

IMPLEMENTATION OF RESTORATIVE JUSTICE PRINCIPLES IN THE SETTLEMENT OF MISCELLANEOUS CRIMES BY THE POLICE OF THE REPUBLIC OF INDONESIA

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Abstract

The purpose of this research is to analyze the legal provisions regarding Restorative Justice in the settlement of minor crimes by the Indonesian National Police and to analyze the application of Restorative Justice principles in the settlement of minor crimes by the Indonesian National Police. The method used is normative legal research. Based on the research results, it is known that the legal provisions for Restorative Justice in the resolution of minor crimes by the Indonesian National Police have a fairly strong normative basis, although they have not been fully codified in the Criminal Procedure Code. The primary legal basis for the implementation of Restorative Justice by the police stems from discretionary authority as specified in the Indonesian National Police Law, which provides room for police officers to act according to their own judgment in the public interest. This regulation was then clarified and reinforced through Indonesian National Police Regulation Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice, which regulates the material and formal requirements, settlement mechanisms, and limitations of the application of Restorative Justice. Thus, legally, Restorative Justice in the resolution of minor crimes is a legitimate criminal law policy, based on controlled discretion, and intended to realize substantive justice, efficient law enforcement, and maintain social order. The application of Restorative Justice principles in resolving minor crimes by the police essentially reflects the core values of Restorative Justice, namely the principles of restoration, participation, perpetrator responsibility, a balance between legal certainty and substantive justice, and the protection of human rights. The principle of restoration is realized through efforts to redress the victim's losses and restore social relationships; the principle of participation is realized through dialogue and deliberation between the victim and the perpetrator; while the principle of perpetrator responsibility is reflected in an admission of guilt and a willingness to correct the consequences of the criminal act.

Keywords: Implementation, Restorative Justice, Minor Crimes

INTRODUCTION

The idea of Restorative Justice emerged as a critique of the criminal justice system, which relies on imprisonment for resolving social conflict. This is because the parties involved in the conflict are not involved in resolving the conflict. Victims remain victims, and imprisoned perpetrators also create new problems for families, and so on. A prominent characteristic of Restorative Justice is that crime is viewed as a symptom that is part of social action, not simply a violation of criminal law. Crime is viewed as an act that harms people and damages social relations. This contrasts with criminal law, which has made crime a state problem. Only the state has the right to punish, although indigenous communities can also impose sanctions. The imprisonment system serves as an outlet for societal hatred, accepted and implemented by the state. The idea of Restorative Justice emerged because the criminal process has not yet provided justice for victims. Efforts towards Restorative Justice already exist in correctional institutions, although they are still not prominent. This implementation, for example, places the correctional period as a forum for re-equalizing the relationship between prisoners and victims. (Zulfa, 2009).

The Regulation of the Republic of Indonesia National Police or often called the Police Regulation or Perpol concerning Handling of Criminal Acts based on Restorative Justice is a step by the Police in realizing the resolution of criminal acts by prioritizing Restorative Justice which emphasizes the restoration of the original state and the balance of protection and interests of victims and perpetrators of criminal acts which is not oriented towards punishment is a legal need in society.

Restorative Justice itself means restorative justice. Conventional criminal justice processes recognize restitution or compensation for victims, while restoration has a broader meaning. Restoration involves restoring the relationship between the victim and the perpetrator. This restoration can be based on a mutual agreement between the victim and the perpetrator. The victim can explain the losses they have suffered, and the perpetrator is given the opportunity to atone for them through compensation, reconciliation, community service, or other agreements. This is because conventional criminal justice processes do not provide space for the parties involved, in this case the victim and the perpetrator, to actively participate in resolving their problems. Every indication of a crime, regardless of the escalation of the act, will continue to be rolled into the realm of law enforcement, which is solely the jurisdiction of law enforcement. Active community participation seems to be no longer important; everything simply leads to a criminal decision or punishment without considering the essence (Siregar, 1986).

The goal of Restorative Justice is to promote fair trials and encourage all parties to participate (Zulfa, 2012). Victims feel that their suffering is taken into account and that the agreed compensation is commensurate with the suffering and losses they have suffered. Perpetrators do not have to experience suffering to realize their mistakes. The primary goal of Restorative Justice is to empower victims, encouraging perpetrators to focus on recovery. Restorative Justice prioritizes meeting the victim's material, emotional, and social needs. The success of Restorative Justice is measured by the extent of the perpetrator's losses, not by the severity of the sentence imposed by the judge. Essentially, perpetrators are to be released from the criminal process and from prison, as much as possible (Dewi & Syukur, 2011).

In consideration of the Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, Considering a. that the Republic of Indonesia National Police needs to realize the resolution of criminal acts by prioritizing Restorative Justice which emphasizes the restoration of the original state and the balance of protection and interests of victims and perpetrators of criminal acts that are not oriented towards punishment is a legal need of society; b. that the Republic of Indonesia National Police to respond to the development of legal needs of society

that fulfills the sense of justice of all parties is given authority in accordance with Article 16 and Article 18 of Law Number 2 of 2002 concerning the Republic of Indonesia National Police, it is necessary to formulate a new concept in enforcing criminal law that accommodates the norms and values that apply in society as a solution while providing legal certainty, especially the benefits and sense of justice of society; c. that based on the considerations as referred to in letter W and letter b, it is necessary to stipulate the Regulation of the Republic of Indonesia National Police concerning the handling of Criminal Acts Based on Restorative Justice; Considering Law Number 2 of 2002 concerning the Indonesian National Police (State Gazette of the Republic of Indonesia of 2002 Number: 2, Supplement to the State Gazette of the Republic of Indonesia Number 4168); Decides: To stipulate the Regulation of the Indonesian National Police concerning the Handling of Criminal Acts Based on Restorative Justice.

The Indonesian National Police Regulation on Handling Criminal Acts based on Restorative Justice is a new concept in criminal law enforcement that accommodates prevailing norms and values in society as a solution while providing legal certainty, especially the benefits and sense of justice of the community, in order to answer the development of legal needs of the community that fulfills the sense of justice of all parties, which is a manifestation of the authority of the Indonesian National Police in accordance with Article 16 and Article 18 of Law No. 02 of 2002 concerning the Indonesian National Police.

Law No. 02 of 2002 concerning the Republic of Indonesia National Police Article 18 paragraph (1) For the public interest, officials of the Republic of Indonesia National Police in carrying out their duties and authorities may act according to their own judgment. Paragraph (2) Implementation of the provisions as referred to in paragraph (1) may only be carried out in circumstances that are absolutely necessary by paying attention to statutory regulations, as well as the Code of Professional Ethics of the Republic of Indonesia National Police.

Restorative Justice is the resolution of criminal acts by involving the perpetrator, victim, the perpetrator's family, the victim's family, community leaders, religious leaders, traditional leaders, or stakeholders to jointly seek a just resolution through peace by emphasizing the re-election of the original state. Handling of criminal acts based on Restorative Justice must meet general and specific requirements. General requirements apply to the activities of the Implementation of Criminal Investigation functions, investigations, or inquiries, while special requirements only apply to criminal acts based on Restorative Justice in investigation or inquiry activities.

This exception to recidivism is what raises normative issues when linked to the National Criminal Code and the New Criminal Procedure Code. Philosophically, restorative justice is based on the view that crime is a social conflict that causes harm to the victim, the perpetrator, and society, so its resolution must focus on restoring social relations. Within this framework, the perpetrator's status as a recidivist should not automatically preclude the application of restorative justice, especially if the crime committed is minor, does not have widespread impact, and the victim is willing to resolve the case through a restorative mechanism. The National Criminal Code and the New Criminal Procedure Code themselves do not explicitly prohibit the application of restorative justice to repeat offenders, thus normatively opening up space for case-by-case assessment.

The absolute restrictions on recidivism in Police Regulation 8 of 2021 have the potential to create vertical disharmony within the law. While the law, as a higher norm, encourages restorative approaches and alternative sentencing, internal implementing regulations should not excessively narrow this space. From a legal perspective, overly rigid restrictions can hinder the realization of substantive justice, particularly for victims who prioritize recovery over punishment, and for perpetrators who still have opportunities for social rehabilitation.

