

THE INDONESIAN SUPREME COURT REGULATION: ENABLING OFFENDERS AND VICTIMS TO FULFILL RESTORATIVE JUSTICE AGREEMENTS DURING PROBATION

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Abstract

This study investigates the application of conditional sentencing within the framework of restorative justice as outlined in Indonesian Supreme Court Regulation (PERMA) No. 1 of 2024. This regulation offers a mechanism that enables offenders to fulfill their obligations from restorative agreements during the probation period, promoting both offender accountability and victim restoration. The research analyzes the procedural aspects of restorative justice in criminal cases in Indonesia, particularly focusing on how it is implemented in courts. It highlights the benefits of integrating restorative justice with conditional sentencing, while also identifying challenges and gaps in the legal framework. Additionally, the study calls for further empirical research to evaluate the practical effectiveness of this approach and the legal consequences if offenders fail to fulfill their obligations during the probation period.

Keywords: *Restorative Justice, Probation, Conditional Sentence, Courts' Decision*

INTRODUCTION

For an extended period, Indonesia's criminal justice system was heavily rooted in retributive justice, where punishment was primarily seen as a form of retribution for crimes committed by offenders. Under this system, individuals accused of criminal behavior were held fully accountable for their actions and were subjected to penalties such as imprisonment or fines, aimed at deterring both the individual offender and society at large (Hafrida & Usman, 2024). However, over time, this punitive approach has been increasingly critiqued for failing to provide satisfactory justice to victims, offenders, and the community. As highlighted by Syah (2024), the retributive model's emphasis on punishment often overlooks the restoration of the victim and fails to foster reconciliation between the parties involved. Additionally, this approach has not been effective in reducing crime rates and tends to ignore the social circumstances of offenders during the execution of their sentences. The prevalence of overcrowded prisons and high rates of recidivism underscore the limitations of the retributive model in achieving meaningful long-term societal outcomes.

In light of these concerns, restorative justice has emerged as a promising alternative for resolving criminal disputes. This approach encourages the active participation of victims, offenders, and community members in addressing the repercussions of criminal behavior and in working towards future resolutions (Satriana & Dewi, 2021). In the early 2024, the Indonesian Supreme Court issued Supreme Court Regulation (PERMA) No. 1 of 2024, establishing guidelines for handling criminal cases using restorative justice principles. This regulation highlights essential elements of restorative justice, such as the engagement of both victims and offenders, along with the involvement of community members as mediators, which aims to promote social cohesion.

The introduction of this regulation reflects the recognition that the criminal justice system should not focus exclusively on punishment but also on restoring victims and ensuring offenders take responsibility for their actions. The previous absence of clear legal frameworks—particularly regarding eligible case types, procedural requirements, and the trial process—led the Supreme Court to create this regulation to eliminate legal uncertainties and address existing gaps. Restorative justice, as defined in Article 1, Paragraph 1, refers to a methodology for handling criminal matters by involving all relevant parties, such as the victim, their family, the defendant, and their relatives, with the primary goal of restoration rather than punishment. According to Article 6, Paragraph 1, judges may apply restorative justice procedures when specific criteria are met, including minor offenses, losses not exceeding IDR 2,500,000 or the equivalent of the provincial minimum wage, complaint-based crimes (*delik aduan*), crimes carrying a maximum

sentence of five years, offenses committed by juveniles whose diversion efforts have failed, or certain traffic offenses. Reconciliation, along with an offender's willingness to take responsibility for damages and address the victim's needs, may be considered as mitigating factors, potentially leading to conditional or probationary sentencing under Article 19 of the regulation. However, offenders often face challenges in promptly fulfilling their obligations to compensate victims. To address this, the court may impose a conditional sentence, enabling the offender to meet their responsibilities during a probationary period.

