

## **Enhancing Restorative Justice Regulation for Criminal Cases' Legal Certainty: Exploring Ideal Concepts**

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### **Abstract**

*The growing concept of justice has undergone a shift from retributive justice to restorative justice. Indonesia's Police and Prosecutor's Office have implemented alternative measures for handling criminal cases by adopting restorative justice as a result of the unsatisfactory of the implementation of retributive justice. In 2020, The Prosecutor Office issued a regulation regarding the termination of prosecution based on restorative justice. The Police have also issued a regulation concerning the handling of criminal acts based on restorative justice. However, there are few differences in the approach to restorative justice compared to the aforementioned regulation. The objective of this composition is to assess the legal implications stemming from the disparities in restorative justice regulations as observed within the Police and the Prosecutor's Office and to formulate a model of restorative justice approach that should be implemented in both institutions. The analysis concludes that these divergent provisions concerning restorative justice engender a state of legal ambiguity within the community. Therefore, there is a need for reformulation to harmonize the regulation of restorative justice by incorporating it into the Code of Criminal Procedure (KUHAP) in order to create a consistent and binding legal framework for all parties involved.*

**Keywords:** *Restorative Justice, Prosecutor's Office, Police, and Legal Certainty.*

### **INTRODUCTION**

In the criminal justice system, there are four cooperating components to achieve integrated criminal justice administration. The four components are the Police, Prosecutor's Office, Courts, and Correctional Institutions. In the conventional criminal justice system, these four components are primarily focused on apprehending and punishing suspects (in personam). The mentioned criminal justice system is considered successful in fulfilling its main task of controlling crime when reports and complaints from crime victims can be resolved by bringing the perpetrators to the court, obtaining guilty verdicts, and imposing punishments. The law enforcement authorities prosecuting and convicting defendants to be punished with imprisonment as long as possible serve as a benchmark for the success of law enforcement on resolving a criminal case. The tendency to use imprisonment as a criminal sanction has resulted in overcrowding the Correctional Institution. As a result, until January 2022, as of January 2022 the burden of the Detention Unit and Correctional Institution in Indonesia has reached 223%.

In the operational sphere of Indonesia's criminal justice system, the well-being of crime victims, including the afflictions and losses they endure, frequently faces negligence. Often

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relegated to the role of evidence or witnesses, crime victims scarcely receive opportunities to secure their rights through discretion. While the Public Prosecutor embodies the interests of crime victims in the pursuit of prosecuting offenders, ostensibly providing legal safeguarding for both victims and society, the actuality often overlooks the gravity of victims' losses. Despite the retributive approach's application, its efficacy in rectifying victims' losses and suffering remains deficient. Even post-conviction and sentencing of perpetrators, the victims are unable to revert to their pre-crime state.

The concept of justice growth has shifted from retributive justice to restorative justice. The adoption of restorative justice aligns with the abolitionist perspective. Abolitionists believe that the existing criminal justice system is flawed and structurally defective, requiring a change in its structure and system. Abolitionist proponents seek alternative and more appropriate forms of punishment beyond imprisonment. In the development of the abolitionist perspective, restorative justice has emerged as an effort to address dissatisfaction with existing criminal law and procedures. In a few countries such as Australia and several European nations have implemented restorative justice in every stage of the conventional criminal justice process, from investigation, prosecution, adjudication, to execution.

The main challenge in implementing the restorative justice approach in Indonesia lies in the mechanisms it offers, which emphasize the concepts of peace, mediation, and reconciliation, where the perpetrator, victim, law enforcement agencies, and the wider community participate directly in resolving criminal cases. This approach stands in contrast to the rigid and formalistic nature of the traditional criminal justice system, which prioritizes legal certainty over justice within society.

Law enforcement agencies, including the Prosecutor's Office and the Police, have taken strategic measures to address legal issues through the implementation of the restorative justice framework. To handle minor criminal offenses effectively, in 2020, the Prosecutor's Office issued the Prosecutor's Office Regulation Number 15 of 2020 regarding the Termination of Prosecution Based on Restorative Justice (Prosecutor's Office Regulation 15/2020). One year after the Prosecutor's Office released regulations related to restorative justice, the Police also issued a similar regulation, namely the Police Regulation Number 8 of 2021 regarding the Handling of Criminal Acts Based on Restorative Justice (Police Regulation 8/2021). Since the issuance of Regulation Number 15 of 2020 by the Prosecutor's Office on July 21, 2020, until March 16, 2022, a total of 821 have been successfully resolved employing the restorative justice methodology. In the Police force, from 2021 to March 2022, the Indonesian National Police reported resolving 15,039 cases through restorative justice.

The definition of restorative justice in Prosecutor's Office Regulation 15/2020 and Police Regulation 8/2021 by the Police, refers to the resolution of criminal cases involving the perpetrator, victim, families of the perpetrator/victim, and other relevant parties who collectively seek a fair solution emphasizing restoration rather than retaliation. However, unfortunately, the application of restorative justice in resolving cases by these two law enforcement agencies is still operating independently. Coordinating Minister for Political, Legal, and Security Affairs, Mahfud MD, stated during a Focus Group Discussion held on November 4, 2021, organized by the Coordinating Ministry for Political, Legal, and Security Affairs under the theme "Aligning Law Enforcement Officials' Perception Regarding Criminal Law Enforcement from a Restorative Justice Perspective," that there is a lack of synergy among law enforcement agencies in implementing restorative justice. This absence of coordination has led to divergent regulations and core principles concerning restorative justice within the Prosecutor's Office and the Police, potentially giving rise to challenges in the realm of law enforcement in Indonesia.