Normatively, the implementation of Restorative Justice requires a balance between the interests of victims, perpetrators, and the community. The police, as a law enforcement institution, must be equipped with operational guidelines, mediation training, and transparent case evaluations to ensure the principles of Restorative Justice can be effectively implemented. Therefore, Restorative Justice is not merely an alternative case resolution method, but rather a strategic tool for building public trust in the criminal justice system and mitigating social conflict that could potentially harm communities.

Restorative justice in Indonesia's post-reform criminal law system has gained strong legitimacy, both substantively through the National Criminal Code and procedurally through the New Criminal Procedure Code. The main challenge lies in synchronizing technical policies, particularly National Police Regulations, to align with the spirit of criminal law reform. This adjustment is crucial so that restorative justice does not cease to be a normative concept but truly functions as a means of realizing legal certainty, benefit, and justice within society.

From an administrative practice perspective, the implementation of Article 5(e) requires courts to provide reliable data regarding each offender's criminal history. In the Indonesian bureaucratic context, data shortages, delays in updating records, and even administrative errors are not uncommon. This situation has the potential to unfairly exclude offenders who would otherwise qualify for restorative justice. In other words, this article increases the risk of procedural injustice due to excessive reliance on the accuracy of the court administration system.

The strictness of Article 5(e) also limits the police's authority to assess cases holistically. In practice, there are cases of repeated minor crimes that do not significantly endanger the community. For example, a perpetrator previously convicted of petty theft is now involved in a minor assault that the victim agrees to resolve amicably. Under this article, the police cannot use restorative justice, even though this mechanism may be more effective for restoring social relations and preventing further crime than detention. This inflexibility has led to criticism that Article 5(e) is too restrictive and inconsistent with the primary goals of restorative justice.

Thus, although Article 5(e) aims to maintain the integrity and credibility of the Restorative Justice mechanism, its implementation raises a number of normative and practical issues. Definitional ambiguity, neglect of rehabilitation potential, reliance on court administrative data, and reduced police flexibility in contextually assessing cases are key issues that require attention. From a legal perspective, this article has the potential to reduce the effectiveness of Restorative Justice in building social reconciliation and reducing recidivism, thus necessitating a review of the wording of the article to align it more closely with the principles of Restorative Justice and legal certainty.

RESEARCH METHODS

This study employs normative legal research, focusing on the study of applicable legal norms, principles, and doctrines. This approach is relevant for analyzing the application of restorative justice principles in the resolution of minor crimes by the Indonesian National Police, as the focus of the study is on legal regulations and their compliance with the concept of restorative justice, without collecting empirical data in the field.

The research approach used includes a statutory approach by examining related regulations, as well as an analytical approach to examine the content of norms and their consistency with the principles of restorative justice in police practice.

The data sources in this study are secondary data, consisting of primary, secondary, and tertiary legal materials. Primary legal materials include relevant laws and regulations, such as the Criminal Procedure Code (KUHP), provisions of the Criminal Code (KUHP)

concerning minor crimes, and National Police Regulation Number 8 of 2021 concerning Restorative Justice. Secondary legal materials include books, journals, and legal expert opinions, while tertiary legal materials include legal dictionaries and other supporting references.

Data collection was conducted through a literature review, reviewing all relevant legal materials. Data analysis was conducted qualitatively, interpreting and reviewing legal norms and doctrines to assess the alignment between legal regulations and the application of restorative justice in police practice.

Conclusions are drawn deductively, drawing conclusions from general legal norms to their specific applications. The conclusions include an assessment of the effectiveness of restorative justice in resolving minor crimes and recommendations for improvements as legal and policy implications.

RESULT AND DISCUSSION

A. Legal Regulations Regarding Restorative Justice in the Settlement of Minor Crimes by the Republic of Indonesia Police

The development of modern criminal law shows a significant paradigm shift from a retributive justice approach to a more humanistic and recovery-oriented approach, known as Restorative justice. The classic paradigm of criminal law, which places punishment as the primary objective, is beginning to be questioned for its effectiveness, particularly in the context of substantive justice, victim protection, and the restoration of social relationships damaged by crime. In the Indonesian context, the need for a restorative justice approach is growing stronger, given the complexity of social problems, the limitations of the correctional system, and public demands for fairer and more socially just criminal case resolution.

Restorative justice is not intended to eliminate criminal law or replace the formal criminal justice system, but rather to serve as a corrective mechanism against the rigidity of positive law, which often ignores the humanitarian and social dimensions of a crime. Within this framework, the state plays not only a punisher but also a facilitator of recovery for victims, perpetrators, and the community. Therefore, legal regulation of restorative justice is fundamental in ensuring that this approach operates within the law, guarantees legal certainty, and prevents abuse of discretion by law enforcement officials.

In Indonesia, restorative justice has a relatively strong normative foundation, both at the investigation, prosecution, and court stages. These provisions are scattered throughout various laws and regulations, internal regulations of law enforcement agencies, and judicial policies of the Supreme Court. This paper comprehensively analyzes the legal provisions for restorative justice in the Indonesian criminal justice system, emphasizing the legal basis at the investigation, prosecution, and court levels, and examining their legal implications for the principles of legal certainty, justice, and expediency.

Law Number 2 of 2002 concerning the Republic of Indonesia National Police in Article 1 number (1) explains that the Police are all matters relating to the functions and institutions of the police in accordance with statutory regulations. The term police in this law contains two meanings, namely the function of the police and the police institution. In Article 2 of Law Number 2 of 2002 concerning the Republic of Indonesia National Police, the function of the police is one of the functions of state government in the field of maintaining public security and order, law enforcement, protection, guardianship and service to the community. Meanwhile, the police institution is a government organ that is designated as an institution and is given the authority to carry out its functions based on statutory regulations. Furthermore, Article 5 of Law Number 2 of 2002 concerning the Republic of Indonesia National Police states that:

- 1) The Republic of Indonesia National Police is a state apparatus that plays a role in

maintaining public security and order, enforcing the law, and providing protection, patronage, and services to the community in order to maintain domestic security.

- 2) The Republic of Indonesia National Police is the National Police which is a single unit in carrying out the role as referred to in paragraph (1).

The word "police" has a different meaning now than when the term "police" was first coined. The term "police" was first used in Greece in the 10th century BC, when it was "Politeia," meaning the entire government of a city-state. The term then evolved to encompass all city-state affairs. Since cities at that time were independent states, also known as poleis, "politeia" came to mean all matters not only related to the city-state's governance but also religious affairs. In the 14th and 15th centuries, due to the changing times, religious affairs and activities became more numerous, necessitating special arrangements. Religious affairs were eventually removed from the "politeia" (police) sphere, leaving the term "politeia" (police) to encompass only worldly affairs and affairs. From these terms, "politeia" and "polis" gave rise to the terms "lapolice" (French), "politeia" (Dutch), "police" (English), "polzei" (German), and "polis" (Indonesian).

Now the term police is interpreted as a government agency (a group of civil servants) tasked with maintaining public security and order, civil servants tasked with maintaining public security and order (Nagara, 2000). It is widely known by the public, especially among the police, that the legal duties of the police are stipulated in Law Number 2 of 2002 concerning the Republic of Indonesia National Police and in the Defense and Security Law.

From the explanations of the terms police and policing above, the following can be interpreted: the police is an organ or government institution within the state. Meanwhile, the term police is both an organ and a function. As an organ, it is an organized and structured government institution within the state system, which is given the task, authority, and responsibility to carry out policing by law. As a function, it refers to the duties and authorities granted by law, namely preventive and repressive functions. The preventive function is through providing protection, shelter, and service to the community, and the repressive function is within the framework of law enforcement. And when linked to duties, it essentially refers to the universal task of ensuring compliance with prevailing norms in society. The primary function of the police is to enforce the law and serve the interests of the general public. Therefore, it can be said that the police's duty is to prevent crime and provide protection to the community (Mulyadi, 2009).

The police function is one of the functions of state government in the field of maintaining public security and order. Law enforcement, protection, protection, and service to the community. The function of the police (POLRI) is closely related to Good Governance, namely as a state instrument that maintains kamtibmas (public security and order) which is tasked with protecting, protecting and serving the community and enforcing the law, namely as one of the functions of legal government, protection, protection, and service to the community which is obtained attributively through the provisions of the 1945 Constitution Article 30 and Article 2 of Law Number 2 of 2002 concerning the Indonesian National Police.

