

Restorative Justice Mechanisms at The Preliminary Inquiry Stage in The Indonesian Criminal Justice System: Strengthening The Role of The Police in The Reform of The Criminal Procedure Code

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Abstract: This study found that, to date, there are no comprehensive regulations regarding the authority of preliminary inquiry officers to actively implement restorative justice. The relevant regulations remain piecemeal, linked to Article 18 of Law – Law No. 2 of 2002 on the National Police of the Republic of Indonesia and its amendments, which essentially stipulate that, in the public interest, National Police officers of the Republic of Indonesia may, in carrying out their duties and exercising their authority, act according to their own judgment while observing the laws and regulations and the Code of Ethics of the National Police of the Republic of Indonesia. This study is a normative legal research aimed at identifying an ideal model for the Restorative Justice Mechanism during the preliminary inquiry stage in the revision of the Criminal Procedure Code (KUHAP). The conclusion of this study is that there is a fundamental difference between the provisions in effect since the enactment of Article 79(5) of Law No. 20 of 2025 on the Criminal Procedure Code and the previous regulations, which stipulate: “Once all agreements have been fulfilled, the case must be discontinued and a court ruling must be sought.” This has led to multiple interpretations among preliminary inquiry officers, as the draft Government Regulation on Restorative Justice—which is intended to be a derivative of the new Criminal Procedure Code—has not yet been enacted. Consequently, current

practices create a legal vacuum (*Rechtvacuum*) for law enforcement officials, particularly investigators, in implementing Restorative Justice at the preliminary inquiry stage.

Keywords: Preliminary Inquiry Stage, Restorative Justice, New Criminal Procedure Code.

Introduction

Background

The penal system is closely linked to criminal policy. Criminal policy, as intended here, refers to the rational efforts undertaken by society to combat crime. In this regard, referring to the purpose of the criminal law system (*purposive system*) which links the use of criminal punishment as a means or tool to achieve the objectives of criminal law itself (Barlian, Aristo Evandy A., & Arief, 2017) the aspect of sentencing constitutes the final stage of the Criminal Justice System, namely through the issuance of a judge’s ruling on a criminal case (Kurniawati et al., 2021). According to Herbert L. Packer, the purpose of punishment

takes two conceptual forms with differing moral implications: the Absolute/Retributive Theory where punishment is viewed as a negative retribution and the Relative/Utilitarian Theory where punishment is viewed in terms of its benefits or utility, focusing on the situation or outcome intended to be achieved by imposing the sentence (Packer, n.d.).

Artidjo Alkostar presents his thoughts based on a philosophical study of science regarding punishment, as follows: First, ontologically, punishment is essentially a legal consequence of an individual's commission of a criminal act, linked to the state's authority to impose punishment on an individual and/or a corporation that, following a judicial process, has been found to have committed a criminal act and is guilty, and thus must be punished. Second, from an axiological perspective, the acts committed by a person who is sentenced are deemed inconsistent with the value of truth. Thus, *sentencing* cannot be separated from the value system prevailing within a society or state (Alkostar, n.d.).

As of April 9, 2026, the number of inmates in prisons and detention centers in Indonesia stood at 271,468, consisting of 215,156 convicted prisoners and 56,312 pretrial detainees. Ideally, the total number of inmates in prisons and detention centers should be 146,860. These figures indicate an *overcapacity* rate of 85% in prisons and detention centers. In August 2025, despite prior improvements, the *overcapacity* rate stood at 93%, and by June, it had reached 100% (Santoso, 2014). Consequently, this has led to new problems because correctional institutions are *overcapacity* and lack adequate supervision due to the imbalance between the number of inmates and correctional staff; therefore, a comprehensive approach is needed to address the issues mentioned above.

From the perspective of implementing prison sentences in a selective and flexible manner, the formulation of prison sentences that are mandatory and absolute (imperative and absolute) Just as with single and cumulative formulations, this can only be justified if accompanied by policy formulations that can soften the application of such imperative and absolute policies. Policy formulations that soften these rigid policies can be formulated as either preventive or repressive policies. A preventive policy is a policy provided by law to prevent or discontinue criminal cases from proceeding to court, whereas a repressive policy is defined as a policy established by law to mitigate the application of the mandatory prison sentencing system should a case proceed to court (Government Regulation of The Republic of Indonesia Number 1 of 2024 on Harmonization of National Fiscal Policy, 2024).