This article analyzes the differences in the regulation of restorative justice in handling criminal cases within the Police and the Prosecutor's Office. In relation to this matter, the

article discusses the issue: what are the legal consequences arising from the differences in the regulation of restorative justice between the Police and Prosecutor's Office, and how should the restorative justice approach be implemented in handling criminal cases in Indonesia?

## **METHOD**

This research adopts a normative juridical approach. The normative juridical approach involves examining, studying, and interpreting theoretical aspects, including legal principles in the form of concepts, rule of law, legal doctrines, and related legal systems, to address the research questions. Concept analysis and statutory analysis are used to answer the first and second research questions. The data used in this study are secondary data, which are obtained from literature sources such as primary legal materials, secondary legal materials, and tertiary legal materials. The data analysis method employed to manage the acquired data is qualitative analysis. Qualitative analysis involves inventorying various relevant primary, secondary, and tertiary legal materials.

## **LEGAL CONSEQUENCES OF THE DIFFERENCE BETWEEN RESTORATIVE JUSTICE REGULATION IN THE POLICE AND THE PROSECUTOR'S OFFICE**

Restorative justice, or *keadilan restoratif* in Indonesian, has been recognized as a method of approaching criminal case resolution since the 1960s. The restorative justice approach differs from the conventional criminal justice system's approach. Restorative justice emphasizes the direct participation of the criminal actor, victim, and community in the case resolution process. Restorative justice has played a broader role in the Indonesian Criminal Justice System since the amendment of the Child Protection Law in 2014. Although the law only applies to children and adolescents, the discourse on implementing restorative justice has gained wide attention within the Indonesian Criminal Justice System. It can be said that the implementation of restorative justice in the juvenile justice system in Indonesia—and even in the general criminal justice system—is a long-awaited moment for many, considering that law enforcement in Indonesia has always been based on Law Number 8 of 1981 on Criminal Procedure, which emphasizes formal legal approaches and punitive sanctions.

Howard Zehr, as quoted by Ali Gohar, states that restorative justice is a principle that influences various policies in criminal law enforcement. According to Tony F. Marshall, “restorative justice is a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future.” It can be understood that *keadilan restoratif* based on the description above, is a process in which the parties involved in the criminal offense, not limited to just the victims, the suspects, and the law enforcement agencies, collectively resolve the problem and determine how to address the resulting consequences and their implications for the future.

John Braithwaite, internationally recognized as the Father of Restorative Justice, defines restorative justice as “restoring property loss, restoring injury, restoring a sense of security, restoring dignity, restoring a sense of empowerment, restoring deliberative democracy, restoring harmony based on a feeling that justice has been done, and restoring social support.” John Braithwaite's definition of restorative justice can be inferred as an effort to conclude aspects that were affected by the offense to be restored.

The United Nations Congress in 2000 produced the "United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters", which includes several fundamental principles for the use of restorative justice approaches in criminal case

handling. This has been stressed by Article 28 of the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century, promoting the advancement of restorative justice involves integrating its principles into policies, procedures, and programs that duly acknowledge the rights, needs, and interests of victims, perpetrators, communities, and other pertinent stakeholders.

The restorative justice approach essentially aims to resolve criminal cases by focusing on restoring the conditions to what they were before the crime occurred. The restoration of the victim is expected to rebuild the harmony of life as it was before the crime. As for the offender, they may not need to go to prison if the interests and losses of the victim have been restored, the victim and the community have forgiven, and the offender has expressed remorse.

The Handbook on Restorative Justice Programs released by the United Nations Office on Drugs and Crime (UNODC) emphasizes that restorative justice programs complement, rather than replace, the existing criminal justice system. Therefore, restorative interventions can be used at any stage of the criminal justice process. Generally, there are four main points within the criminal justice system where restorative justice processes can be successful: (a) on the police level prior to formal charges; (b) on the prosecution level after charges have been laid, often preceding the trial; (c) within the judicial domain, whether during pre-trial phases or sentencing stages; and (d) within correctional facilities, as an alternative to incarceration, as a component of non-custodial sentences, within confinement, or after release from custody. At each of these points, opportunities can be created by officials to exercise their discretionary power and direct offenders to restorative justice programs.

In Indonesia, the Police and the Prosecutor's Office, functioning within the criminal justice subsystem, establish regulations to govern the implementation of restorative justice within their respective domains. The Police have issued provisions regarding restorative justice, namely Police Regulation 8/2021, which includes the restorative justice approach to terminate cases at the preliminary investigation and full investigation stages. On the other hand, the Prosecutor's Office regulates restorative justice in Prosecutor's Office Regulation 15/2020, which includes the restorative justice approach to terminate cases at the prosecution stage.