Special police functions relate to police authority which is specifically determined by or under the authority of law for a particular area of authority. Government agencies which are authorized by or under the authority of law to carry out special police functions in their respective fields are called special police apparatuses, in accordance with the law which serves as their legal basis.

The function of the police from a sociological dimension consists of certain jobs which in the practice of community life are felt to be necessary and beneficial, in order to create security and order in their environment, so that from time to time they are carried out based on the awareness and will of the community itself independently and then institutionalized in the social order of life.

Considering the details of the police's duties and authorities as outlined above, it is clear that there are essentially two police duties in the field of law enforcement: law enforcement in the criminal justice sector (using penal means) and law enforcement using non-penal means. The task of law enforcement in the judicial sector (using penal means) is actually only one or a small part of the police's duties. The majority of police duties lie outside of criminal law enforcement (non-penal means).

During the investigation phase, restorative justice gains increasingly clear legal legitimacy through the institutional policies of the Indonesian National Police. Normatively, police discretionary authority is the initial basis for the implementation of restorative justice. Article 18 of Law Number 2 of 2002 concerning the Indonesian National Police provides room for police officers to act according to their own judgment in the public interest. This discretion provides an entry point for the application of criminal case resolution outside of formal judicial mechanisms, as long as it does not conflict with the law and the public's sense of justice.

A significant development in the regulation of restorative justice at the investigative level was marked by the issuance of Indonesian National Police Regulation Number 8 of 2021 concerning the Handling of Criminal Offenses Based on Restorative Justice. This regulation explicitly outlines the requirements, mechanisms, and limitations for investigators' implementation of restorative justice. The regulation emphasizes that restorative justice can only be applied to certain minor crimes, those that do not cause public unrest, and those that have the consent of both the victim and the perpetrator.

From a criminal law perspective, this regulation demonstrates a shift from a formal legalistic approach to a problem-solving justice approach. Investigators are no longer positioned solely as enforcers of norms, but also as social mediators who play an active role in restoring the balance of legal relations disrupted by criminal acts. However, the application of restorative justice at the investigative stage also raises legal issues, particularly related to the principles of legality and legal certainty. A frequent criticism concerns the potential subjectivity of investigators in determining the suitability of a case for restorative resolution.

Theoretically, these problems can be explained through Satjipto Rahardjo's progressive legal theory, which positions law as a means to achieve substantive justice, not merely normative certainty. Within this framework, investigators' discretion is viewed as an instrument for correcting injustices that may arise from the rigid application of the law. However, to prevent this from becoming an abuse of power, such discretion must be normatively limited and institutionally supervised (Rahardjo, 2014).

The prosecution stage is a crucial phase in the criminal justice system, as it is at this stage that the state officially determines whether a case is worthy of being brought to trial. Restorative justice regulations at this stage are firmly established through Republic of Indonesia Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. This regulation marks a significant shift in the prosecution paradigm, from a purely repressive approach to a more restorative and humane one.

The regulation authorizes prosecutors to discontinue prosecution upon meeting certain conditions, including first-time offenders, a prison sentence of no more than five years, relatively small losses, and a peace agreement between the victim and the offender. From a criminal procedure law perspective, this policy constitutes a form of functional depenalization implemented through the prosecutor's discretion (Hadjon, 2018).

A legal analysis of this regulation demonstrates an integration between the principle of opportunity and restorative justice. Although the Indonesian legal system formally adheres to the principle of legality in prosecution, the application of restorative justice by the prosecutor's office demonstrates an implicit recognition of the principle of opportunity within

certain limits. This aligns with the modern legal perspective that positions prosecution as an instrument of criminal policy, not simply a technical mechanism for law enforcement.

However, the application of restorative justice in prosecution also faces normative challenges, particularly related to the potential for unequal legal treatment. Cases with similar characteristics can potentially be treated differently depending on the subjective judgment of the prosecutor. Therefore, strict and transparent guidelines are needed to ensure that the application of restorative justice does not create new injustices. In this context, the principle of equality before the law must remain the primary foundation for any decision to terminate a prosecution.

The reform of national criminal law through Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code) and Law Number 20 of 2025 concerning the Criminal Procedure Code (New Criminal Procedure Code) demonstrates a significant paradigm shift from a repressive approach to a more humanistic and corrective one. This shift is clearly reflected in the strengthening of the concept of restorative justice and the introduction of alternative punishments, such as community service, which philosophically places social recovery and perpetrator responsibility as the primary goals of punishment. In the context of investigations, this change has important implications for the authority and discretion of law enforcement officials, particularly the police, who were previously more tied to the crime control model.

Article 85 of the new Criminal Code introduces community service as an alternative to short-term imprisonment or light fines. Normatively, this provision emphasizes that punishment need not always be oriented towards imprisonment, but can be directed towards more constructive and socially beneficial forms of sanctions. Although community service is imposed through a court decision, the character and purpose of this punishment align with the spirit of restorative justice, namely restoring social balance, avoiding stigmatization of perpetrators, and encouraging real accountability. Thus, the new Criminal Code provides a substantive foundation that the resolution of minor crimes does not always have to result in conventional punishment.

This substantive foundation is procedurally strengthened in the new Criminal Procedure Code. Articles 79 through 88 explicitly regulate restorative justice mechanisms as an integral part of the criminal justice system, no longer merely a discretionary policy. This regulation is significant because it provides strong legal legitimacy for investigators to resolve certain criminal cases through reconciliation between the perpetrator and the victim. Unlike the old Criminal Procedure Code, which did not explicitly regulate restorative justice, the new Criminal Procedure Code institutionalizes this mechanism with clear conditions, procedures, and legal consequences, including termination of investigations after agreements are met and a court order is obtained.

In the context of investigations, Articles 83 and 84 of the new Criminal Procedure Code (KUHAP) assign a central role to investigators as facilitators of restorative justice. Investigators no longer function solely as gatherers of evidence to bring cases to court, but also as actors authorized to mediate in resolving cases to restore the original situation. This authority broadens the meaning of due process of law, from mere formal procedures to a process oriented toward substantive justice for victims, perpetrators, and the community. However, it should be noted that this authority is strictly limited by exceptions in Article 82 of the new KUHAP, particularly for serious crimes and crimes with widespread impact, thus preventing the misuse of restorative justice.

National Police Chief Regulation Number 8 of 2021 is a sectoral regulation that practically adopted the concept of restorative justice at the investigation level before the new Criminal Procedure Code came into effect. This regulation details the material and formal requirements for the implementation of restorative justice by the police. From a legal

harmonization perspective, this regulation can be seen as a normative embryo that was later institutionalized nationally through the new Criminal Procedure Code. However, this is precisely where normative problems arise, particularly regarding the provisions of Article 5 letter e of Regulation 8 of 2021, which excludes repeat offenders from the application of restorative justice.

The provision regarding "repeat offenders based on a court decision" in the Police Regulation raises serious ambiguity when linked to the new Criminal Procedure Code (KUHAP). While the new KUHAP limits the application of restorative justice to non-recidivists, it leaves room for certain exceptions, such as for crimes committed through negligence or crimes previously punishable only by fines. Conversely, Police Regulation 8 of 2021 does not provide a clear operational definition of the scope of "repeat offenders." Consequently, there is a potential for a disconnect between national criminal procedure law and internal police policies, which in practice could hinder the implementation of restorative justice at the investigative level.

This ambiguity directly impacts legal certainty and uniform application. Investigators in one region may interpret the recidivism provisions narrowly, while investigators in another region interpret them broadly, resulting in disparities in the treatment of perpetrators. This situation contradicts the primary goal of restorative justice, which emphasizes contextual and proportional justice. From the perspective of the principles of legality and legal certainty, this inconsistency should be resolved by positioning the new Criminal Procedure Code as both *lex superior* and *lex posterior*. Therefore, Regulation 8 of 2021 needs to be adjusted to align with the new criminal procedure law norms.

Conceptually, the relationship between the new Criminal Code, the new Criminal Procedure Code, and Police Regulation No. 8 of 2021 demonstrates a continuity of purpose, namely prioritizing restoration and substantive justice in handling minor crimes. The new Criminal Code provides a philosophical basis and alternative sanctions, the new Criminal Procedure Code provides a binding procedural framework, while Police Regulation No. 8 of 2021 serves as technical operational guidelines at the investigative level. However, this continuity will only be effective if there is consistent normative harmonization, particularly regarding the limitations and exceptions to the application of restorative justice.

