

## The Urgency of Codifying and Unifying Restorative Justice Regulations in Criminal Procedure Code Reform

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### Abstract

*The fragmentation of restorative justice regulations across Indonesia's criminal justice institutions, including the police, prosecution, and judiciary, has resulted in procedural inconsistencies and undermined legal certainty for both victims and offenders. This study aims to examine the normative and institutional urgency of codifying and unifying restorative justice mechanisms within the reform of the Criminal Procedure Code (KUHAP), particularly in light of the restorative provisions introduced in the 2023 Code Penal (KUHP). Employing a normative juridical method, supported by limited empirical data from interviews with convicted persons, the research integrates statutory, comparative, and conceptual analyses to evaluate coherence between sectoral regulations and the integrated criminal justice framework envisioned by the revised KUHAP. Findings reveal significant regulatory divergence regarding eligibility criteria, procedural stages, and legal consequences, resulting in selective enforcement and a decline in public trust. The study concludes that codification and unification of restorative justice norms are imperative to harmonise institutional mandates, operationalise the principle of ultimum remedium, and ensure substantive legal certainty. Codified provisions should establish uniform procedures, binding legal effects, and cross-institutional coordination mechanisms. These reforms carry significant implications for advancing a humane and efficient criminal justice system in Indonesia, reducing litigation costs, and enhancing public confidence in restorative approaches.*

**Keywords:** Restorative Justice, Codification, Unification, Legal Certainty, Criminal Procedure Code (KUHAP).

### Introduction

Indonesia's integrated criminal justice system continues to face enduring structural and procedural challenges, particularly in addressing the rights and needs of victims. The existing KUHAP primarily secures the procedural rights of suspects, often at the expense of equitable access to justice for victims. Legal proceedings from investigation and prosecution to adjudication remain highly formalistic and

protracted, producing outcomes that stigmatise not only offenders but also victims and their families.<sup>1</sup> This situation reflects what Franz von Liszt described as *Rechtsgüterschutz durch Rechtsgutverletzung*, wherein legal protection paradoxically arises from the very infringement of the rights it seeks to protect.<sup>2</sup> In response, restorative justice has emerged as a corrective paradigm to address punitive biases and procedural rigidity by emphasising reconciliation, accountability, and the restoration of social relationships over retributive punishment.<sup>3</sup>

Despite its growing prominence, restorative justice in Indonesia remains governed by fragmented sectoral regulations, including Perpol No. 8 of 2021, Perjak No. 15 of 2020 and PERMA No. 1 of 2024. These instruments provide operational guidance at different procedural stages but lack a unified legal foundation that ensures consistency, binding authority and procedural safeguards across institutions.<sup>4</sup> This fragmentation manifests in practical inconsistencies. For example, a restorative settlement accepted by the police in Bandung was subsequently rejected by the prosecutor due to divergent regulatory standards, illustrating the lack of harmonisation between agencies.<sup>5</sup>

Paradoxically, while these inconsistencies persist, the reliance on restorative justice mechanisms has grown steadily, signalling an evolving institutional shift toward restorative approaches. Statistical data indicate a steady increase in the use of restorative justice mechanisms. In 2022, the Indonesian National Police resolved

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<sup>1</sup> P. D. Ratnasari, "Legal Protection of the Rights of Suspects in Criminal Case Investigation Process in Human Rights Perspective," *International Journal of Social Science and Human Research* 5, no. 11 (2022), <https://doi.org/10.47191/ijsshr/v5-i11-31>.

<sup>2</sup> Bambang Waluyo, *Perkara Penyelesaian Perkara Pidana Penerapan Keadilan Restoratif Dan Transformatif* (Jakarta: Sinar Grafika, 2020).

<sup>3</sup> R. P. Kiefer et al., "Apology and Restitution in a Role-Play Restorative Justice Experiment: Multiple Perspectives, Multiple Measures," *Journal of Psychology and Theology* 48, no. 2 (2020): 105–17, <https://doi.org/10.1177/0091647120911114>.

<sup>4</sup> Sarimonang Beny Sinaga et al., "Enhancing Restorative Justice Regulation for Criminal Cases' Legal Certainty: Exploring Ideal Concepts," *Migration Letters* 20, no. 5 (2023): 890–900, <https://doi.org/https://doi.org/10.59670/ml.v20i5.4096>.

<sup>5</sup> Berdasarkan hasil wawancara dengan Dina Anne selaku Jaksa di Kejaksaan Negeri Bandung.

15,809 cases through restorative justice, representing an 11.8% increase from 2021. Meanwhile, the Public Prosecution Service reported 1,454 restorative case resolutions.<sup>6</sup> These data suggest a growing institutional preference for restorative approaches. However, without an overarching statutory basis that standardizes principles, procedures, and legal effects across institutions, restorative justice remains discretionary and vulnerable to inconsistent enforcement.

This normative gap becomes particularly problematic in light of broader legal reforms. The new KUHP, enacted in 2023 and expected to enter into force in 2026, introduces several provisions that implicitly support restorative justice, such as recognizing victim forgiveness as a mitigating factor and allowing for case termination upon reconciliation. However, these substantive advancements remain unsupported by corresponding procedural mechanisms under the current KUHP. The March 2025 draft of the revised KUHP marks a promising development by incorporating limited references to restorative justice. Nevertheless, the absence of a cohesive and codified procedural framework continues to hinder the consistency, authority, and enforceability of restorative practices throughout the criminal justice process.

Recent studies have underscored the persistent institutional and procedural inconsistencies surrounding restorative justice in Indonesia. Dhia Fadlia, Prija Djatmika, and Yuliati demonstrate that dissynchronization among regulatory frameworks issued by the police, prosecution, and judiciary has created legal uncertainty and undermined the coherence of restorative justice implementation within the criminal justice system.<sup>7</sup> Complementing this, Afriandi Sikumbang and Rineke Sara highlight that the absence of harmonised standard operating

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<sup>6</sup> Rahel Nadra C., "Kejagung Selesaikan 1.454 Perkara Lewat "Restorative Justice," *kompas.com*, 2022, <https://nasional.kompas.com/read/2022/12/30/15223891/kejagung-selesaikan-1454-perkara-lewat-restorative-justice-sepanjang-2022>.