The definition of restorative justice from Police Regulation 8/2021 is:

“Pasal 1

3. Keadilan Restoratif adalah penyelesaian Tindak Pidana dengan melibatkan pelaku, korban, keluarga pelaku, keluarga korban, tokoh masyarakat, tokoh agama, tokoh adat atau pemangku kepentingan untuk bersama-sama mencari penyelesaian yang adil melalui perdamaian dengan menekankan pemulihan kembali pada keadaan semula.”

This definition can be roughly translated as the resolution of the Crime Act, which involves the offender, victim, family of the offender, family of the victim, public figure, religious figure, cultural figure, or stakeholders to collectively find a just resolution emphasizing restoration to a pre-crime condition. Furthermore, on Prosecutor's Office Regulation 15/2020, the definition of restorative justice is:

“Pasal 1

1. Keadilan Restoratif adalah penyelesaian perkara tindak pidana dengan melibatkan pelaku, Korban, keluarga pelaku/Korban, dan pihak lain yang terkait untuk bersama-sama mencari penyelesaian yang adil dengan menekankan pemulihan kembali pada keadaan semula, dan bukan pembalasan.”

This definition can be roughly translated as the resolution of a crime act case, which involves the offender, Victim, family of the offender/Victim, and other parties to

collectively find a just resolution emphasizing restoration to a pre-crime condition and not for avenge. The two definitions can be inferred to share the same substances.

Police Regulation 8/2020 and Prosecutor's Office 15/2020 share the same substance in the definition of restorative justice, however there are differences between Police Regulation 8/2021 and Prosecutor's Office Regulation 15/2020 which are presented in a table showing the differences in provisions regarding restorative justice as follows.

Substance	Police Regulation 8/2021 <sup>5</sup>	Prosecutor's Office Regulation 15/2020 <sup>6</sup>
<b>Offender</b>	<b>Article 5, letter e</b> Not a repeat offender based on a Court Decision.	<b>Article 5, paragraph (1), letter a</b> Offender who commits a crime for the first time.
<b>Types of crimes that cannot be resolved through restorative justice approach</b>	<b>Article 5, letter f</b> Terrorism, crimes against state security, corruption, and crimes against human life.	<b>Article 5, paragraph (8)</b> a. Crimes against state security, the dignity of the President and Vice President, friendly foreign states, heads of friendly foreign states and their deputies, public order, and morality; b. Crimes punishable by a minimum sentence; c. Narcotics offenses; and d. Environmental crimes.
<b>Legal Subject</b>	Not regulated.	<b>Article 5, paragraph (8), letter e</b> Crimes committed by corporations cannot be resolved through restorative justice.
<b>Criminal Sanctions</b>	Not regulated.	<b>Article 5, paragraph (1), letter b</b> Crimes are only punishable by fines or imprisonment for a maximum of five years.
<b>Extent of Loss</b>	Not regulated.	<b>Article 5, paragraph (1), letter c</b> Crimes committed with evidence value or resulting loss not exceeding Rp 2,500,000

Based on the table on the differences in restorative justice provisions above, the main differences can be summarized as follows:

<sup>5</sup> Peraturan Kepolisian [Police Regulation], *supra* note 24.

<sup>6</sup> Peraturan Kejaksaan [Prosecutor's Office Regulation], *supra* note 25.

1. Formulation regarding the perpetrator of criminal acts in the application of restorative justice differs between the two regulations. The phrase "first-time offender" as stated in Prosecutor's Office Regulation 15/2020 is too broad because when a suspect who is alleged to have committed a criminal act is resolved through reconciliation, either at the Police or the Prosecutor's Office, it does not mean that the suspect has been found guilty of committing the crime. To determine whether someone is guilty or not, it must be based on the process of evidence presentation in a criminal trial.

2. The types of criminal acts that can or cannot be resolved through restorative justice differ between the two provisions. For example, based on Police Regulation 8/2021, drug-related offenses are allowed to be resolved through restorative justice, while according to the Prosecutor's Office Regulation 15/2020, they are not permitted. However, the Prosecutor's Office has issued Guideline Number 18 of 2021 regarding the Settlement of Drug Abuse Crime Cases through Rehabilitation with a Restorative Justice Approach as the implementation of the Dominus Litis Principle of the Prosecutor, which allows for the settlement of drug abuse crime cases as stipulated in Article 127(1) of Law Number 35 of 2009 on Narcotics through rehabilitation as an implementation of restorative justice with the aim of restoring the original condition, particularly for victimless crimes related to drug abuse.

Based on Police Regulation 8/2021, crimes against human life cannot be resolved through restorative justice, while according to Prosecutor's Office Regulation 15/2020, they are allowed. Similarly, negligence is recognized in the Prosecutor's Office, while the Police only regulate negligence in traffic accidents. In other words, Police Regulation 8/2021 allows for almost all criminal acts to be resolved through restorative justice, except for terrorism, crimes against national security, corruption, and crimes against human life. On the other hand, the Prosecutor's Office has stricter regulations, which also include crimes that are subject to minimal criminal penalties, drug-related offenses, and environmental crimes.