Thus, restorative justice at the investigative stage in the post-reform Indonesian criminal justice system is no longer merely a pragmatic policy, but rather part of the design of a modern, recovery-oriented criminal justice system. The challenge ahead lies not in the lack of a legal basis, but rather in the consistent application and alignment of sectoral regulations so that the goals of restorative justice, as envisioned by the new Criminal Code and Criminal Procedure Code, are truly realized in police investigative practices.

The regulation of restorative justice in the courts presents a more complex dimension, given that judges are bound by the principles of independence and impartiality. Nevertheless, the Supreme Court has accommodated the restorative justice approach through various judicial policies, including Supreme Court Regulation No. 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice. This regulation provides a normative basis for judges to consider restorative solutions when issuing verdicts.

From a criminal procedural law perspective, the application of restorative justice in court does not always result in the elimination of criminal penalties. Instead, it can be realized in the form of decisions that consider reconciliation, victim recovery, and the perpetrator's responsibility. Judges continue to carry out their judicial function, but with a broader orientation toward substantive justice. This aligns with Gustav Radbruch's theory of justice, which places justice as a fundamental value that must be prioritized when there is a conflict between justice and legal certainty. (Radbruch, 1950).

Legally, restorative justice in court is also closely linked to the protection of human

rights, particularly the victim's right to effective redress. This approach shifts the victim's position from mere witness to subject with a direct stake in the judicial process. In this context, the court is no longer viewed solely as an arena for punishment, but also as a space for dialogue and reconciliation.

However, the application of restorative justice in courts is not without criticism, particularly regarding the risk of inconsistent decisions. Without clear and measurable guidelines, judges have the potential to apply restorative justice differently, ultimately reducing legal certainty. Therefore, the Supreme Court's role in developing comprehensive and binding guidelines is crucial to maintaining the consistency and legitimacy of this approach.

Systemically, the regulation of restorative justice in investigations, prosecutions, and trials demonstrates an effort to harmonize the values of justice, legal certainty, and expediency. From a legal theory perspective, this approach reflects the integration of legal positivism and responsive legal thought. Law is no longer understood as a closed and static norm, but as a dynamics (that must adapt to societal dynamics (Atmasasmita, 2017).

However, the scattered provisions of restorative justice across various sectoral regulations also raise coordination and synchronization issues. The absence of explicit provisions in the Criminal Procedure Code (KUHAP) results in restorative justice still being viewed as an administrative policy, rather than a fundamental procedural legal norm. This situation has the potential to undermine the legal legitimacy of restorative justice, particularly when faced with formal and material challenges before the judiciary.

In the context of criminal law reform, the integration of restorative justice into the new Criminal Procedure Code (KUHAP) is an urgent need. These regulations must include clear principles, procedures, and oversight mechanisms to ensure consistent and accountable implementation of restorative justice. Thus, restorative justice will not only be a discretionary policy of law enforcement officials but also an integral part of the national criminal justice system.

Legal arrangements for restorative justice in the Indonesian criminal justice system have undergone significant development, particularly through normative policies at the investigation, prosecution, and court levels. The application of restorative justice reflects a paradigm shift in criminal law toward a more humanistic, responsive, and recovery-oriented approach. However, this implementation still faces various legal challenges, particularly related to legal certainty, consistency of application, and oversight of law enforcement officers' discretion. Therefore, it is necessary to strengthen the normative foundation of restorative justice through codification in criminal procedural law, as well as to increase the capacity of law enforcement officers to implement this approach professionally and with integrity. In this way, restorative justice can function optimally as an instrument for realizing substantive justice based on humanitarian values and social justice.

Criminal law enforcement in Indonesia has faced complex structural issues over the past few decades, ranging from overcrowding in correctional institutions, slow judicial processes, and public dissatisfaction with court decisions perceived as not reflecting a sense of substantive justice. These issues are increasingly evident in the handling of minor crimes, which typically have a relatively low level of culpability and social impact, yet are often processed through lengthy and repressive formal criminal justice mechanisms. This situation has fostered the need for alternative approaches to resolving minor crimes, one of which is restorative justice.

Restorative justice views criminal acts not merely as violations against the state, but as social conflicts that cause harm to victims, perpetrators, and society. Therefore, resolution is directed at restoring the original state through dialogue, deliberation, and mutual agreement. In the context of the Indonesian criminal justice system, the Indonesian National Police

(Polri) plays a strategic role in the implementation of restorative justice, particularly in the initial stages of case handling, namely the investigation and inquiry. This role is crucial given that the police are the primary gateway to the criminal justice system.

The police resolve minor crimes through a restorative justice approach, examining the legal basis, implementation mechanisms, and legal implications for the principles of legal certainty, justice, and expediency. In the Indonesian criminal law system, minor crimes are normatively recognized in various provisions, including the Criminal Code (KUHP) and the Criminal Procedure Code (KUHAP). In general, minor crimes are characterized by relatively low criminal penalties, small losses, and limited social impact. The KUHAP provides special provisions for minor crimes through a speedy examination mechanism, reflecting criminal procedure law's recognition of the specific characteristics of these crimes.

However, in law enforcement practice, resolving minor crimes through formal justice channels often does not align with the goals of efficiency and justice. The investigation, trial, and sentencing processes often incur greater social costs than the benefits gained. From a criminal policy perspective, this situation demonstrates the need for a non-prevention. (to complement the penal approach in crime prevention (Arief, 2016).

Restorative justice exists as a relevant non-penal approach to minor crimes. This approach emphasizes reparation for victims' losses, accountability for perpetrators, and restoration of social harmony, without necessarily leading to criminal prosecution. In this context, the police have broad discretion to determine whether a minor crime case is appropriate for resolution through restorative justice mechanisms.

The implementation of restorative justice by the police is inseparable from the normative foundation that provides legal legitimacy for the use of discretion. Article 18 of Law Number 2 of 2002 concerning the Indonesian National Police authorizes police officers to act according to their own judgment in the public interest. This provision serves as the primary legal basis for the police in taking steps to resolve cases outside of formal criminal justice mechanisms, including in the handling of minor crimes.

More specifically, restorative justice regulations are strengthened through Indonesian National Police Regulation Number 8 of 2021 concerning the Handling of Criminal Offenses Based on Restorative Justice. This regulation explicitly stipulates the material and formal requirements for implementing restorative justice, including the types of crimes that can be resolved, the reconciliation mechanism, and documentation and internal oversight requirements. With this regulation, restorative justice is no longer solely dependent on the individual discretion of investigators but is instead placed within a structured legal framework.

From the perspective of state administrative law, these regulations reflect institutional efforts to limit and direct the use of discretion so that it does not deviate from the objectives of the law. Police discretion in resolving minor crimes is positioned as responsible *freies ermesen*, namely freedom of action that remains bound by general principles of good governance, such as legal certainty, proportionality, and accountability (Hadjon, 2015).

In practice, police resolution of minor crimes through restorative justice involves a series of procedural and participatory stages. The initial stage begins with the investigator identifying the case, taking into account the characteristics of the crime, the perpetrator's background, the harm caused, and the victim's attitude. This assessment is crucial because it determines whether a case is suitable for restorative resolution or should proceed to the formal judicial process.

If a case is deemed to meet the criteria for restorative justice, investigators facilitate a meeting between the victim and the perpetrator in a deliberative atmosphere. This process aims to reach a peace agreement based on the awareness and willingness of both parties. This agreement can take the form of compensation, an apology, or another form of mutually

agreed-upon reparation. From a criminal law perspective, this mechanism reflects a shift from retributive justice to reconciliation. Restorative justice which is more oriented towards resolving social conflicts (Atmasasmita, 2017).

From a legal perspective, the peace agreement reached in the restorative justice process has significant legal implications. In the context of minor crimes, the agreement serves as the basis for investigators to discontinue the investigation. However, this discontinuation does not constitute an elimination of the crime, but rather an alternative resolution recognized by national criminal law policy. Therefore, documenting and reporting the results of restorative settlements are crucial to ensuring transparency and accountability.

