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THE URGENCY OF CODIFICATION AND UNIFICATION OF REGULATIONS ON RESTORATIVE JUSTICE WITHIN THE INTEGRATED CRIMINAL JUSTICE SYSTEM AS PART OF THE CRIMINAL PROCEDURE CODE REFORM EFFORTS

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Abstract

Regulations related to Restorative Justice in Indonesia currently exist in various forms, including Police Regulations, Prosecutor's Regulations, and Supreme Court Regulations. However, there is no master regulation that integrates these within a unified criminal justice system, leading to multiple interpretations and inconsistent applications. This research aims to examine the urgency of codification and unification of Restorative Justice regulations to ensure legal certainty. Using a normative juridical approach with analytical-descriptive specifications, the study applies literature and field research combined with data analysis techniques. The findings reveal that the current condition of restorative justice regulations in Indonesia has not been harmonized and uniform, so a unification concept is needed to make restorative justice regulations into one guideline that has one understanding and does not cause multiple interpretations or doubts for the parties, especially for perpetrators of criminal acts. Thus, by unifying restorative justice regulations, an integrated criminal justice system can be achieved. This concept can be included in the Draft KUHAP is currently still in the process of being drafted. This means that with the provision of restorative justice in the Draft KUHAP, the provisions regarding restorative justice can be made more harmonious and in line.

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

Introduction

The resolution of cases within Indonesia's criminal justice system continues to face various challenges. The provisions of the Criminal Procedure Code (KUHAP) predominantly regulate the rights of suspects. At the same time, the procedural stages ranging from investigation and inquiry to prosecution and trial are often lengthy and time-consuming. Within these arrangements and processes, the rights of victims are not adequately accommodated. The interests of victims are often overshadowed by law enforcement authorities, who, acting with a normative legal mindset, tend to focus solely on gathering evidence to fulfil the elements of the alleged crime. In this process, the losses suffered by the victim are merely treated as components necessary to prove the crime.

The protracted criminal justice process significantly contributes to the formation of public stigma not only toward the perpetrators but often extends to their families, dependents, as well as witnesses and victims. [1] The protracted criminal justice process significantly contributes to the formation of public stigma not only toward the perpetrators but often extends to their families, dependents, as well as witnesses and victims. Such negative stigmas begin to take shape at the initial stages of case handling and often persist even after the legal process has concluded. Franz von Liszt illustrated this issue through the concept of *Rechtsgüterschutz durch Rechtsgutverletzung*, where the essence of law is to protect rights and interests. However, in practice, the legal process may itself infringe upon those very rights and interests.[2] Therefore, handling criminal cases through the judicial process must be approached with great care and caution as a last resort.

The criminal justice system has historically focused on punishing offenders. This approach, centered on the perpetrator and the state, has often overlooked the rights and needs of victims. However, beginning in the 1970s, there was a growing

[1] Bambang Waluyo, *Perkara Penyelesaian Perkara Pidana Penerapan Keadilan Restoratif dan Transformatif*, Jakarta : Sinar Grafika, 2020, hlm. 4
[2] *Ibid*, hlm. 5

recognition of the importance of victims' roles in the justice process. The public started to see the value of victim-oriented approaches, which aligned with the rise of restorative justice. As both a legal theory and practice, restorative justice emerged to address the needs of victims, aiming to create a more inclusive and holistic form of justice.[3]

Restorative justice represents a paradigm shift in criminal law enforcement by providing an alternative approach to resolving disputes between parties. Keadilan Restoratif pertama kali dicetuskan oleh Howard Zehr pada tahun 1970. Introduced by Howard Zehr in the 1970s, this concept focuses on the needs and interests of victims as well as the responsibility of offenders to repair the harm caused by their actions.[4] Restorative justice has become a foundational idea for addressing the needs of individuals involved in disputes that traditional criminal justice systems cannot effectively accommodate.

The restorative justice paradigm upholds core legal objectives, particularly the principle of utility as recognized by both the government and society. The benefits of restorative justice include empowering victims, offenders, families, and communities to resolve offences through awareness and mutual acknowledgement, ultimately contributing to societal healing.[5] However, the implementation of restorative justice within Indonesia's criminal justice system encounters several challenges, especially regarding regulatory integration at the legislative level.[6] It is crucial to carefully consider the legal doctrines of *lex superior derogat legi inferiori* (higher law overrides lower law) and *lex specialis derogat legi generali* (special law overrides general law) in this context.

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[3] Maidina Rahmawati, *et al*, *Peluang dan Tantangan Penerapan Keadilan Restoratif dalam Sistem Peradilan Pidana di Indonesia*, Jakarta : Institute for Criminal Justice Reform, 2022, hlm 15

[4] Howard Zehr, The Little Book of Restorative Justice, Pennsylvania: Good Books, 2001, hlm. 21.

