

RESTORATIVE JUSTICE: THE DILEMMA OF LEGAL CERTAINTY AMIDST SECTORAL REGULATORY BARRIERS OF LAW ENFORCEMENT AGENCIES

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Received : 25 September 2025

Published : 18 November 2025

Revised : 10 October 2025

DOI : <https://doi.org/10.54443/ijerlas.v6i1.4515>

Accepted : 09 November 2025

Link Publish : <https://radjapublika.com/index.php/IJERLAS>

Abstract

The main problem with the implementation of restorative justice in Indonesia is that it is still regulated sectorally by the Police, the Prosecutor's Office, and the Courts, resulting in a lack of synchronization, overlapping norms, and the potential for legal uncertainty. Through normative juridical research with a statutory, conceptual, and case-based approach, this article examines the differences in the regulation and implementation of restorative justice in National Police Regulation Number 8 of 2021, Attorney General Regulation Number 15 of 2020, and Supreme Court Regulation Number 1 of 2024. The results show that regulations at the investigation level still contain vague and immeasurable formulations, while the Prosecutor's Office has clearer criteria but remains inconsistent with the Supreme Court Regulation, which even allows certain recidivists to seek restorative resolution. At the court level, restorative justice functions only as an approach without terminating the case process, thus differing in orientation from the two previous levels. These differences create inconsistencies in implementation, confusion of authority, and diminish the essence of restorative justice as a restorative instrument. This article emphasizes the need for short-term regulatory harmonization and the establishment of a specific law on restorative justice as an integrated legal umbrella to ensure legal certainty, justice, and benefit for all parties involved in the criminal justice process.

Keywords: *Crime, Restorative Justice, Integrated.*

1. Introduction

The Indonesian criminal justice system is still dominated by a retributive paradigm, where punishment is imposed as a form of retribution for violations of the law. This approach often ignores the role of victims and the aspect of social recovery. As a result, the legal system is deemed incapable of delivering substantive justice for all parties. With the development of the modern legal paradigm, the concept of restorative justice has emerged, emphasizing reparation, reconciliation, and community involvement as an alternative to traditional punishment patterns. The concept of restorative justice has long been recognized in Indonesian customary law practices, where conflict resolution is carried out through deliberation and social restoration. Globally, this approach began to develop in the 1970s in Canada and New Zealand, and was later adopted in various countries to address minor offenses and juvenile cases. Indonesia itself began implementing it through Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which emphasizes the importance of restorative justice in case resolution.

The implementation of restorative justice in Indonesia is strengthened by the Memorandum of Understanding between the Supreme Court, the Ministry of Law and Human Rights, the Attorney General's Office, and the Indonesian National Police in 2012, and is translated into various sectoral regulations such as the Regulation of the Chief of Police Number 8 of 2021, the Regulation of the Attorney General Number 15 of 2020, and Supreme Court Regulation Number 1 of 2024. However, the diversity of these regulations actually creates a lack of synchronization between law enforcement agencies, which has the potential to lead to legal uncertainty and differences in treatment in case resolution. Many simple cases that should have been resolved restoratively have instead ended up in court, such as the case of Grandma Minah, who was charged with stealing cocoa, Grandpa Piyono, who was charged with keeping alligator fish, a traffic accident case that caused property damage that was resolved amicably by the victim and defendant, and many other minor cases that should not have been brought to court. This phenomenon demonstrates the need for an integrated legal system so

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that the implementation of restorative justice is not partial in each institution. This study aims to find a mechanism for resolving criminal acts based on integrated restorative justice to create legal certainty, justice, and benefits for all parties. The implications of sectoral legal regulations on the same matter can lead to legal uncertainty. Each law enforcement agency regulates matters through institutional regulations, and there are also differences in understanding and legal consequences for each process at the audit level. Investigators are guided by the Regulation of the Chief of Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, Public Prosecutors are guided by the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, and Judges are guided by the Regulation of the Supreme Court Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice with authority that cannot be controlled because each is regulated by agency regulations.

The diversity of regulations regarding restorative justice by each law enforcement agency creates a dilemma for those seeking justice from this restorative perspective. From the victim's perspective, we might desire reparation for the losses we have suffered. Conversely, from the perpetrator's perspective, we might unintentionally commit a crime, hoping it can be resolved amicably and avoid going to court. This dilemma arises when different regulations, with different implementations at each level of investigation, demand justice for both victims and perpetrators. Based on the introduction above, the problem formulation we will discuss is: What are the legal issues in the sectoral application of restorative justice within the police, prosecutors, and courts?