<sup>7</sup> Dhia Fadlia, Prija Djatmika, and Yuliati, "The Legal Implications of the Dissynchronization in the Regulation of Restorative Justice within the Criminal Justice System in Indonesia from the Perspective of Legal Certainty," *International Journal of Educational Review, Law And Social Sciences (IJERLAS)* 4, no. 6 (2024): 1884–89, <https://doi.org/10.54443/ijerlas.v4i6.2132>.

procedures and institutional coordination has led to fragmented practices and inconsistent outcomes, thereby reinforcing the urgency of codifying and unifying restorative justice norms within the Draft KUHP.<sup>8</sup>

Building on these findings, this study addresses a critical research gap by examining the doctrinal necessity for codifying and unifying restorative justice mechanisms within Indonesia's broader criminal procedure reform. The novelty of this study lies in its normative-legal critique of the existing regulatory framework and its argument for the codification and unification of restorative justice mechanisms through procedural law reform. By framing restorative justice not merely as an institutional policy but as a matter of legal certainty, this study offers a timely contribution to the discourse on criminal procedure reform in Indonesia. This research focuses on two key issues: (1) how restorative justice is currently implemented within Indonesia's fragmented legal framework; and (2) to what extent codification and unification of restorative justice regulations are necessary to ensure legal certainty and to support the broader reform of Indonesia's criminal procedure law.

## Methods

This study adopts a normative juridical method as its principal methodological framework, focusing on the examination of legal norms, doctrines, and statutory provisions governing restorative justice within Indonesia's criminal procedure. The study is complemented by a limited empirical approach, consisting of interviews with convicted persons, which serves to contextualize and substantiate the normative findings without displacing the primacy of doctrinal analysis.

A conceptual and statutory approach is utilised to assess the coherence of restorative justice regulations across institutional frameworks, namely the Indonesian National Police, the Public Prosecutor's Office, and the judiciary, to

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<sup>8</sup> Afriandi Sikumbang and Rineke Sara, "Harmonization of Restorative Justice Regulations within the Indonesian Criminal Justice System," *Greenation International Journal of Law and Social Sciences* 3, no. 2 (2025): 318–28, <https://doi.org/10.38035/gijlss.v3i2.426>.

evaluate their compatibility with the integrated criminal justice system envisioned under the RKUHAP and the 2023 KUHP. Comparative legal analysis is also applied to draw insights from jurisdictions that have codified restorative mechanisms, including New Zealand, Canada, and Norway. Data were examined through a qualitative descriptive method, involving systematic inventory, classification, and synthesis of norms to identify fragmentation and propose codification and unification strategies.

## **Discussion**

### **The Implementation of Criminal Case Settlement Through Restorative Justice in Relation to the Existing Law**

In the realm of criminal law, punitive measures are traditionally conceived as a last resort, embodying the principle of *ultimum remedium*. Given their inherently coercive and severe nature, criminal sanctions function subsidiarily and should only be invoked when alternative legal mechanisms prove insufficient.<sup>9</sup> This principle is firmly embedded in Indonesian criminal jurisprudence, where criminal law is designed not as the primary instrument of social control but as a corrective mechanism deployed in exceptional circumstances. Accordingly, the application of criminal penalties demands prudence, as excessive reliance on punitive measures risks undermining the proportionality and legitimacy of legal enforcement.

Criminal law exists as a body of law that regulates violations and crimes against public interests. The nature of its sanctions, which intentionally inflict suffering or punishment, distinguishes it from other fields of law.<sup>10</sup> Notably, criminal penalties may still be imposed even in the absence of a direct individual victim. This characteristic reinforces the perception of criminal law as *ultimum remedium*, a

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<sup>9</sup> Y. E. Pudovochkin, "Criminal Law Measures and Criminal Liability: Scientific Discussion and Searching for a Solution," *Penitentiary Science*, 14, no. 4 (2020): 542–51, <https://doi.org/10.46741/2686-9764-2020-14-4-542-551>.

<sup>10</sup> Yulies Tine Masrini, *Pengantar Hukum Indonesia* (Jakarta: Sinar Grafika, 2006).

mechanism intended to correct deviant behavior and exert psychological deterrence to prevent others from committing similar offenses.<sup>11</sup>

In this context, restorative justice has emerged as a necessary and constructive approach for resolving criminal cases. This model represents a shift from a retributive paradigm toward a restorative one, prioritizing reconciliation and healing over punishment.<sup>12</sup> The increasing societal demand for a justice system that facilitates restoration rather than retribution highlights the urgency of integrating restorative mechanisms into criminal case resolution.<sup>13</sup> Despite being more humane and often preferred by victims for its emphasis on restoring the original state of affairs, restorative justice does not yet provide legal certainty for offenders within Indonesia's integrated criminal justice system, which comprises multiple institutions such as the police, the prosecution, and the judiciary.

The existing regulatory framework governing restorative justice in Indonesia reveals a high degree of institutional fragmentation. Each subsystem, namely, the Indonesian National Police, the Public Prosecutor's Office, and the judiciary, has independently issued internal regulations that govern the application of restorative justice within their respective domains. This regulatory divergence has resulted in conflicting interpretations and procedural inconsistencies, leading to uncertainty for law enforcement officers, victims, and offenders alike in determining the proper legal steps and the legitimacy of restorative outcomes.

Each institution, namely, the National Police, the Public Prosecutor's Office, and the judiciary, has issued its internal guidelines: Perpol No. 8 of 2021, Perjak No.

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<sup>11</sup> Y. Fernando, "Complaint Defiction and Ultimium Remedium in the Perspective of Positivism (Roman) Law School, and Realism, and Sociology, and Utilitarianism and Freie Recht Slehre (Anglo-American)," *Journal Equity of Law and Governance* 3, no. 1 (2023): 58-71, <https://doi.org/10.55637/elg.3.1.6616.58-71>.

<sup>12</sup> Rahayu Sri Utami, "Restorative Justice: A Comprehensive Shift Towards Victim-Perpetrator Reconciliation and Community Healing," *Indonesian Journal of Law and Economics Review*. 18, no. 3 (2023), <https://doi.org/10.21070/ijler.v18i3.959>.

<sup>13</sup> A. Omowon and A. S. Kunlere, "Restorative Justice Practices: Bridging the Gap between Offenders and Victims Effectively," *World Journal Of Advanced Research and Reviews* 24, no. 3 (2024): 2768-85, <https://doi.org/10.30574/wjarr.2024.24.3.3978>.