[5] Henny Saida Flora, Keadilan Restorative Justice Sebagai Alternatif Dalam Penyelesaian Tindak Pidana dan Pengaruhnya Dalam Sistem Peradilan Pidana di Indonesia, Ubelac, Vol. 3 No. 2 Oktober 2019, Hlm. 142-143

[6] Ketua MA: Ada Tantangan Memperkuat Implementasi Keadilan Restoratif , https://www.hukumonline.com/berita/a/ketua-ma--ada-tantangan-memperkuat-implementasi-keadilan-restoratif-lt60317604be719/ diakses pada tanggal 27 Maret 2025 Pukul 21.30 WIB

The current Indonesian Penal Code (KUHP), established by Law No. 1/1946, and the Criminal Procedure Code (KUHAP), established by Law No. 8 of 1981, do not include provisions for restorative justice. However, the absence of such regulations does not mean that restorative justice cannot be applied, nor does it allow for its arbitrary use, as this could lead to deviations from established positive law. Article 109 pharagraph (2) and Article 140 pharagraph (2) letter a of KUHAP stipulate the conditions under which prosecution may be discontinued, including: 1) lack of sufficient evidence; 2) the incident not constituting a criminal offence; 3) or the case being closed by law.

Chief of Police Regulation (Perkapolri) No. 8/2021 and Prosecutor's Regulation (Perja) No. 15/2020 stipulate that prosecution may be discontinued due to the implementation of restorative justice referred to as *afdoening buiten process* (case resolution outside of court). This is outlined in Article 2, paragraph (5) of Perkapolri No. 8/2021 and Article 3, paragraphs (1) and (4) of Perja No. 15/2020. Both regulations indicate that restorative justice can serve as a legal basis for terminating an investigation, inquiry, or prosecution when a case is closed by operation of law. Therefore, the issuance of these regulations reflects a broad interpretation of Article 109, paragraph (2) and Article 140, paragraph (2) of the Criminal Procedure Code (KUHAP). KUHAP does not mandate further regulation concerning the requirements for discontinuing prosecution. In other words, the issuance of Perkapolri No. 8/2021 and Perja No. 15/2020 stems from the institutional authority of the Indonesian National Police and the Attorney General's Office. However, the consideration section (konsideran) of Perkapolri No. 8/2021 references Law No. 2 of 2002 regarding the Indonesian National Police, while the konsideran of Perja No. 15/2020 cites not only KUHAP but also Law No. 16/2004 concerning the Public Prosecution Service. This poses a problem because neither KUHAP nor the aforementioned laws explicitly grant either institution the authority to create regulations that govern the termination of investigations, inquiries, or prosecutions based on restorative justice.

These internally issued policies particularly within the Police and the Prosecutor's Office have led to practical complications. As each institution exercises its criminal law enforcement duties, they adhere to their own internal regulations. This can result in situations where a case resolved by the Police using restorative justice may be rejected by the Prosecutor's Office, which has the authority to review each case termination proposed by the Police. For example, at the Bandung District Prosecutor's Office, a request to terminate a sexual assault investigation involving a suspect identified as DW was not approved. The police investigators at Bandung Metropolitan Police (Polrestabes) had decided to terminate the case based on reconciliation between the victim's family and the perpetrator, classifying it as a restorative justice resolution. However, the examining prosecutor disagreed, pointing out that sexual assault cases are expressly excluded from restorative justice resolutions, as outlined in Article 5, Paragraph (8) letter a of Perja No. 15/2020. In contrast, Article 5 letter f of Perkapolri No. 8/2021 does not explicitly exclude such cases if specific conditions, such as reconciliation, are met.[7] Likewise, case termination by the Prosecutor's Office based on restorative justice may be challenged by the Police, invoking Article 80 of KUHAP, which allows for a legal review of the legitimacy of an investigation or prosecution termination by investigators, public prosecutors, or interested third parties. These differing views and inconsistent practices in implementing restorative justice between the Police and Prosecutor's Office have fostered the public perception that such resolutions are selective and only applicable to some instances.[8]

Restorative justice-based case resolutions, as carried out by the Police and Prosecutor's Office, may contradict Article 109 Paragraph (2) and Article 140 Paragraph (2) of KUHAP. Nevertheless, the practice has gained broad acceptance

[7] Berdasarkan hasil wawancara dengan Dina Anne selaku Jaksa di Kejaksaan Negeri Bandung

[8] Iwan Sutiawan, "Restorative Justice di Kepolisian dan Kejaksaan Seolah Masih Abu-Abu", 2022, https://www.gatra.com/news-541278-hukum-restorative-justice-di-Kepolisian -dan- Kejaksaan -seolah-masih-abu-abu.html diakses diakses pada tanggal 28 Maret 2025 Pukul 22.00 WIB

and positive public response, as reflected in the growing number of criminal cases resolved through restorative justice mechanisms from 2021 to 2024, as follows:

Table 1. Cases Settled Through Restorative Justice

Year	Public Prosecutor's Office	National Police Force
2021	314 cases	-
2022	1.454 cases	15.809 cases
2023	2.407 cases	18.175 cases
2024	1.985 cases	21.063 cases

Source: Bandung District Prosecutor's Office

The implementation of Restorative Justice within the Indonesian criminal justice system by the Indonesian National Police and the Public Prosecution Service poses certain challenges. However, in 2022, the Indonesian National Police reported resolving 15,809 cases through Restorative Justice, marking an increase of 1,672 cases, or 11.8%, compared to 14,137 cases in 2021. Additionally, the Public Prosecution Service, through the Head of the Legal Information Center (Kapuspenkum) at the Attorney General's Office, reported resolving 1,454 cases through Restorative Justice in 2022.[9]

