International Journal of Educational Review, Law & Social Sciences (IJERLAS)

International Journal of Educational Review, Law And Social Sciences (IJERLAS Journal) | ISSN (e): 2808-487X
Volumes 5 No. 6 (2025)

REFORMULATION OF INDONESIA'S RESTORATIVE JUSTICE FRAMEWORK UNDER SUPREME COURT REGULATION NO. 1 OF 2024

Muhammad Hanif Ramadhan[1], Setiawan Noerdajasakti[2], Faizin Sulistio[3]
[1,2,3]Faculty of Law, Universitas Brawijaya, Jakarta
E-mail: hanif19951995@gmail.com

Received	: 01 August 2025	Published	: 29 September 2025
Revised	: 20 August 2025	DOI	: https://doi.org/10.54443/ijerlas.v5i6.41871
Accepted	: 23 September 2025	Link Publish	: https://radjapublika.com/index.php/IJERLAS

Abstract

The Indonesian criminal justice system is undergoing a paradigm shift from a retributive to a restorative approach, solidified by the enactment of Supreme Court Regulation Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice. This regulation aims to provide a standardized framework for judges. However, its practical implementation reveals a tension between formal legal certainty and the pursuit of substantive justice. This research conducts a normative legal analysis to evaluate the adequacy of the conditions and mechanisms within the Supreme Court Regulation as a guide for judges. The study employs statute, conceptual, and case approaches, analyzing primary and secondary legal materials. The findings indicate that the rigid requirements stipulated in the regulation, such as the limit on criminal threats, along with ambiguities in exclusionary clauses like recidivism, are insufficient and often hinder the achievement of substantive recovery. Furthermore, the absence of explicit procedural mechanisms for penal mediation forces judges to rely on discretionary activism. This journal argues for a reformulated regulation that is more flexible and principle-based, proposing the inclusion of a discretionary gateway for judges, harmonizing recidivism rules with the new National Criminal Code, and institutionalizing penal mediation procedures to ensure the restorative process is substantive and consistent.

Keywords: ***ideal regulation, judicial guidelines, legal reform, restorative justice, Supreme Court Regulation.***

INTRODUCTION

The Indonesian criminal justice system, historically rooted in the Dutch colonial-era Criminal Procedure Code (Kitab Undang-Undang Hukum Acara Pidana - KUHAP), is undergoing a significant transformation.[1] The system, derived from the Het Herziene Inlandsch Reglement, traditionally outlines a linear procedural path from investigation by the police, prosecution by the Public Prosecutor, to examination in court by a panel of judges, all with the objective of enforcing justice. For decades, this process has been dominated by a retributive philosophy, where the primary focus is on condemnation and the imposition of punishment as a form of societal retaliation against the offender. This paradigm, however, has faced growing criticism for its inherent shortcomings. It has been argued that the retributive model systematically marginalizes the interests of victims, often reducing them to mere witnesses for the state while overlooking their profound economic, physical, and psychological losses.[2] Moreover, its effectiveness in achieving long-term societal goals has been questioned, as research increasingly indicates that imprisonment as a form of retribution does not consistently deter repeat offenses and contributes to systemic issues such as prison overcrowding and the social stigmatization of former inmates.[3] In response to these deficiencies and influenced by evolving global legal philosophies, a new paradigm has gained traction: restorative justice (RJ). This approach represents a fundamental shift in perspective, moving away from a state-centric focus on punishment towards a more holistic, problem-solving orientation. It prioritizes the restoration of losses suffered by the victim, the genuine accountability of the offender for the harm caused, and the reintegration of both parties into the

[1] Muladi, *Kapita Selekta Sistem Peradilan Pidana*, (Semarang, penerbit Universitas Diponegoro, 1995), pp. 41
[2] Mochtar Kusumaatmadja, *Konsep-Konsep Hukum Dalam Pembangunan*, (Bandung: Alumni, 2006) pp. 10
[3] Maidina Rahmawati dkk, *Peluang dan Tantangan Penerapan Restorative Justice dalam Sistem Peradilan Pidana di Indonesia* (Jakarta : Institute for Criminal Justice Reform (ICJR)), 2022), pp. 60.

community through a process of dialogue and negotiation. This global movement has been significantly shaped by international instruments, most notably the United Nations Economic and Social Council (ECOSOC) Resolution 2002/12 on the Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, which provides a normative framework for member states to develop effective and equitable restorative programs.[4] This paradigm shift is increasingly visible within the Indonesian legal landscape. An early and significant legislative step was the enactment of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, which formally introduced the concept of diversion as a primary mechanism to achieve restorative justice for child offenders. This was followed by Supreme Court Regulation (PERMA) No. 2 of 2012, which adjusted the financial threshold for petty crimes, thereby encouraging non-custodial resolutions for minor offenses and implicitly promoting restorative principles. These initial regulations laid the groundwork for a series of more specific internal policies. For instance, the Decree of the Director General of the General Judiciary Body No. 1691/DJU/SK/PS.00/12/2020 was issued to provide more detailed guidance for judges on implementing restorative justice across various case types, including those involving children, women, and petty crimes. However, these fragmented guidelines were still considered insufficient, particularly concerning the lack of detailed procedures for facilitating peace agreements and ensuring consistent application across different jurisdictions.

