



## THE LEGAL IMPLICATIONS OF THE DISSYNCHRONIZATION IN THE REGULATION OF RESTORATIVE JUSTICE WITHIN THE CRIMINAL JUSTICE SYSTEM IN INDONESIA FROM THE PERSPECTIVE OF LEGAL CERTAINTY

Dhia Fadlia<sup>1</sup>, Prija Djatmika<sup>2</sup>, Yuliati<sup>3</sup>

<sup>1, 2, 3</sup> Faculty of Law, Universitas Brawijaya

Correspondence Address: [moonstasks@gmail.com](mailto:moonstasks@gmail.com)

### Abstract

*The regulation of restorative justice within the criminal justice system in Indonesia is currently governed by the respective law enforcement agencies, but it has not been codified in the Indonesian Criminal Procedure Code (KUHAP), which can lead to legal uncertainty. Consequently, there are legal implications arising from the lack of synchronization in the regulation of restorative justice within Indonesia's criminal justice system, particularly from the perspective of legal certainty. Therefore, this study aims to reconstruct the regulation of restorative justice to ensure legal certainty in the future. This research is a normative-juridical study utilizing both statutory and synchronic approaches. There are fundamental differences concerning the conditions and limitations of criminal acts as regulated by Police Regulation No. 8 of 2021, Prosecutor's Regulation No. 15 of 2020, and Supreme Court Regulation No. 1 of 2024. The existing partial guidelines on restorative justice, particularly regarding the conditions set forth, are inconsistent and cause legal uncertainty in determining which cases may be eligible for restorative justice, especially those under the Police institution, where the criteria are considered overly broad. Thus, the differences in restorative justice regulations among the respective agencies lead to inconsistencies in the conditions and limitations of criminal acts, as well as confusion in the restorative justice process during the investigation and inquiry stages within the Police. There is a need for specific regulation on restorative justice to be incorporated into the Criminal Procedure Code (KUHAP) to avoid inconsistencies and legal uncertainty.*

**Keywords:** *Restorative Justice, Dissynchronization, Legal Certainty, Criminal Law*

### 1. INTRODUCTION

The development of modern law and the application of restorative justice began with the implementation of programs for resolving disputes outside of traditional judicial processes, known as victim-offender mediation, which started in the 1970s in Canada. Initially, this program was introduced as an alternative measure for sentencing juvenile offenders, allowing the offender and the victim to meet before the sentence was carried out, in order to propose a punishment that would be considered among other factors by the judge. This program assumes that offenders would benefit from this process, and victims would receive special attention and benefits, which could reduce recidivism among juvenile offenders and increase the likelihood that children would take responsibility for providing restitution to the victim. The implementation of this program resulted in higher levels of satisfaction for both victims and offenders compared to those undergoing traditional judicial processes<sup>1</sup>.

The diversity of restorative justice regulations in Indonesia, governed by various state institutions such as the National Police (Polri), the Prosecutor's Office, and the Supreme Court, reflects a comprehensive effort to implement the principles of restorative justice within the criminal justice system. However, the differences in regulations and their implementation across these institutions can lead to normative ambiguity. Each institution has distinct authorities and guidelines

<sup>1</sup> Rufinus Hotmaulana Hutauruk, 2013, *Penaggulangan Kejahatan Korporasi Melalui Pendekatan Restoratif Suatu Terobosan Hukum*, Sinar Grafika, Jakarta, hal. 124

***THE LEGAL IMPLICATIONS OF THE DISSYNCHRONIZATION IN THE REGULATION OF RESTORATIVE JUSTICE WITHIN THE CRIMINAL JUSTICE SYSTEM IN INDONESIA FROM THE PERSPECTIVE OF LEGAL CERTAINTY***

*Dhia Fadlia<sup>1</sup>, Prija Djatmika<sup>2</sup>, Yuliati<sup>3</sup>*

for implementing restorative justice, which may result in legal uncertainty for both the public and law enforcement officers themselves. The legal force of case resolution through restorative justice remains available to all parties involved. However, the current issue regarding the harmonization of case resolution through restorative justice must be addressed, as the legal regulations related to restorative justice differ at various levels, leading to differing perspectives among law enforcement agencies. This disparity results in uncertainty in the interpretation and implementation of restorative justice.