The handling of criminal cases under Restorative Justice requires a clear alignment between the Criminal Procedure Code (KUHAP) and the regulations set forth by the police, prosecutors, the Directorate General of General Courts, and other legal instruments. This alignment is crucial to prevent arbitrary enforcement and to ensure compliance with legal norms in both doctrinal and theoretical aspects. The researcher strongly supports the government's initiative to shift the paradigm of criminal law from a retributive model to a more modern approach that emphasizes

[9] Rahel Nadra C, "Kejagung Selesaikan 1.454 Perkara Lewat "Restorative Justice" Sepanjang 2022, 2022,https://nasional.kompas.com/read/2022/12/30/15223891/kejagung-selesaikan-1454- perkara-lewat-restorative-justice-sepanjang-2022, diakses pada tanggal 28 Maret 2025 Pukul 23.00 WIB

corrective, restorative, and rehabilitative justice.[10] This change is expected to better realize the principles of utility and justice within the legal system. However, it is also important to consider legal certainty in the implementation of Restorative Justice regulations. The aspect of legal certainty referred to here is that the paradigm shift in criminal law from a previously retributive model to a restorative one must first be aligned with statutory-level legislation. The existence of laws as legal products situated below the Constitution and MPR Decrees places them as general legal instruments.[11] This positioning influences the validity (binding force) of a regulation. Theoretically, the validity of a legal regulation is determined by whether it is established based on a higher-level legal norm. herefore, as previously noted by the researcher, it is essential for the Criminal Procedure Code (KUHAP) to be coherent with the technical regulations on Restorative Justice.

Indonesia has developed various drafts of the Criminal Procedure Code, but only the March 2025 draft explicitly includes provisions on Restorative Justice, while also addressing the roles and authorities of the police, prosecutors, and judiciary as parts of an integrated criminal justice system. This omission in previous drafts is unfortunate, especially given the separate and ongoing application of Restorative Justice within each institution, as well as the 2023 Criminal Code (KUHP), which adopts restorative justice principles as a key approach to resolving criminal offenses. The 2023 KUHP reflects a modern perspective that incorporates corrective, restorative, and rehabilitative justice. Article 54 stipulates that sentencing guidelines must consider the forgiveness of the victim or their family. Additionally, Article 132 pharagraph (1) letter g indicates that prosecution is nullified when a resolution is reached outside of judicial proceedings, as regulated by law. The explanation of Article 132 defines "prosecution" as encompassing the

[10] Biro Hukum dan Kerjasama Kementerian Hukum dan Ham, "RUU KUHP Tinggalkan Paradigma Hukum Pidana Sebagai Alat Balas Dendam", https://www.kemenkumham.go.id/berita- utama/ruu-kuhp-tinggalkan-paradigma-hukum-pidana-sebagai-alat-balas-dendam, diakses pada tanggal 4 November 2024 Pukul 05.30 WIB

[11] Sudikno Mertokusumo, *Mengenal Hukum: Suatu Pengantar*, Yogyakarta: CV. Maha Karya Pustaka, hlm. 125

entire judicial process, starting from the investigation. Therefore, according to this explanation, the internal regulations on Restorative Justice issued by the police, prosecution, and the Supreme Court conflict with the 2023 KUHP, which mandates that extra-judicial settlements be governed by statutory law. These internal regulations also contradict the imperative nature of Law No. 8/1981 on Criminal Procedure (KUHAP).

Indonesia's criminal justice system is an integrated system that involves various law enforcement institutions in addressing and handling criminal offences. The key components of this integrated system include the Police, the Public Prosecution Service, the Judiciary, and Correctional Institutions. Based on the above background, the issues identified in this study are how is the implementation of criminal case settlement through Restorative Justice by the prevailing laws, and to what extent is the codification and unification of Restorative Justice regulations necessary to ensure legal certainty in the reform of the Criminal Procedure Code?

Methods

This research employs several approaches, including the statute approach, as it examines various legal provisions that are central to the study. It employs a descriptive-analytical method aimed at providing both an overview and an analysis of how these provisions are implemented in accordance with applicable legal norms.

Discussion

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

When it comes to criminal law actions, these should ideally be considered as a last resort (*ultimum remedium*). Criminal law, known for its severe penalties, is thought to serve a subsidiary function, meaning it should only be applied when other legal remedies are inadequate. As a result, criminal law is often referred to as *ultimum remedium* or last resort. This principle is firmly established in Indonesian

criminal law, which highlights that criminal sanctions should be viewed as the final option rather than the first step. This approach takes into account the serious nature of these penalties and their varying effects on individuals.