2. Research Methods

This research is a normative juridical research, namely research that analyzes how the law functions to find the right answers by proving the truth sought in several regulations or positive laws or legal norms or from various legal norms written in the codification of laws and the teachings or doctrines that underlie them. Legal research according to Peter M. Marzuki, is conducted to find solutions to emerging legal issues.¹ Considering that the main focus of this thesis research is on the regulations in force in Indonesia that specifically regulate the concept of restorative justice, the legal sources that will be analyzed in this research are relevant laws and legal literature that is closely related to the research topic. The author will use several approaches commonly used in legal research to explain how the mechanism for resolving criminal acts using an integrated restorative justice approach. The author will test this using comparisons with other legal norms or legislation.²so the author uses a statutory approach, and to explain the application of restorative justice that is currently occurring in several courts, he uses a case approach and a conceptual approach.³to explain the meaning of the word restorative itself. In this study, legal materials in the form of statutory regulations are used as primary legal materials and related literature in the form of books and scientific articles, through the study of statutory regulations and library research, so that the most appropriate method to use in this legal research is descriptive analysis.

3. Discussion

To answer the formulation of the problem in the application of the principle of restorative justice in the criminal justice system in Indonesia, the following conditions were obtained:

a. Regulated sectorally with different criteria by law enforcement agencies

Restorative justice in Indonesia is currently regulated sectorally by each law enforcement agency, so there is no single legal umbrella that unifies its mechanisms. This means that each law enforcement agency, such as the police, prosecutors, and courts, has its own guidelines for implementing restorative justice principles. The Indonesian National Police regulates restorative justice through Police Chief Regulation (Perkap) No. 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice. The Prosecutor's Office implements restorative justice through Attorney General Regulation (Perja) No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. The Supreme Court issued Supreme Court Regulation (Perma) No. 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice. According to the National Police Chief's Regulation Number 8 of 2021, a request to resolve

¹Laurensius Arliman S, The Role of Legal Research Methodology in the Development of Legal Science in Indonesia, SOUMATERA LAW REVIEW, Volume 1, Number 1, 2018, p. 123.

²Marzuki, PM (2023). Legal Research Revised Edition: A Guide for Academics and Practitioners. Jakarta: Kencana, p. 95

³Irfan, N., & Suhardi, R. (2024). Criminal Law Research Methodology: From Conception to Application. Bandung: PT Refika Aditama, p. 150.

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a case through restorative justice must be made in writing, in the form of a letter of application, and at the initiative of the perpetrator, victim, or related party. As stipulated in Article 15, the perpetrator, victim, or family of the perpetrator/victim, or a third party must submit a written request to the chief of police at their respective level where the case is being handled. The National Police Chief's Regulation stipulates the following material requirements for crimes that can be handled through restorative justice:

- 1) Does not cause public unrest and/or rejection from the community;
- 2) Does not impact social conflict;
- 3) Does not have the potential to divide the nation;
- 4) Not radical or separatist;
- 5) Not a repeat offender based on a court decision.

When we examine the above criteria from the perspective of legal certainty theory, this section is open to numerous interpretations due to the use of immeasurable and open-ended language. Here's the explanation:

Ad.1 Does not cause public unrest and/or rejection from the public

According to the National Police Chief's Regulation, crimes that can be handled through restorative justice are crimes that do not cause public unrest. The measurement of this level of public unrest remains unclear. Public unrest is a stage that clearly demonstrates the social dimension of a problem.⁴ A social problem can be said to be disturbing society if it meets three dimensions. First, the unrest reflects that the problem is related to the moral awareness of the community members. Second, general unrest also means that within the community has begun to form a common perception of the threat posed by the problem. This is a threat to stability and normalcy, as well as to the community's moral values. Social problems are always related to the stability and normalcy of that society. Social problems are also always related to the shared values and noble hopes of the community. And third, there is a growing awareness that this problem cannot be resolved alone, but must be done through cooperation among the members of the community who experience it.⁵ If we look at the definition, this public unrest can only be measured through empirical research whose value or measurement cannot be stated objectively and accurately.

Social issues that cause unrest vary from place to place, with varying societal structures. For example, living together as husband and wife without marriage is a criminal offense under national law, Article 412 of the National Criminal Code. However, in certain communities, living together as husband and wife is considered normal and not a crime. Living together without marriage is a couple's life choice and is private, and therefore not considered a cause for concern. While the National Police Chief's regulation specifies the criteria for crimes that can be handled under restorative justice, the author believes that the term "causing public unrest" remains unclear and can be interpreted differently depending on who uses it and where. Generally speaking, all crimes disrupt social stability. Using this general criterion, it is clear that no crime can be handled under restorative justice because it does not meet the material requirements outlined in the National Police Chief's Regulation. Thus, it can be concluded that this criterion gives rise to various interpretations, which when viewed from the theory of legal certainty, this regulation is ambiguous or multi-interpretable so that it does not meet the criteria for legal certainty.