15 of 2020, and PERMA No. 1 of 2024. Although these instruments uniformly recognize the legitimacy of restorative justice within Indonesia’s criminal justice framework, they diverge significantly in defining eligibility criteria, procedural stages, and the substantive scope of cases to which restorative justice may be applied.

This inconsistency undermines the *ultimum remedium* principle by enabling scenarios in which restorative agreements finalized under one institutional framework may be disregarded by another, exposing offenders to renewed prosecution despite prior resolution efforts. Such outcomes not only negate the intended restorative function but also raise constitutional concerns regarding legal certainty and equality before the law, as guaranteed under Article 28D paragraph (1) of the 1945 Constitution.

A notable example of this inconsistency can be found in the differing requirements outlined in Perjak No. 15 of 2020 and Perpol No. 8 of 2021. Article 4 of Perjak No. 15 of 2020 stipulates that restorative justice may only be applied in cases where the maximum statutory penalty does not exceed five years of imprisonment and where material losses are valued at no more than IDR 2,500,000 (two million five hundred thousand rupiah). Conversely, Perpol No. 8 of 2021, particularly in Articles 5 and 6, does not impose such limitations. The specific differences between these two regulations are illustrated in the following table:

**Table 1.** Regulatory Differences in Restorative Justice

Category	Perjak No. 15/2020	Perpol No. 8/2021	PERMA No. 1/2024
Requirement	Requirements: a. The offender committed a criminal act for the first time b. The offense is punishable by a fine or imprisonment	Substantive Requirements: a. Does not cause public unrest b. Does not lead to social conflict c. Does not pose a threat to national unity and integrity	Criminal offenses that may be resolved through Restorative Justice are those classified as complaint-based offenses ( <i>delik aduan</i> ).

Category	Perjak No. 15/2020	Perpol No. 8/2021	PERMA No. 1/2024
	of no more than 5 years. c. The offense resulted in a financial loss of less than IDR 2,500,000 (Articles 4)	d. Is not related to acts of radicalism or separatism e. The offender is not a recidivist Formal Requirements: a. There is reconciliation between the offender and the victim b. The offender fulfills the victim's rights as a form of accountability (Article 5 and 6)	(Article 6 paragraph 1 letter b)
Principles	The principles of public interest, justice, proportionality, criminal law as a last resort ( <i>ultimum remedium</i> ), and the resolution of criminal cases must be carried out in a prompt, simple, and low-cost manner. (Article 2)	Aims to ensure legal certainty, deliver practical benefits, and cultivate a sense of justice in society. (not explicitly regulated in a specific article)	1. Restoration of the original condition; 2. Strengthening the rights, needs, and interests of the victim; 3. Accountability of the offender; 4. Punishment as a last resort; 5. Consensus-based approach; 6. Transparency and accountability. (Article 2)
Case Exceptions	Criminal offenses involving state security, the	Criminal offenses of terrorism, offenses against state security,	Criminal offenses that may be resolved through



Category	Perjak No. 15/2020	Perpol No. 8/2021	PERMA No. 1/2024
	President and Vice President, offenses carrying minimum mandatory sentences, narcotics, environmental crimes, and offenses committed by corporations. (Article 5)	corruption offenses, and offenses resulting in the loss of life. (Article 5)	restorative justice are those classified as complaint-based offenses. (Article 6 paragraph 1 letter b)
Mechanism	The public prosecutor offers the possibility of a peace agreement to both parties. (Article 7)	The process is carried out by submitting a written request made by the perpetrator, the victim, their families, and/or relevant community or traditional figures. (Article 13)	The judge provides an opportunity for the defendant and the victim to reach an agreement for resolution through restorative justice. (Article 7)

*Source: Compiled by the author from several references*

Differences in regulatory provisions governing restorative justice have significant implications for its implementation, both from the perspective of victims and offenders. For instance, when both parties, the victim and the offender, initiate a reconciliation process and submit a restorative justice request at the investigation stage under police authority, but the case fails to resolve and is transferred to the Prosecutor's Office, the requirements for accessing restorative justice mechanisms change. A case that initially fulfilled the necessary criteria under police procedures may subsequently fail to meet the prosecutorial requirements. This may occur due to various factors, such as the offence carrying a sentence of more than five years, the offender being a recidivist, or the case falling under categories that are explicitly excluded from restorative justice according to prosecutorial regulations. Such discrepancies create procedural confusion, leaving both victims and offenders uncertain about their rights and obligations.

In practice, several criminal defendants have experienced such inconsistencies. In certain cases, even after reconciliation and compensation were provided to victims, legal proceedings continued until a formal court decision was issued. A relevant example is the case of DL (pseudonym), an inmate at the Class I Detention Centre in Bandung (Kebon Waru Prison), who was charged with theft. DL reported that he had reconciled with the victim (initials AP), supported by a written peace agreement and the victim's forgiveness. He submitted a request for restorative justice during the investigation phase. However, while his request was still being processed, the case was transferred to the Prosecutor's Office. DL was then required to resubmit a restorative justice application under the new procedural framework, which was ultimately rejected. This sequence of events left him confused and uncertain about the appropriate legal procedures for requesting restorative justice.<sup>14</sup>

A similar case involved RF (pseudonym), a former inmate at Class IIB Garut Prison, who was convicted of fraud in 2022. Like DL, RF had reached a reconciliation with the victim (initials CM), formalised through a written peace agreement and compensation. RF submitted all necessary administrative documents in support of his restorative justice request, yet it was still denied. RF expressed his frustration over the lack of procedural clarity and the fact that each institution seemed to apply different standards for handling restorative justice.<sup>15</sup>

Discrepancies in the implementation of restorative justice between the police and the prosecutor's office, as illustrated by various cases, originate from each institution's reliance on distinct internal regulatory frameworks. Although these regulations possess equal normative status and operate within the same criminal justice subsystem, their divergent application generates inconsistencies at the preliminary stages of criminal proceedings. This divergence threatens the integrity

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<sup>14</sup> Hasil wawancara dengan salah satu terpidana atas tindak pidana Penganiayaan Ringan pada tanggal 29 Agustus 2024 di Rumah Tahanan Kelas I Bandung (Kebon Waru) Pukul 11.00 WIB.