3. Regulation of the Prosecutor's Office Regulation 15/2020 prohibits the application of restorative justice approach to corporate criminal acts, while there is no such prohibition in Police Regulation 8/2021.

4. Regarding the criminal sanctions and the magnitude of the losses resulting from a criminal act as the basis for applying restorative justice, Prosecutor's Office Regulation 15/2020 sets the limitations, whereas Police Regulation 8/2021 does not regulate it. In practice, Prosecutor's Office Regulation 15/2020 has led to ambiguous interpretations within the prosecutor's scope. In response to these challenges, the Deputy Attorney General for General Crimes issued Circular Letter Number 01/E/EJP/02/2022 on the Implementation of Discontinuation of Prosecution Based on Restorative Justice (Circular Letter No. 01/E/EJP/02/2022). The provisions of Article 5 paragraph (1) letters b and c of Prosecutor's Office Regulation 15/2020 can be exempted under certain conditions as regulated in Circular Letter No. 01/E/EJP/02/2022. The existence of this Circular Letter indicates that the concept of discontinuation of prosecution with a restorative justice approach is still not firmly established. Circular Letter No. 01/E/EJP/02/2022 provides an example case in which the suspect, who is a first-time offender, is alleged to have committed assault with premeditation, in violation of Article 353 paragraph (1) of the Criminal Code, with a maximum prison sentence of four years, without considering any losses, regardless of the amount, even exceeding Rp2,500,000 (two million five hundred thousand Indonesian Rupiah). Based on this example case, the discontinuation of prosecution with a restorative justice approach can be given to the offender because the offender is a first-time offender, the maximum prison sentence is less than five years, and the variable of loss is not taken into account or, in other words, it can exceed Rp2,500,000 (two million five hundred thousand Indonesian Rupiah).

Criminal justice can be defined as a process involving several law enforcement agencies. The mechanism of criminal justice includes sequential activities starting from full investigation, prosecution, court hearings, and implementation of judicial decisions carried out by correctional institutions. The entire process operates within a system, where each institution is a subsystem that is interconnected and influences one another. In this criminal justice system, there are functional components or subsystems that must be interconnected and work together. The concept or approach of restorative justice must be implemented by all subsystems of the criminal justice system in an integrated, consistent, and sustainable manner to create a restorative integrated criminal justice system.

Lon Fuller's theory, as emphasized by Dimiyati and Wardiono, highlights the eight moral requirements that legal positivism must fulfill, including the non-contradiction of rules. The existence of rules is intended to regulate social life in an organized and well-structured manner, governing various actions within society. These rules should be integrated with one another, allowing the coexistence of rules and their synergy in accordance with ethics and legal values.

The differences in the regulation of the application of restorative justice in Regulation of the Prosecutor's Office Regulation 15/2020 and Police Regulation 8/2021 have resulted in legal uncertainty. Therefore, it is essential to reformulate the regulation of restorative justice to harmonize the concept and implementation of restorative justice in Indonesia.

## **RECOMMENDED IMPLEMENTATION OF RESTORATIVE JUSTICE APPROACH IN HANDLING CRIMINAL CRIMES BY THE POLICE AND THE PROSECUTOR'S OFFICE**

Criminal law policy or the strategy of crime prevention through criminal law follows a three-fold trajectory: formulation or legislative stage, application or adjudicative stage, and implementation or executive/administrative stage. From the legislative aspects, based on the findings of the first research problem formulation, it is found that Police Regulation 8/2021 and Prosecutor's Office Regulation 15/2020 are not harmonious and not synergistic, and therefore a reformulation of regulations regarding restorative justice is needed in order to create legal certainty and provide justice to the victims and offenders involved in the restorative justice process.

In relation to this reformulation, it needs to be emphasized that in the process of preliminary investigation, full investigation, and prosecution, if peace has been achieved, the victim has forgiven the offender, and the resulting harm has been restored, then the reason for case termination can be accepted "legally," as through restorative justice, the legal objectives which are legal certainty, justice, and benefits have been achieved. However, it is necessary to ensure that the restorative justice approach does not become a transactional field in resolving criminal acts. Regulation of the Police No. 8 of 2021 and Prosecutor's Office Regulation 15/2020 are still laden with the interpretation that restorative justice approach is a method of peacefully terminating cases, whereas it is broader than that, as the restorative justice approach exists to fulfill the sense of justice for all parties involved in criminal cases.

As stipulated in the United Nations Basic Principles of the Use of Restorative Justice Programs in Criminal Matters, in the reformulation of regulations regarding restorative justice, fundamental safeguards need to be considered in order to protect the rights of the parties involved and ensure justice for both the offenders and victims, including:

- a. The right to consult with legal advisors: Victims and offenders must have the right to consult with legal advisors regarding the restorative process and, if necessary, have access to translation and/or interpretation.



- b. Children's rights to assistance from parents or guardians: In addition, children should have the right to receive assistance from their parents or guardians.
- c. The right to receive complete information: Before agreeing to participate in the restorative process, the parties must be fully informed about their rights, the nature of the process, and the possible consequences of their decisions.
- d. The right to abstain from participation: It is crucial that both parties—the victims and the offenders—who are affected by a situation, as well as those responsible for it, compelled or influenced to engage in the restorative process or agree to its actions or results. Their willing consent is mandatory. In cases involving minors, providing children with essential and appropriate guidance and support may be necessary before they can form a genuine and well-informed agreement.