Recognizing the need for a more comprehensive, unified, and legally binding framework, the Supreme Court of Indonesia enacted Supreme Court Regulation Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice (henceforth PERMA No. 1/2024). This regulation represents the most significant attempt to date to institutionalize restorative justice at the judicial level. It aims to provide clear and authoritative guidance for judges on the requirements, mechanisms, and forms of victim recovery within the restorative process, thereby establishing a binding legal standard. The regulation defines restorative justice as a participatory approach involving all relevant parties with the explicit goal of seeking recovery, not retribution. Despite its laudable intentions, the practical implementation of PERMA No. 1/2024 has revealed a critical tension between the formal requirements it prescribes and the substantive goals of justice it seeks to promote. This tension is vividly illustrated in judicial practice, such as in the Purwakarta District Court Decision No. 139/PID.B/2024/PN Pwk and the Probolinggo District Court Decision No. 41/PID.B/2025/PN Pbl. In both of these cases, judges were confronted with offenses under Article 365 of the Criminal Code (theft with violence), which, due to their high maximum penalties, formally fall outside the scope of eligibility defined in PERMA No. 1/2024. Nevertheless, the judges in these cases chose to apply restorative principles, driven by the fact that substantive peace agreements and full compensation had been achieved between the offenders and victims. These decisions highlight the judiciary's struggle with rigid regulations that can impede justice in specific contexts and underscore the urgent need for a critical analysis of the current framework. This leads to the central research questions of this study:

1. Have the conditions and mechanisms articulated in PERMA No. 1/2024 provided sufficient and adequate guidance for judges in the application of restorative justice?
2. What would constitute an ideal regulatory framework for Restorative Justice (RJ) within the Indonesian legal context?

This journal will undertake a comprehensive normative analysis to evaluate the adequacy of PERMA No. 1/2024. By examining its theoretical underpinnings, its practical application through case studies, and its alignment with broader principles of justice, this study aims to propose a more ideal, comprehensive, and implementable regulatory framework for restorative justice in Indonesia's future positive law.

LITERATURE REVIEW

To comprehensively analyze the adequacy of PERMA No. 1/2024, it is essential to ground the discussion in relevant legal theories concerning judicial consideration, the purpose of punishment, the concept of restorative justice, and judicial discretion. These theoretical frameworks provide the necessary lens through which the formal norms of the regulation can be evaluated against the substantive goals of justice.

The Nature of Judicial Consideration

Every court decision must explicitly state the considerations, containing factual reasons and legal grounds, that form the basis of the judgment, known in legal terms as motivering or ratio decidendi. This process is not merely a literal application of a regulation but an intellectual and conscientious process that represents the judge's accountability for their decision. The quality of legal consideration is a primary measure of the quality of the

[4] ECOSOC Resolution 2002/12, *Basic principles on the use of restorative justice programmes in criminal matters*, 24 July 2002.

judgment itself. A sound consideration must demonstrate coherent reasoning, connect evidence to facts, and apply the law accurately, ultimately aiming to achieve the three fundamental values of law: justice (gerechtigkeit), legal certainty (rechtssicherheit), and utility (zweckmäßigkeit).[5] Legal scholars consistently classify the foundations of judicial consideration into three interconnected pillars: juridical, sociological, and philosophical.[6] The **juridical consideration** is the formal-legalistic foundation, where the judge acts as an "applicator of the law," basing their decision on legal facts revealed in court and applicable positive law. The **sociological consideration** requires the judge to be sensitive to the social context surrounding a case, including the values and sense of justice that live within the community (living law). This aligns with the judge's duty to explore and understand the societal impact of a crime and its resolution.[7] The **philosophical consideration** is the realm where the judge transcends being merely a "mouthpiece of the law" (la bouche de la loi) to become a "representative of God," using their conscience to achieve substantive justice. This involves reflecting on the purpose of punishment and internalizing moral and humanitarian values. The integration of these three pillars is crucial for producing a judgment that is not only legally correct but also socially acceptable and morally just.

The Purpose of Punishment

The purpose of punishment is a central theme in criminal law, providing justification for the imposition of suffering through penal sanctions and guiding judges in delivering fair and proportional sentences. Three main theories dominate this discourse. The **Absolute or Retributive Theory** posits that punishment is an absolute consequence of a crime, inflicted solely because a wrong has been committed (quia peccatum est). Its main goal is retribution, ensuring the punishment fits the crime, thereby upholding justice and public condemnation of the wrongful act. This theory is backward-looking, focusing on the past transgression.[8] Conversely, the **Relative or Utilitarian Theory** is forward-looking. It justifies punishment based on its future utility, primarily the prevention of crime for the greater good of society. This is achieved through general deterrence (dissuading the public), special deterrence (dissuading the individual offender), incapacitation (physically preventing the offender from committing more crimes), and rehabilitation (reforming the offender).[9] The **Mixed or Hybrid Theory** emerged to bridge the gap between the two, integrating elements of both. It acknowledges that punishment must be proportional to the offense (a retributive principle) while also serving useful societal purposes like prevention and rehabilitation (a utilitarian goal). The new Indonesian National Criminal Code (Law No. 1 of 2023) reflects this integrated approach, stating that the purposes of punishment include preventing crime, rehabilitating offenders, resolving conflict, and restoring balance in society, which resonates strongly with the principles of restorative justice.[10]