Ad.2 Does not impact social conflict

Article 1 of Law of the Republic of Indonesia Number 7 of 2012 concerning Social Conflict Management defines social conflict as a feud and/or violent physical clash between two or more groups of people that persists over a period of time and has widespread impacts, resulting in insecurity and social disintegration, disrupting national stability and hindering national development. If a common thread is drawn between crimes committed by individuals that cause social conflict, it will be very difficult to conclude. At what level can a crime give rise to social conflict, or what kind of crime does not give rise to social conflict or clashes between two groups of people? It is clear that the criteria for such crimes cannot be measured. Let's take, for example, the measurable criteria stipulated in Article 5 letter e of the National Police Chief Regulation Number 8 of 2021, "not a repeat offender based on a court decision." This measurable criterion means that to determine whether someone is a repeat offender, it is sufficient to prove whether or not they have a court decision. According to the author, the criterion of "not having an impact on social conflict" is immeasurable, unclear, or vague,

⁴Tangdilintin, P., Presetyo, B., Oetoyo, B., Febriana, E., Tosaini, R., Budiwati, Y., ... & Bantarti, W. (2014). Social problems, p. 7.

⁵Ibid, Tangdilintin, P., Presetyo, B., Oetoyo, B., Febriana, E., Tosaini, R., Budiwati, Y., ... & Bantarti, W, pp. 8-9.

leading to multiple interpretations. From a legal certainty perspective, this clearly falls short of legal certainty. From a legislative perspective, this lacks clarity of formulation and fails to qualify as sound legislation.

Ad.3 Does not have the potential to divide the nation

The National Police Chief Regulation provides criteria for a crime to meet the material requirements to be handled based on restorative justice, but the measure used is "not having the potential to divide the nation." There is no definite measure of a crime that can cause national division. The meaning of dividing the nation itself means dividing the nation into two or more opposing camps. In some literature, dividing the nation is closely related to other ideologies or understandings that are internalized in society itself, thus influencing the attitude of rejection of the original ideology of the Indonesian nation, namely Pancasila, which adheres to the principle of unity with the motto *Bhinneka Tunggal Ika*. The next question is what category of criminal acts can potentially divide the nation? In his book entitled "Jihad Against Religious Hate Speech," Prof. Dr. H. Nasaruddin Umar, MA explains that hate speech or hate speech wrapped in religion is an act that can divide the nation, especially among Muslims. Religious hate speech can take the form of oral statements, writings, carvings, pamphlets, and caricatures. Speech containing elements of hatred incite hatred among citizens and cause widespread division.⁶

It's important to note that this "potential to divide the nation" is unclear and immeasurable. How can we know whether a crime can contribute to national disunity? If we rely solely on hate speech, what about the Sampit Tragedy in 2001? The conflict between the Dayak and Madurese tribes was sparked by the Dayak murder of a group of Madurese pedicab drivers, which was then retaliated by the Madurese, resulting in widespread riots, thousands of casualties, and the displacement of thousands? Isn't this a criminal act that has caused widespread ethnic divisions throughout Indonesia? Therefore, the criterion of "potential to divide this nation" is an ambiguous and unclear phrase, open to multiple interpretations. In terms of legal certainty, the criteria for criminal acts to be handled based on restorative justice according to National Police Chief Regulation Number 8 of 2021 is "not potentially divisive to the nation." This is unclear or vague, giving rise to numerous interpretations (ambiguity), thus failing to meet the requirements of legal certainty and also failing to meet the principle of clarity of formulation as a requirement for good legislation. The formulation of good legislation should use straightforward, clear, measurable wording and not open to multiple interpretations, because the end result of unclear or vague legislation is legal uncertainty.

Ad.4 Not radical or separatist in nature

Radicalism comes from the Latin word "radix," meaning "root." It is an ideology or belief that seeks fundamental and rapid change or dismantling of the existing social and political order, down to its roots. The goal of radicalism is to replace existing systems, such as state ideology, government systems, or social orders, with new systems they believe in. In the modern context, the term radicalism is often closely associated with extremism. This means they are willing to use extreme means, including intimidation, coercion, or violence (terrorism), to impose their ideology. When linked to the criteria for crimes that can be handled under restorative justice, the question is: what crimes impose a new ideology on a group of people? Separatism is simply defined as an ideology or movement aimed at gaining sovereignty and separating a region or group from its parent country. This movement is usually driven by strong differences in identity, such as ethnicity, language, religion, culture, or history. It can also be triggered by feelings of injustice, discrimination, or economic exploitation by the central government. If so, what kind of crimes can be classified as separatist? This definition is unclear and ambiguous, creating legal uncertainty.