This study focuses on legal issues related to victim compensation in criminal law. Specifically, it examines how conditional sentencing can be applied when aspects of restorative agreements between victims and offenders remain unmet, as guided by Indonesian Supreme Court Regulation (PERMA) No. 1 of 2024. The research employs a normative legal methodology, incorporating both statutory and case law approaches (de Miguel & Wilkinson, 2024), and utilizes secondary data from primary, secondary, and tertiary legal sources. A qualitative analysis of the data is conducted to better understand how courts may use conditional sentences to facilitate the completion of restorative justice agreements.

The goal of this research is to provide an in-depth understanding of how conditional sentencing can be effectively utilized to implement restorative justice in legal practice. It is anticipated that the findings will assist judges in making informed decisions and promote wider acceptance of restorative justice in suitable criminal cases.

LITERATURE REVIEW

Theoretical Foundations of Restorative Justice

Braithwaite (2002) highlights a significant shift in the criminal justice paradigm from a retributive approach to a restorative one. He argues that while retributive justice, which focuses solely on punishment, often fails to reduce crime rates, it can also aggravate underlying social issues. In contrast, restorative justice aims to repair relationships between offenders, victims, and the community by encouraging dialogue and mutual understanding.

Daly (2005) notes that restorative justice processes are inherently conversational and dialogic. However, she also points out that this approach may not be suitable for all types of offenses and can sometimes reinforce existing social inequalities. Daly emphasizes the importance of balancing restorative and retributive elements to ensure fair and equitable outcomes in the justice process.

Zehr (2005) underscores the critical importance of incorporating the victim's perspective in criminal proceedings. He asserts that victims have a right to be heard and to actively participate in the justice process. For Zehr, true justice cannot be achieved unless it promotes healing for both the victim and the offender.

Garland (2001) discusses the increasing use of surveillance technologies in modern criminal justice systems. He cautions that this trend may exacerbate social injustices and alienation, advocating for a more humane and restorative approach to punishment. Similarly, Christie (1981) critiques the traditional punitive model, arguing that it fails to effectively deter criminal behavior and often leads to greater societal harm. Christie calls for a justice system focused on prevention, rehabilitation, and community restoration rather than mere retribution.

In the Indonesian context, several legal studies have explored the evolution of restorative justice. Ridwan (2016) specifically examines domestic violence within the criminal justice system from a restorative justice perspective. He concludes that domestic violence cases are multidimensional, involving both civil and criminal aspects. Ridwan asserts that restorative justice mechanisms, as part of the deliberative model, can be applied through various approaches depending on the case, and sometimes even combine multiple mechanisms for resolution.

Joko (2013) further highlights the effectiveness of criminal mediation using a restorative justice approach. His research indicates that such mediation offers a swift, cost-effective solution for certain criminal cases, integrating customary law principles and fostering mutual agreements and restitution between the parties involved.

Legal Framework for Restorative Justice in Indonesia

In Indonesia, the implementation of restorative justice (RJ) has begun to gain traction across various legal domains, although a single, comprehensive legal framework has yet to be fully established. The principle of restorative justice in Indonesia focuses on resolving criminal cases by engaging the offender, the victim, and the community in a collaborative process aimed at reaching mutually beneficial agreements. This process prioritizes the restoration of relationships and gives offenders the opportunity to take responsibility for their actions and make amends for the harm they have caused. The implementation of restorative justice in Indonesia reflects an ongoing effort to reconcile local values with modern legal reforms. This approach not only promotes reconciliation between offenders and victims but also aims to rebuild public trust in the legal system. Strengthening and expanding restorative justice practices hold significant potential for fostering a more humane, inclusive, and sustainable justice

model in Indonesia. The legal regulations governing the application of restorative justice in Indonesia are outlined in the following frameworks:

1) Restorative Justice in the 1945 Constitution of the Republic of Indonesia

As the foundational law of the Indonesian state, the 1945 Constitution (UUD 1945) incorporates principles that align with the concept of restorative justice. According to Syah (2024), elements of restorative justice are embedded in the Fifth Principle of Pancasila, which advocates for "Social Justice for All the People of Indonesia." Restorative justice in this context aims to provide a more comprehensive form of justice by involving all parties affected by crime—offenders, victims, and the broader community—thereby aligning with the social justice mandate enshrined in the Constitution. It emphasizes preserving the dignity of both victims and offenders, offering offenders a chance for reform, and upholding the right to a decent and dignified life for all involved.