General Overview of Restorative Justice

Restorative justice represents a paradigm shift away from the state-centric, punitive focus of the retributive model. Historically, responses to harm were often private matters, but with the rise of the state, crime became an offense against public order, marginalizing the victim in the process. The modern restorative justice movement, gaining momentum in the 1970s, sought to bring the victim back to the center of the process.[11] The term was popularized by Albert Eglash, who defined it as a constructive effort involving the offender, victim, and community to repair the harm caused by crime.[12] At its core, restorative justice is a process that involves all stakeholders in collectively resolving the aftermath of an offense. The United Nations defines a **restorative process** as any process where the victim, offender, and other affected parties participate together to resolve matters arising from the crime, often with a facilitator. A **restorative outcome** is an agreement reached through this process, which can include reparation, restitution, and community service, aimed at meeting the needs of the parties and achieving reintegration for both victim and offender.

---

[5] Sudikno Mertokusumo, Mengenal Hukum: Suatu Pengantar (Yogyakarta: Liberty Yogyakarta, 2007), pp. 145.
[6] Ahmad Rifai, Penemuan Hukum oleh Hakim dalam Perspektif Hukum Progresif (Jakarta: Sinar Grafika, 2010), pp. 126
[7] Laelatul Barkah, "Perlindungan Hak Penyandang Disabilitas Tuna Grahita Sebagai Saksi Korban Dalam Proses Peradilan Pidana Di Indonesia," ResearchGate, accessed by 17 Juli 2025, pp. 7
[8] Herbert L. Packer, *The Limits of The Criminal Sanction*, (California: Stanford University Press, 1968), pp. 37
[9] *Ibid*
[10] Article 51 Law No. 1 Tahun 2023 Tentang *Kitab Undang-Undang Hukum Pidana*
[11] Victim Participation in the Criminal Justice System, https://criminal-justice.iresearchnet.com/forensic-psychology/victimization/victim-participation/. Accessed by 26 March 2025
[12] Shadd Maruna, "*The Role of Wounded Healing in Restorative Justice: An Appreciation of Albert Eglash*," Restorative Justice: An International Journal 2 (2014)

In Indonesia, the concept was formally defined in the Juvenile Criminal Justice System Law and subsequently adopted in various regulations, culminating in PERMA No. 1/2024. The regulation defines restorative justice as "an approach in handling criminal cases conducted by involving the parties, including the victim, the victim's family, the defendant/child, the defendant's/child's family, and/or other related parties, with a process and goal that seeks recovery, and not merely retribution." This definition aligns with the international understanding that integrates process and outcome, focusing on healing and repair rather than punishment.

The Concept of Judicial Discretion

Judicial discretion (freies Ermessen) represents the authority inherent in a judge's position to make decisions based on their judgment and wisdom when the law does not provide a clear directive.[13] This is not an arbitrary power but a necessary space within the legal system to address the inherent limitations of written law. The need for discretion arises because legislation cannot anticipate every possible real-life scenario, leaving gaps (leemten in het recht) that judges must fill through legal discovery (rechtsvinding).[14] H.L.A. Hart's theory of the "open texture of law" provides a strong theoretical foundation for discretion. Hart argued that all legal rules have a "core of certainty" and a "penumbra of uncertainty.[15] In the penumbra, where cases are not clearly governed by the rule, judges must exercise discretion by weighing social aims and consequences. This discretion, however, is not limitless. It is bound by the legal framework, the overarching goals of justice, utility, and legal certainty, the values of the community, and the judge's own moral conscience and accountability.[16] In the context of restorative justice, judicial discretion becomes a critical tool for judges to navigate the tension between the formal requirements of PERMA No. 1/2024 and the pursuit of substantive, restorative outcomes.

METHOD

This study is classified as **normative legal research**, also known as doctrinal or library research. The primary focus is the analysis of law conceptualized as a system of norms and rules that govern societal behavior.[17] This research method involves examining library materials or secondary data, including statutory regulations, court decisions, legal theories, and doctrines developed within the field of law. The choice of this method is based on the research problem, which aims to analyze and assess the **suitability** of judges' legal considerations (ratio decidendi) in specific court decisions with the norms stipulated in PERMA No. 1/2024.