Djisman Samosir explained that the practice of sentencing in Indonesia itself tended to adopt an absolute/retributive approach prior to the emergence of the concept of *restorative justice*, namely: This sentencing practice prioritized retribution (penal); punishment was not intended to serve practical purposes; and sentences were imposed absolutely (Samosir, 1992). Such criminal justice practices are characterized by an absolute/retributive approach to punishment that emphasizes retribution, promoting the view that all criminal acts must be punished, thereby leaving no room for the parties involved—namely, the victim and the offender themselves—to resolve their issues before proceeding through the criminal justice system. Consequently, Eddy O.S. Hiariej argues that it is necessary to shift the conception of imprisonment from a “*premium remedium*” (primary measure), as previously explained in the handling of criminal justice proceedings, to an “*ultimum remedium*” (last resort) through

the application of *Restorative Justice*, particularly in light of the issue of overcrowding in State Detention Centers and Correctional Institutions (Rahmawati, 2022).

Based on the above discussion, the development of modern and transparent criminal justice infrastructure is essential to support the implementation of Law No. 1 of 2023 on the Criminal Code (New Criminal Code) through Law No. 20 of 2025 on the Code of Criminal Procedure (the new Criminal Procedure Code), including an effective case management system and equitable access to justice for all segments of society. This is in line with the need to continue strengthening restorative and rehabilitative justice mechanisms so that the criminal justice system is not merely repressive but also capable of restoring social relationships and providing offenders with opportunities for reintegration into society. Thus, the implementation of the new Criminal Code requires institutional capacity building, consistent law enforcement, and ongoing public outreach and legal education to prevent disparities in its practical application.

The reform of the criminal justice system under Law No. 1 of 2023 on the Criminal Code (New Criminal Code) marks a significant paradigm shift in Indonesian criminal law. This reform represents a shift from a retributive penal system toward a more utilitarian and humanistic system, which emphasizes corrective justice, prevention, rehabilitation, and the restoration of social balance. The roles of restorative and rehabilitative justice in the new penal system have been further strengthened. The new Criminal Code accommodates dispute resolution mechanisms involving mediation between the offender, the victim, and the community, with the aim of restoring losses and repairing social relationships damaged by criminal acts. This approach not only provides offenders with an opportunity for self-improvement but also fulfills victims' rights to meaningful restoration and justice. Thus, restorative justice serves as a vital tool in reducing the burden on correctional institutions and enhancing the effectiveness of criminal law enforcement (Gizella, 2025).

In the criminal justice system, the initial step—or *the first step*—of the criminal proceedings is the preliminary inquiry (English) or *Onderzoek/Osparing* (Dutch) to determine whether a criminal offense has occurred. The various actions taken by preliminary inquiry officers, as set forth in Article 5 of the new Criminal Procedure Code, are intended to gather evidence to clarify a criminal offense (Hiariej, 2026). In this regard, the *restorative justice* approach can begin at the preliminary inquiry stage, as this has been regulated Regulation of the Indonesian National Police No. 8 of 2021 on the Handling of Criminal Offenses Based on Restorative Justice (Regulation on Restorative Justice) and Article 79(8)(a) of the new Criminal Procedure Code provide: “*The mechanism of restorative justice is implemented at the following stages: a. Preliminary Inquiry , ...*”.

Article 81 of the new Criminal Procedure Code (KUHP) governs the mechanism for initiating restorative justice as well as the basic principles of its implementation. Restorative justice may be carried out either at the request of the parties directly involved—namely, the Perpetrator, Suspect, Defendant, Victim, and their respective families—or through an offer by law enforcement officials at any stage of the criminal justice process. This provision indicates that restorative justice does not depend solely on the initiative of the parties but can also be actively facilitated by law enforcement officials, provided that the wishes of the parties are respected.

The authority of a preliminary inquiry officer or criminal investigator to offer restorative justice must nevertheless be accompanied by procedural safeguards to ensure that an offer does not develop into direct or indirect pressure. An offer of restorative justice should therefore be treated as an informational and facilitative act rather than a directive requiring the parties to accept settlement. The officer must explain that participation is voluntary, that refusal will not result in adverse procedural consequences, and that each party retains the right to obtain legal assistance or consultation before giving consent.

Voluntariness should be documented through a written informed-consent form and, where necessary, an audio or audiovisual record confirming that the parties understand the nature and consequences of the restorative process. A reasonable reflection period should also be available before the agreement is finalized. Where the victim is in a vulnerable condition, including physical, psychological, economic, or relational dependency on the alleged offender, the officer should conduct an additional assessment to determine whether the apparent consent is genuinely voluntary. Any indication of intimidation, coercion, deception, or improper inducement should require the restorative process to be suspended and the ordinary criminal procedure to continue.