Criminal law exists as a body of law that regulates violations and crimes against public interests. Violations of these laws result in punishments that are meant to be painful or punitive for the offender.[12] One of the main distinctions between criminal law and other branches of law is that its penalties are intentionally repressive and can be imposed even when there is no direct victim. This distinct characteristic is the rationale behind viewing criminal law as *ultimum remedium* , a last resort o correct harmful behavior, especially that of offenders. Additionally, it aims to exert psychological pressure to deter others from committing crimes.[13]

The growing recognition of restorative justice mechanisms as a way to resolve criminal cases is becoming more prominent in society. There is a significant shift from retributive justice to restorative justice that should be embraced in handling criminal cases. Restorative justice is often viewed as more humane and is frequently preferred by victims because it aims to restore conditions to their original state. However, it does not necessarily provide the offender with legal certainty within the integrated criminal justice system, which includes law enforcement agencies like the police, prosecution services, and the judiciary.

Based on the various regulations regarding restorative justice, as previously mentioned, each institution including the Police, the Public Prosecution Office, and the Judiciary has issued its own specific provisions. hese differences have resulted in multiple interpretations and created legal uncertainty for law enforcement officers, victims, and offenders.

A notable distinction between the Prosecutor's Regulation No. 15 /2020 and the Chief of Police Regulation No. 8/2021 lies in the requirements for implementing restorative justice. Article 4 of the Prosecutor's Regulation No. 15/2020 states that

[12] Yulies Tine Masrini, *Pengantar Hukum Indonesia*, Jakarta: Sinar Grafika, 2006, Hlm. 60
[13] J.M. Van Bemmelen, *Hukum Pidana Material Bagian Umum*, Jakarta: Binacipta, 1984, Hlm. 13

criminal cases eligible for restorative justice must carry a penalty of no more than five years' imprisonment and must not involve financial losses exceeding IDR 2,500,000 (two million five hundred thousand rupiah). In contrast, Articles 5 and 6 of the Chief of Police Regulation No. 8/2021 do not impose such limitations. The specific differences between these two regulations are illustrated in the following table:

Table 2. 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 of no more than 5 years. c. The offense resulted in a financial loss of less than IDR 2,500,000 (Articles 4)	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 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)	Criminal offenses that may be resolved through Restorative Justice are those classified as complaint-based offenses (delik aduan). (Article 6 paragraph 1 letter b)

Principles	The principles of public interest, justice, proportionality, criminal law as a last resort (*ultimum remedium*), 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 expressly stipulated in a particular 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 President and Vice President, offenses carrying minimum mandatory sentences, narcotics, environmental crimes, and offenses committed by corporations. (Article 5)	Criminal offenses of terrorism, offenses against state security, corruption offenses, and offenses resulting in the loss of life. (Article 5)	Criminal offenses that may be resolved through restorative justice are those classified as complaint-based offenses (delik aduan). (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)

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When examining the differences in the provisions mentioned above, it becomes clear that they can impact the implementation of restorative justice from both the victim's and the offender's perspectives. For instance, if the victim and offender try to reach a settlement and submit a restorative justice request during the police investigation phase but are unsuccessful, and the case is later transferred to the prosecutor's office, they may need to resubmit the requirements for restorative justice. This may lead to a situation where the criteria initially fulfilled during the investigation phase are no longer applicable at the prosecution stage. This may occur because the offence is punishable by more than five years of imprisonment, involves a repeat offender, or falls under categories excluded from restorative justice by the Prosecutor's Office. These inconsistencies can confuse both victims and offenders, potentially jeopardizing restorative justice efforts.

In practice, restorative justice has been applied in various cases involving criminal offenders. In some instances, even when a peace agreement was reached and compensation was made by the offender, legal proceedings continued until a court verdict was rendered.

One such case involved a convicted thief, referred to by the pseudonym DL, who was incarcerated at the Class I Detention Center in Bandung (Kebon Waru Prison). DL shared that during the investigation phase, he reconciled with the victim, whose initials are AP, with the support of a written peace agreement and forgiveness from the victim. DL submitted a request for restorative justice to the police. However, while this process was underway, the case was transferred to the prosecutor's office. At this point, DL had to restart the restorative justice process by drafting a new request for the prosecutor's office, which was ultimately rejected. DL felt confused and uncertain about the procedural steps for submitting a restorative justice request.[14]

[14] 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

A similar situation was experienced by RF (pseudonym), a former inmate convicted of fraud in the Class IIB Garut Prison. The offence occurred in 2022. Like DL, RF had reconciled with the victim (initials CM), evidenced by a signed peace agreement and payment of compensation at the prosecutor's office. Although RF submitted all necessary administrative documents, his restorative justice request was also rejected. RF expressed confusion over the varying standards among the institutions involved, each seemingly operating under its own set of rules and guidelines.[15]

The discrepancies in handling restorative justice between the police and the prosecutor's office evident in the above cases can lead to legal uncertainty and the perception of selective law enforcement. These differences are primarily due to each institution relying on its internal regulations to implement restorative justice. While these regulatory instruments are equal in legal standing both forming part of the criminal justice subsystem their divergence poses a significant issue, as both institutions serve as initial entry points to the criminal justice system. As a result, disparities in regulation can lead to inconsistencies in the implementation of policies.

A notable example of inconsistency can be found in the provisions regarding excluded offenses. Article 5 of Prosecutor's Regulation No. 15/2020 states that restorative justice cannot be applied to offenses involving state security, the president and vice president, offenses with minimum penalties, narcotics, environmental crimes, and corporate offenses. In contrast, Article 5 of Police Regulation No. 8/2021 excludes terrorism, state security offenses, corruption, and crimes resulting in the loss of life. Notably, Prosecutor's Regulation No. 15/2020 does not explicitly mention terrorism or corruption, which creates a potential assumption that these crimes might still be eligible for restorative justice at the prosecutor level.