To address the formulated research questions, this study employs several complementary approaches:

1. **Statute Approach**: This is the main pillar of the research, conducted by examining all relevant laws and regulations. The primary focus is on **PERMA Number 1 of 2024** as the benchmark legal norm.[18] The analysis aims to systematically identify its principles, material and formal requirements, procedural mechanisms, and limitations. Other related regulations, such as Law No. 1 of 2023 on the National Criminal Code (KUHP) and Law No. 8 of 1981 on the Criminal Procedure Code (KUHAP), are also analyzed to understand the systemic context.
2. **Conceptual Approach**: This approach is utilized by drawing from established views and doctrines in legal science. The researcher will study relevant legal concepts such as restorative justice, judicial discretion, the purposes of punishment, and legal certainty by referring to the perspectives of legal experts. This approach serves as the theoretical framework for analyzing and giving deeper meaning to judicial considerations.
3. **Case Approach**: This approach is used to analyze specific cases that have been decided by courts. In this research, the case approach is applied through an in-depth study of **Purwakarta District Court Decision No. 139/PID.B/2024/PN Pwk** and **Probolinggo District Court Decision No. 41/PID.B/2025/PN Pbl**. These cases were chosen because they represent instances of judicial activism where restorative principles were applied despite the cases formally falling outside the PERMA's scope, thus serving as critical examples to understand how judges interpret and apply abstract norms to concrete legal facts.

The data sources for this research are primarily **secondary data**, collected through library and document study.[19] These are classified into:

[13] J.C.T. Simorangkir, dkk., Kamus Hukum (Jakarta: Sinar Grafika, 2008), pp. 38.
[14] Soerjono Soekanto, Faktor-Faktor yang Mempengaruhi Penegakan Hukum (Jakarta: RajaGrafindo Persada, 2002), pp. 15.
[15] *Ibid*
[16] H.L.A. Hart, The Concept of Law, 2nd ed. (Oxford: Clarendon Press, 1994), pp. 124
[17] Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, (Jakarta: Rajawali Pers, 2015), . 13
[18] Bambang Sunggono, Metodologi Penelitian Hukum, (Jakarta: Rajawali Pers, 2012), pp. 43.

- **Primary Legal Materials**: Authoritative and binding legal materials, which are the main objects of this research. These include statutory regulations such as the 1945 Constitution of the Republic of Indonesia, the Criminal Code (KUHP), the Criminal Procedure Code (KUHAP), and PERMA Number 1 of 2024, as well as the aforementioned court decisions.
- **Secondary Legal Materials**: Materials that provide explanations and analyses of primary legal materials, such as textbooks, legal journals, previous research, and relevant legal articles.
- **Tertiary Legal Materials**: Materials that provide guidance to primary and secondary legal materials, such as legal dictionaries, encyclopedias, and bibliographies.[19]

All collected data are analyzed using a **qualitative analysis method** by applying **deductive reasoning**. The analysis process follows systematic stages: first, systematizing and interpreting the norms within PERMA Number 1 of 2024 to establish a normative benchmark (das Sollen). Second, identifying and describing the legal facts and judicial considerations (ratio decidendi) from the court decisions under study (das Sein). Third, a comparison of the judicial considerations with the normative framework of PERMA to evaluate their consistency and suitability. Finally, drawing conclusions deductively from the entire analysis to comprehensively answer the research questions.[20]

RESULTS AND DISCUSSION

The enactment of PERMA Number 1 of 2024 marks a pivotal moment in the Indonesian criminal justice system, formalizing a paradigm shift from retributive to restorative justice.[21] This regulation provides an official framework for judges, transforming their role from mere adjudicators applying the law rigidly (la bouche de la loi) to active legal discoverers (rechtsvinder).[22] This evolution is not only a procedural adjustment but also a philosophical one, aligning with the mandate for judges to explore the living law and values within society. It also resonates with progressive legal theories, such as that of Satjipto Rahardjo, which argue that "law is for man, not man for law," encouraging legal practitioners to make breakthroughs (judicial activism) to achieve substantive justice. This section will first critically analyze the adequacy of the conditions and mechanisms stipulated in PERMA No. 1/2024, using key court decisions as illustrations, and then formulate a more ideal regulatory framework.

The Inadequacy of Conditions and Mechanisms in PERMA Number 1 of 2024

While PERMA No. 1/2024 is a significant step forward, a critical analysis reveals that its conditions and mechanisms are not yet sufficient to provide a fully comprehensive and flexible guide for judges. Several key weaknesses emerge, which are vividly illustrated by judicial practice.

1. The Rigidity of Limitative Requirements in Article 6. Article 6(1) of the PERMA serves as the "gateway" for applying restorative justice by setting out five limitative categories of eligible offenses. This quantitative approach, while aiming for legal certainty, proves problematic when confronted with the nuances of real cases. The strict limits on financial loss and sentence threats force justice to be viewed through the lens of numbers rather than substance. This rigidity is starkly highlighted in the **Purwakarta Decision No. 139/PID.B/2024/PN Pwk** and the **Probolinggo Decision No. 41/PID.B/2025/PN Pbl**. Both cases involved charges under Article 365 of the Criminal Code, with a maximum sentence of nine years, placing them firmly outside the five-year limit set by the PERMA. A purely positivistic judge would have stopped there. However, in both instances, the judges looked beyond the formal barrier, recognizing that a substantive restorative outcome—a genuine peace agreement and full compensation to the victim—had been achieved. This demonstrates that the **restorability** of a case is a qualitative attribute that cannot be captured by rigid numerical thresholds. The fact that judges feel compelled to make such legal breakthroughs is a strong indicator that the formal requirements of the PERMA are too narrow and fail to accommodate the pursuit of substantive justice, necessitating its reformulation. The following table provides a comparative analysis of the two landmark decisions, illustrating how judges navigated the limitations of the regulation:

[19] Amiruddin dan Zainal Asikin, Pengantar Metode Penelitian Hukum, (Jakarta: Rajawali Pers, 2012), pp. 129.
[20] H. Salim HS dan Erlies Septiana Nurbani, Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi, (Jakarta: Rajawali Pers, 2013), pp. 78.
[21] Romli Atmasasmita, *Sistem Peradilan Pidana Kontemporer*, (Jakarta: Kencana, 2017), pp. 112.
[22] Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum Indonesia*, (Yogyakarta: Genta Publishing, 2009), pp. 5.

Table 1. Comparative Analysis of Judicial Approaches in Restorative Justice Implementation

Analytical Variable	Purwakarta Decision No. 139/PID.B/2024/PN Pwk	Probolinggo Decision No. 41/PID.B/2025/PN Pbl
Formal Inconsistency	Offense under Art. 365 (1) of the Criminal Code (9-year threat), exceeding the 5-year limit of PERMA No. 1/2024.	Offense under Art. 365 (1) of the Criminal Code (9-year threat), exceeding the 5-year limit of PERMA No. 1/2024.
Peace Process & Timing	Facilitated actively by the panel of judges **during** the trial, including suspending the session for mediation.	Initiated by the defendant's family and occurred **before** the trial began.
Form of Restoration	Holistic: Material restitution plus substantial compensation for trauma, totaling IDR 7,500,000.	Materialistic: Full restitution for the exact material loss of IDR 2,700,000.
Primary Judicial Approach	**Substantive Discretion:** Used the successful peace agreement as the primary mitigating factor (ratio decidendi) to drastically reduce the sentence, applying the spirit of the Regulation.	**Rechtsvinding (Legal Discovery):** Interpreted the "provincial minimum wage" clause to apply the higher "city minimum wage" to formally fit the case within the Regulation's criteria.
Final Sentence vs. Demand	Demand: 3 years and 6 months. **Verdict: 8 months.** (Approx. 76% reduction).	Demand: 1 year and 8 months. **Verdict: 7 months.** (Approx. 56% reduction).

The analysis of this table reveals two distinct models of progressive judicial practice in the face of rigid regulation. The Probolinggo court opted for a legal discovery approach, creatively interpreting the existing rules to bring the case under the PERMA's umbrella. This method seeks to maintain formal legal certainty while achieving a just result. In contrast, the Purwakarta court took a more direct, **substantive** approach. It did not attempt to fit the case into the formal requirements but instead used its judicial discretion to apply the spirit of restorative justice, acknowledging the successful peace process as the most crucial factor in its sentencing consideration. This latter approach, which led to a more significant sentence reduction, arguably values the quality and depth of the restorative outcome more highly, sending a strong message that genuine, holistic recovery is paramount. Both models, however, unequivocally demonstrate that the existing formal requirements are insufficient and that judges require a more flexible framework to deliver substantive justice.

2. Ambiguity and Disharmony in the Recidivism Clause. Article 6(2)(c) of PERMA No. 1/2024 provides an exclusionary clause, stating that restorative justice cannot be applied if the defendant is a recidivist for a "similar type of offense" within a three-year period. This provision, while conceptually relevant, is fraught with interpretive challenges and legal disharmony. First, the term "similar type of offense" is inherently ambiguous. Without a precise legal definition, its application depends heavily on the subjective interpretation of the judge, leading to potential inconsistencies across courtrooms. This ambiguity creates a dangerous loophole. An offender convicted of a violent crime could commit a serious but not "similar" offense, such as large-scale fraud, shortly after release and still technically qualify for restorative justice. This reflects the concept of **special recidivism** (speciale recidive) which is outdated and has been abandoned in the new criminal code.[23]

Second, the three-year timeframe is arguably too short to serve as an effective deterrent or a meaningful observation period for behavioral change. More fundamentally, this clause is misaligned with the legal reforms in the new National Criminal Code (Law No. 1 of 2023). The new code adopts a system of **general recidivism** (algemeene recidive), where what matters is the fact of reoffending itself, not the specific type of crime.[24] By clinging to the outdated concept of special recidivism, the PERMA creates a disharmony within Indonesia's evolving criminal law landscape. The social stigma attached to ex-convicts often creates a vicious cycle, where societal rejection pushes them back into crime, highlighting the failure of the previous punitive system rather than an inherent incorrigibility of the individual.