The United Nations Basic Principles of the Use of Restorative Justice Programs in Criminal Matters has given out the recommendation regarding the reformulation of regulations regarding restorative justice, attention should also be given to important procedural safeguards, such as:

- a. Requiring Consent from Both Offender and Victim: Utilizing the restorative process necessitates the voluntary for either party to withdraw their consent at any point during the procedure (as stated in paragraph 7).
- b. Mandatory Agreement from Offender and Victim: For the restorative process to proceed, the mutual consent of both the victim and the offender is imperative; furthermore, both parties must retain the ability to revoke their consent at any point throughout the process (as detailed in paragraph 7).
- c. Non-Admission of Guilt through Participation: The engagement of the offender in the restorative justice process should not be construed as an admission of guilt that could be used as evidence in subsequent legal proceedings (as mentioned in paragraph 8).
- d. Voluntary and Fair Agreements: Agreements that arise from the restorative process should be established voluntarily, encompassing only rational and proportionate responsibilities (outlined in paragraph 7).
- e. Prioritizing Safety of Involved Parties: Ensuring the safety of all parties should be a prime consideration when referring a case to the restorative justice process and during its execution (as indicated in paragraph 10).
- f. Addressing Disparities and Cultural Differences: In cases referred to the restorative justice process and throughout its implementation, it's important to account for disparities that can result in power imbalances and respect cultural differences among the parties (as elaborated in paragraph 9).
- g. Maintaining Process Confidentiality: Confidentiality must be upheld for discussions during the private stages of the restorative process, and these discussions should not be disclosed subsequently, unless the parties grant consent or as mandated by national law (as mentioned in paragraph 14). Furthermore, other human rights instruments, such as the Convention on the Rights of the Child (paragraph 16), aim to ensure privacy and secrecy in procedures involving minors.
- h. Oversight by Judicial Authorities: In instances where it is fitting, the consequences of agreements emerging from restorative justice initiatives should be subject to judicial supervision or inclusion within judicial verdicts or decisions. When this scenario arises, these outcomes must carry the same weight as any other judicial pronouncement, thereby inhibiting subsequent prosecution regarding the same set of circumstances (as stated in paragraph 15).



- i. Non-Conclusive Agreement Resolution: If parties fail to reach an agreement, the mere failure to reach an agreement should not be used against the offender in subsequent criminal justice proceedings (according to paragraph 16).
- j. No Enhanced Penalties for Agreement Non-Implementation: Failure to implement an agreement reached during the restorative justice process (excluding court decisions or verdicts) "should not serve as a justification for harsher penalties in future criminal proceedings" (as specified in paragraph 17).

The aspects that should not be neglected in the reformulation of legislations considering restorative justice are the characteristics of restorative justice itself, which are as follows:

- a. it involves an alternative thought paradigm, particularly regarding victimization and society's approach to victimization;
- b. it places a greater emphasis on the injury resulting from victimization;
- c. it aims to repair the damage done to the victim and reduce future damage by deterring criminal activity;
- d. it holds offenders accountable for their deed and the damage they have inflicted;
- e. it pursues compensation for the victim's losses;
- f. it strives for the reintegration of both the victim and the offender into their respective communities;
- g. it is achieved through collaborative and synergistic efforts by the community and the government;
- h. victimization is seen more as a violation against an individual by another individual rather than as a violation against the state by an individual; and
- i. it encourages offenders to understand their mistakes and express remorse.

The aspect that needs to be considered in harmonizing the implementation of restorative justice requires careful consideration of the criteria for determining which types of crimes can be effectively addressed through this approach. Currently, it is regrettable that the determination of which crimes can or cannot be approached through restorative justice in Indonesia is made by each institution based on their respective considerations.

Andrew Ashworth believes that "restorative justice cannot deal with absolutely all criminal cases, the relationship between the formal system and any restorative justice processes must be carefully crafted so as to avoid inequities." In this regard, considering that the restorative justice process involves both the offender and the victim, it is crucial to provide detailed classification of "offenders" and "victims" to determine the types of crimes that can be processed through restorative justice.

One of the types of crimes that can be analyzed to implement restorative justice, is drug abuse offenses, where the offenders are also victims (victimless crime). From the perspective of victimology, according to Stephen Schafer, drug users are categorized as self-victimizing individuals. This type of victim is characterized by deviant behavior and can fall under the realm of criminal law, including victimization. The relationship between the victim and the offender can be described as a partnership, where the victim bears full responsibility for the occurrence of victimization.

Victimless crimes have specific characteristics that differentiate them from other crimes. One unique characteristic of victimless crimes is that the offender is also the victim, and there is no harmful impact on others besides the offender. Therefore, it is not appropriate to apply a restorative justice approach to drug abuse offenders because it does not meet the characteristics of restorative justice, which involve violations against individuals by other individuals. The rehabilitation of drug abuse offenders is more appropriately seen as a form of punishment determined through regular judicial processes.