The urgency of a comprehensive regulation of restorative justice within the Indonesian Criminal Procedure Code (KUHAP) becomes increasingly evident in this context. The inclusion of restorative justice in the KUHAP would provide a strong and uniform legal foundation for its application at all stages of the criminal justice process, from investigation and inquiry by the police, prosecution by the public prosecutor, to trial in the courts. Thus, the harmonization of restorative justice rules can be achieved, eliminating multiple interpretations and legal gaps. This would help ensure that restorative justice is applied consistently and fairly, providing legal certainty for all parties involved, while enhancing the efficiency and effectiveness of the criminal justice system in Indonesia<sup>2</sup>. With harmonized guidelines, all stakeholders involved in the criminal justice process will have a unified understanding of the application of restorative justice, thereby strengthening public confidence in the judicial system. Furthermore, such harmonization will mitigate the risk of divergent interpretations and ensure that all individuals are treated equitably and fairly under the law<sup>3</sup>.

In this context, it is essential for the criminal justice system in Indonesia to continuously consider various factors that influence legal decisions, including the principles of restorative justice and the need for effective law enforcement<sup>4</sup>. By considering the dissynchronization of restorative justice frameworks and their implications, the criminal justice system can evolve towards a more comprehensive approach, grounded in a deeper understanding of the complexities of criminal behavior and the humanitarian needs of both offenders and victims. This represents a vital step in ensuring that justice in Indonesia is not merely procedural, but also substantive and sustainable, offering equitable outcomes for all parties engaged in the criminal justice process<sup>5</sup>.

The urgency of this research lies in the pivotal role of harmonizing restorative justice within Indonesia's criminal justice system. As the demand for more inclusive and rehabilitative mechanisms for dispute resolution intensifies, restorative justice has emerged as a compelling solution to address the vulnerabilities and deficiencies of the conventional justice system. In the context of Indonesia, where issues of justice, rehabilitation, and social reintegration remain central challenges, examining the legal implications of restorative justice is crucial for understanding how the criminal justice system can be reformed and enhanced. The legal implications of implementing restorative justice encompass complex and significant issues, including the need for legal certainty.

### **Research question**

The formulation of research questions in this study is based on the description in the background above, namely:

- a. What are the legal implications of the dissynchronization of restorative justice regulations within the criminal justice system in Indonesia from the perspective of legal certainty?

<sup>2</sup> Sudarmin, A. (2023). Restorative justice in islamic law: solutions to improve social justice towards a golden indonesia 2045. *El-Rusyd Jurnal Sekolah Tinggi Ilmu Tarbiyah Stit Ahlussunnah Bukittinggi*, 8(2), 97-104. <https://doi.org/10.58485/elrusyd.v8i2.203>

<sup>3</sup> Syaid, A. (2022). Implementation of restorative justice with obligation of reversal burden of proof as an attempt to reimburse state losses for justice in the crime of money laundering with predicate crime of corruption. *International Journal of Arts and Humanities Studies*, 2(1), 54-65. <https://doi.org/10.32996/bjahs.2022.2.1.8>

<sup>4</sup> Maya, E. and Wadjo, H. (2021). Penerapan restorative justice dalam penanganan kasus kekerasan terhadap perempuan pada masa pandemi corona virus disease (covid-19). *Jurnal Belo*, 6(2), 256-275.

<sup>5</sup> Budiyo, B. (2024). Kompatibilitas restorative justice dengan nilai-nilai pancasila dalam sistem peradilan pidana anak. *Pancasila Jurnal Keindonesiaan*, 4(1), 38-47.



b. How can restorative justice be regulated to ensure legal certainty in the future?

## 2. IMPLEMENTATION METHOD

The author uses a type of normative-juridical research methodology, which involves analyzing law as a system. The study utilizes both a synchronic approach and a legislative approach. Legal sources are drawn from primary and secondary materials, particularly those pertaining to restorative justice legislation and the regulations governing restorative justice within various institutions. Data collection is conducted through library research, involving the review of existing documents, including books, scholarly articles, legislation, and other written materials relevant to the research. This process entails searching for, studying, recording, and interpreting information pertinent to the research subject.