From a legal theory perspective, the police's application of restorative justice in resolving minor crimes can be analyzed through a progressive legal approach. Satjipto Rahardjo emphasized that law must be positioned as a means to achieve justice and human happiness, not merely a tool for enforcing norms. (Rahardjo, 2010). In this context, restorative justice is a concrete manifestation of law that is responsive to social needs.

However, the implementation of restorative justice also poses normative challenges, particularly regarding the principles of legality and legal certainty. A frequent criticism concerns the potential for inconsistent application of the law due to differing subjective assessments by investigators. In similar cases, one case may be resolved restoratively, while another is processed through formal justice. This situation has the potential to violate the principle of equality before the law if not strictly regulated.

Internal police regulations, through National Police Chief Regulation Number 8 of 2021, serve as a tool to harmonize discretion and legal certainty. This regulation establishes clear criteria and internal oversight mechanisms, ensuring that the use of discretion is not arbitrary. From the perspective of the rule of law (*rechtsstaat*) theory, this regulation demonstrates an effort to maintain a balance between the flexibility of law enforcement and the protection of citizens' rights. (Kelsen, 1967).

The application of restorative justice in the resolution of minor crimes by the police has systemic implications for the criminal justice system as a whole. First, this approach contributes to reducing the caseload in courts and correctional institutions. By resolving minor cases at the police level, judicial resources can be focused on more serious and complex matters.

Second, restorative justice strengthens the victim's position in the law enforcement process. Victims are no longer treated merely as evidence, but as subjects with the right to redress. This aligns with developments in modern criminal law, which increasingly emphasizes the protection of victims' rights. (Muladi, 2012). Third, this approach encourages community participation in resolving criminal conflicts, thereby strengthening the social legitimacy of law enforcement.

However, these positive implications can only be achieved if restorative justice is implemented consistently and responsibly. Without effective oversight, this approach has the potential to be misused as a means of compromise that harms victims or as a loophole for opaque practices. Therefore, strengthening internal and external oversight mechanisms is a key prerequisite for the success of restorative justice.

The restorative justice approach to resolving criminal cases is essentially in line with the values that exist in Indonesian society, because restorative justice prioritizes the principle of common interest by prioritizing family values, community values, as well as family values, tolerance, mutual cooperation, and mutual forgiveness (Waluyo, 2020). Howard Zehr proposed a scheme that views crime as a violation of relationships between members of society. This violation creates an obligation to achieve justice for the victim, the perpetrator, and the community, with the main focus on the victim requiring recovery from the losses suffered, this includes material, physical, and psychological, with the perpetrator's

responsibility through an apology based on the perpetrator's remorse and the provision of compensation (Ali, 2009).

Howard Zehr's scheme above, that the central focus of restorative justice is focused on restoring the victim's losses due to a crime, as well as the basic concept in the application of the restorative approach which is an action aimed at building or restoring damaged relationships damaged by the crime. Regarding this result, it has also been known and has been practiced in customary law in Indonesia. The philosophy of the restorative approach that aims to restore the situation as it was before the conflict occurred, is in line with the philosophy of Indonesian customary law which emphasizes the restoration of disturbed balance in society (Hutauruk, 2019). Furthermore, regarding the characteristics of justice stated in detail by Muladi, namely (Akub & Sutiawati, 2018):

- 1) Crime is seen as a violation by one person against another person that is recognized as a conflict.
- 2) The main focus is to solve problems regarding future accountability and obligations.
- 3) Normative nature is built on the basis of discussion and bargaining.
- 4) Ways to improve relations between the parties are through restitution, reconciliation and restoration.
- 5) Rights relations are assessed on the basis of results as the meaning of justice.
- 6) The focus is on restoring or repairing social losses.
- 7) The facilitator in the restorative process is the community.
- 8) The role of the victim.
- 9) The perpetrator's responsibility is seen as the impact of the request for an action and to help decide the best.
- 10) Criminal acts are understood in a comprehensive context, regarding morality and economics.
- 11) Stigma can be removed through restorative actions.

Restorative justice aims to provide victims who agree to a restoration process with a sense of security and satisfaction. Perpetrators of crimes recognize and understand that their actions have harmed the victim and others and therefore must take responsibility for making amends. By agreeing to a restoration approach that emphasizes repairing the damage done and preventing future violations, offenders commit to repairing the damage done and attempt to identify the factors influencing their behavior. Both victims and perpetrators collectively understand the dynamics underlying the crime, leading to reintegration or reintegration into society (United Nations, 2006).

Restorative justice in the prosecutor's office generally regulates the provisions or classification of criminal acts that may be restored, namely generally minor crimes, while the regulations related to minor crimes in the Criminal Procedure Code have determined that minor crimes are defined as having a sentence of no more than 3 months and a fine of no more than IDR 7,500. In its development, PERMA Number 2 of 2012 was issued, minor crimes (tipiring) are limited to Articles 354, 373, 379, 384, 47, and 482 of the Criminal Code, with a loss limit of no more than IDR 2,500,000.00. The determination of minor crimes refers to the articles in the Criminal Code and the provisions in the Criminal Procedure Code and PERMA (Wirajaya et al., 2022).

In enforcing criminal law in accordance with societal norms and values, with the output being a solution, this can also provide legal certainty and provide legal efficacy or benefits and fulfill the public's sense of justice. Therefore, in terms of adapting to the development of community legal needs, the Indonesian National Police (POLRI) requires the formulation of a new idea or concept for resolving criminal acts in the criminal law enforcement system, one that is able to adapt to values. Justice that is growing and developing in community life, therefore the issuance of National Police Regulation Number 8 of 2021

concerning Handling Criminal Acts Based on Restorative Justice, which is the basis for the implementation of restorative justice that produces A2 and SP3. Regulated in 5 National Police Regulations Number 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice. The material requirements are that it does not result in unrest and rejection from the community that leads to conflict or social unrest, is not a repetition of the crime, without the potential to divide the nation, is not a crime against state security, radicalism and separatism, a crime against terrorism, a crime against corruption, and a crime aimed at people's lives.

Regarding formal requirements, they begin with a peace settlement between both parties and the fulfillment of the victim's rights through the perpetrator's responsibility, except in drug crimes (Wirajaya et al., 2022). Additional or special requirements for ITE crimes are limited to perpetrators who distribute illegal content. This includes the perpetrator's willingness to delete the content and hand it over to investigators, followed by a video apology to be uploaded to an application or social media, and the deletion of the content. The perpetrator's intention to cooperate with National Police investigators is also evident.

The police regulate the requirements for handling criminal acts based on restorative justice in narcotics crimes in Article 9 paragraph (1) of the National Police Regulation Number 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice, limited to the qualifications of addicts and victims of drug abuse, not being involved in a drug crime syndicate, dealer and/or dealer, there has been an assessment by an integrated assessment and at the time of the OTT, evidence of daily drug use was found, if no evidence is found if the urine test results are positive for drug use, then there is a willingness of the perpetrator to participate with the National Police investigators to carry out further investigations.

Restorative justice is limited to first-time offenders or non-recidivists. Crimes that threaten national security, crimes that result in disability or death, crimes committed by corporations, corruption, and environmental crimes cannot be resolved through restorative justice.

The resolution of minor crimes by the Indonesian National Police through a restorative justice approach is a manifestation of the development of criminal law that is more humane and responsive to community needs. With an increasingly robust legal basis, particularly through the Police Law and National Police Regulation Number 8 of 2021, the police have the legitimacy to resolve minor cases restoratively within the legal framework. However, the implementation of restorative justice must not be separated from the principles of the rule of law, particularly legal certainty, equality before the law, and accountability. Therefore, strengthening regulations, increasing the capacity of officers, and effective oversight are key to ensuring that restorative justice truly functions as an instrument for realizing substantive justice in resolving minor crimes.

The concept of restorative justice in the Indonesian criminal justice system developed in response to the limitations of the retributive justice approach, which focuses solely on punishment. In the context of minor crimes, the formal punishment approach often creates new problems, such as case backlogs, high social costs, and the failure to achieve a sense of substantive justice for the parties. Therefore, legal regulations regarding restorative justice are relevant, particularly in law enforcement practices by the Indonesian National Police, the gatekeeper of the criminal justice system.