In the Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, in Article 3 paragraph (2), the closure of a case in the interests of law is carried out in the following cases:⁸

- a. the defendant died;
- b. expiration of criminal prosecution;
- c. there has been a court decision that has permanent legal force against a person for the same case (*nebis in idem*);

⁶Prof. Dr. H. Nasaruddin Umar, MA, *Jihad Against Religious Hate Speech*, 2019, PT. Elex Media Komputindo, p. 102.

⁷<https://www.kompas.com/stori/read/2023/08/29/170000479/tragedi-sampit-konflik-berdarah-antara-suku-dayak-dan-madura>, accessed on September 21, 2025.

⁸ Prosecutor's Regulation Number 15 of 2020.

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- d. complaint for a criminal offense the complaint is withdrawn or withdrawn; or
- e. there has been a settlement of the case outside the court (afdoening buiten process).

At the prosecution level, Prosecutor's Regulation Number 15 of 2020 stipulates that a criminal act can be stopped from being prosecuted based on restorative justice according to Article 5 paragraph (1) if it meets at least the following conditions:

- a. the suspect is committing a crime for the first time;
- b. criminal acts are only punishable by a fine or are punishable by imprisonment of no more than 5 (five) years;
- c. and the crime is committed with the value of the evidence or the value of the loss incurred as a result of the crime not exceeding IDR 2,500,000.00 (two million five hundred thousand rupiah).

In terms of clarity, the provisions regarding the requirements for criminal offenses to be resolved based on restorative justice are very clear and measurable. To determine whether a suspect is a first-time offender, it is sufficient to prove whether or not the suspect has a legally binding conviction for a previous crime.

In letter b, the criteria are crimes that are only punishable by a fine or those punishable by a sentence of less than 5 (five) years. This requirement is very clear because to determine it, the Public Prosecutor only needs to look at the criminal threat according to the charges charged against the Suspect, and each of these charges, the criminal act committed by a person, has been regulated in the Criminal Code or special laws regarding special crimes.

Meanwhile, to determine the value of evidence or the value of losses incurred as a result of a crime, no more than Rp2,500,000.00 (two million five hundred thousand rupiah) is sufficient to calculate the actual losses with the assistance of the victim of the crime. Therefore, this formulation is very clear and measurable, preventing people from feeling their way as to which crimes meet the criteria for resolution based on restorative justice.

The conditions for a criminal act to be resolved through a restorative justice approach are regulated in Article 6 paragraph (1) of Supreme Court Regulation Number 1 of 2024 as follows:

- a) the crime is a complaint offense;
- b) criminal acts with a maximum penalty of 5 (five) years imprisonment in one of the charges, including criminal acts of jinayat according to qanun;
- c) criminal acts involving child perpetrators whose diversion was unsuccessful;
- d) traffic crimes in the form of crimes

National Police Regulation No. 8 of 2021 does not require a complaint-based offense, as previously explained, as the criteria stipulated in the regulation are unclear, vague, and immeasurable. This regulation more specifically mentions a complaint-based offense, which in our Criminal Code also mentions several crimes that are only processed through a complaint, such as Articles 284, 310, and 367 of the Criminal Code, as well as other complaint-based offenses regulated by law. This requirement is not explicitly stated in the Prosecutor's Regulations, but it can be included in the maximum penalty of five years. Nearly all articles containing complaints of offenses carry a penalty of less than five years, for example, Article 284 of the Criminal Code carries a penalty of nine months, Article 310 of the Criminal Code carries a penalty of nine months, and others.

Regarding the complaint offense regulated in this Supreme Court Regulation, there is no exception to the same as that regulated in Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (TPKS Law) in Article 7 paragraph (1). This is different from the Prosecutor's Regulation which makes an exception for crimes against morality, which means that this Supreme Court Regulation regarding the complaint offense is in conflict with the Prosecutor's Regulation which excludes crimes against morality. Another requirement in the Supreme Court Regulation is a maximum sentence of five years in prison for any one charge. This applies if there is more than one charge, whether an alternative charge, a subsidiary charge, a cumulative charge, or a combination of charges, where one of the charges carries a sentence carrying a maximum sentence of five years, then the case can be resolved at the court hearing stage using a restorative justice approach. The Supreme Court Regulation also states that this requirement applies to criminal acts of jinayat according to the Qanun, which article can be applied in the Sharia Court, whose criminal provisions are subject to the Qanun. In addition to regulating the maximum penalty requirements, the Supreme Court Regulation also stipulates that the conditions for resolving cases using a restorative justice approach are juvenile crimes for which diversion is unsuccessful. As we know, diversion must be attempted at every level of investigation. Based on this Supreme Court Regulation, it should also be implemented at the investigation and prosecution levels because diversion is carried out at every level of investigation. If diversion is unsuccessful during the investigation, investigators can try to use guidelines