This study found that the principal problem does not lie in the complete absence of authority to conduct restorative justice, but in the different scope of authority exercised by preliminary inquiry officers and criminal investigators. A preliminary inquiry officer acts at the stage of determining whether an event constitutes a criminal offense and whether the matter should proceed to a formal criminal investigation. By contrast, a criminal investigator exercises authority after the criminal process has entered the investigation stage and a more formal determination of the alleged offense and the relevant legal subject has been undertaken. This distinction is important because Article 7 of the new Criminal Procedure Code expressly recognizes the authority of criminal investigators to resolve criminal cases through restorative justice within the scope of their investigative powers. The authority of preliminary inquiry officers should therefore not be interpreted as identical to the authority of criminal investigators. At the preliminary inquiry stage, the role of the officer should primarily consist of identifying eligibility, informing the parties of the availability of restorative justice, facilitating voluntary communication, documenting consent, and verifying whether the preliminary requirements for restorative settlement have been satisfied. Accordingly, the proposed reconstruction should distinguish between two levels of authority. The preliminary inquiry officer should possess a facilitative and screening authority, whereas the criminal investigator should exercise formal investigative authority where the matter has progressed into a criminal investigation. This distinction prevents the preliminary inquiry officer from prematurely exercising powers that belong to the criminal investigator while still allowing restorative justice to operate at the earliest legally permissible stage.

Problem Statement

Based on the background described above, the following research questions have been identified:

1. What is the mechanism for Restorative Justice during the preliminary inquiry stage under Indonesian positive law?

2. Are preliminary inquiry officers' authorities sufficient to implement *Restorative Justice*?
3. What is the ideal model for the Restorative Justice Mechanism during the preliminary inquiry stage in the revision of the Criminal Procedure Code?

Research Objectives

Based on the problem identification in this study, the following research objectives were established:

- a. To describe the Restorative Justice Mechanism during the preliminary inquiry stage according to Indonesian positive law;
- b. To analyze whether the authority of preliminary inquiry officers is sufficient to implement *Restorative Justice*;
- c. To identify an ideal model for the Restorative Justice Mechanism during the preliminary inquiry stage in the revision of the Criminal Procedure Code

Novelty

Unlike previous related studies, this research focuses on how implementing regulations regarding the exercise of preliminary inquiry officers' authority in applying restorative justice mechanisms during the preliminary inquiry stage are comprehensively addressed, given that neither the National Police Law nor the Ministerial Regulation on Restorative Justice has yet fulfilled the implementing provisions of Article 81 of the new Criminal Procedure Code.

Methodology

This study is a normative legal study aimed at identifying an ideal model for restorative justice mechanisms during the preliminary inquiry stage within the revised Criminal Procedure Code (KUHP). The approaches used in this study are the Statutory Approach (Legislative Approach), the Conceptual Approach, and the Comparative Legal Approach. The data used are secondary data, namely the New Criminal Procedure Code and its implementing regulations. The data collection technique employed in this study by the researcher is prescriptive analysis—an analysis that not only predicts what will happen in the future but also recommends optimal actions to be taken. The analytical methods were derived from a literature review of websites containing legal regulations and articles.

Result and Discussion

The Role of Preliminary Inquiry Stage in the Criminal Justice System

The criminal justice system is closely related to the term "*system of administration of criminal justice*," which can also be referred to as the law enforcement system. This law enforcement system can be defined as a mechanism for combating crime, comprising the police, the public prosecutor's office, the general courts, and the correctional system. It operates based on the principles of criminal justice administration—which is the result of the interaction between legislation, administrative practices, and social behavior—forming a rational system that produces specific outcomes within its limitations. In a narrower sense,

it can also be defined as a court system that administers justice on behalf of the state or as a mechanism for resolving a case or dispute (Susanto, 2004).

The term “criminal justice system” carries several implications: it indicates the existence of a process or mechanism through which all involved components function—a process that begins when an individual becomes a suspect, then a defendant, subsequently a convicted person, and finally a former convict. Within this process, which results in changes to an individual’s status within the criminal justice system, it has been established how the regulations governing this sequence of events should be implemented or enforced. It also indicates that the criminal justice process involves several institutions, each with its own authority and duties based on existing provisions, and that in carrying out their duties and exercising their authority, these institutions share an inseparable common purpose (Kadri Husin, 2016).

