation, such as Indonesia, the restorative approach becomes more relevant and contextual. Legally, restorative justice encourages reforms in legal structures and procedures, for example in the form of:

1. Penal mediation institutions
2. Customary-based criminal deliberation forums
3. The active role of community leaders and legal facilitators

**Thus, the implementation of restorative justice is an integral part of the *ius constituendum* in reforming the national criminal law system**

Despite legal legitimacy and institutional support, the implementation of restorative justice in Indonesia is not yet fully optimal. Some of the main challenges faced include:

1. The absence of a legal umbrella at the level of a law that regulates restorative justice in general (unification of restorative law is still partial).
2. Limited capacity of human resources (law enforcement officers and facilitators) in understanding restorative principles and techniques.
3. The potential for abuse of authority by law enforcement officials if not balanced by oversight mechanisms and public participation.

Nevertheless, the future prospects are wide open, especially with the support of civil society, academics, and international institutions that continue to push for the adoption of restorative justice in national law. Ongoing criminal law reform through revisions to the Criminal Code and the Criminal Procedure Code can also provide momentum for the systemic inclusion of restorative principles. It is clear that restorative justice, both normatively and in its implementation, makes a significant contribution to efforts to reform the criminal justice system in Indonesia. This approach offers solutions to the limitations of the conventional system by emphasizing participation, restoration, and reconciliation. Through recognition in legislation and implementation by law enforcement officials, restorative justice paves the way for a more humane, inclusive, and effective criminal justice system in achieving the ultimate goals of justice.

**Formulation of Restorative Justice in Law Number 2 of 2002 concerning the Republic of Indonesia National Police**

Restorative justice offers a radically different paradigm from the current system. This approach shifts the focus from "who did wrong and how to punish them" to "who was hurt, what their needs are, and who has a responsibility to fix them."

1. The essential pillars of restorative justice include:
2. Acknowledgment of responsibility by the perpetrator as a prerequisite for a peaceful resolution;
3. Reparation for the victim's emotional, social, and material losses;
4. Dialogue and active participation of all parties, including the community;
5. Social reintegration of the perpetrator, by preventing long-term stigmatization;
6. Strengthening local values and community wisdom as the basis for conflict resolution.
7. Thus, this approach not only resolves conflicts legally but also repairs damaged social relationships, rebuilds trust, and creates a real sense of justice within the community.

To encourage the transformation of the criminal justice system through a restorative justice approach, the following strategic steps are required:

1. Reformulating criminal legislation by incorporating restorative justice principles into the Criminal Code (KUHP) and the Criminal Procedure Code (KUHP);
2. Institutionalizing the penal mediation process through collaboration between law enforcement officials, community leaders, and independent facilitators;
3. Strengthening the capacity of human resources, particularly the police, prosecutors, and judges, to understand and implement the restorative approach;
4. Integrating traditional approaches and local values, such as village deliberations, into restorative mechanisms;

**Increasing public legal awareness through participatory and ongoing legal education.**

Within this reform framework, it is necessary to reposition the role of law enforcement institutions from exclusive authority to facilitators of justice. This means that the police, prosecutors, and judges no longer act as sole determinants of legal destiny, but rather as facilitators of dialogue between perpetrators, victims, and the community. Meanwhile, the community should not be viewed as outsiders to the legal system. Instead, they must be the legitimate owners of the conflict resolution process, especially in the context of crimes that directly impact community life.

Reform of the criminal justice system in Indonesia will never be complete if it remains stuck solely in procedural aspects. True reform requires a shift in perspective on justice itself—from justice as retribution to justice as restoration. Within this framework, restorative justice plays a key role. By making restorative justice a pillar of reform, Indonesia is not only improving its legal system from a procedural and substantive perspective, but also revitalizing legal awareness rooted in local values. In this context, communities are positioned not merely as objects of law, but as active subjects who contribute to determining the direction of conflict resolution. Criminal resolution no longer relies solely on punishment, but also on restoring social relations, acknowledging the suffering of victims, and holding perpetrators accountable for their actions.

Furthermore, restorative justice-based conflict resolution is essentially a form of community-based criminal law reform, placing communities at the center of conflict resolution efforts. With increased public awareness of restorative justice, a new legal culture is emerging that favors the restoration of social relations and the recognition of humanitarian values. It is clear that the formulation of restorative justice in Law Number 2 of 2002 concerning

the Indonesian National Police is not explicitly stated as a binding legal principle or mechanism. However, the spirit of restorative justice is implicitly reflected in several general norms, such as the function of protection, care, and service to the community stipulated in Article 13, and the principle of respect for human rights stipulated in Article 1. **These norms demonstrate that the police's duties are not merely repressive, but also preventive and humane.**

The discretionary authority granted to members of the Indonesian National Police under Article 18 paragraph (1) creates a legal loophole that can be exploited as a basis for implementing a restorative approach. However, without detailed regulations regarding the conditions, limitations, and mechanisms for restorative justice-based discretion, this has the potential to lead to deviations in the implementation of duties, particularly in terms of accountability and oversight.

In practice, the Indonesian National Police (Polri) has issued National Police Regulation Number 8 of 2021 as an operational instrument for implementing restorative justice. However, because it falls within the hierarchy of regulations below the law, it lacks the same legal force as a statute and relies on commitment to its implementation. Therefore, the lack of explicit formulation in the Police Law creates a legal vacuum in the context of reforming the criminal justice system based on restorative justice.