[15] Hasil wawancara dengan salah satu mantan terpidana dari Rumah Tanahan Negara Kelas II B Garut pada tanggal 4 September 2024 Pukul 11.00 WIB

Based on the aforementioned provisions, harmonization is imperative. Divergent narratives within such regulations must not be permitted, as they may lead to multiple interpretations and erroneous assumptions. According to the author, not all criminal cases are appropriate for resolution through restorative justice. Certain offences, such as terrorism and corruption, should be excluded from restorative justice mechanisms, as they are dangerous and classified as transnational crimes.

Furthermore, there is a notable difference between Prosecutorial Regulation (Perja) No. 15/2020 and Police Regulation (Perpol) No. 8/2021 in terms of the procedural mechanism. Article 7 of Perja No. 15/2020 stipulates that restorative justice is implemented based on an offer from the Prosecutor's Office. In contrast, Article 13 of Perpol No. 8/2021 provides that the restorative justice mechanism may proceed upon submission of a written request by the perpetrator, victim, their families, or relevant community figures. This divergence has the potential to create confusion, particularly for victims and offenders, thereby rendering the procedural mechanism of restorative justice unclear in terms of legal certainty.

Another significant point of divergence can be found in Supreme Court Regulation (Perma) No. 1/2024. Article 6, paragraph (1), points (b) and (c) state that criminal acts eligible for resolution through restorative justice are limited to complaint-based offenses (delik aduan) or offenses that carry a maximum sentence of five (5) years of imprisonment for at least one of the charges. In contrast, Prosecutorial Regulation (Perja) No. 15/2020 and Police Regulation (Perpol) No. 8/2021 do not specifically clarify whether restorative justice applies only to complaint-based offenses or establish any sentencing thresholds for the criminal charges faced by the offender.

Moreover, the final legal products resulting from restorative justice differ between institutions. Police may issue an SP3 (order to stop investigation), the prosecutor may issue a prosecution termination letter, and courts may issue a

judicial ruling. These inconsistencies lead to legal uncertainty for offenders regarding their status.

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.

The fundamental concept of legal certainty is to protect justice seekers and legal users themselves. Legal certainty ensures that individuals are protected even before initiating legal proceedings, as they are aware of the applicable legal norms beforehand. Legal certainty is one of the fundamental principles of the rule of law.[16] In the context of restorative justice:

a. Offenders must be assured that once they meet the requirements for restorative justice (RJ), they will not be subjected to further criminal prosecution.
b. There must be an official and written termination issued by law enforcement authorities.
c. Restorative justice must be regulated and consistently integrated into the integrated criminal justice system.

Written law, as a hallmark of legal certainty, is intended not only to establish order but also to ensure that positive law is implemented consistently. When applied consistently, legal norms can fulfil other legal objectives, namely ensuring that the law delivers tangible benefits to society, thereby making it both effective and efficient.

Based on the foregoing dynamics, the current implementation of restorative justice in Indonesia lacks legal clarity, resulting in multiple interpretations and confusion among stakeholders, which in turn leads to selective enforcement. Victims and offenders often struggle to determine whether their case qualifies for

[16] Mario Julyanto dan Aditya Yuli Sulistyawan, *Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum*, Jurnal Crepido Volume 01 Nomor 01, Juli 2019, hlm 300.

restorative justice. Therefore, a unified regulation is urgently needed to clearly and comprehensively govern restorative justice.

The implementation of restorative justice in resolving criminal cases must be integrated into a unified criminal justice system. This integrated system aims to accelerate and simplify legal proceedings, minimize errors or procedural mistakes, and enhance the accuracy and fairness in the administration of criminal law.[17] In this regard, the concept of restorative justice serves as a supporting element in achieving a more effective and integrated criminal justice system. 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.

Each subsystem of the criminal justice process has its regulations based on their respective institutional laws. This results in procedural and eligibility discrepancies across institutions. The final legal outcomes from police and prosecution processes raise uncertainty for offenders regarding their legal status. For example, if the police do not issue an SP3 following a restorative justice process, the prosecutor may still pursue the case, possibly leading to court proceedings.

Each subsystem in the integrated criminal justice system has its regulations that refer to the laws governing their respective institutions. This results in differences in terms of the criteria and procedures that must be followed by the offender, the victim, and the community within each subsystem in which they are involved. The final decisions issued by the police and the prosecutor's office regarding the implementation of restorative justice create legal uncertainty for the offender regarding their legal status. For example, an offender who has undergone

[17] Pengadilan Negeri Pulau Punjung, Pidana Terpadu Berbasis Teknologi Informasi (SPPT TI) & Restorative Justice Sosialisasi Sistem Peradilan Pidana Terpadu Berbasis Teknologi Informasi (SPPT TI) & Restorative Justice, https://pn-pulaupunjung.go.id/sosialisasi-sistem-peradilan-pidana-terpadu-berbasis-teknologi-informasi-sppt-ti-restorative-justice/#:~:text=Sistem%20peradilan%20pidana%20terpadu%20ini,keadilan%20dalam%20menjalankan%20hukum%20pidana. Diakses pada tanggal 19 November 2024 Pukul 13.00 WIB.

a restorative justice process at the police level, if not issued with a termination of investigation letter (SP3), may still have their case followed up by the prosecutor's office, and there is a possibility that the case will proceed to court.