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for handling based on restorative justice, as is the case at the prosecution level. However, these regulations are only stated in the Supreme Court Regulation. This imbalance in regulations ultimately causes confusion for the public. Considering that at the investigation level, the initiation for resolution with restorative justice must come from the perpetrator or victim or their family or related parties. In contrast, at the prosecution stage, peace efforts between the perpetrator and victim are offered by the Public Prosecutor. At the examination level in Court, seeking a restorative justice approach is a requirement for the Judge examining the case (Article 4 paragraph (4)) of Supreme Court Regulation 1 of 2024. Furthermore, the Supreme Court Regulation regulates the conditions for resolving with a restorative justice approach in traffic cases that are crimes. Examples of traffic cases that are crimes are accidents causing damage to property, minor injuries, serious injuries, and death. Several articles of Law Number 22 of 2009 concerning Traffic and Road Transportation regulate the threat of traffic crimes that are more than 5 (five) years, namely Article 310 paragraph (4) the threat is 6 (six) years, Article 311 paragraph (4) the threat is 10 (ten) years, Article 310 paragraph (5) the threat is 12 (twelve) years, meaning that this provision is contrary to the Prosecutor's Office regulations which require a maximum criminal threat of 5 (five) years.

The Supreme Court Regulation and the Supreme Court Regulation do not require crimes against life to be resolved using a restorative justice approach. Based on the threat of a sentence of less than five years, crimes under Article 345 of the Criminal Code, which is part of Chapter XIX - Crimes Against Life, according to the Supreme Court Regulation and the Supreme Court Regulation should be resolved using a restorative justice approach because the threat of punishment is only four years. This requirement clearly contradicts the National Police Chief's Regulation, which excludes crimes against life from being handled using restorative justice. In addition to regulating the conditions, the Supreme Court Regulation also regulates exceptions. The exception by the Supreme Court Regulation which, according to the Author, is in conflict with other regulations is in Article 6 paragraph (2) letter c of Supreme Court Regulation 1 of 2024, which provides an exception "The defendant repeats a similar crime within a period of 3 (three) years since the defendant has completed serving a court decision that has permanent legal force." The meaning of this article is that the judge may take a restorative justice approach if in the last 3 (three) years after serving the sentence, the defendant has not repeated the same crime. Regardless of whether the crime committed is of the same type or not, the meaning of this article is that the Supreme Court Regulation provides leniency for recidivist defendants to be resolved with restorative justice. This is very clearly in conflict with the Kaplari Regulation and the Prosecutor's Regulation which provide exceptions for repeat offenders.

In addition to being in conflict with the Chief of Police Regulation and the Regional Regulation, according to the author, the Supreme Court Regulation which provides space for repeat offenders to be able to seek restorative justice, also conflicts with the SPPA Law. If both are based on the basic concept of restorative justice as the spirit or core of the SPPA, then the Supreme Court Regulation clearly conflicts with the SPPA Law. In Article 7 paragraph (2) of the SPPA Law, the absolute requirements for diversion are a criminal threat of under 7 (seven) years and not a repeat of the crime, where both requirements are cumulative, if one is not met then all requirements are not met so that diversion cannot be attempted at every level of examination. If the Supreme Court Regulation provides space for repeat offenders to be resolved with the RJ approach, it will give the impression that the legislation on restorative justice is lenient towards adults but rigid towards children. The author is concerned that this will give rise to a sense of public dissatisfaction which could impact public trust in the law in this country.

In the regulations on the resolution of criminal acts using the restorative approach mentioned above, the resolution mechanisms still stand alone or are applied sectorally in each law enforcement agency, which allows for different interpretations so that in terms of regulations in the context of implementing their authority, it seems as if they do not provide horizontal control obligations.⁹ A supervisory mechanism that allows other law enforcement agencies to comprehensively monitor the ongoing criminal proceedings, conducted by the law enforcement agency directly handling the alleged crime. This monitoring covers all stages of case handling, from the investigation stage, where evidence is collected and witnesses are questioned, to the prosecution stage, where the public prosecutor files an indictment in court, and finally to the trial stage, where the judge renders a decision on the case. From the explanations above, it is very clear that the regulations on restorative justice are still overlapping, still contradictory, the regulations are still vague, and are regulated by each law enforcement agency according to their respective authorities without providing control to the