## 3. RESULTS AND DISCUSSION

### 1. The Legal Implications of the Dissynchronization of Restorative Justice Regulations within the Criminal Justice System in Indonesia from the Perspective of Legal Certainty

There are fundamental differences concerning the conditions and limitations of criminal offenses as outlined in Police Regulation No. 8 of 2021, Prosecutor's Regulation No. 15 of 2020, and Supreme Court Regulation No. 1 of 2024. Police Regulation No. 8 of 2021 on the Handling of Criminal Offenses Based on Restorative Justice does not provide clear boundaries regarding the severity of the criminal penalty or the acceptable value of damages in the cases it governs. Nonetheless, this regulation underscores the importance of resolving minor offenses through a written application to the Head of the Police Resort or the Head of the Police Sector, without further specification of the types or amounts of damages involved. In contrast, Prosecutor's Regulation No. 15 of 2020 on the Termination of Prosecution Based on Restorative Justice offers more specific criteria regarding the suspension of prosecution through the restorative justice approach.

Prosecutor's Regulation No. 15 of 2020 on the Termination of Prosecution Based on Restorative Justice establishes that the primary conditions for its application are that the suspect is a first-time offender and that the offense committed is subject to a penalty limited to either a fine or imprisonment not exceeding five years. Additionally, the value of the evidence or the damages involved must not exceed IDR 2,500,000, thereby providing clear limitations on both the material aspects and the types of offenses eligible for resolution through restorative justice.

In contrast, Supreme Court Regulation No. 1 of 2024 on Guidelines for Adjudicating Criminal Cases Based on Restorative Justice offers more detailed criteria concerning the severity of penalties or the value of damages, emphasizing that the offense must meet the requirements for a conditional sentence or supervision. This suggests that the approach is primarily focused on evaluating the suitability of the defendant for conditional sentencing, with an emphasis on rehabilitation and post-conviction supervision of the defendant's behavior. Overall, the principal distinction between these three regulations lies in the clarity and specificity of the legal thresholds concerning the type and severity of offenses, as well as the mechanisms for resolution or supervision that may be applied to offenders.

Police Regulation No. 8 of 2021 on the Handling of Criminal Offenses Based on Restorative Justice fails to establish clear limitations regarding the severity of penalties or the value of damages incurred. This creates a significant legal uncertainty, as there is no explicit framework to determine whether a particular offense qualifies for resolution through restorative justice. For instance, it remains unclear whether offenses carrying penalties exceeding five years of imprisonment or involving damages over IDR 100,000,000,000 can be addressed through restorative justice at this stage, thereby rendering it impossible to make such determinations under the current regulatory framework.

The legal implications of the dissynchronization of restorative justice regulations in Indonesia result in a lack of legal certainty, particularly concerning the delineation of penalties

***THE LEGAL IMPLICATIONS OF THE DISSYNCHRONIZATION IN THE REGULATION OF RESTORATIVE JUSTICE WITHIN THE CRIMINAL JUSTICE SYSTEM IN INDONESIA FROM THE PERSPECTIVE OF LEGAL CERTAINTY***

*Dhia Fadlia<sup>1</sup>, Prija Djatmika<sup>2</sup>, Yuliati<sup>3</sup>*

applicable in restorative justice procedures. This uncertainty may lead to arbitrary decision-making, especially during the investigation phase, raising concerns about the violation of fundamental legislative principles, such as the principle of protection. It is feared that such discrepancies could undermine the core objective of legislation, which is to safeguard and ensure the well-being of society as a whole, without exception<sup>6</sup>.

Based on the findings, the researcher concludes that the dissynchronization of regulations between Police Regulation No. 8 of 2020 on the Handling of Criminal Offenses Based on Restorative Justice, Prosecutor's Regulation No. 15 of 2020 on the Termination of Prosecution Based on Restorative Justice, and Supreme Court Regulation No. 1 of 2024 on Guidelines for Adjudicating Criminal Cases Based on Restorative Justice, which all address the application of restorative justice in substance, has resulted in significant inconsistencies and legal uncertainty. These regulations, which remain fragmented in nature, contain divergent requirements that exacerbate confusion, particularly regarding the eligibility of cases for restorative justice. Specifically, Police Regulation No. 8 of 2020 is perceived as problematic due to its overly broad criteria, which contribute to the legal uncertainty surrounding the application of restorative justice, particularly in the context of police enforcement.