An integrated criminal justice system emphasizes cross-institutional coordination. In the context of restorative justice:

a. Inter-agency coordination (police, prosecution, judiciary, LPSK, correctional services) must ensure that once a case is resolved through restorative justice, it is no longer prosecuted;
b. A cross-agency communication mechanism and restorative justice case database are needed;
c. A joint regulation or national codification should serve as a binding reference for all institutions.

Although the internal regulations of each subsystem guarantee legal certainty in the form of internal provisions within their respective institutions, stating that the institution has the authority to handle criminal cases based on restorative justice, offenders who have resolved their cases through restorative means remain in legal uncertainty without integration and formal recognition across institutions. Therefore, establishing national regulations and an integrated mechanism is essential to ensure legal certainty for the offender.

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 issues that prioritizes healing and reconciliation as its primary objectives. This approach focuses on restoring the relationship between the offender, the victim, and the affected community while also remedying the harm caused by the criminal act. Restorative justice provides offenders with the opportunity to make amends and repair damaged relationships with both victims and society. This can be achieved

through mediation, dialogue, or other forms of reconciliation. The primary goal of restorative justice is not punishment but rather recovery and reconciliation that involve all parties affected by the criminal act. Restorative justice is considered a more humane and practical approach to addressing legal problems, as it concentrates on addressing the root causes rather than solely punishing the offender.[18]

Restorative justice is a judicial approach that centres on the needs of both victims and offenders, involving community participation rather than implementing punitive principles for the offender through judicial deliberation.[19] This restorative approach emphasizes the creation of justice and balance for both victims and offenders. It does not merely apply a decision about who wins and who loses in an adversarial system. Instead, the process of restorative justice facilitates dialogue among all parties affected by the crime, including victims, offenders, their supporters, and the wider community, to collectively determine how to address the crime and its implications for the future.[20]

Restorative justice aims to mitigate the negative impact of criminal acts by directly involving the related parties in the resolution process, thereby avoiding lengthy case resolution times. James Dignan Wright states that the primary goal of restorative justice is recovery, while the secondary goal is compensation. This approach aims to restore the circumstances impacted by the criminal act, including providing compensation to victims through methods agreed upon by all involved parties.[21]

Restorative justice presents significant benefits to society in practice, based on its concept and objectives. In recent years, the implementation of restorative justice has not resulted in conflicts between offenders and victims; instead, all cases have concluded peacefully, highlighting its considerable positive impact on society.

[18] *Ibid*,
[19] Andro Giovani Ginting dan Vici Utomo Simatupang dan Sonya Arini Batubara, *Op,Cit*, hlm. 180.
[20] Afthonul Afif, Pemaafan, *Op,Cit*, hlm. 341- 350.
[21] G. Widiartana dan Aloysius Wisnubroto, *Op,Cit*, hlm.46

Law, in its positive form (legislation), must provide benefits to individuals. The theory of utility, which focuses on legal utility, promotes the "greatest happiness principle." This principle suggests that an ideal society aims to maximize happiness and minimize suffering. In essence, it strives to provide the greatest possible happiness for the general public while ensuring that broader society experiences as little suffering as possible.[22]

Lilik Rasyidi and Zainuddin Ali explain that the utility theory of law recognizes that it is impossible to achieve happiness for all members of society. Consequently, the law often results in dissatisfaction for those adversely affected by it. Therefore, the benefits provided to the majority are prioritized over the disadvantages faced by a minority group. The effectiveness of legislation is evaluated based on its ability to promote overall happiness among people.[23]

Returning to the factual situation, as previously discussed, the implementation of restorative justice in Indonesia remains suboptimal due to the lack of uniformity and alignment among various regulations, which affects the effectiveness of its application. Restorative justice could serve as an important pillar for the Integrated Criminal Justice System. An Integrated Criminal Justice System requires various elements for its realization. Referring to the components of a system, integration in the criminal justice system requires synchronization in terms of structure, substance, and culture.[24]

The concept of a criminal justice system was first introduced by legal experts and scholars in the United States in response to dissatisfaction with the performance of law enforcement agencies and institutions. These organizations predominantly followed a law-and-order approach that heavily relied on the effectiveness and efficiency of police and prosecution services. However, both the police and prosecution faced operational and procedural challenges that hindered their ability

[22] Abdul Chair Ramadhan, *Op,Cit*, hlm.53.
[23] *Ibid.*
[24] Supriyanta, KUHAP dan Sistem Peradilan Pidana Terpadu, Jurnal Wacana Hukum, Vol. VIII No. 1 April 2009, hlm. 3

to effectively control rising criminal activity, and in some cases, these challenges even exacerbated the problem.