Theoretically, restorative justice is based on the view that crime is not merely a violation of the state, but also a violation of the social relationship between the perpetrator, the victim, and society. This paradigm aligns with progressive legal theory, which positions law as a means to achieve substantive justice, not merely normative certainty. In minor crimes, the primary goal of criminal law does not always have to be achieved through punishment, but can be achieved through restoration, reconciliation, and the perpetrator's

moral responsibility to the victim.

B. Implementation of Restorative Justice Principles in the Settlement of Minor Crimes by the Indonesian National Police

The development of modern criminal law demonstrates a paradigm shift from a retributive approach that emphasizes punishment of the perpetrator to a more humanistic and recovery-oriented approach. This shift is driven by a growing awareness that the conventional criminal justice system often fails to deliver substantive justice, particularly in the handling of minor crimes. Lengthy, formalistic, and repressive judicial processes can actually cause further suffering for victims, perpetrators, and society, without producing real healing.

In this context, restorative justice emerges as an alternative paradigm that views criminal acts not merely as violations against the state, but as social conflicts that cause concrete harm and must be remedied. Restorative justice emphasizes the importance of dialogue, active participation of all parties, perpetrator responsibility, and the restoration of social balance. In Indonesia, this approach is gaining increasing relevance, particularly in resolving minor crimes, which characteristically have limited social impact and are more appropriately resolved through non-punitive mechanisms.

The Indonesian National Police (Polri) plays a central role in the implementation of restorative justice, as it is at the initial stage of the criminal justice system. As gatekeepers of criminal law enforcement, the police have discretionary authority that allows for the resolution of cases outside of formal judicial mechanisms. Therefore, a study of the principles of restorative justice in the resolution of minor crimes by the Indonesian National Police is crucial to understanding how these principles are implemented in law enforcement practice and their legal implications for the rule of law.

According to Roeslan Saleh, whether or not a person who commits an act is punished depends on whether there was an error at the time of committing the act or not. If a person who commits a criminal act actually makes an error, then of course he can be subject to criminal sanctions, however, if he has committed a prohibited and reprehensible criminal act but does not make an error, he will certainly not be punished (Saleh, 2003).

A system is a network of several elements that function together. The penal system plays a strategic role in efforts to combat criminal acts. The penal system is a set of laws and regulations related to criminal sanctions and punishment. If the penal system is broadly defined as the process of imposing or imposing a sentence by a judge, then it can be said that the penal system encompasses all legal provisions that regulate how criminal law is enforced or operationalized concretely, resulting in a person being subject to criminal sanctions.

This means that all laws and regulations concerning substantive criminal law, formal criminal law, and criminal enforcement law can be viewed as a unified criminal system. Therefore, it can be said that criminal punishment cannot be separated from the types of crimes regulated by a country's positive law (Failin, 2017). Punishment carried out by an orderly society against criminals can take the form of eliminating or disabling the perpetrators of criminal acts, so that the perpetrators no longer cause problems in the future.

Essentially, every criminal act committed by an individual requires that person to be held accountable for their actions. Criminal responsibility is intended to determine whether a defendant is responsible for the crime. If the act is proven to be unlawful and the defendant is capable of taking responsibility, the person can be punished.

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Van Hammel defines punishment (straf) according to positive law as a special kind of

suffering. According to Van Hammel, this suffering is imposed by the authority authorized to impose punishment on behalf of the state as the one responsible for general legal order for an offender, this suffering is imposed solely because the person has violated a legal regulation that must be enforced by the state. Simon also defines punishment (*straf*) as a suffering inflicted on a person, this suffering is linked by criminal law to the violation of a norm, which has been imposed by a judge's decision on a guilty person.

These two Dutch criminal law experts share the same view in defining punishment, which is essentially suffering. However, it must be understood that this suffering is not an end in itself; it is merely a tool used by the state to remind people not to commit crimes (Hamzah, 2006).

The purpose of punishment is based on the idea that the criminal law system is a unified system with a purpose (purposive system or teleological system) and punishment is only a tool/means to achieve the goal, so in the concept of the new Criminal Code, the purpose of punishment is formulated based on the balance of two main targets, namely community protection (general prevention) and individual protection/development (special prevention). Until now, the Criminal Code as the main source of Indonesian criminal law and laws outside the Criminal Code do not have clear and complete written regulations regarding the purpose and guidelines of punishment. This is important to remember because the implementation of punishment without a clear purpose can result in the criminal law not working according to its function.

There are several considerations regarding the need for a review of formulative/legislative policies regarding the objectives and guidelines for criminal punishment in reforming the criminal punishment system in Indonesia, including:

1. That the Criminal Code currently in force does not explicitly formulate objectives and guidelines for the criminal system.
2. That the strategic position of the objectives and guidelines for criminal punishment is intended to provide direction, guidance and methods for law enforcement to implement criminal provisions.
3. That formulating goals and guidelines is a fundamental prerequisite in formulating a way, method or action.
4. The Indonesian nation is currently preparing a Criminal Code that will replace the Criminal Code (WvS), therefore it is necessary to study the objectives and guidelines for criminal punishment that are adapted to the development of today's society and the philosophy and outlook on life, namely Pancasila (Irmawanti & Arief, 2021).

The scope of the penal system encompasses a very broad range of material, encompassing all areas of criminal law (material, formal, and implementation). This material encompasses a broad discussion of the penal system. In a narrow sense, the penal system relates only to issues surrounding criminal law, such as the nature of criminal law, its philosophy of existence, its objectives, its types, and its application. In short, criminal law is a way to enforce compliance with rules, hold violators accountable, and safeguard the interests of society.

Criminal liability is the imposition of a penalty on a perpetrator of a crime for their actions that violate a prohibition. Criminal liability involves transferring the blame inherent in a crime to the perpetrator. Holding someone accountable in criminal law means transferring the objective blame inherent in a criminal act to the perpetrator (Candra, 2013).

Punishment must be individual, affecting only the perpetrator. No one will be held responsible for the mistakes of others. This requirement is a fundamental principle of criminal law. Punishment is also general, applicable to all groups, regardless of their status, by equalizing the rights of the rich and the poor, and the intelligent and the ignorant, before the law. The impact of punishment must also be equal: prevention and future education.

The tendency of criminal justice theory is to limit punishment to no more than necessary and must not neglect the humanizing aspect of the convict. Criminal justice only considers the level of the crime and its impact on the perpetrator and society. From this perspective, criminal justice tends to be more oriented towards the convict and society at large. Something overlooked in the criminal justice system is the victims of criminal acts and their heirs. For crimes that harm individuals, victims of criminal acts should also receive legal attention and protection. For example, victims of theft, and victims or their heirs for crimes involving loss of life.

In fact, there is a tendency for legal activity in society to be characterized by the increasing use of legal sources and the resolution of problems through legal means. However, increasing public legal awareness is inversely proportional to the process of resolving legal problems. The law does not always act as a balancer for societal interests, as it tends to accommodate the interests of certain elites (Pekuwali, 2008). This is indicated when law enforcement prioritizes legal certainty while ignoring justice and the benefits of law for society. The adage of justice has changed with the development of the modern nationalist century, which prioritizes reasoning, but almost never satisfies human thinking about the meaning and significance of justice within the rhythm of legal movements in society.

Laws should be implemented fairly, but injustice often occurs. Law enforcement officials are not yet fully aware of this (Friedrich, 2004). The law enforcement process is still far from a sense of justice for the public. Yet, the essence of law is justice itself. Justice under the law is a right of every citizen that must be guaranteed and protected by the state. The legal justice that emerges is more formal legal, justice based on written texts contained in the Constitution (rule-bound).

Law is not merely an expression consisting of a collection of regulations (judicial precedent). There is a dialogical atmosphere between law and the existing social conditions of society (Cotterell, 1984). Proposing a law must take society into account, because law cannot be separated from society. Savigny stated that *Das recht wird nicht gemacht, est ist und wird mit dem volke* (law is not made but grows and develops with society). Looking at the law means looking at the society concerned.

In recent years, it seems as if the courts are the only appropriate place to resolve legal issues (conflicts) and seek justice. Consequently, any indication of a crime, regardless of the escalation of the act, will continue to be passed on to law enforcement, which is solely the jurisdiction of law enforcement. Active public participation seems to be diminished, with everything focused solely on the court's decision in the form of punishment, regardless of its essence. In fact, in a criminal trial, the parties involved are the public prosecutor, the judge, the defendant, legal counsel, and witnesses. The victim is represented by the public prosecutor, and to strengthen the evidence, the victim is usually made a witness (victim) (Waluyo, 2011). However, this has not yet provided any tangible impact or benefit to the victim.