<sup>15</sup> Hasil wawancara dengan salah satu mantan terpidana dari Rumah Tahanan Negara Kelas II B Garut pada tanggal 4 September 2024 Pukul 11.00 WIB.

of Indonesia's integrated criminal justice system, engenders perceptions of selective law enforcement, and ultimately undermines the foundational objective of coherence in criminal adjudication.

One significant difference lies in the exceptions outlined in each regulation. Article 5 of Perjak No. 15 of 2020 excludes restorative justice for offenses related to state security, crimes involving the President or Vice President, offenses with minimum mandatory sentences, narcotics-related crimes, environmental crimes, and offenses committed by corporations. In contrast, Article 5 of Perpol No. 8 of 2021 excludes terrorism, state security offenses, corruption, and crimes resulting in loss of life. Notably, Perjak No. 15 of 2020 does not explicitly mention terrorism and corruption, which may lead to the potential misinterpretation that these offenses can still be resolved through restorative justice at the prosecutorial stage.

Given such discrepancies, harmonization of legal provisions is imperative. Contradictory narratives within restorative justice regulations foster legal ambiguity and misinterpretation. The author argues that not all criminal offenses should be eligible for restorative justice. Notably, crimes such as terrorism and corruption, categorized as dangerous and transnational, must be categorically excluded.

Another point of divergence between the two regulations relates to procedural mechanisms. Article 7 of Perjak No. 15 of 2020 specifies that restorative justice can only proceed if initiated by the Prosecutor's Office. Meanwhile, Article 13 of Perpol No. 8 of 2021 allows for a restorative justice process to begin through a written request made by the offender, the victim, their families, or relevant community figures. This procedural inconsistency has the potential to confuse both victims and offenders, leading to uncertainty in the implementation of restorative justice.

Further complexity arises with the introduction of PERMA No. 1 of 2024. According to Article 6 paragraphs (1) letter (b) and (c), restorative justice applies only to complaint-based offenses or offenses carrying a maximum penalty of five years for at least one of the charges. In contrast, neither Perjak No. 15 of 2020 nor

Perpol No. 8 of 2021 explicitly limits restorative justice to complaint-based offenses or sets out sentencing thresholds in these terms.

Moreover, the final legal outcomes following restorative justice proceedings differ across institutions. The Police may issue a termination of investigation (SP3), the Prosecutor's Office may release a prosecution dismissal letter, while the judiciary ultimately concludes cases through formal court rulings. These variations create further ambiguity concerning the legal status of offenders post-restoration. According to the author, this reflects a broader legal ambiguity surrounding the implementation of restorative justice in Indonesia. When there is no alignment or harmonization between regulations, it undermines legal certainty and the effectiveness of law enforcement.

This normative uncertainty and procedural fragmentation not only undermine the legal framework but also generate profound social and psychological harms, shaping how victims, offenders, and the broader community perceive the legitimacy of the justice system. Victims may experience renewed trauma when reconciliation agreements are disregarded, and offenders may suffer frustration and growing distrust toward the justice system.<sup>16</sup> Evidence from Medan underscores that inconsistent outcomes across different regions and agencies undermine public confidence, thereby diminishing the perceived legitimacy of restorative justice mechanisms.<sup>17</sup> This erosion of legitimacy weakens societal resilience and the perceived credibility of restorative justice as an alternative to conventional prosecution.

At its essence, the principle of legal certainty is designed to protect justice seekers and ensure that individuals are informed of the applicable legal norms

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<sup>16</sup> Carolyn. Hoyle and Diana Batchelor, "Making Room for Procedural Justice in Restorative Justice Theory," *The International Journal of Restorative Justice* 1, no. 2 (2018): 175–86, <https://doi.org/10.5553/IJRJ/258908912018001002001>.

<sup>17</sup> Nugraha Manuella Meliala, Ismaidar, and Muhammad Arif Sahlepi, "Penerapan Restorative Justice Oleh Pengadilan Negeri Medan Untuk Mewujudkan Kepastian Hukum Dalam Penyelesaian Tindak Pidana," *Jurnal Ilmu Hukum, Humaniora Dan Politik* 4, no. 3 (2023): 459–470, <https://doi.org/10.38035/jihhp.v4i3.1961>.

before initiating legal proceedings.<sup>18</sup> Within the context of restorative justice, this principle mandates that offenders who have met all the requirements should not be subject to further criminal prosecution.<sup>19</sup> Additionally, it requires law enforcement agencies to issue a formal, written decision to terminate the legal process officially. Moreover, for restorative justice to function effectively and equitably, it must be uniformly regulated and systematically integrated across the entire criminal justice system.<sup>20</sup> Written law, as a symbol of legal certainty, must not only establish order but also ensure that legal norms are consistently implemented. Consistent application promotes the broader objectives of law by maximising its utility, effectiveness, and social benefit.<sup>21</sup>

Based on the foregoing dynamics, it is evident that restorative justice in Indonesia still lacks regulatory clarity. Both victims and offenders face significant uncertainty in determining whether their cases qualify for resolution through restorative justice, as divergent institutional practices frequently undermine its foundational purpose as a humane mechanism and ultimate recourse within criminal adjudication. In this regard, Muhammad Artferyo and Supardi, through a normative juridical study, reveal the persistence of inconsistencies in the implementation of restorative justice among the police, prosecutors, and the Supreme Court. Divergent standards, interpretations, and procedural frameworks across these institutions create substantial uncertainty for both victims and offenders regarding eligibility for restorative mechanisms. Their findings further

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<sup>18</sup> S. Zemlianukhina and N. S. Zemlianukhina, "The Causes and Effects of Discouragement in the Working-Age Population," *Problems of Economic Transition* 63, no. 4–5 (2022): 203–11, <https://doi.org/10.1080/10611991.2022.2141544>.

<sup>19</sup> L. B. Dewandaru, J. Hafidz, and L. Hanim, "The Policy of the Prosecutor's Authority in Termination of Prosecutions Based on Restorative Justice in Criminal Justice System In Indonesia," *Law Development Journal*, 4, no. 3 (2022): 403–15, <https://doi.org/10.30659/ldj.4.3.403-415>.