In the Integrated Criminal Justice System, institutions and agencies involved in law enforcement, although having distinct duties and internal objectives, fundamentally function as interconnected subsystems working toward a common goal. For this collaboration to be effective, it must be supported by adequate legislation that enables all subsystems to function coherently, cooperatively, and integratively. If legal regulations fail to promote these interconnections, it can lead to fragmentation in law enforcement. This results in an institution-centric approach that hinders the realization of a truly Integrated Criminal Justice System.[25]

To achieve an Integrated Criminal Justice System particularly regarding restorative justice regulations a central regulation or a unified guideline is necessary through the unification of restorative justice regulations, thereby fostering a shared understanding and common objectives among law enforcement officers. With this unification, the problems encountered in implementing restorative justice, such as differing interpretations of requirements, mechanisms, and goals, will be significantly reduced.

Legal unification refers to efforts to establish uniform laws applicable to all citizens of a given country. In Indonesia, legal unification has been achieved in the public law sectors, including constitutional law, administrative law, taxation, and criminal procedure law. However, the private law sector remains pluralistic, except in certain areas. Legal unification is the systematic consolidation of various laws into a single legal code applicable to all citizens nationwide. It also refers to the enactment of a national legal code. Legal unification encompasses all types of applicable dispute laws and applies to all citizens, codified into a unified system that

[25] *Ibid*, hlm. 12

universally applies to all population groups.[26] The objectives of legal unification include:[27]

1) Enhancing the efficiency and effectiveness of the legal system;
   By adopting uniform and coordinated laws, unification can reduce overlap and confusion in the legal system, thereby improving law enforcement and judicial processes.
2) Promoting justice;
   Legal unification can eliminate unfair legal disparities among regions, social groups, or individuals, thus fostering legal equality and ensuring fair treatment for all citizens.
3) Encouraging integration and harmonisation;
   In the context of international law, unification promotes legal integration and harmonisation among countries, thereby reducing legal barriers to trade, investment, and international cooperation.
4) Facilitating social mobility and interaction;
   Uniform laws promote mobility and interaction among diverse individuals, groups, and legal entities, fostering social integration, cultural exchange, and cross-border collaboration.
5) Reducing administrative and compliance costs.
   With uniform laws, administrative and compliance burdens are reduced for individuals, companies, and institutions, as they only need to adhere to a single legal framework.

The need for legal unification has been examined in several studies, including by Merdiansa Paputungan in 2018, which focused on the unification of procedural law for the review of all legislation. The study was motivated by the inconsistent procedural mechanisms between the Supreme Court and the Constitutional Court.

[26]Annisa, Pengertian Unifikasi Hukum ,Tujuan, dan Unsur Hukumnya, https://fahum.umsu.ac.id/pengertian-unifikasi-hukum-tujuan-dan-unsur-hukumnya/ diakses pada tanggal 21 November 2024 Pukul 09.00 WIB
[27] *Ibid*.

This inconsistency presents challenges, making the unification of procedural law the most viable solution. Although this study expands awareness of the need for uniform procedures between the courts, it is limited to procedural mechanisms.[28]

The inconsistency among Police Regulations, Prosecution Regulations, and Supreme Court Regulations regarding restorative justice mechanisms has caused confusion and ambiguity, hindering effective case resolution through restorative justice despite the numerous benefits this resolution offers.

The current Criminal Procedure Code (KUHAP) is considered outdated as a procedural guideline for enforcing substantive criminal law. It fails to accommodate the restorative justice approaches now established in the 2023 Criminal Code (KUHP), which will take effect in 2026. The 2023 KUHP reflects a modern orientation towards corrective, restorative, and rehabilitative justice. Article 54 of the 2023 KUHP addresses restorative justice by requiring that sentencing guidelines take into account the forgiveness of the victim or their family. Additionally, Article 132 paragraph (1) point g states that the authority to prosecute shall be nullified if an extrajudicial settlement, as regulated by law, has occurred. According to the explanatory note for Article 132, "prosecution" refers to the judicial process that begins with an investigation. Therefore, extrajudicial settlements based on internal regulations of the Police, Prosecution, and Supreme Court contradict the 2023 KUHP, which mandates that such settlements must be governed by law. This also conflicts with the imperative nature of the current KUHAP.

Therefore, the author argues that a unification of restorative justice regulations in Indonesia is imperative. This can be technically implemented through the enactment of a specific regulation governing restorative justice, incorporating provisions from Prosecutor's Regulation No. 15/2020, Police Regulation No. 8/2021, and Supreme Court Regulation No. 1/2024, and applying uniformly to

[28] Edy Sujendro, Gagasan Pengaturan Kodifikasi Dan Unifikasi Peraturan Perubahan dan Peraturan Omnibus Law, Jurnal USM Laaw Review Vol 3 No. 2 Tahun 2020, hlm. 388

institutions forming subsystems within the Integrated Criminal Justice System and across all judicial levels.