The restorative justice system is an effort to resolve criminal cases using an approach used in the conventional criminal justice system. This approach emphasizes the direct participation of the perpetrator, victim, and community in resolving criminal cases. Handling criminal cases using a restorative justice approach offers a different perspective in understanding and handling a crime. From a restorative perspective, the meaning of a crime is essentially the same as in criminal law in general, namely an attack on individuals and society, as well as social relations (Bakhri, 2016). The characteristics of the implementation of restorative justice are (Marlina, 2009):

- a. The implementation of restorative justice is proposed to make offenders responsible for repairing the harm caused by their wrongdoing.

- b. To overcome guilt constructively, an agreement is given to the offender to prove his ability and quality to be responsible for the losses he has caused.
- c. The resolution of criminal cases involves the victim or victims, parents, and the victim's family.
- d. To solve the problems that occur, this concept is used to create a forum and work together.
- e. Between social reactions and errors a direct relationship must be established.

In criminal cases, the restorative justice system at least aims to repair/restore the criminal acts committed by the perpetrator with actions that are beneficial for the perpetrator, the victim and their environment, which involve them directly in solving the problem, and is different from the way adults are handled, which then leads to the goal of the crime itself.

In the National Police Chief Regulation Number 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice, Article 6 paragraph (3) provides examples of restorative justice, namely returning goods, compensating for losses, replacing costs incurred as a result of the crime, and/or replacing damages caused by the crime. Fulfillment of these rights is evidenced by a written statement in accordance with the agreement signed by the victim.

The application of restorative justice principles is a logical consequence of the shifting paradigm of modern criminal law, which no longer places punishment as the sole means of resolving criminal offenses. In the conventional criminal law system, crimes are viewed as violations against the state, so resolution focuses on punishing the perpetrator through formal judicial mechanisms. This approach often neglects the interests of victims, neglects reparation, and fails to restore social relationships damaged by the crime. This situation has encouraged the development of restorative justice as an alternative approach oriented toward restoration, dialogue, and reconciliation.

Restorative justice is not simply a criminal case resolution technique, but rather a legal paradigm with its own set of normative principles. These principles serve as the philosophical and legal foundation for the application of restorative justice at various stages of the criminal justice system. In the Indonesian context, restorative justice principles have begun to be explicitly adopted in various legal policies, at the police, prosecutors, and judicial levels. However, the application of these principles is not without academic debate and normative challenges, particularly regarding the principles of legality, legal certainty, and equality before the law.

Therefore, a discussion of the application of restorative justice principles is crucial to understanding the extent to which this approach can be harmoniously integrated into the national criminal law system. This analysis aims not only to outline the principles of restorative justice but also to examine their legal implications for law enforcement practices, particularly in the context of a state based on the rule of law that upholds the supremacy of law and the protection of human rights.

The primary principle of restorative justice is reparation for the harm caused by a crime. In this context, reparation extends beyond material reparation to encompass psychological, social, and moral recovery for the victim, the perpetrator, and the community. This principle positions the victim as the primary subject of reparation, not merely an object of evidence in the criminal justice process. From a classical criminal law perspective, the victim's position is often marginalized because the primary focus is on proving the perpetrator's guilt and imposing a sentence by the state (Muladi, 2010).

The application of the principle of reparation requires a shift in the perspective of law enforcement officials in handling criminal cases. Case resolution is no longer measured solely by the fulfillment of the elements of the crime and the imposition of criminal sanctions, but rather by the extent to which the victim's losses can be repaired and social conflicts resolved.

From a justice theory perspective, the principle of reparation aligns with the concept of corrective justice, which emphasizes restoring balance following unlawful acts (Rawls, 1971).

In the context of its implementation in Indonesia, the principle of restoration is reflected in various restorative justice policies that require a peace agreement and compensation. However, legally, the application of this principle must be carried out carefully to avoid creating new injustices, especially if the victim is in a socially or economically vulnerable position. Therefore, the role of law enforcement officials as neutral facilitators is crucial to ensure that restoration is carried out fairly and voluntarily.

Another fundamental principle of restorative justice is the active participation of all parties involved in the crime, particularly the victim and the perpetrator. Restorative justice rejects a top-down approach that is entirely controlled by the state, and replaces it with a dialogue process that allows the parties to express their interests, needs, and expectations. This principle places deliberation as the primary means of resolving criminal conflicts (Atmasasmita, 2017).

From an Indonesian legal perspective, the principles of participation and dialogue are strongly relevant to the values of Pancasila, particularly the fourth principle, which emphasizes deliberation for consensus. Therefore, the implementation of restorative justice can be seen as an effort to contextualize modern criminal law with local legal and cultural values. From a sociological perspective, dialogue between victims and perpetrators allows for a deeper understanding of the impact of the crime, thus fostering a sense of responsibility and empathy.

However, implementing the principle of participation is not without legal challenges. In practice, not all victims or perpetrators have the same capacity to participate equally in the dialogue process. Inequality in power relations, social pressure, or fear of legal consequences can influence the sincerity of participation. Therefore, from a criminal procedure law perspective, a protection mechanism is needed to ensure that the parties' participation is voluntary and free from coercion (Hadjon, 2018).

The principle of restorative justice also emphasizes perpetrator responsibility as a key element in resolving criminal offenses. Unlike conventional criminal justice systems, which emphasize punishment, restorative justice requires perpetrators to actively acknowledge their actions, understand the impact, and take concrete steps to repair the harm. Responsibility in this context is moral and social, not merely legal (Arief, 2016).

From a criminal law theory perspective, the principle of restorative responsibility aligns with the goals of modern criminal justice, which emphasize rehabilitation and social reintegration. By involving offenders in the recovery process, restorative justice has the potential to reduce recidivism rates and encourage more sustainable behavioral change. In this context, punishment is no longer understood as retribution, but as an educational and corrective tool.

However, the application of the principle of perpetrator responsibility must be distinguished from impunity. Admission of guilt and willingness to repair harm should not be used as a justification for arbitrarily eliminating legal accountability. Therefore, normatively, restorative justice should be positioned as a conditional alternative mechanism, particularly for certain crimes with limited social impact (Sudarto, 2013).

One crucial issue in implementing the principle of restorative justice is the balance between legal certainty and substantive justice. In a positive legal system, legal certainty is a key pillar of the rule of law, ensuring that the law is applied consistently and predictably. However, rigid application of the law often compromises substantive justice, particularly in cases with complex social and humanitarian dimensions (Kalsen, 1945).

Restorative justice exists as an effort to bridge the tension between legal certainty and substantive justice. From the perspective of Gustav Radbruch's legal theory, when a conflict

arises between legal certainty and justice, justice must be prioritized. This principle serves as the philosophical foundation for the application of restorative justice in the criminal legal system. However, the application of this principle must not completely ignore legal certainty, as this could undermine public trust in the legal system.

In Indonesian law enforcement practice, this balance is sought through normative regulations that limit the scope of restorative justice. With clear criteria and procedures, the implementation of restorative justice is expected to remain within the law and avoid creating uncertainty. From a constitutional law perspective, these regulations reflect the state's efforts to maintain the rule of law while responding to demands for social justice (Radbruch, 1950).

The application of restorative justice principles cannot be separated from a human rights perspective. In the context of criminal law, human rights are not only inherent in the perpetrator, but also in the victim and the community. Restorative justice emphasizes protecting the victim's right to effective reparation, the perpetrator's right to be treated humanely, and the community's right to live in a harmonious social order (Muladi, 2012).

From an international legal perspective, the principle of restorative justice aligns with evolving human rights standards, which emphasize a non-punitive and restorative approach to addressing certain crimes. In a national context, the application of this principle must continue to respect constitutional guarantees for citizens' rights, including the right to legal certainty and equal treatment before the law.

However, the implementation of restorative justice also has the potential to lead to human rights violations if not implemented carefully. For example, pressuring victims to reconcile for the sake of efficient law enforcement can violate their right to justice. Therefore, the principle of human rights protection must be a primary parameter in any application of restorative justice (Bassiouni, 2013).