<sup>20</sup> Mario Julyanto and Aditya Yuli Sulistyawan, "Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum," *Jurnal Crepido* 1, no. 1 (2019): 300, <https://doi.org/10.14710/crepido.1.1.13-22>.

<sup>21</sup> O. V. Shcherbanyuk, V. Gordieiev, and L. G. Bzova, "Legal Nature of the Principle of Legal Certainty as a Component Element of the Rule of Law," *Juridical Tribune* 13, no. 1 (2023): 22–31, <https://doi.org/10.24818/tbj/2023/13/1.02>.

underscore that, in the absence of harmonised operational guidelines, restorative justice risks failing to achieve its substantive objectives and instead becomes merely symbolic.<sup>22</sup>

The formulation of the revised KUHAP presents a critical opportunity to address longstanding structural deficiencies in Indonesia's restorative justice framework. Before this initiative, restorative mechanisms were fragmented across institutional regulations, lacking a binding procedural integration, which resulted in selective enforcement and inconsistent eligibility criteria, particularly for minor offences. Codification within the revised KUHAP would harmonise these disparate mechanisms into a single procedural code, thereby enhancing procedural fairness, ensuring consistent application, and reaffirming restorative justice as *ultimum remedium* within the criminal justice system. This normative shift lays the groundwork for deeper analysis on why such codification is essential for comprehensive criminal justice reform.

Integrating restorative justice into a unified criminal justice system is equally vital from a practical standpoint. This integrated system aims to accelerate and simplify legal proceedings, minimise errors and procedural mistakes, and enhance the accuracy and fairness in the administration of criminal law. In this regard, the concept of restorative justice serves as a supporting element in achieving a more effective and integrated criminal justice system.<sup>23</sup> Furthermore, this approach may also have a significant impact on the national and regional economies, particularly in terms of reducing expenditures from the State Budget (APBN) and Regional Budget (APBD), as prolonged litigation processes typically consume substantial public funds. Cost reductions are achieved by resolving cases at earlier procedural stages, thereby obviating the need for extended investigations, formal indictments,

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<sup>22</sup> Muhammad Artferyo and Supardi, "Application of Restorative Justice in Criminal Justice," *Syiah Kuala Law Journal* 9, no. 2 (2025): 274–84, <https://doi.org/10.24815/sklj.v9i2.46014>.

<sup>23</sup> N. Soekorini and Hartoyo, "Restorative Justice in the Application of Criminal Law," *KnE Social Sciences* 7, no. 15 (2022): 607–15, <https://doi.org/10.18502/kss.v7i15.12135>.

and protracted trials, while simultaneously minimizing expenses related to detention facilities, court administration, and legal representation.

Prior studies, including research by Nur'aini Jamal indicate that restorative mechanisms shorten case duration, reduce reliance on pre-trial detention, and consequently lessen financial burdens on law enforcement agencies and correctional institutions.<sup>24</sup> Similarly, Sakti demonstrates that restorative justice, even in corruption cases, embodies the ideal of “simple, swift, and low-cost justice,” offering tangible reductions in state expenditure.<sup>25</sup> Collectively, these findings affirm that codification and unification of restorative mechanisms would not only strengthen procedural consistency but also advance fiscal efficiency within Indonesia's integrated criminal justice framework.

The integrated criminal justice system places strong emphasis on inter-agency coordination, particularly in the context of restorative justice. To ensure the effectiveness and finality of restorative resolutions, institutions such as the police, prosecution, judiciary, the Witness and Victim Protection Agency (LPSK), and correctional services must guarantee that once a case is resolved through restorative means, it is not subject to further legal processing. This coordination requires the development of a unified communication mechanism supported by a centralised restorative justice database that enables transparent and consistent information sharing across agencies. Furthermore, a joint regulation or nationally codified guideline must serve as a binding legal reference for all stakeholders, ensuring uniformity in implementation and preventing disparities in interpretation and enforcement.

Although sectoral regulations within each component of the criminal justice system provide a normative basis for restorative practices, the absence of

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<sup>24</sup> Nur'aini Jamal, “Implementasi Peraturan Kepolisian Negara Republik Indonesia Nomor 8 Tahun 2021 Tentang Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif,” *Jurnal Equitable* 8, no. 2 (2022), <https://doi.org/10.37859/jeq.v8i2.4963>.

<sup>25</sup> L. Sakti, “Penerapan Restorative Justice Dalam Perkara Korupsi Sebagai Wujud Peradilan Sederhana, Cepat, Dan Biaya Ringan,” *Jurnal Ius Constituendum* 8, no. 2 (2023): 239, <https://doi.org/10.26623/jic.v8i2.6822>.

inter-institutional integration perpetuates legal uncertainty for both victims and offenders. Empirical findings by Rahmathoni further substantiate this concern, demonstrating that the lack of harmonized guidelines and interpretative coherence among law-enforcement agencies frequently reduces restorative justice to a symbolic rather than substantive mechanism.<sup>26</sup> Addressing this structural deficiency requires the establishment of a unified national regulation and a centralized procedural mechanism to ensure both legal certainty and substantive effectiveness. Codification within the revised KUHAP would therefore consolidate fragmented practices into a coherent framework, align procedural safeguards with restorative principles, and foster uniform application across police, prosecutorial, and judicial institutions.

### **The Urgency of Codification and Unification of Regulations Related to Restorative Justice as Legal Certainty in the Context of Criminal Procedure Code Reform**

Restorative justice is an alternative approach to resolving legal disputes that places recovery and reconciliation at its core. This model focuses on repairing the relationships among the offender, the victim, and the affected community, as well as addressing the harm resulting from the criminal act. Restorative justice offers the offender an opportunity to make amends and rebuild damaged relationships through methods such as mediation, dialogue, or other forms of reconciliation. Its primary objective is not to impose punishment but to facilitate healing that involves all parties affected by the crime. In this regard, restorative justice is often regarded as a more humane and socially effective legal solution, as it targets the root causes of crime rather than merely administering punitive measures.<sup>27</sup>

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<sup>26</sup> Lutfi Yusup Rahmathoni, "Perbedaan Makna Restorative Justice Pasca Perma No. 1 Tahun 2024 Pada Sistem Hukum Pidana Di Indonesia," *Rewang Rencang: Jurnal Hukum Lex Generalis* 5, no. 10 (2024): 1–15, <https://jhlrg.rewangrencang.com/>.