Related to the author's concept above, the Government of Indonesia is currently preparing a Draft Criminal Procedure Code (Draft KUHAP), which will represent the nation's first homegrown Criminal Procedure Code. This new code incorporates the concept of unification and an integrated system, as seen in Law No. 8/1981 on Criminal Procedure (KUHAP). Examples of this integration can be found in various articles: Articles 7, 107, and 109 outline the relationship between police investigators and civil servant investigators; Articles 8, 14, 24, 109, 110, 140, 143, 144, 207, and 214 govern interactions between police investigators and public prosecutors; and Articles 29, 33, 38, and 214 establish the relationships among investigators, judges, and courts. These provisions demonstrate that codification and unification have been implemented in law enforcement authorities to avoid overlapping jurisdictions.

The Government of Indonesia is currently drafting the new KUHAP. Its purpose is to build national legal development in support of the rule of law by reforming criminal procedure to align with an integrated criminal justice system, positioning law enforcement institutions according to their respective functions, duties, and authorities. The reform also aims to strengthen legal certainty, law enforcement, legal order, social justice, legal protection, and human rights for suspects, defendants, witnesses, and victims, thereby promoting the rule of law.

Regarding restorative justice regulations, the March 2025 Draft KUHAP contains provisions for handling cases through restorative justice in Article 1 Point 18, Article 67(2)(g), and Chapter IV, which regulates the mechanism for restorative justice. According to the author, the March 2025 Draft KUHAP offers the best opportunity, as it incorporates provisions from Prosecutor's Regulation No. 15 of 2020, Police Regulation No. 8 of 2021, and Supreme Court Regulation No. 1 of 2024. For instance, the Draft KUHAP features a list of exceptions in Article 77 that outlines cases not eligible for dismissal through restorative justice, which aligns with Article

5(8)(g) of Prosecutor's Regulation No. 15 of 2020. Therefore, the March 2025 Draft KUHAP aims to unify and codify restorative justice regulations, effectively addressing the issues previously mentioned.

The process of unification and codification of rules and mechanisms for handling cases through restorative justice across law enforcement agencies within the Integrated Criminal Justice System will clarify:

a. When and under what circumstances RJ may be applied;
b. The rights of the offender after the restoration;
c. The legal status of the peace agreement (e.g., whether it equals a court decision or an order to terminate investigation).

The current KUHAP does not explicitly accommodate the concept of restorative justice. Therefore, the upcoming Draft KUHAP should:

a. Include a specific chapter or article on restorative justice;
b. Provide a formal mechanism at each stage (investigation, prosecution, trial) for dismissing cases based on RJ;
c. Determine objective and subjective criteria for the national application of RJ;
d. Affirm that completed RJ outcomes have permanent legal force and cannot be reprocessed.

Conclusion

1. The resolution of criminal cases based on restorative justice by the police, the prosecutor's office, and the judiciary is currently still guided by each institution's internal regulations. The police follow Chief of Police Regulation No. 8/2021, the prosecutor's office adheres to Prosecutor's Regulation No. 15/2020, and the judiciary applies Supreme Court Regulation No. 1/2024. The police continue to terminate investigations and preliminary inquiries as long as the case meets the requirements set out in Chief of Police Regulation No. 8/2021, even when the prosecutor's office disagrees with the termination of an investigation conducted by the police. The prosecutor's office also proceeds

with the termination of prosecution for criminal cases that meet the requirements under the Prosecutor's Regulation No. 15/2020. The termination of investigation, inquiry, and prosecution by the police and the prosecutor's office contradicts Article 109 paragraph (2) of the Criminal Procedure Code (KUHAP) and Article 140 paragraph (2) points a of KUHAP, which stipulate that the reasons for terminating prosecution are: (1) insufficient evidence, (2) the act under investigation is not a criminal offence, and/or (3) the case is closed by law. However, as long as no pretrial motion is filed by the parties permitted under Article 80 of KUHAP, the police and the prosecutor's office continue to ensure legal certainty in handling criminal cases based on restorative justice within the scope of their respective authorities.

2. The differences in procedures and criteria for implementing restorative justice among the police, the prosecutor's office, and the judiciary create legal inconsistencies and increase the risk of re-criminalization of offenders. This is concerning, especially since case resolution through restorative justice has already been completed by the police and the prosecutor's office. In practice, restorative justice offers significant benefits to society. Over the past several years, its implementation has not led to conflicts between offenders and victims; all cases have been resolved peacefully, indicating its positive impact on the community. Furthermore, the number of cases resolved through restorative justice by the police increased from 2021 to 2024. The criminal justice system in Indonesia is integrated, involving multiple law enforcement agencies in addressing criminal offenses. Its main components—the police, the prosecutor's office, the judiciary, and correctional institutions—are governed by the Criminal Procedure Code (KUHAP), which is mandatory for enforcing substantive criminal law. The 2023 Criminal Code (KUHP) also regulates restorative justice. However, the current implementation of restorative justice through internal regulations of the police, the prosecutor's office, and the

Supreme Court conflicts with the 2023 KUHP, which serves as the substantive criminal law and is set to take effect in 2026. The KUHP stresses that extra-judicial resolutions must be regulated by law. This creates a contradiction with the KUHAP, which does not allow for the termination of investigations or prosecutions based on restorative justice. Therefore, there is an urgent need for the codification and unification of restorative justice regulations into the new KUHAP to achieve legal certainty, protect the rights of offenders, and ensure institutional consistency within the Indonesian criminal justice system.

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