V.N. Pillai defines the criminal justice system—in terms of the institutions involved in the criminal justice process—as follows : *“By the criminal justice system, I mean the police, the prosecutorial services, the courts, and the correctional departments. These are the component elements of the structure of the criminal process, and it has been described as a continuous and orderly progression of events.”* (Free translation: “The criminal justice system refers to the police, the prosecutorial services, the courts, and the correctional departments. These are the component elements of the structure of the criminal process, and it has been described as a continuous and orderly progression of events.”)

Article 1(8) of the new Criminal Procedure Code defines “criminal investigation” as a series of actions taken by an investigator to search for and uncover events suspected of constituting a criminal offense in order to determine whether or not an criminal investigation may be conducted in accordance with the procedures set forth in this Act. In this regard, Article 1(5) of the new Criminal Procedure Code defines a criminal investigation as a series of actions taken by an investigator to search for and collect evidence to clarify a criminal offense and identify a suspect.

Regarding criminal investigation authority, the Indonesian National Police (Polri), as one of the subsystems within the law enforcement framework, is granted authority by law to enforce the law against all criminal offenses. This authority encompasses the roles of preliminary inquiry officer and criminal investigationas set forth in the new Criminal Procedure Code. It is understood that the new Criminal Procedure Code (KUHAP) is the criminal procedure law governing the administration of justice for courts within the general court system and the Supreme Court by regulating the rights and obligations of those involved in criminal proceedings, thereby ensuring that the fundamental principles of the rule of law are upheld. The criminal procedure law that must be followed in these criminal proceedings is often referred to as formal law in the context of law enforcement. The articles governing investigative authority, as stipulated in Article 5 of the new Criminal Procedure Code, are as follows:

- “(1) By virtue of their duties, preliminary inquiry officers have the authority to:
- a. receive reports or complaints from individuals regarding criminal acts, either in writing or via telecommunications and/or electronic media;

- b. to seek out, collect, and gather information and evidence;
 - c. to stop a person under suspicion and to ask for and examine their identification;
 - d. to conduct an assessment and arrange for facilities and/or referrals to address the special needs of women and vulnerable groups; and
 - e. taking other actions in accordance with the law.
- (2) Preliminary Inquiry Officers, upon the order of an Criminal Investigator, may take the following actions:
- a. Arrest, restriction on leaving a location, search, and detention;
 - b. inspection and seizure of documents;
 - c. collecting finger, conducting identification, taking a person, and collecting forensic data from a person; and
 - d. transporting and presenting a person to the Investigator.
- (3) The Preliminary Inquiry Officers shall prepare and submit a report on the results of the exercise of the authority referred to in paragraph (1) and the actions referred to in paragraph{2), to the Criminal Investigator.
- (4) Preliminary inquiry officers have the authority to carry out their duties throughout the entire jurisdiction of the Unitary State of the Republic of Indonesia in accordance with the provisions of laws and regulations."

As a point of distinction, the articles that regulate regarding investigative Criminal Investigators as stipulated in the Articles of the new Criminal Procedure, as follows:

- a. Article 6 of the new Criminal Procedure Code provides: "(1) Criminal Investigators consist of:
 - a. National Police Criminal Investigators;
 - b. Non-Police Criminal Investigators (PPNS); and
 - c. Specific Criminal Investigators.
- (2) Indonesian National Police (Polri) Criminal Investigators as referred to in paragraph (1)(a) are the primary criminal investigators authorized to conduct criminal investigation stage into all criminal offenses.
- (3) The requirements regarding rank, education and training, and certification for Criminal Investigators as referred to in paragraph (1) shall be implemented in accordance with the provisions of laws and regulations."
- b. Article 7 of the new Criminal Procedure Code provides: "(1) Criminal Investigators have the duties and authority to:
 - a. to receive reports or complaints from individuals regarding criminal offenses;
 - b. to search for, collect, and secure evidence;
 - c. to take initial action at the scene of the incident;
 - d. to stop a person and inspect the person's identification documents or identification;
 - e. to search for a person suspected of committing a criminal offense in order to identify a suspect;