<sup>27</sup> rince Pius Imiera, "Therapeutic Jurisprudence and Restorative Justice: Healing Crime Victims, Restoring the Offenders," *De Jure Law Journal* 51, no. 1 (2018): 82–101, <https://doi.org/10.17159/2225-7160/2018/V51N1A6>.



As a judicial model, restorative justice centers on the needs of both victims and offenders and actively involves the broader community, diverging from the traditional punitive approach where outcomes are decided exclusively by judicial authorities.<sup>28</sup> Rather than functioning within an adversarial system that defines winners and losers, restorative justice enables collaborative dialogue among victims, offenders, their supporters, and the wider community to determine how best to respond to the crime and its future implications. This approach seeks to repair harm and rebuild social trust, thereby promoting long-term cohesion within communities.<sup>29</sup>

The key objective of restorative justice is to mitigate the adverse effects of crime by directly engaging relevant stakeholders, ensuring a more expedited and meaningful resolution process. As James Dignan Wright observes, the principal goal of restorative justice is restoration, with compensation as a secondary aim. This signifies that the resolution of criminal acts through a restorative lens seeks to restore the status quo ante, including compensation to the victim through mutually agreed-upon methods. From its conceptual foundation and intended objectives, restorative justice offers substantial societal benefits. In practice, restorative justice has led to peaceful resolutions without further conflict between victims and offenders, thus demonstrating its effectiveness in promoting societal harmony.<sup>30</sup>

From a legal-theoretical standpoint, law functions not only as a framework for maintaining order and protecting rights but also as an instrument for realizing broader conceptions of justice. Among the dominant philosophical approaches, utilitarianism posits that laws should pursue the greatest happiness for the greatest number, even if such pursuit occasionally disadvantages certain individuals or

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<sup>28</sup> Andro Giovani. Ginting, Vici Utomo. Simatupang, and Sonya Arini Batubara, "Restorative Justice Sebagai Mekanisme Penyelesaian Tindak Pidana Kekerasan Dalam Rumah Tangga," *Jurnal Rectum* 1, no. 3 (2019): 180–87, <http://dx.doi.org/10.46930/jurnalrectum.v1i2.225>.

<sup>29</sup> Afthonul Afif, *Pemaafan, Rekonsiliasi & Restorative Justice*, Cetakan I (Yogyakarta: Pustaka Pelajar, 2015).

<sup>30</sup> Aloysius Wisnubroto and G. Widiartana, *Pembaharuan Hukum Acara Pidana* (Bandung: Citra Aditya Bakti, 2005).

minorities.<sup>31</sup> As articulated by Lilik Rasyidi and Zainuddin Ali, achieving happiness for all through law is inherently impossible. Consequently, legal frameworks inevitably prioritize collective welfare over individual grievances. In this view, the legal system must strive to achieve fairness while simultaneously maximizing societal benefits, thereby fulfilling its consequentialist mandate.<sup>32</sup>

Building upon this theoretical foundation, the codification and unification of restorative justice emerge as normative imperatives within a utilitarian framework. Regulatory fragmentation, manifested in divergent institutional guidelines and inconsistent procedural standards, undermines social utility by fostering unequal treatment, eroding public confidence, and perpetuating legal uncertainty for victims and offenders alike. A harmonized and codified framework would address these deficiencies by establishing uniform criteria for the application of restorative mechanisms, ensuring procedural predictability across law enforcement bodies, and facilitating more expeditious and equitable resolutions. Accordingly, the proposed reform of KUHAP transcends mere administrative harmonization. It embodies a consequentialist approach that prioritizes the greatest happiness for the greatest number through coherent and socially responsive criminal justice practices.

The urgency of such reform becomes even more evident when assessed against Indonesia's empirical realities. The current implementation of restorative justice remains inadequate due to the pronounced inconsistencies and normative misalignments among existing legal instruments. These regulatory discrepancies significantly impair the effectiveness of restorative mechanisms and weaken their legitimacy within the broader Integrated Criminal Justice System. In practice, the absence of a unified legal framework perpetuates disparities in access to restorative

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<sup>31</sup> Abdul Chair Ramadhan, *Perkembangan Filsafat Hukum* (Jakarta: BP Iblam, 2006).

<sup>32</sup> Ramadhan.

mechanisms and contributes to systemic inefficiencies, further diminishing public trust in criminal justice institutions.<sup>33</sup>

This normative imperative for unification aligns with broader discourses on integrated criminal justice systems, a concept originally formulated by criminal law scholars in the United States. The notion emerged from dissatisfaction with law enforcement institutions that predominantly adhered to a rigid law-and-order paradigm, heavily reliant on the operational capacity of police and prosecutors.<sup>34</sup> However, such institutions faced significant procedural and practical limitations, constraining their ability to reduce crime and exacerbating systemic inefficiencies. The comparative experience of the United States underscores the necessity of coherent frameworks to foster institutional synergy an insight that remains highly pertinent for Indonesia's ongoing criminal procedure reform under the Draft KUHAP.

In an Integrated Criminal Justice System, law enforcement agencies though differing in mandate and operational focus function as interdependent subsystems working toward shared objectives. Such institutional synergy can only be realized through adequate legal frameworks that promote coherence, coordination, and integration among subsystems. The absence of such frameworks leads to fragmentation and an institution-centric approach, ultimately obstructing the development of a truly unified system.<sup>35</sup> To achieve this integration, particularly concerning restorative justice, a foundational regulation or unified legal guideline is needed to consolidate various existing provisions. This regulatory unification will ensure a common understanding and shared objectives across law enforcement institutions, thereby minimizing divergent interpretations and practices,

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<sup>33</sup> Supriyatna, "Kuhap Dan Sistem Peradilan Pidana Terpadu," *Jurnal Wacana Hukum* 8, no. 1 (2009), <https://doi.org/10.33061/1.jwh.2009.8.1.318>.

<sup>34</sup> Alessandro Corda and Rhys Hester, "Leaving the Shining City on a Hill: A Plea for Rediscovering Comparative Criminal Justice Policy in the United States," *International Criminal Justice Review* 31, no. 1 (2021): 203–23, [10.1177/1057567720981626](https://doi.org/10.1177/1057567720981626).