[23] Afrijal & Ainal Hadi, "Pengulangan Tindak Pidana Memiliki Bagian-Bagian Satwa yang Dilindungi dan Penerapan Hukumnya (Suatu Penelitian Di Wilayah Hukum Pengadilan Negeri Bireuen)," *Jurnal Ilmiah Mahasiswa Bidang Hukum Pidana*, Vol. 3, No. 2 (2019), pp. 222

[24] Titin Nurfatlah, dkk, "Konsep Residive Dalam Kita Undang-Undang Hukum Pidana Nasional Ditinjau Dalam Perspektif Tujuan Pemidanaan," *Unizar Law Review*, Vol. 7, No. 1 (2024), pp. 95

3. The Absence of Explicit Procedural Mechanisms for Mediation. Perhaps the most significant practical shortcoming of PERMA No. 1/2024 is the lack of explicit guidance on how to conduct the restorative process itself. While Articles 10 and 12 grant judges the functional authority to "endeavor" to reach a new agreement by facilitating communication and making suggestions, the regulation does not institutionalize a clear procedural mechanism for doing so. There are no specific provisions on **penal mediation** (bemiddeling in strafzaken) or the use of a **caucus**.

This procedural vacuum forces judges who wish to facilitate genuine dialogue to improvise, often by suspending court proceedings to hold informal mediation sessions. This practice, while innovative, is not standardized and its success depends entirely on the individual judge's skills, understanding, and willingness. The formal, often intimidating, atmosphere of a courtroom is psychologically unconducive to the kind of open, honest, and vulnerable dialogue required for true restoration.[25] Without a structured, private, and neutral space for mediation, the process risks becoming a mere formality to satisfy a procedural checklist rather than a substantive and transformative experience for the victim and offender. This stands in contrast to systems in countries like the Netherlands, where penal mediation is a well-established and professionally facilitated part of the criminal justice process, supported by a dedicated infrastructure.

4. The Juridical Complexity of Partial Restorative Justice. A deeper juridical complexity arises when the outcome of such mediation is not ideally or comprehensively achieved. This phenomenon may be termed 'partial restorative justice, an area for which PERMA has not yet provided explicit guidance. This normative lacuna requires judges to undertake profound interpretation, testing the boundaries between legal formalism and substantive justice. One scenario that may arise is the fulfillment of restorative obligations by a third party. In restorative justice, material restitution is a common form of settlement. However, an issue may arise when the Defendant personally lacks the financial capacity to fulfill it, as in the case of a child offender or an indigent adult defendant. In such situations, the Defendant's family often steps forward to assume financial responsibility. From a rigid perspective, this could be seen as not fulfilling the essence of personal accountability that is central to restorative philosophy. Nevertheless, imposing an impossible demand would obstruct a solution. If the Defendant's family, driven by a sense of collective responsibility deeply rooted in Indonesian culture, is willing to provide restitution, and most importantly, the victim accepts this form of recovery, then rejecting the agreement solely because it is fulfilled by a third party would be a formalistic and counterproductive act. The key is to shift the focus from who pays to what objective is achieved. As long as the offender continues to show sincere remorse, the fulfillment of material obligations by their family can be seen as an embodiment of collective responsibility that actually strengthens the restorative process. The judge's role here is to ensure that the third-party intervention is not a means of "buying" a lenient sentence, but is part of a complete recovery package where the offender's moral accountability remains central.

Further issues may arise in cases with multiple victims, such as in mass fraud or traffic accidents. PERMA has not provided clear guidance for situations where some victims agree to a settlement while others refuse. The spirit of restorative justice does not demand a uniform outcome and respects every step toward recovery. A Defendant's sincere effort to reconcile with some victims is a valuable legal fact demonstrating good faith. To disregard it would create a disincentive for future offenders. In such cases, the legal process must continue to provide justice for the victims who have not reached a settlement. Here, the judge's discretion is tested to create legal equilibrium in the verdict. On one hand, the judge must recognize the accomplished peace agreement as a significant mitigating factor. On the other, the judge must formulate a fair and proportional sentence representing the Defendant's accountability towards the uncompensated victims. A more procedurally complex challenge then emerges in cases of participation (deelneming), where an offense is committed by two or more Defendants. If only one Defendant initiates a peace agreement, the principle of individual accountability must be upheld. The good faith of one Defendant cannot automatically absolve the criminal liability of another. However, it would be highly unjust if the restorative effort of one Defendant were disregarded due to the non-cooperation of a co-defendant. Acknowledging the settlement by a partial set of offenders is a necessity to enforce the principle of the individualization of punishment. The reconciling Defendant's actions must be viewed as a manifestation of personal remorse. Therefore, the agreement must be accepted as a very substantial basis for mitigation for that individual. In its verdict, the court must be able to apply clear sentencing differentiation. The Defendant who has restored the damage deserves a much

[25] Jonathan Derby, Restorative Justice Principles and Practice, (Washington, DC: Prison Fellowship International, 2021), pp. 43

lighter sentence, in line with modern penological objectives oriented towards rehabilitation and fostering a sense of responsibility.[26]

Towards an Ideal Regulation for Restorative Justice in Indonesia

Based on the identified weaknesses, an ideal regulatory framework for restorative justice in Indonesia should be reformulated to be more flexible, comprehensive, and harmonized with the national legal renewal. This does not necessarily mean abolishing the existing structure, but rather refining it to better serve the principles of substantive justice and utility.