One of the requirements for the principle of discontinuation of prosecution based on restorative justice in the Prosecutor's Office is that the value of evidence or losses remains below Rp 2,500,000 (two million five hundred thousand Indonesian rupiahs). The provision of Rp 2,500,000 can be disregarded if other conditions are met. This rule becomes a gray area in law enforcement. On the other hand, the Police do not specify a particular monetary threshold for evidence value or losses in the context of considering the appropriateness of restorative justice. To ensure legal clarity and reduce ambiguity, it becomes imperative to establish a clearly defined threshold for the permissible amount of losses eligible for restorative justice within the framework of legal norms, while minimizing the presence of exceptions. The law must clearly determine the limit of the loss value that can and cannot be subject to restorative justice.

The same value of Rp 2,500,000 is used to assess crimes against individuals, bodies, lives, and personal freedom that cannot be calculated in monetary terms. Crimes against individuals, bodies, lives, and personal freedom do not need to consider material value. The harm caused by crimes against individuals, bodies, lives, and personal freedom should be assessed physically and psychologically by medical professionals and psychologists.

For offenses against human life, the resolution through a restorative justice approach should not be applicable. This is because crimes against human life carry a maximum penalty of fifteen years' imprisonment, and life cannot be evaluated in monetary terms. The Police's stance in excluding crimes against human life from those suitable for resolution through restorative justice is justified.

The Prosecutor's Office bars the utilization of restorative justice for cases involving corporate legal entities. This provision needs to be reconsidered because restorative justice is actually more effective and functional when used in cases of corporate crime. For example, in the criminal justice process, corporations face severe punishments that can lead to the inability to pay fines and bankruptcy. On the other hand, through a restorative justice approach, there can be discussions between the victim and the corporation to determine the best recovery mechanism that enables the corporation to pay fines/compensation and restore the rights of the victim.

Embracing the restorative justice approach has the potential to incentivize corporations to exhibit cooperation in making reparations and rectifying the harm they've inflicted. In alignment with this perspective, Article 26 of the United Nations Convention Against Corruption (UNCAC) on the Liability of Legal Persons states that the participating states must endeavor to ensure that responsible corporations are subjected to effective, proportionate, and dissuasive criminal or non-criminal sanctions, including financial sanctions. Article 26 of the UNCAC provides room for corporate accountability not only through criminal sanctions but also through non-criminal sanctions. The perspective of transferring criminal sanctions to non-criminal ones is a process of resolution through a restorative justice approach.

Another detail regarding the crime act that needs to be noted when implementing restorative justice is that offenders who can be addressed through a restorative justice approach are those who are not recidivists. This means that offenders who have committed crimes but have not reached the trial stage or have reached a settlement in the Police can have their cases discontinued through restorative justice because they have not been declared guilty based on a legally binding court decision.

Considering the procedural aspects of implementing restorative justice, the establishment of a supervisory mechanism by higher authorities becomes imperative. For instance, within the framework of the Prosecutor's Office, when aiming to execute the discontinuation of prosecution via restorative justice, the prosecutor handling the case must conduct an online case conference with the Deputy Attorney General on General Criminal Affairs (Jampidum) to obtain approval for whether the suspension of prosecution through restorative justice should be granted to the suspect. On the other hand, in the Police, there

is no case conference at the higher level; there is only supervision after the issuance of the Decree on Termination of Preliminary Investigation and the Decree on Termination of Full Investigation. Restorative justice should not be granted too easily, as it could become a commodity in the buying and selling of cases.

On the other hand, it is necessary to consider that easily discontinuing cases based on a restorative justice approach can set a precedent for other criminals, making them believe that committing crimes is sufficient with claims of urgent basic needs and other compassionate reasons, which could result in an increase in crime rates. Offenders become inclined to commit crimes because the punishment is lenient and does not have a deterrent effect on the offender, both in terms of the general effect and deterrence effect.

In order to resolve the differences between the provisions in Police Regulation 8/2021 and Prosecutor's Office Regulation 15/2020 and to achieve a consistent and binding regulation on the application of restorative justice for all parties involved, it becomes essential to integrate stipulations governing the utilization of restorative justice into a legislative framework. The legislation referred to here is the Draft Criminal Procedure Code (RUU KUHAP). Through the legislative process, it can be assessed which offenses can and cannot be resolved through restorative justice, as well as other limitations that can be implemented, in accordance with Indonesian society and internationally accepted principles.

## CONCLUSION

The mechanism of progressive criminal justice, starting from full investigation, prosecution, court hearings, and implementation of court judgments, must work within a system that is interconnected and cooperative. Although there is a desire to implement a restorative justice approach in Indonesia, particularly within the Police Institution and the Prosecutor's Office, it is regrettable that the regulations regarding restorative justice issued by these two institutions are not aligned, especially concerning provisions related to offenders, types of crimes, legal subjects, criminal penalties, and the extent of loss. This ultimately creates legal uncertainty. The implementation of restorative justice should be comprehensive, consistent, and sustainable. The existence of regulations at the legislative level, specifically within the Criminal Procedure Code (KUHAP), regarding restorative justice is essential to harmonize and integrate the application of restorative justice. Through the legislative process, an assessment can be made regarding which offenses can and cannot be resolved through restorative justice, as well as other limitations that should be consistent across law enforcement agencies.