⁹Iqbal Felisiano and Amira Paripurna, Implementation of Restorative Justice and Loopholes in Corruption Practices, *Integritas: Jurnal Antikorupsi* Vol 9, No. 1, 2023, pp. 135-149

authorized institution to supervise the process. These legal issues are very clearly illustrated in the substance of each agency's regulations. According to the theory of legislation, these different and conflicting agency regulations not only apply within the agency but also apply externally and are binding so that they can be a guideline for the justice-seeking community as procedural law. However, it is very unfortunate when these binding regulations are different, overlapping, unclear and even contradictory so that they cannot be called good legislation and fulfill the principle of clarity of formulation, which ultimately gives rise to legal uncertainty. The overlapping and lack of synchronization of regulations, as described above, leads to a lack of legal certainty, as illustrated by the absence of a law governing the matter (*ubi jus incertum, ibi jus nullum*). Meanwhile, Utrecht's opinion demonstrates that legal certainty encompasses two concepts:

- 1) the existence of general rules makes individuals know what actions they can or cannot do; And
- 2) in the form of legal security for individuals from government arbitrariness due to general regulations, individuals can know what the state may impose on or do to individuals.¹⁰

b. Differences in Implementation

At the Investigation Level

All successful restorative justice-based case handling processes at the investigation level always end with the termination of the investigation if the handling is successful or the perpetrator and victim agree to reconcile. National Police Regulation Number 8 of 2021 also states that if the case handling based on restorative justice is successfully implemented, it also means the case is closed. This means that successful handling using a restorative justice approach results in the termination of the investigation and is counted as a case settlement (Article 16 paragraph (1) letter f).

At the Prosecution Level

Unlike the investigative process, restorative justice at the prosecution level involves a peace agreement between the suspect and victim offered by the public prosecutor, without pressure, coercion, and intimidation. This process is implemented in stage two, namely the transfer of responsibility for the suspect and the handover of evidence from the investigator to the public prosecutor. The administrative process involves requiring the public to prepare a report if the victim, suspect, or their family rejects the peace settlement effort. The public prosecutor then issues a memorandum of opinion stating that the case can be referred to the court, stating the reasons. If a resolution based on restorative justice is successful, meaning the suspect or victim agrees to a peaceful resolution, the public prosecutor can issue a decree terminating the prosecution.

What is interesting about Prosecutor's Regulation Number 15 of 2020 is that the public prosecutor acts as a facilitator. This is similar to the diversion process regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, in which the public prosecutor acts as a facilitator who regulates the diversion process. Then, just like the diversion process, peace efforts are carried out at the Prosecutor's Office. Another thing that is very similar to diversion is, when peace efforts are unsuccessful or in this case rejected by the parties, both the suspect and the victim or their family, the public prosecutor can directly refer the case to the court. Or when an agreement to reconcile but the agreement is not implemented by the suspect, the public prosecutor refers the case to the court.

The end of the successful resolution of criminal acts based on restorative justice at the prosecution level is the issuance of a termination of prosecution and the case is considered closed. The shortcomings in the implementation of restorative justice at the investigation and prosecution levels based on each regulation, namely the National Police Chief's regulations and the prosecutor's office regulations are not yet completely fair because they do not provide oversight space for other agencies, especially for the court to supervise the investigation and/or prosecution process, because the implementation of justice at each level of examination should have supervision from the court, an institution authorized to try criminal cases. Lack of oversight can potentially lead to violations of the parties' rights by law enforcement officials at every stage of the investigation. This is because, fundamentally, the meaning of *pro justisia* means that any coercive measures taken during the judicial process must be authorized by the court, the institution authorized to exercise judicial power.

¹⁰Riduan Syahrani. Summary of the Essence of Legal Science. Bandung: Citra Aditya, 1999, p. 23

At the Examination Level in Court

Unlike the National Police Chief's Regulation and the prosecutor's office regulations, which apply restorative justice in the criminal justice process, the Supreme Court only applies restorative justice as an approach. The approach in question is a method or perspective to achieve a specific goal, in this case, for the purpose of recovery or restoration. Why is this different from the process at the investigation and prosecution levels? Restorative justice in investigations and prosecutions, if successfully implemented, results in the termination of the investigation or termination of prosecution. In contrast to the Supreme Court's regulations, if restorative justice is successfully implemented, it only becomes things that can mitigate the defendant's sentence.