1. Introducing a Discretionary Gateway for Substantive Justice. The Supreme Court's current regulation on restorative justice (PERMA No. 1 of 2024) is often criticized for its rigidity, which creates a conflict between formal rules and the pursuit of substantive justice. This has placed progressive judges in a legal "grey area" when they try to apply the spirit of reconciliation in cases that don't meet every strict requirement. The proposed solution is not to remove the existing rules but to add a "discretionary gateway" through a new provision, Article 6(3). This would give judges a formal basis to significantly mitigate a sentence when a genuine, voluntary, and substantive peace agreement has been reached between the parties, even if other formal criteria are not met. This power would be carefully controlled by conditions ensuring the peace process is fair and provides a greater benefit than a purely punitive outcome. This reform is justified as a way to balance legal certainty with necessary flexibility, legitimizing the sound discretion of judges. It sets a high standard for what constitutes a valid peace agreement and aligns the regulation with the restorative goals of Indonesia's new National Criminal Code (KUHP). Ultimately, this change would create a more dynamic and responsive justice system, empowering judges to honor the "spirit" of reconciliation and act as true facilitators of social harmony.

2. Reformulating the Recidivism Clause for Clarity and Harmony The exclusionary clause for recidivism in Article 6(2)(c) requires substantial revision. First, the ambiguous phrase "similar type of offense" should be **removed**. This would align the PERMA with the principle of general recidivism adopted by the new National Criminal Code, closing the current loophole and focusing on the fact of reoffending as the key indicator of risk. Second, the timeframe should be extended from three years to **five years**. This provides a more meaningful period for observing behavioral change and, crucially, creates vertical harmonization between the Supreme Court's regulation and the nation's highest criminal statute (Law No. 1 of 2023), ensuring consistency in Indonesia's criminal policy.

3. Institutionalizing Penal Mediation and Caucus Mechanisms To fill the procedural void, PERMA No. 1/2024 must be amended to explicitly institutionalize the mechanisms of **penal mediation** and **caucus**. New articles should be added to provide a clear, standardized procedure for judges to follow when facilitating peace agreements. The regulation should formally define **Penal Mediation** as a process led by a judge-mediator, conducted outside the formal courtroom setting (e.g., in a designated mediation room) to create a neutral and less intimidating environment. It should outline the key stages of mediation: an opening statement by the mediator, an opportunity for the victim to speak first and share their experience without interruption, an opportunity for the offender to respond and express remorse, and a facilitated dialogue to explore solutions.[27]

Furthermore, the regulation must explicitly authorize and provide guidelines for the use of **Caucus**—private, separate meetings between the mediator and each party. The caucus is an essential tool for building trust, exploring sensitive information, and testing potential solutions in a confidential setting. The regulation must guarantee the absolute confidentiality of information shared during a caucus, as this is the foundation upon which parties will feel safe enough to engage in honest dialogue. By formalizing these mechanisms, the Supreme Court would ensure that the restorative process is not only legitimized but also conducted with a high degree of quality, consistency, and psychological astuteness across all courts.

4. Formulating Guidelines for Partial Restorative Justice A further area of inadequacy is the PERMA's silence on cases of **"partial restorative justice."** This situation arises when, for example, a peace agreement is reached with only some of multiple victims, or when only one of several co-defendants seeks reconciliation. In such

[26] Irene Sagel-Grande, "Restorative Justice in the Netherlands," in *The 3E Model for a Restorative Justice Strategy in Europe*, (Thessaloniki: Aristotle University, 2013), p. 8.
[27] Marisa Kurnianingsih, Daffa Rafif Dewanto, dan Yoeseof Mustofa, "Penal Mediation: Synchronization of Restorative Justice and Reflective Justice", *Mulawarman Law Review* 9, no. 1 (2024): pp. 46

scenarios, a rigid application could unfairly penalize the party demonstrating good faith. An ideal regulation must provide clear guidance. It should stipulate that a partial peace agreement does not halt legal proceedings for the remaining parties but **must be considered a significant mitigating factor** for the specific defendant who achieved it. This upholds the principle of individual accountability while rewarding restorative efforts, empowering judges to differentiate sentences and deliver a more nuanced and equitable judgment. By implementing these reforms, PERMA No. 1/2024 would evolve from a well-intentioned but flawed guideline into a mature, dynamic, and responsive regulatory instrument. It would empower judges to be true facilitators of recovery, balancing the need for legal certainty with the profound pursuit of substantive justice, in line with the progressive and humane vision of Indonesia's modern criminal justice system.