Therefore, a reformulation of Law Number 2 of 2002 is necessary to explicitly incorporate normative provisions regarding restorative justice. This is crucial to strengthen the legal basis, ensure certainty and uniformity of application, and encourage a paradigm shift in law enforcement by the police from a retributive approach to a more humane, participatory approach oriented toward social restoration.

In the hierarchy of Indonesian laws and regulations, according to Law No. 12 of 2011 concerning the Establishment of Legislation (as most recently amended by Law No. 13 of 2022), the Regulation of the National Police of the Republic of Indonesia (Perpol) falls into the category of Regulations of Non-Ministerial Institutions or Non-Ministerial Government Institutions, which is part of: "Legislation stipulated by State Institutions or Agencies."

Although Perpol was not explicitly mentioned in the body of Law No. 12/2011, the Constitutional Court ruling and amendments to Law No. 13/2022 broaden the recognition of technical regulations from state institutions, including the National Police, as part of the positive legal system. Based on the above description, it is clear that Perpol No. 8 of 2021 falls at the level of Regulations of Non-Ministerial Institutions, which is hierarchically below Presidential Regulations and below Laws and Government Regulations.

## CONCLUSION

Legal certainty in the implementation of restorative justice by the police embodies the principles of legality and due process of law in Indonesian criminal law. Its normative legitimacy is enshrined in National Police Chief Regulation Number 8 of 2021, which regulates the requirements, procedures, and limitations for out-of-court settlements. This regulation provides a clear legal basis for the police to exercise discretion in a measured, fair, and transparent manner, with the consent of all parties, especially the victim. As long as it is implemented in accordance with the provisions, the precautionary principle, and is supervised internally and externally, its implementation fulfills the elements of legal certainty, both in terms of norms and implementation, in order to protect human rights, restore victims, and prevent crime on an ongoing basis.

Although Law Number 2 of 2002 concerning the Police does not explicitly include the principle of restorative justice, its spirit is reflected in the National Police's function to maintain order, protect, serve, and serve the community while upholding human rights. The National Police's discretionary authority provides a valid legal basis for resolving minor criminal cases outside the courts, particularly those involving children, indigenous peoples, or vulnerable groups, as long as they adhere to the principles of proportionality, accountability, and legality. Therefore, even though it is not explicitly stated, the application of restorative justice remains open through an approach that prioritizes benefit, participation, and social recovery.

## SUGGESTIONS

The suggestions that researchers can convey in this writing are:

- 1) To ensure legal certainty in the implementation of restorative justice by the police, existing regulations need to be strengthened and implemented uniformly. Regulation of the Chief of Police (Perkap) Number 8 of 2021 still needs to be supported by higher-level regulations to prevent disparities in case handling. Every resolution must be transparent, documented, and open to oversight. Therefore, restorative justice should be explicitly regulated in the Draft Criminal Code (RKUHP) or the Criminal Procedure Code (KUHP) to become an integral part of a legitimate criminal justice system and guarantee legal certainty for all parties.
- 2) To ensure a strong legal basis for the implementation of restorative justice by the National Police (Polri), Law No. 2 of 2002 is needed to explicitly include the principles, grounds, and mechanisms of restorative justice. Furthermore, detailed internal regulations are needed to prevent abuse of discretion and ensure transparency. The National Police (Polri) also needs to increase human resource capacity through training and outreach, and



strengthen coordination with the prosecutor's office, courts, the Witness and Victim Protection Agency (LPSK), and the community to build a participatory and sustainable restorative justice system.

## REFERENCES

1. Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, (Jakarta: Prenada Media, 2017).
2. \_\_\_\_\_, *Kebijakan Legislasi dalam Penanggulangan Kejahatan dengan Hukum Pidana*, (Jakarta: Prenadamedia Group, 2017).
3. \_\_\_\_\_, *Mediasi Penal dan Restorative Justice*, (Semarang: FH UNDIP, 2008).
4. Daniel W. Van Ness & Karen Heetderks Strong, *Restoring Justice*, 5th ed., (Routledge, 2015).
5. John Braithwaite, *Restorative Justice & Responsive Regulation*, (New York: Oxford University Press, 2002).
6. Lilik Mulyadi, *Keadilan Restoratif dalam Sistem Peradilan Pidana Indonesia*, (Jakarta: Sinar Grafika, 2022).
7. Luhut M.P. Pangaribuan, "Implementasi Restorative Justice dalam Sistem Peradilan Pidana di Indonesia", *Jurnal Hukum IUS*, Vol. 10 No. 3 (2022).
8. Muladi, *Kapita Selekta Sistem Peradilan Pidana*, (Semarang: Badan Penerbit Universitas Diponegoro, 2002).
9. Peraturan Kepolisian Negara Republik Indonesia Nomor 8 Tahun 2021 tentang Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif.
10. Peter Mahmud Marzuki, *Penelitian Hukum*, Edisi Revisi, (Jakarta: Kencana, 2014).
11. Rika Saraswati, *Restorative Justice: Konsep dan Implementasinya dalam Sistem Peradilan Pidana*, (Bandung: Refika Aditama, 2019).
12. Satjipto Rahardjo, *Ilmu Hukum*, Bandung: Citra Aditya Bakti, 2006.
13. Tony Marshall, "Restorative Justice: An Overview", Home Office Research Development and Statistics Directorate, 1999.
14. Tony Marshall, *Restorative Justice: An Overview*, Home Office Research Development and Statistics Directorate, London, 1999.
15. Zehr, Howard, *The Little Book of Restorative Justice*, (Intercourse: Good Books, 2002).