Normatively, the application of restorative justice principles points to a more humane and responsive development of criminal law. However, critically, several challenges warrant careful consideration. First, the fragmentation of restorative justice provisions across various sectoral regulations has the potential to lead to inconsistent implementation. Second, reliance on the discretion of law enforcement officials creates room for subjectivity, which could threaten the principle of equality before the law.

From the perspective of responsive legal theory, these challenges must be addressed through institutional strengthening and public participation. The law must not only be responsive to social needs but also accountable and transparent. Therefore, the application of restorative justice principles must be accompanied by effective oversight mechanisms, both internally and externally (Nonet & Selznick, 1978)

The implementation of restorative justice principles represents a progressive step in reforming Indonesian criminal law. The principles of restoration, participation, perpetrator responsibility, a balance between legal certainty and substantive justice, and the protection of human rights form the normative foundation that enriches the criminal justice system. However, the successful implementation of these principles depends heavily on clear regulations, professional law enforcement officers, and accountable oversight mechanisms. Therefore, restorative justice should not be understood as weakening law enforcement, but rather as an effort to realize laws that are more just and meaningful for society. The integration of restorative justice principles into the criminal justice system must be carefully developed to align with the ideals of a state based on the rule of law and the values of social justice.

A reflection of the shifting paradigm of criminal law enforcement in Indonesia. This paradigm shifts from a repressive orientation toward punishment to an approach that emphasizes restoration, balancing interests, and substantive justice. In police practice, this shift is not only normative but also touches on the sociological and philosophical dimensions

of criminal law as an instrument for regulating social life.

Conceptually, restorative justice is understood as an approach to resolving criminal cases that focuses on restoring relationships between the perpetrator, the victim, and the community. Its core principles are the perpetrator's admission of guilt, reparation for the victim's losses, and the creation of sustainable peace. In the context of minor crimes, this approach is relevant because the nature of the offenses generally does not have a serious impact on public order, but they have the potential to damage social relations if resolved repressively through formal punishment.

The application of restorative justice principles by the police stems from the discretionary authority inherent in the investigative function. This discretion allows police officers to choose the most proportionate and beneficial alternative case resolution for all parties. In minor crimes, the use of restorative discretion is interpreted as a legal action aimed at preventing conflict escalation and minimizing the negative impacts of the formal criminal justice process, such as stigmatization of perpetrators and marginalization of victims. Thus, discretion is not understood as a deviation from the law, but rather as an instrument for implementing the law equitably.

From the perspective of the theory of the purpose of criminal law, the application of restorative justice to minor crimes can be viewed as an effort to simultaneously achieve benefit and justice. The relative theory of punishment emphasizes that the purpose of punishment is not solely retribution, but rather prevention and behavioral improvement. In this context, restorative solutions are considered more effective than formal punishment because they encourage perpetrators to assume moral and social responsibility without having to go through a potentially counterproductive punishment process (Walker, 1985).

Furthermore, the application of restorative justice principles also has important implications for the protection of victims' rights. In conventional criminal justice systems, victims are often passive and lack adequate redress. In contrast, in a restorative approach, victims are given the space to directly express their feelings, needs, and hopes. This active participation of victims not only provides psychological satisfaction but also strengthens the legitimacy of the case resolution outcome. From the perspective of procedural justice theory, enforcement (fair treatment in the legal process are key factors in building public trust in law enforcement (Tyler, 2006).

However, the implementation of restorative justice by the police is not without challenges. One of the main challenges is maintaining objectivity and accountability in the use of discretion. Without clear guidelines and adequate oversight, the implementation of restorative justice has the potential to create legal uncertainty and the appearance of discriminatory treatment. Therefore, strict operational standards are needed to ensure that restorative resolution is only applied to cases that meet certain criteria and do not conflict with the public interest.

From a sociological legal perspective, the success of restorative justice implementation is greatly influenced by public acceptance. In Indonesian society, which upholds the values of deliberation and family, the restorative approach has a strong cultural foundation. These values can provide social capital for the police in facilitating peaceful resolution of cases. However, on the other hand, there is still a societal view that equates justice with punishment. This view demands ongoing legal education efforts so that restorative justice is understood as a legitimate and dignified form of justice (Friedman, 1975).

Normatively, the application of restorative justice principles to minor crimes also contributes to the efficiency of the criminal justice system. Resolving cases at the police level reduces the burden on prosecution and the judiciary, freeing up law enforcement resources to focus on more serious cases. Within the framework of criminal justice policy, this approach

aligns with the principles of selectivity and diversion, which aim to optimize the performance of the criminal justice system as a whole.

The analysis concludes that the police's application of restorative justice principles in resolving minor crimes represents a concrete manifestation of humanistic and responsive law enforcement. This approach not only provides justice for victims and perpetrators but also strengthens the police's role as guardians of social harmony. While still facing challenges in terms of consistency and oversight, the application of restorative justice holds significant potential to become a model for resolving criminal cases that is just, efficient, and rooted in Indonesian social values.

The police have discretionary powers that allow them to resolve cases outside of formal judicial mechanisms in the public interest. From an administrative law perspective, discretion is understood as the freedom of action granted by law to government officials to make decisions in certain situations. Philipus M. Hadjon describes discretion as free powers that must be exercised responsibly and in accordance with the general principles of good governance (Hadjon, 2015).

In the context of restorative justice, police discretion is a crucial instrument for balancing legal certainty and substantive justice. However, uncontrolled use of discretion has the potential to create inconsistent legal application and violate the principle of equality before the law. Therefore, the implementation of restorative justice must be supported by clear normative guidelines and effective oversight mechanisms.

The application of restorative justice principles in the resolution of minor crimes by the police cannot be separated from a human rights perspective. Human rights are inherent in victims, perpetrators, and the community, therefore, every criminal case resolution mechanism must guarantee the protection of these rights. Restorative justice emphasizes the victim's right to effective reparation, the perpetrator's right to humane treatment, and the community's right to security and order.

From a criminal law and human rights perspective, the restorative approach aligns with the principle of respect for human dignity. However, its implementation also carries the risk of human rights violations if not carried out carefully. Pressure on victims to reconcile for the sake of efficient law enforcement, for example, can violate their right to justice. Therefore, the principle of human rights protection must be a primary parameter in any application of restorative justice (Bassiouni, 2013).

The principles of restorative justice in the resolution of minor crimes by the Indonesian National Police reflect the development of criminal law that is more humane and responsive to community needs. The principles of restoration, participation, perpetrator responsibility, legal certainty through responsible discretion, and protection of human rights form the normative foundation for the application of restorative justice at the police level.

CONCLUSIONS

The legal provisions for restorative justice in the resolution of minor crimes by the Indonesian National Police (Polri) have a fairly strong normative basis, although they have not yet been fully codified in the Criminal Procedure Code. The primary legal basis for the implementation of restorative justice by the police stems from discretionary authority as stipulated in Law Number 2 of 2002 concerning the Indonesian National Police, which provides room for police officers to act according to their own judgment in the public interest. This regulation was later clarified and reinforced through Indonesian National Police Regulation Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice, which stipulates the material and formal requirements, resolution mechanisms, and limitations of the application of restorative justice. Therefore, legally, restorative justice in the resolution of minor crimes by the police constitutes a legitimate

criminal law policy, based on controlled discretion, and intended to achieve substantive justice, efficient law enforcement, and maintain social order.

The application of restorative justice principles in resolving minor crimes by the police essentially reflects the core values of restorative justice, namely the principles of restoration, participation, perpetrator responsibility, a balance between legal certainty and substantive justice, and the protection of human rights. The principle of restoration is realized through efforts to restore victims' losses and restore social relations; the principle of participation is realized through dialogue and deliberation between victims and perpetrators; while the principle of perpetrator responsibility is reflected in the admission of guilt and a willingness to repair the consequences of the criminal act. However, the implementation of these principles still faces challenges, particularly related to the potential for subjectivity in the use of discretion, the lack of uniformity in application across regions, and the risk of neglecting victims' rights if the reconciliation process is not carried out voluntarily and in a balanced manner. Therefore, although conceptually and normatively the application of restorative justice by the police is in line with the objectives of modern criminal law, in practice, strengthening supervision and consistency of implementation is still needed to ensure it does not conflict with the principles of legal certainty and equality before the law.

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