Furthermore, there exists significant ambiguity regarding the application of restorative justice during the stages of investigation and inquiry. Investigation is a series of actions undertaken to determine whether an event constitutes a criminal offense, whereas inquiry aims to collect evidence to elucidate the occurrence of a crime and to identify the perpetrator. In this context, restorative justice should not be applicable at the investigation stage, as RJ necessitates that all parties—the offender, the victim, and the community—reach a mutual understanding of the event as an act of injustice. However, during the investigation, it remains unclear whether a crime has occurred. This discrepancy generates legal uncertainty concerning the conceptualization and application of restorative justice within police procedures.

This has implications for the guarantee of rights for the parties involved in the restorative justice process. In relation to the Chief of Police Circulars No. 7/VII/2018 and No. 8/VII/2018, investigators issue a Letter of Termination of Investigation and a Decree of Termination of Investigation when restorative justice is involved in the legal process. However, there is no clear regulation governing the issuance of such termination letters within the criminal procedure law. The mechanism for issuing these letters is not specified in the Criminal Procedure Code (KUHAP), and the police can issue them independently, without any check-and-balance mechanism involving other institutions, such as the public prosecutor's office, regarding their issuance. Furthermore, there is no clear mechanism for testing or reviewing these decisions. This stands in contrast to the investigation phase. During the investigation phase, the event being examined has already been confirmed as a criminal offense, and the investigative process is focused on collecting evidence that will clarify the crime and identify the perpetrator<sup>7</sup>.

Given these considerations, the principle of restorative justice necessitates a thorough reassessment of the mechanisms employed to terminate investigations and inquiries. This reevaluation is essential to ensure that these mechanisms are consistent with the legal framework at the statutory level. The issues of accountability and legal uncertainty surrounding the restorative justice process within law enforcement stem from the potential application of unclear and undefined investigative procedures. To date, there is a lack of reliable data or official reports issued by the Indonesian National Police regarding the discretion exercised by investigators in the implementation of restorative justice approaches in the resolution of criminal cases.

The restorative justice process, as currently implemented, is often in direct conflict with the principles of victim rehabilitation and, in some instances, may even be repressive. For example, in cases of rape, law enforcement has sometimes considered the marriage of the perpetrator and the

<sup>6</sup> Undang-Undang Republik Indonesia Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-undangan

<sup>7</sup> Pasal 1 angka 2 KUHAP



victim as a form of restorative justice. However, this approach fails to serve as a genuine means of recovery or restoration for the victim<sup>8</sup>. Fundamentally, not all issues are amenable to resolution through peacebuilding strategies. A pertinent example is sexual violence, where a significant power imbalance exists between the perpetrator and the victim.

According to Wemmers (2002), a restorative justice approach that prioritizes reconciliation between the perpetrator and the victim in sexual violence cases may impose an additional psychological burden on the victim, compelling them to forgive the perpetrator. This approach may disproportionately affect female victims, as it risks involving them in a process that seems to prioritize the rehabilitation of the male perpetrator. As such, this approach can inadvertently reinforce existing power dynamics and heighten the risk of revictimization for female victims<sup>9</sup>.

## 2. Regulation of Restorative Justice that Ensures Legal Certainty

Restorative justice is applied as an alternative approach to resolving criminal cases. Although it has been implemented across various institutions, such as the police, prosecution, and judiciary, there is yet to be a standardized regulation on the matter. Each law enforcement agency continues to refer to its own distinct set of rules.

The Indonesian National Police (Polri), the Attorney General's Office (Kejaksaan), and the Supreme Court (Mahkamah Agung) each have their own regulations regarding restorative justice. These regulations should be harmonized and consolidated into a unified, stringent legal framework, at the level of formal legislation, and incorporated into the Criminal Procedure Code (KUHAP) to effectively address the existing legal gap.

To establish restorative justice as a legitimate part of Indonesia's legal framework, its provisions must be incorporated into the Criminal Procedure Code (KUHAP). This will provide a solid legal foundation for its application throughout the criminal justice process, addressing the existing legal vacuum. Such integration will clarify the position of restorative justice as a lawful alternative for resolving criminal cases, reinforcing the need for a more rehabilitative approach in the criminal justice system. For restorative justice to be effectively implemented, it is vital to provide continuous education and training programs for all law enforcement personnel, including police officers, prosecutors, judges, and correctional staff. These programs should ensure that all relevant parties are well-versed in the principles, objectives, and procedures of restorative justice, enabling them to apply these practices appropriately and effectively in their respective roles within the criminal justice system.