CONCLUSION

Based on the comprehensive analysis conducted, the following conclusions can be drawn:

1. The conditions and mechanisms stipulated in Supreme Court Regulation Number 1 of 2024 have proven to be **insufficient in providing a fully adequate and flexible guide for judges** in applying restorative justice. The regulation's reliance on rigid, quantitative criteria—such as the five-year maximum sentence threat—creates a formalistic barrier that often conflicts with the substantive goal of recovery, as evidenced by landmark judicial decisions. These limitations force judges to engage in judicial activism to apply restorative principles in cases that are formally ineligible but substantively ripe for restoration. Furthermore, the ambiguity in key clauses, particularly concerning recidivism, and the significant procedural vacuum regarding the actual conduct of mediation, undermine the regulation's effectiveness and lead to inconsistent application in practice.
2. An **ideal regulation for restorative justice in Indonesia** requires a framework that is more flexible, principle-based, and procedurally comprehensive. Such a framework should not discard the existing structure but enhance it through several key reforms: (a) incorporating a **"discretionary gateway"** to allow judges to apply restorative principles to cases outside the formal criteria when a substantive peace agreement exists; (b) **reforming the recidivism clause** to align with the new National Criminal Code for legal harmony and clarity; (c) explicitly **institutionalizing the mechanisms of penal mediation and caucus** to standardize and improve the quality of the restorative process; and (d) **providing clear guidance for handling cases of partial restorative justice**. This reformed model would empower judges, ensure consistency, and better reflect the rehabilitative and humanistic goals of Indonesia's modern criminal justice system, ensuring that justice is not only decided but truly felt by all parties involved.

REFERENCES

Afrijal & Ainal Hadi, "Pengulangan Tindak Pidana Memiliki Bagian-Bagian Satwa yang Dilindungi dan Penerapan Hukumnya (Suatu Penelitian Di Wilayah Hukum Pengadilan Negeri Bireuen)," Jurnal Ilmiah Mahasiswa Bidang Hukum Pidana, Vol. 3, No. 2 (2019)

Ahmad Rifai, Penemuan Hukum oleh Hakim dalam Perspektif Hukum Progresif (Jakarta: Sinar Grafika, 2010)

Amiruddin dan Zainal Asikin, Pengantar Metode Penelitian Hukum, (Jakarta: Rajawali Pers, 2012)

Bambang Sunggono, Metodologi Penelitian Hukum, (Jakarta: Rajawali Pers, 2012)

ECOSOC Resolution 2002/12, Basic principles on the use of restorative justice programmes in criminal matters, 24 July 2002

H. Salim HS dan Erlies Septiana Nurbani, Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi, (Jakarta: Rajawali Pers, 2013)

H.L.A. Hart, The Concept of Law, 2nd ed. (Oxford: Clarendon Press, 1994)

Herbert L. Packer, The Limits of The Criminal Sanction, (California: Stanford University Press, 1968)

Irene Sagel-Grande, "Restorative Justice in the Netherlands," in The 3E Model for a Restorative Justice Strategy in Europe, (Thessaloniki: Aristotle University, 2013

J.C.T. Simorangkir, dkk., Kamus Hukum (Jakarta: Sinar Grafika, 2008)

Jonathan Derby, Restorative Justice Principles and Practice, (Washington, DC: Prison Fellowship International, 2021)

Laelatul Barkah, "Perlindungan Hak Penyandang Disabilitas Tuna Grahita Sebagai Saksi Korban Dalam Proses Peradilan Pidana Di Indonesia," ResearchGate, accessed by 17 Juli 2025

Law No. 1 Of 2023 About Indonesian Criminal Code
Maidina Rahmawati dkk, Peluang dan Tantangan Penerapan Restorative Justice dalam Sistem Peradilan Pidana di Indonesia (Jakarta : Institute for Criminal Justice Reform (ICJR)), 2022)
Marisa Kurnianingsih, Daffa Rafif Dewanto, dan Yoeseof Mustofa, "Penal Mediation: Synchronization of Restorative Justice and Reflective Justice", Mulawarman Law Review 9, no. 1 (2024)
Mochtar Kusumaatmadja, Konsep-Konsep Hukum Dalam Pembangunan, (Bandung: Alumni, 2006)
Muladi, Kapita Selekta Sistem Peradilan Pidana, (Semarang, penerbit Universitas Diponegoro, 1995)
Romli Atmasasmita, Sistem Peradilan Pidana Kontemporer, (Jakarta: Kencana, 2017)
Satjipto Rahardjo, Hukum Progresif: Sebuah Sintesa Hukum Indonesia, (Yogyakarta: Genta Publishing, 2009)
Shadd Maruna, "The Role of Wounded Healing in Restorative Justice: An Appreciation of Albert Eglash," Restorative Justice: An International Journal 2 (2014)
Soerjono Soekanto dan Sri Mamudji, Penelitian Hukum Normatif: Suatu Tinjauan Singkat, (Jakarta: Rajawali Pers, 2015)
Soerjono Soekanto, Faktor-Faktor yang Mempengaruhi Penegakan Hukum (Jakarta: RajaGrafindo Persada, 2002)
Sudikno Mertokusumo, Mengenal Hukum: Suatu Pengantar (Yogyakarta: Liberty Yogyakarta, 2007)
Supreme Court Regulation No. 1 Of 2024 About Guidelines for Adjudicating Criminal Cases Based on Restorative Justice
Titin Nurfatlah, dkk, “Konsep Residive Dalam Kita Undang-Undang Hukum Pidana Nasional Ditinjau Dalam Perspektif Tujuan Pemidanaan,” Unizar Law Review, Vol. 7, No. 1 (2024)
Victim Participation in the Criminal Justice System, https://criminal-justice.iresearchnet.com/forensic-psychology/victimization/victim-participation/. Accessed by 26 March 2025