The three institutions differ in their methods of implementing restorative justice. This difference in implementation also impacts public trust in the law. Conceptually, if restorative justice is successful, it benefits not only the victim but also the perpetrator of the crime. Victims receive justice through the restoration of their rights, while perpetrators receive justice through the termination of prosecution or investigation and avoid the need for legal proceedings or criminal proceedings. However, if the implementation differs across legal agencies, it will create confusion for justice seekers. For example, perpetrators of criminal acts may feel more advantaged if the case is resolved at the investigation or prosecution stage. If it is brought to court, the defendant must still be held accountable for their mistakes through criminal prosecution. In addition to criminal prosecution, cases brought to court can lead to stigmatization or labeling of the defendant as a convict. Even if the defendant ultimately reconciles with the victim and can reintegrate into society, if the defendant is convicted, it will be difficult to avoid this stigma.

Viewed from the theory of legal certainty, the regulations on restorative justice are implemented differently by each law enforcement agency. Starting from investigation, prosecution, and examination in court, occurs when each agency makes its own regulations according to their respective authorities which ultimately causes overlapping, conflicting regulations and even different applications. These different applications occur because each law enforcement officer makes regulations and interprets the regulations themselves.

Nurhasan Ismail is of the opinion that the creation of legal certainty in statutory regulations requires several requirements related to the internal structure of the legal norms themselves, namely:

- 1) There is clarity in the concepts used. These legal norms contain descriptions of specific behaviors, which are then integrated into specific concepts.
- 2) The presence of a clear hierarchy is considered crucial because it affects the validity or invalidity of, and the binding or non-binding nature of, a statutory regulation. This clarity of hierarchy can provide guidance as a form of law that has the authority to create regulations from specific statutes.
- 3) There is consistency in legal norms. This means that the provisions contained in a number of laws relate to a specific subject and do not contradict each other.

Legal certainty requires the establishment of legal regulations in laws created by authorized or authoritative parties. This ensures that the established regulations have a legal aspect and can guarantee the certainty that the law functions as a regulation that must be obeyed by society or its citizens. Thus, the differences in implementation indicate the absence of a clear concept of the law being enforced. Uniform understanding of the concept in this case is crucial to prevent differing understandings among law enforcement agencies in creating agency regulations, leading to differences in implementation, ultimately leading to legal uncertainty. Viewed from the legal theory of Prof. Sri Indarti, the differences in regulations in similar regulations reflect the absence of harmonization, overlapping regulations, conflicts between one regulation and another similar regulation so that they do not fulfill the principles of good legal regulations.

c. Output/Result

The output or results of each criminal action resolution process based on restorative justice at each level of examination are as follows:

At the investigation level

As previously explained, a successful restorative justice-based criminal resolution process always ends with the termination of the investigation. According to National Police Chief Regulation No. 8 of 2021, termination of an investigation signifies the completion of the case.

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It is true that a successful criminal resolution process based on restorative justice, in accordance with the spirit of National Police Chief Regulation Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice, always ends with the termination of the investigation. According to the National Police Chief Regulation, the termination of an investigation based on restorative justice is substantially a form of criminal case resolution at the police level. This is achieved after a peace agreement is reached between the perpetrator, victim, and other relevant parties, emphasizing the restoration of the original situation, reparation of the losses incurred, and the fulfillment of a sense of justice that is not oriented toward punishment. The termination of the investigation through the restorative justice mechanism confirms a paradigm shift in criminal law enforcement, from a focus on retributive justice to restorative justice. By terminating the investigation, the case is recorded in the Restorative Justice register as a form of case resolution, directly providing legal certainty for all parties without having to go through a lengthy and costly judicial process. Furthermore, this step also contributes to the efficiency of law enforcement officers and reduces the caseload in courts, as well as helping address the problem of overcapacity in correctional institutions.

The successful outcome of a restorative justice-based criminal justice resolution process at the investigative level is the termination of the investigation, with the resulting product being a Termination of Investigation Order. However, the question arises as to whether this Termination of Investigation Order, intended to resolve a case, is equated with a legally binding court decision, or is it merely a means of terminating the legal process. As we know, a perpetrator is declared a repeat offender if a legally binding court decision has been issued. If the investigation is terminated, is it legally recognized as an *inkracht* case? In any legal literature, an *inkracht* case is defined as a case with a legally binding court decision. If the Termination of Investigation Order is not the same as an *inkracht* case, there is an opportunity for pre-trial legal action. If the SP3 is declared invalid, the investigation termination can be continued or can also be re-reported as a new case.