<sup>35</sup> A. Rofiq, H. S. Disemadi, and N. S. Putra Jaya, "Criminal Objectives Integrality in the Indonesian Criminal Justice System," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 19, no. 2 (2019): 179–90, <https://doi.org/10.30631/alrisalah.v19i2.458>.

particularly regarding the conditions, procedures, and purposes of restorative justice.

Comparative experiences from other jurisdictions underscore the feasibility and benefits of codification. In New Zealand, the Children, Young Persons, and Their Families Act 1989 institutionalized restorative justice for youth offenders by embedding family group conferences as a mandatory element of the youth justice process.<sup>36</sup> Likewise, Canada's Youth Criminal Justice Act 2003 formalized restorative mechanisms through structured diversion programs and victim-offender mediation, primarily aimed at juveniles yet offering normative principles adaptable to broader criminal justice contexts.<sup>37</sup> Norway's Mediation and Reconciliation Service Act extended restorative practices to both juveniles and adults, establishing a comprehensive statutory framework that ensures uniform procedures nationwide and bolsters public trust in restorative outcomes.<sup>38</sup> Collectively, these codified models demonstrate how legal unification fosters procedural clarity, equitable access, and enhanced public confidence in the justice system, insights that hold significant relevance for Indonesia's ongoing efforts to harmonize restorative principles within its forthcoming criminal procedure reforms.

Legal unification refers to a systematic effort to create a cohesive and universally applicable body of law for all citizens, aiming to eliminate inconsistencies and fragmentation within a legal system.<sup>39</sup> In the Indonesian context, this process has been largely realized in the realm of public law such as constitutional, administrative, taxation, and criminal procedural law while private

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<sup>36</sup> Liam J. Leonard, "Can Restorative Justice Provide a Better Outcome for Participants and Society than the Courts?," *Laws* 11, no. 1 (2022): 14, <https://doi.org/10.3390/laws11010014>.

<sup>37</sup> M. Adorjan and R. Ricciardelli, "The Last Bastion of Rehabilitation: Contextualizing Youth Correctionalism in Canada," *The Prison Journal* 98, no. 6 (2018): 655-77, <https://doi.org/10.1177/0032885518811807>.

<sup>38</sup> Dariusz Kuźelewski, "The Norwegian Model of Victim-Offender Mediation as an Original System Approach," *Białystok Legal Studies: Białostockie Studia Prawnicze* 29, no. 4 (2024): 139-59, <https://doi.org/10.15290/bsp.2024.29.04.09>.

<sup>39</sup> Ahmad Althof 'Athooillah and Muhammad Faisol, "Analysis of Legal Unification toward the National Legislation Program in Indonesia," *Rechtenstudent Journal* 4, no. 1 (2023): 1-14, <https://doi.org/10.35719/rch.v4i1>.

law continues to exhibit pluralistic characteristics, except in certain areas. The core objective of legal unification is to consolidate various legal norms into a single, codified framework that applies uniformly across all segments of the population.

This unification enhances the efficiency and effectiveness of the legal system by reducing regulatory overlaps and interpretive ambiguities, thereby facilitating more coherent enforcement and adjudication. It also promotes legal equity by eliminating unjust disparities across regions, social classes, or individuals, ensuring equal treatment under the law.<sup>40</sup> On an international level, legal unification fosters harmonization by reducing legal barriers to trade, investment, and global cooperation. Additionally, it supports social interaction and mobility by enabling more consistent legal engagement across diverse actors and entities. Lastly, by streamlining legal compliance and administration, a unified legal system helps reduce operational burdens for individuals, businesses, and public institutions.<sup>41</sup>

Building upon the conceptual benefits of legal unification, the fragmented implementation of restorative justice in Indonesia illustrates the practical challenges that emerge in the absence of a coherent normative framework. The study by Agung Wibowo et al. highlights regulatory inconsistencies among law enforcement institutions, demonstrating that without codification and unification, restorative justice is applied unevenly and lacks substantive legitimacy.<sup>42</sup> This concern is reinforced by the findings of Afriandi Sikumbang and Rineke Sara, whose research on harmonizing restorative justice regulations within Indonesia's criminal justice system reveals that uncoordinated institutional mandates and procedural

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<sup>40</sup> Petrakova M.S., "Systematization of Legislation as a Way to Ensure the Effectiveness of Legal Regulation: Theoretical and Legal Aspects," *Courier of Kutafin Moscow State Law University (MSAL)* 1, no. 11 (2021): 233–40, <https://doi.org/10.17803/2311-5998.2021.87.11.233-240>.

<sup>41</sup> V. Andriiv, "Unification of Norms in the Field of International Legal Regulation of Labour," *Bulletin of Taras Shevchenko National University of Kyiv Legal Studies* 5, no. 8 (2022): 120, <https://doi.org/10.17721/1728-2195/2022/1.120-1>.

<sup>42</sup> Agung Wibowo, Hartiwiningsih Hartiwiningsih, and Sulistyanta Sulistyanta, "Harmonization of Restorative Justice Regulation in the Legal System in Indonesia," in *Proceedings of the International Conference on Cultural Policy and Sustainable Development (ICPSD 2024)* (Atlantis Press, 2024), 352–60, [https://doi.org/10.2991/978-2-38476-315-3\\_48](https://doi.org/10.2991/978-2-38476-315-3_48).

disparities perpetuate legal uncertainty and undermine public trust. Although the two studies address different aspects of restorative justice, both collectively affirm the doctrinal imperative to codify and unify restorative justice mechanisms as part of Indonesia's broader criminal procedure reform.<sup>43</sup>

The consequences of this fragmentation are particularly evident in the implementation of restorative justice, where divergent regulations issued by the National Police, the Attorney General's Office, and the Supreme Court have created overlapping mandates and inconsistent procedures. In the absence of codified and harmonized standards, law enforcement agencies often apply different criteria for initiating or terminating restorative processes, leading to unequal access to justice and eroding public trust in the legal system. This disjointed legal landscape not only undermines the principle of equality before the law but also contradicts the integrative spirit of the criminal justice system envisioned in Indonesia's broader legal reform agenda.