To ensure the proper and effective implementation of restorative justice, robust mechanisms for ongoing evaluation and oversight must be established. Independent monitoring bodies should be tasked with assessing the implementation and outcomes of restorative justice initiatives, providing recommendations for improvement when necessary. These mechanisms will ensure that restorative justice practices are continually refined and adapted to meet evolving legal and societal needs.

Through these measures, it is anticipated that restorative justice can be applied in a more structured, coordinated, and legally certain manner, addressing the current gaps in the system. The integration of restorative justice into the Criminal Procedure Code (KUHAP), along with the harmonization of regulations across law enforcement agencies, will establish a clear, consistent, and sustainable framework for its application, thereby enhancing both the fairness and effectiveness of the Indonesian criminal justice system.

## 4. CONCLUSION

The legal implications of the desynchronization in the regulation of restorative justice within Indonesia's criminal justice system have led to significant inconsistencies in its application.

<sup>8</sup> <https://icjr.or.id/menikahkan-korban-dengan-pelaku-kekerasan-seksual-bukan-restorative-justice/>

<sup>9</sup> Wemmers sebagaimana dikutip dalam Annie Cossins, 2008, *Restorative Justice and Child Sex Offences (the Theory and The Practice)* dalam British Journal of Criminology, Vol 48 edisi 1 Mei 2008, hlm. 364

***THE LEGAL IMPLICATIONS OF THE DISSYNCHRONIZATION IN THE REGULATION OF RESTORATIVE JUSTICE WITHIN THE CRIMINAL JUSTICE SYSTEM IN INDONESIA FROM THE PERSPECTIVE OF LEGAL CERTAINTY***

*Dhia Fadlia<sup>1</sup>, Prija Djatmika<sup>2</sup>, Yuliati<sup>3</sup>*

The differing criteria and limitations of criminal offenses outlined in the Indonesian National Police Regulation No. 8 of 2021, the Attorney General's Regulation No. 15 of 2020, and the Supreme Court Regulation No. 1 of 2024 have created legal uncertainty. Moreover, the internal regulatory differences between law enforcement agencies have caused confusion in the implementation of restorative justice, particularly during the investigation and inquiry stages within the police. This disparity has the potential to result in selective case handling, undermining the uniformity and fairness of the process. There is a need for specific regulation within the Indonesian Criminal Procedure Code (KUHAP) that addresses Restorative Justice in the future, in order to ensure legal certainty moving forward.

**REFERENCES**

- Annie Cossins (2008), "Restorative Justice and Child Sex Offences (the Theory and the Practice) dalam British Journal of Criminology, Vol 48 edisi 1 Mei
- Budiyono, B. (2024). Kompatibilitas restorative justice dengan nilai-nilai pancasila dalam sistem peradilan pidana anak. *Pancasila Jurnal Keindonesiaan*, 4(1), 38-47.
- Maya, E. and Wadjo, H. (2021). Penerapan restorative justice dalam penanganan kasus kekerasan terhadap perempuan pada masa pandemi corona virus disease (covid-19). *Jurnal Belo*, 6(2), 256-275.
- Hutauruk R.H. 2013, *Penanggulangan Kejahatan Korporasi Melalui Pendekatan Restoratif Suatu Terobosan Hukum*. Jakarta: Sinar Grafika
- Sudarmin, A. (2023). Restorative justice in islamic law: solutions to improve social justice towards a golden indonesia 2045. *El-Rusyd Jurnal Sekolah Tinggi Ilmu Tarbiyah Stit Ahlussunnah Bukittinggi*, 8(2), 97-104.
- Syaid, A. (2022). Implementation of restorative justice with obligation of reversal burden of proof as an attempt to retribute state losses for justice in the crime of money laundering with predicate crime of corruption. *International Journal of Arts and Humanities Studies*, 2(1), 54-65.
- Annie Cossins (2008), "Restorative Justice and Child Sex Offences (the Theory and the Practice) dalam British Journal of Criminology, Vol 48 edisi 1 Mei