Level of Prosecution

The process of resolving criminal offenses based on restorative justice at the prosecution stage is more or less the same as the diversion process. If the restorative justice process is successful, the prosecution will be discontinued. If restorative justice efforts are unsuccessful or a peace agreement is not implemented, the case will be referred directly to the court. The termination of the prosecution was based on the consideration that the community's legal interests had been met through the restoration of the situation and the provision of compensation to the victim, making the formal judicial process no longer relevant or proportionate. However, the application of restorative justice also has limitations, particularly regarding the type of crime and the amount of damages, and must be carried out transparently and accountably to guarantee the rights of both victims and perpetrators.

Conversely, if a peace agreement is failed or the agreement is not fulfilled, the case will automatically return to formal litigation. The Public Prosecutor will continue the prosecution process by drafting an indictment and submitting the case file to the court for trial. This demonstrates that restorative justice is an alternative resolution that prioritizes recovery, rather than eliminating the state's obligation to prosecute perpetrators. The primary goal of restorative justice is to repair the damage caused by the crime and restore social relations between the parties involved, as well as encourage perpetrator accountability. Therefore, if restorative efforts are not achieved, law enforcement through the courts is a necessary step to ensure legal certainty and justice. Similar to terminating an investigation, terminating a prosecution due to a successful resolution based on restorative justice also ends the case. However, the question remains whether terminating a prosecution guarantees the suspect's right not to be prosecuted again, given that terminating a prosecution does not result in *ne bis en idem*.

Examination in Court

Unlike the implementation of restorative justice at the investigative and prosecution levels, court hearings do not stop the investigation. Restorative justice efforts are still pursued, but the legal process continues. The Supreme Court requires judges to implement restorative justice in trials for eligible cases. It should be noted that the implementation of restorative justice within the Supreme Court is not a process, but rather an approach. Because the court applies restorative justice only as an approach, not a process, the success of restorative justice cannot stop a case.

4. Conclusion

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Regulations regarding restorative justice are still regulated sectorally by each law enforcement agency, namely Regulation of the Chief of the Republic of Indonesia Police Number 8 of 2021 concerning Handling of Criminal Acts based on Restorative Justice, Regulation of the Republic of Indonesia Attorney General's Office Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice and Regulation of the Supreme Court Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases through the Restorative Justice Approach are still overlapping, still vague, still contradictory.

- a) In the police, specifically during the investigation stage, the provisions regarding the requirements for criminal acts are still unclear and vague, especially in the formulations, "causing public unrest and/or rejection from the community", "Not impacting social conflict", "Not having the potential to divide the nation", "Not being radical or separatist" are unclear, immeasurable, or vague. In addition, restorative justice according to the Regulation of the Chief of Police Number 8 of 2021 is a process, so that the output of the successful RJ is the termination of the investigation, but there are no regulations on how the RJ process should be followed up with other law enforcement agencies as part of the check and balance function, especially with the court as an independent institution that carries out judicial functions to then determine whether the status of the RJ case is completed with the termination of the investigation can be declared legally binding and cannot be resubmitted at a later date.
- b) In the Prosecutor's Office, which carries out the prosecution process, the provisions for criminal offenses that can be resolved through RJ are clear and measurable, but Perja 15 of 2020 does not stipulate the requirement of "complaint offenses", but excludes crimes against morality, considering that Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence also includes complaint offenses, contrary to the Supreme Court regulations that allow criminal offenses based on complaints to be resolved through RJ. In addition, the output of successful RJ is the termination of prosecution, which also in the Prosecutor's Regulation does not regulate how the check and balance mechanism, such as reporting to the court to determine whether the status of the RJ case is completed with the termination of prosecution can be declared legally binding so that it cannot be submitted again at a later date.
- c) At the level of examination in the Court, Supreme Court Regulation Number 1 of 2024 provides space for recidivists, namely those who have not repeated criminal acts in the last 3 years since completing their sentence. Whatever the circumstances, regardless of the time period, a recidivist remains a recidivist, so the Supreme Court Regulation contradicts the Police Chief Regulation and the Work Regulation which do not allow criminal acts by repeat offenders to be resolved through RJ. Furthermore, this Regulation on recidivism contradicts the SPPA Law, which states that the requirement for diversion is not a repeat offense, thus giving the impression that the SPPA is strict towards children but the Regulation is lenient towards adults.

From this, it can be concluded that the application of restorative justice does not fulfill legal certainty which results in the spirit of justice in restorative justice being lost or not being fulfilled, so it is necessary to harmonize existing laws and regulations that regulate restorative justice temporarily to fill the legal vacuum, but in the long term it is necessary to form a special regulation that regulates the resolution of cases based on restorative justice in a law that contains the authority of each law enforcement officer in an integrated manner.

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Peraturan Mahkamah Agung Nomor 1 Tahun 2024, Tentang Pedoman Mengadili Perkara Pidana melalui Pendekatan Keadilan Restoratif

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