## References

- [1] Mardjono Reksodiputro, *Sistem Peradilan Pidana [Criminal Justice System]*, (Depok: Java Kurnia, 2020), 344.
- [2] Id.
- [3] Topo Santoso, *Studi Tentang Hubungan Polisi dan Jaksa dalam Penyidikan Tindak Pidana pada Periode Sebelum dan Sesudah Berlakunya Kitab Undang-Undang Hukum Acara Pidana [A Study on the Relationship Between Police and Prosecutors in Criminal Investigations Before and After the Enactment of the Criminal Procedure Code]*, (1999) (Master degree thesis, Universitas Indonesia) (on file with Lib.UI).
- [4] Putu Indah Savitri, *ICJR: Pemerintah dan DPR Harus Lakukan Evaluasi Hukum Pidana [ICJR: The Government and House of Representatives Must Conduct an Evaluation of Criminal Law]*, (ANTARA, 2021), <https://www.antarane.ws.com/berita/2406561/icjr-pemerintah-dan-dpr-harus-lakukan-evaluasi-hukum-pidana>.
- [5] Genta Tenri Mawangi, *ICJR: Beban Rutan dan Lapas Per Januari 2022 Capai 223 Persen [ICJR: Overcrowding in Detention Unit and Correctional Institutions Reaches 223 Percent as of January*

- 2022], (ANTARA, 2022), [https:// www.antaraneews.com/berita/2687101/icjr-beban-rutan-dan-lapas-per-januari-2022-capai-223-persen](https://www.antaraneews.com/berita/2687101/icjr-beban-rutan-dan-lapas-per-januari-2022-capai-223-persen).
- [6] Josefin Mareta, Penerapan Restorative Justice Melalui Pemenuhan Restitusi pada Korban Tindak Pidana Anak. [The Implementation of Restorative Justice Through the Fulfillment of Restitution for Child Crime Victims], 15(4) Jurnal Legislasi Indonesia 309, 309 (2018).
- [7] Bambang Waluyo, Relevansi Doktrin Restorative Justice dalam Sistem Pemidanaan di Indonesia. [The Relevance of Restorative Justice Doctrine in the Criminal Justice System in Indonesia.], 1(2) Hasanudin Law Review 210, 211 (2015).
- [8] Romli Atmasasmita, Sistem Peradilan Pidana, Perspektif Eksistensialisme, dan Abolisionisme [Criminal Justice System, Existentialism and Abolitionism's Perspective], 101, (Bina Cipta, 1996).
- [9] Eva Achjani Zulfa, Pergeseran Paradigma Pemidanaan [Shift in the Paradigm of Criminal Justice], 3, (Lubuk Agung, 2011).
- [10] Eriyantouw Wahid, Keadilan Restorative Justice dan Peradilan Konvensional Dalam Hukum Pidana [Restorative Justice and Conventional Justice in Criminal Law], 1 (Universitas Trisakti, 2009).
- [11] Ahmad Faizal Azhar, Penerapan Keadilan Restoratif (Restorative Justice) dalam Sistem Peradilan Pidana di Indonesia. [Application of Restorative Justice in the Criminal Justice System in Indonesia], 4(2) Jurnal Kajian Hukum Mahkamah 134, 137 (2019).
- [12] Kejaksaan RI, Jaksa Agung RI Launching Rumah Restorative Justice Untuk Ciptakan Keharmonisasian [The Attorney General of Indonesia Launches Restorative Justice House to Foster Harmonization], (Kejaksaan RI, 2022), <https://www.kejaksaan.go.id/berita.php?idu=0&id=18867>.
- [13] Fajar Pratama, Kabareskrim: 15.039 Kasus Selesai Lewat Restorative Justice pada 2021-2022 [Kabareskrim (Chief of the Criminal Investigation Department): 15,039 Cases Resolved through Restorative Justice in 2021-2022], (detiknews, 2022), <https://news.detik.com/berita/d-6040544/kabareskrim-15039-kasus-selesai-lewat-restorative-justice-pada-2021-2022>.
- [14] Tri Meilani Ameliya, Mahfud MD: Sinergisitas penting dalam penerapan keadilan restoratif [Mahfud MD: Synergy is Important in the Implementation of Restorative Justice], (ANTARA, 2021), <https://www.antaraneews.com/berita/2501445/mahfud-md-sinergisitas-penting-dalam-penerapan-keadilan-restoratif>
- [15] Eva Achjani Zulfa, Keadilan Restoratif di Indonesia (Studi tentang Kemungkinan Penerapan Pendekatan Keadilan Restoratif dalam Praktek Penegakan Hukum Pidana) [Restorative Justice in Indonesia (A Study on the Potential Implementation of Restorative Justice Approach in the Practice of Criminal Law Enforcement)] (2009) (Postgraduate dissertation, Universitas Indonesia) (on file with Lib.UI)
- [16] Eko Syaputra, Penerapan Konsep Restorative Justice dalam Sistem Peradilan Pidana di Masa yang akan Datang [The Application of Restorative Justice Concept in the Future Criminal Justice System], 3(2) Lex LATA Jurnal Ilmiah Ilmu Hukum 236, 249 (2021).
- [17] Hasbi Hasan, Penerapan Keadilan Restoratif dalam Sistem Peradilan Pidana Anak di Indonesia [The Implementation of Restorative Justice in the Juvenile Justice System in Indonesia], 2(2) Jurnal Hukum dan Peradilan 247, 249 (2013).
- [18] Ali Gohar, The Little Book of Restorative Justice, 3-4 (Good Books, 2002).
- [19] Tony F. Marshall, Restorative Justice: An Overview, 5 (Home Office Research, Development and Statistics Directorate, 1999).
- [20] John Braithwaite, Restorative Justice: Assessing Optimistic and Pessimistic Accounts, 25, Journal Crime and Justice, 1, 6 (1999).
- [21] ECOSOC. Res. 2000/14, at 3-5 (July 24, 2002).
- [22] Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century, Apr. 15, 2000, A/CONF.187/4/Rev.3, Article 28.