2) Restorative Justice through Diversion Deliberation in Law Number 11 of 2012 on the Juvenile Criminal Justice System (UU SPPA)

Restorative justice, as defined in Article 1 paragraph 6 of the Juvenile Criminal Justice System Law (UU SPPA), offers a collaborative resolution process prioritizing the restoration of pre-offence conditions over punitive sanctions. Embedded as a fundamental principle, it seeks to shield children from the stigmatizing effects of formal prosecution and promote their reintegration into society. Although not exhaustively codified, restorative justice is substantively operationalized through the diversion mechanism, applicable to minor offences and first-time offenders. The diversion process, guided by judicial discretion and stakeholder consensus, emphasizes mediation and supervised compliance to achieve fair outcomes. In this framework, restorative justice is not merely an alternative procedure but represents a transformative approach to juvenile justice, aligning legal practices with more humane, relationally responsive paradigms.

3) Restorative Justice Principle in the National Criminal Code (KUHP)

The principles of restorative justice as outlined in Law No. 1 of 2023 (the National Criminal Code) are reflected in the objectives of punishment as articulated in Article 51. These objectives include preventing criminal offenses by enforcing legal norms that protect and promote the welfare of society, reintegrating convicted individuals through rehabilitation, and resolving the conflicts arising from criminal acts. Furthermore, the goals are to restore social balance, foster a sense of security, and promote genuine remorse, while alleviating the guilt of convicted individuals. These objectives signal a shift from retributive justice to restorative principles, focusing more on healing, rehabilitation, and reconciliation rather than merely punishing offenders.

4) Reduction of Criminal Sentences or Probational Sentences Based On Supreme Court Regulation (PERMA) Number 1 of 2024

Supreme Court Regulation (PERMA) Number 1 of 2024 introduces guidelines for implementing restorative justice during criminal trials after the investigation and prosecution stages have concluded. Restorative justice under this regulation emphasizes reconciliation and the restoration of the victim's condition rather than retribution, requiring direct involvement and agreement between the victim and the offender. Agus (2024) stated that Although a restorative agreement may be reached, the criminal proceedings continue until a final judgment is rendered, with the court decision accommodating the settlement consistent with restorative justice principles.

PERMA sets forth both general and specific requirements for the application of restorative justice. General requirements include that the offense must be minor, involve losses not exceeding IDR 2,500,000 or the local minimum wage, be a complaint-based offense, carry a maximum penalty of five years' imprisonment, involve juvenile offenders after failed diversion, or relate to traffic crimes classified as criminal offenses. Specific prohibitions apply where the victim or offender refuses settlement, a power imbalance exists between the parties, or the offender has committed a similar offense within three years after completing a prior sentence. Additionally, restorative justice agreements are considered by judges when imposing conditional sentences or supervisory measures, thereby integrating restorative principles into formal criminal adjudication while maintaining procedural justice.

5) Restorative Justice in the Indonesian Prosecutor's Regulation Number 15 of 2020 on Termination of Prosecution Based on Restorative Justice

The Indonesian Prosecutor's Regulation Number 15 of 2020 formally integrates restorative justice into prosecutorial processes, marking a deliberate shift from retributive approaches towards reconciliation-based outcomes. Recognizing restorative justice as essential to criminal justice reform, the Regulation outlines principles of justice, public interest, proportionality, subsidiarity, and procedural efficiency. It grants prosecutors limited discretion to terminate proceedings under specified conditions, such as the expiration of statutory limits, *ne bis in idem*, withdrawal of complaints, and extra-judicial settlements. The process begins with a formal request by the accused or victim, followed by a structured assessment of eligibility and mediation to achieve mutual agreement. Successful mediation leads to the issuance of a Decree on the Termination of Prosecution (SKP2), with prosecutors retaining supervisory duties to ensure compliance. Through this framework, the Regulation redefines prosecutorial functions towards more restorative, relationally driven justice practices.