The current KUHAP is widely regarded as outdated, particularly as a framework for enforcing modern principles of criminal law. It fails to accommodate the restorative justice paradigm incorporated in the 2023 KUHP, which scheduled to be effective in 2026. The new KUHP reflects a shift toward corrective, restorative, and rehabilitative justice. Article 54 emphasizes the importance of victim forgiveness in sentencing decisions, while Article 132 paragraph (1) letter (g) stipulates that prosecutorial authority lapses upon a legally recognized extrajudicial settlement. According to the explanatory note of Article 132, "prosecution" includes all procedural stages beginning from investigation. Thus, restorative justice mechanisms grounded in internal institutional regulations, rather than legislation, are incompatible with the legal framework established in the 2023 KUHP and also contradict the imperative nature of the current KUHAP.

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<sup>43</sup> A. Sikumbang and R. Sara, "Harmonization of Restorative Justice Regulations within the Indonesian Criminal Justice System," *International Journal of Law and Social Sciences* 3, no. 2 (2025): 318–28, <https://doi.org/10.38035/gijlss.v3i2.426>.

For this reason, the author contends that the unification of restorative justice regulations in Indonesia is an urgent necessity. This unification should be achieved through the enactment of a comprehensive statute that integrates relevant provisions from Perpol No. 8 of 2021, Perjak No. 15 of 2020, and PERMA No. 1 of 2024. Such a unified legal instrument would apply across all institutional subsystems within the Integrated Criminal Justice System and be uniformly binding across judicial levels.

Aligned with this proposition, the Indonesian government is currently drafting RKUHAP, which will be the first homegrown procedural code developed domestically. In fact, the existing KUHAP already embodied principles of unification and integration, as reflected in provisions regulating coordination between investigators, prosecutors, and judges. Articles 7, 107, and 109 regulate the relationship between police investigators and civil servant investigators; Articles 8, 14, 24, 109, 110, 140, 143, 144, 207, and 214 govern coordination between the police and public prosecutors; and Articles 29, 33, 38, and 214 detail interactions between investigators, judges, and courts. These articles reflect codified and unified procedural norms intended to prevent jurisdictional overlap.

The Draft KUHAP is designed to advance national legal development by reinforcing the rule of law and establishing an Integrated Criminal Justice System that clearly delineates the roles, functions, and authorities of each law enforcement agency. This reform aims to enhance legal certainty, ensure due process, and strengthen protections for suspects, defendants, witnesses, and victims in line with human rights and constitutional principles. Regarding restorative justice regulations, the March 2025 Draft KUHAP introduces several provisions addressing its application, notably in Article 1 paragraph (18), Article 67 paragraph (2) letter (g), and Chapter IV, which regulates restorative mechanisms. The draft also reflects elements of existing restorative regulations by incorporating exclusions found in Article 77, which mirrors Article 5 paragraph (8) letter (g) of Perjak No. 15 of 2020.

As such, the Draft KUHAP serves as a prime opportunity to codify and unify restorative justice principles within a binding legislative framework.

The codification and unification of restorative justice within the Integrated Criminal Justice System would establish critical procedural clarity, particularly regarding (a) the conditions under which restorative mechanisms may be invoked, (b) the legal rights and obligations of offenders and victims following a restorative resolution, and (c) the binding legal status of peace agreements, including their equivalence to court rulings or their function as grounds for terminating investigations. Given that the current KUHAP does not explicitly accommodate restorative justice, the revised code should incorporate a dedicated chapter regulating its implementation across all procedural stages such as investigation, prosecution, and trial. This chapter must define objective and subjective criteria for nationwide application, articulate uniform procedural standards for law enforcement institutions, and affirm the finality of restorative agreements as legally binding instruments immune from subsequent prosecution or reopening of cases.

The necessity for codification is firmly grounded in established legal theory, as previously discussed. The principle of legal certainty affirms the need for coherence and predictability to ensure equal protection before the law and to eliminate discretionary disparities across institutions. The doctrine of *ultimum remedium* provides the policy rationale for prioritizing restorative mechanisms over punitive measures, reserving criminal prosecution for cases in which no alternative resolution is feasible. Utilitarianism complements these principles by emphasizing the broader socio-economic advantages of restorative justice, including reduced litigation expenses, alleviation of prison overcrowding, and strengthened public confidence in the justice system. Considered collectively, these theoretical perspectives justify codification not merely as an instrument of procedural efficiency but as a doctrinal imperative in advancing comprehensive criminal justice reform.



The convergence of these doctrinal principles with the practical demands of criminal procedure reform demonstrates that codification and unification of restorative justice constitute substantive imperatives rather than mere technical adjustments. Establishing a unified statutory framework would resolve institutional and procedural disparities, standardize implementation across law enforcement agencies, and guarantee consistent legal consequences within the Integrated Criminal Justice System. As Indonesia advances toward the enactment of the Draft KUHP, embedding restorative justice within this reform agenda provides a strategic pathway toward a more coherent, equitable, and socially responsive legal order.

## **Conclusion**

This study demonstrates that Indonesia's current restorative justice framework is characterized by significant regulatory fragmentation, with separate sectoral rules issued by the police, prosecution, and judiciary applying divergent eligibility criteria, procedural mechanisms, and legal effects. Such inconsistencies undermine legal certainty, create unequal access to restorative mechanisms, and erode public trust in the criminal justice system. While the 2023 KUHP introduces substantive restorative principles and the Draft KUHP provides initial references, the absence of a unified procedural framework prevents restorative justice from achieving its full normative and operational potential. Codification and unification within the revised KUHP would harmonize institutional mandates, establish uniform procedural safeguards, and ensure the binding nature of restorative agreements, thereby advancing Indonesia's transition toward a more coherent, humane, and socially responsive criminal justice paradigm.

In addressing these normative and procedural deficiencies, the revised KUHP should incorporate a dedicated chapter that comprehensively regulates restorative justice, clearly defining objective and subjective criteria, procedural stages, and the legal status of peace agreements. This codified framework must integrate and reconcile provisions from existing sectoral regulations while establishing

mandatory inter-agency coordination mechanisms, including a centralized restorative justice database to prevent overlapping processes and ensure transparency. Furthermore, the success of such codification will depend on sustained capacity-building for law enforcement officers and public outreach programs to foster consistent implementation and societal trust. These measures collectively would not only resolve longstanding fragmentation but also operationalise restorative justice as a cornerstone of Indonesia's criminal procedure reform.

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