- [23] United Nations Office on Drugs and Crime (UNODC), *Handbook on Restorative Justice*, 13 (2020), as cited in *supra* note 17, 255.
- [24] Peraturan Kepolisian No. 8 Tahun 2021 tentang Peraturan Kepolisian Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif [Police Regulation No. 8 of 2021 on Handling Criminal Acts Based on Restorative Justice.] (Indonesia)
- [25] Peraturan Kejaksaan No. 15 Tahun 2020 tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif. [Prosecutor's Office Regulation No. 15 of 2020 on Termination of Prosecution Based on Restorative Justice.] (Indonesia)
- [26] Peraturan Kepolisian [Police Regulation], *supra* note 24.
- [27] Peraturan Kejaksaan [Prosecutor's Office Regulation], *supra* note 25.
- [28] Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP: Pemeriksaan Sidang Pengadilan, Banding, Kasasi, dan Peninjauan Kembali* [Discussion of Issues and Application of Criminal Procedure Code: Court Proceedings, Appeals, Cassation, and Judicial Review], 273 (Sinar Grafika, 2003).
- [29] Jaksa Agung Muda Tindak Pidana Umum, Surat Edaran Nomor: 01/E/EJP/ 02/2022 tentang Pelaksanaan Penghentian Penuntutan Berdasarkan Keadilan Restoratif tanggal 10 Februari 2022 [Circular Letter from Deputy Attorney General for General Crimes Number: 01/E/EJP/02/2022 regarding the Implementation of Termination of Prosecution Based on Restorative Justice dated February 10, 2022], 4. (Indonesia)
- [30] *Id.*
- [31] Ahmad Faizal Azhar, *supra* note 11, 2.
- [32] Hayat, *Keadilan sebagai Prinsip Negara Hukum: Tinjauan Teoretis dalam Konsep Demokrasi*. [Justice as a Principle of the Rule of Law: Theoretical Review in the Concept of Democracy.], 2(2) *Padjadjaran Jurnal Ilmu Hukum*, 388, 142 (2015).
- [33] Muhaimin, *Restoratif Justice dalam Penyelesaian tindak Pidana Ringan* [Restorative Justice in Resolving Minor Criminal Offenses.], 19(2) *Jurnal Penelitian Hukum De Jure*, 185, 393 (2019).
- [34] I Made Agus Mahendra Iswara, *Mediasi Penal Penerapan Nilai-Nilai Restorative Justice Dalam Penyelesaian Tindak Pidana Adat Bali* [Mediation in the Application of Restorative Justice Values in Resolving Customary Criminal Offenses in Bali] (2013) (Master degree thesis, Universitas Indonesia) (on file with Lib.UI).
- [35] G.A. Res. 2002/12, at 39-42 (July 24, 2002).
- [36] *Id.*
- [37] Angkasa, *Viktimologi* [Victimology], 223-224, (Rajawali, 2020).
- [38] Andrew Ashworth, *Responsibilities, Rights and Restorative Justice*, 42, *Brit. J. Criminol*, 578, 592 (2002).
- [39] Sihyadi, *Pelaksanaan Keadilan Restoratif (Restorative Justice) dalam Penanganan Perkara Tindak Pidana di Kepolisian dan Kejaksaan* [Implementation of Restorative Justice in Handling Criminal Cases by the Police and Prosecutors], 108, (Fakultas Hukum Universitas Islam Jakarta, 2022).
- [40] Erika Magnalena Chandra, *Victimless Crime in Indonesia: Should We Punished Them?*, 6(2), *Padjadjaran Jurnal Ilmu Hukum*, 216, 217 (2019).
- [41] *Kitab Undang-Undang Hukum Pidana* [Criminal Code], Article 338. (Indonesia)
- [42] John Braithwaite, *Restorative Justice and De-Professionalization*, 13, *The Good Society*, 28, 29 (2004).
- [43] G.A. Res. 58/4, at 21, (Oct. 31 2003).
- [44] Jaksa Agung Muda Tindak Pidana Umum [Deputy Attorney General for General Crimes], *supra* note 28, at 5.
- [45] Peraturan Kepolisian [Police Regulation], *supra* note 24, Article 19-20.