6) Restorative Justice in the Indonesian National Police Regulation

The Indonesian National Police Regulation Number 8 of 2021 establishes a legal framework for incorporating restorative justice principles into the police investigation and inquiry processes. It outlines clear procedural requirements and conditions under which police investigators may adopt restorative justice actions, ensuring such actions comply with legal obligations, reasonableness, and respect for human rights. The regulation specifies the types of offenses eligible for restorative justice, focusing on minor offenses while excluding serious crimes like corruption, homicide, and terrorism. The process begins with a request from either the offender or victim, followed by an assessment of the case's eligibility. If suitable, mediation is facilitated by the police, and upon successful resolution, the investigation is terminated, preventing prosecution. The police are tasked with monitoring the implementation of the agreement to ensure the realization of restorative justice goals.

7) Restorative Justice in the Draft of the 2025 Criminal Procedure Code (RUU KUHAP)

The Draft of the 2025 Criminal Procedure Code defines the Mechanism of Restorative Justice as a procedural approach involving the victim, the victim's family, the suspect, the suspect's family, the defendant, the defendant's family, and/or other related parties, aiming to restore the original condition. Regulated under Chapter IV, this mechanism allows the settlement of criminal cases outside court proceedings at the stages of investigation, inquiry, or prosecution, provided that the offender has committed the crime for the first time, restoration has been achieved, and a peace agreement has been reached between the victim and the offender. Such settlement is formalized through the issuance of a Warrant of Termination of Investigation, Inquiry, or Prosecution, which must be submitted to the court by the Investigator, Inquiry Officer, or Public Prosecutor within three days for judicial confirmation.

Conditional Sentencing in Criminal Law

Conditional sentencing, commonly referred to in Indonesia as "*hukum janggelan*" or "*hukuman percobaan*," is akin to probation in Anglo-American legal systems. Black's Law Dictionary defines probation as a judicial disposition that allows a convicted offender to remain in the community under the supervision of a probation officer, subject to specific conditions during a set probationary period. According to Joko (2019), the key features of Indonesia's conditional sentencing include its equivalence to probation, its role as a rehabilitative alternative to incarceration, its imposition through judicial determination of specific conditions, and its objective to protect offenders from the adverse effects of prison life, ultimately benefiting the offender's rehabilitation.

In Indonesian criminal law, conditional sentencing is governed by Articles 14a–14f of the *Wetboek van Strafrecht* (WvS), applying to custodial sentences of up to one year. The probation period is capped at three years for offenses under Articles 492, 504, 505, 506, and 536 of the WvS, and two years for other offenses, starting from the finality of the judgment. Detention periods do not reduce the probation term. Courts may impose both general and special conditions, with enforcement delegated to designated authorities. Specific conditions may include restitution or certain behavioral requirements, but these must not infringe on religious or political freedoms.

The new Indonesian Criminal Code (Law Number 1 of 2023, also known as the *KUHP Nasional*) replaces the term "conditional sentence" with "supervisory punishment" (*pidana pengawasan*), as set forth in Articles 75 and 76. Supervisory punishment applies to offenses punishable by up to five years' imprisonment, provided the sentence does not exceed three years. Under both the WvS and the *KUHP Nasional*, general conditions are mandatory, while special conditions are discretionary. The core principle remains that the offender must refrain from committing further offenses during the probation or supervision period, with the overarching goal of facilitating the offender's reintegration into society while ensuring their fundamental rights are respected.

RESEARCH METHOD

This study uses a normative legal research method, also known as library research. The aim is to examine applicable legal norms and regulations, focusing on secondary data sources. The approaches used are the conceptual approach and the statute approach, which help analyze the legal issues within the context of restorative justice and conditional sentencing. Secondary data, including statutes, regulations, and legal literature, forms the main basis for this research. The analysis is carried out using descriptive and qualitative methods to provide an in-depth understanding of the legal framework.

RESULTS AND DISCUSSION

The implementation of the restorative justice (RJ) approach marks a shift from traditional retributive justice to a model focused on both offender accountability and victim restoration. RJ provides a procedural space for offenders and victims to engage in dialogue, helping to repair the victim's harm and rehabilitate the offender. Unlike conventional proceedings where the victim's role is limited, RJ ensures victims' rights are fulfilled and promotes a broader understanding of justice.

When a case meets the criteria set in Article 6(1) of the Supreme Court Regulation on Restorative Justice (Perma RJ), judges are required to apply the RJ approach. This is conditional on the consent of both parties, the absence of power imbalances, no prior similar offenses by the offender, and the offender's admission of guilt. Judges must evaluate the harm suffered by the victim and ensure any settlement agreement made outside the courtroom is implemented. If no pretrial settlement exists, Article 15(1) of the Perma RJ allows judges to suggest reconciliation efforts during the trial, considering the crime's impact, economic losses, medical or psychological costs, and the offender's ability to meet any agreement.

Restitution, as outlined in Article 18 of the Perma RJ, may take the form of compensation or specific actions by the offender, provided these do not violate laws, public order, or human rights. A settlement agreement does not eliminate criminal liability but can reduce sentences or lead to conditional sentences or probation, as mentioned in Article 19. In practice, judges may impose conditional sentences or probation as alternatives to imprisonment, incorporating conditions that ensure victims' rights and promote offender rehabilitation. General conditions, which may last up to three years, are applied when offenders fulfill their settlement obligations. Special conditions may require offenders to meet any remaining obligations during the probation period.

This framework allows offenders to complete restitution obligations within the probation period, under conditions of a conditional sentence or probation. By delaying the custodial sentence and linking the offender's liberty to fulfilling specific obligations, this system supports both restorative and rehabilitative goals. The special conditions are not just punitive; they provide structured opportunities for offenders to show accountability and for victims to receive compensation. This aligns with restorative justice principles, focusing on repairing harm and involving both parties in the justice process, while ensuring victims' rights are fully addressed.

The concept of conditional sentencing was initially regulated under Articles 14a–14f of the *Wetboek van Strafrecht* (WvS), applying to sentences of up to one year. In contrast, the new Indonesian Criminal Code (Law No. 1 of 2023) introduces probationary punishment, applicable to offenses with sentences of up to five years, provided the sentence does not exceed three years. Both the WvS and the new Criminal Code impose general conditions, such as refraining from committing further offenses, while special conditions may include restitution or specific actions by the offender, without violating personal freedoms.

The execution of conditional or probationary sentences is overseen by the public prosecutor, who may either enforce the original custodial sentence or issue a formal warning, depending on the offender's compliance with the conditions.

Despite these developments, several regulatory gaps remain, particularly in monitoring the fulfillment of restorative agreements during the probation period and handling the legal consequences of non-compliance. These gaps suggest the need for further research to create more effective legal frameworks that ensure proper supervision and clear consequences for violations of restorative agreements in conditional sentencing and probation.

CONCLUSION

The Indonesian Supreme Court Regulation (PERMA) No. 1 of 2024 marks a significant step by combining conditional sentencing with restorative justice principles. This approach provides a balanced mechanism that ensures offender accountability while promoting victim restoration. It allows offenders the opportunity to fulfill their obligations from the restorative justice agreement during their probation period. Judges are encouraged to apply this tool in appropriate cases, but further empirical research is necessary to assess its practical effectiveness. Additionally,

further research is needed to examine the legal consequences for offenders who fail to meet the obligations outlined in the restorative justice agreement during probation.

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