- f. carry out coercive measures;
 - g. taking fingerprints, conducting identification, photographing a person, and collecting a person's forensic data;
 - h. approaching individuals connected to a criminal offense to examine them and take their statements;
 - i. summoning a person to be examined and to provide testimony as a Witness, Expert, or Suspect;
 - j. terminating an criminal investigation by notifying the Public Prosecutor;
 - k. resolving cases through restorative justice mechanisms;
 - l. designating a suspect as a crown witness;
 - m. accept a guilty plea;
 - n. conducting assessments and arranging for facilities and/or referrals to address the specific needs of women and vulnerable groups; and
 - o. take other actions in accordance with the provisions of applicable laws and regulations.
- (2) PPNS and Certain Criminal Investigators have authority based on the laws that serve as their legal basis.
 - (3) In the performance of their duties and exercise of their authority, PPNS and Designated Criminal Investigators are under the coordination and supervision of National Police Preliminary Inquiry Officers.
 - (4) In carrying out their duties and exercising their authority, PPNS and Designated Criminal Investigators are required to coordinate with National Police Criminal Investigators until the case files are handed over to the Public Prosecutor.
 - (5) The coordination and supervision referred to in paragraphs (3) and (4) do not apply to Criminal Investigators at the Attorney General's Office of the Republic of Indonesia, the Corruption Eradication Commission, and the Indonesian Navy, in accordance with the provisions of the law."

c. Article 8 of the new Criminal Procedure Code provides:

- "(1) Criminal Investigators shall prepare a written record of the actions taken in accordance with their authority.
- (2) Criminal Investigators shall submit the case file to the Public Prosecutor.
 - (3) The submission of case files by Non-Police Criminal Investigators. (PPNS) or Designated Criminal Investigators is carried out through a National Police Investigator, who then jointly submits the case files to the Public Prosecutor.
 - (4) If the Public Prosecutor deems the case file complete, the Criminal Investigators shall hand over the Suspect and the evidence to the Public Prosecutor."

The constitutional mandate set forth in Article 30, paragraph (4) of the 1945 Constitution of the Republic of Indonesia states that the Indonesian National Police, as an instrument of the state tasked with maintaining public security and order, is responsible for protecting, safeguarding, and serving the public, as well as enforcing the law. Furthermore,

regarding these core duties of the Indonesian National Police, Article 13 of the Indonesian National Police Law reinforces this by stipulating that:

“The primary duties of the Indonesian National Police are:

- a. to maintain public security and order;
- b. to enforce the law; and,
- c. to provide protection, care, and service to the public. The process of criminal investigation and examining criminal cases”

Furthermore, Article 2 of the National Police Law states that the function of the police is to carry out one of the functions of state governance in the area of law enforcement, in addition to protecting, caring for, and serving the public. This is further emphasized in Article 14, Paragraph (1), Letter g of the National Police Law, which states that the police have the authority to conduct criminal criminal investigation, which are preceded by preliminary inquiries conducted by Criminal Investigators (Rahardi, 2007).

As law enforcement officials, National Police preliminary inquiry officers and criminal investigators must carry out the law enforcement process firmly, consistently, and in an integrated manner, and uphold legal norms for the protection and welfare of the public so that such law enforcement efforts can result in fair law enforcement, provide legal certainty, and—it is hoped—increase public trust, serve as a deterrent, prevent the occurrence of criminal offenses, educate and guide the public to avoid committing criminal offenses, strive to resolve conflicts arising from criminal offenses, and foster a sense of safety and peace in community life (Hutahean, 2026). The criminal justice system adopted by the Criminal Procedure Code (KUHP) and special rules of criminal procedure constitutes *an integrated criminal justice system* based on the principle of functional differentiation—that is, distinguishing between the functions and authorities of each law enforcement component according to its respective agency. This integrated criminal justice system places all law enforcement officials on an equal footing based on their respective functions and authorities (Renggong, 2014).

The police are the frontline law enforcement officers who interact directly with the public. The police’s role is generally recognized as maintaining public safety and order, and they also serve as law enforcement officers in the criminal justice process. In carrying out their daily duties, police officers constantly interact and maintain direct contact with the public—the very subjects of policing. This means that wherever there are people, there are police officers on duty to maintain public order and security against all forms of crime, ranging from anticipation and prevention to the enforcement of laws against criminal acts.

In this regard, the Police fully serve as the spearhead in law enforcement efforts, particularly regarding criminal offenses. They possess the duties and authority to determine whether the resolution of a case should be halted or whether further action is required in the criminal justice process for specific reasons. The legal provisions underpinning these efforts are Article 18, paragraph

(1) of Law No. 2 of 2002 on the National Police of the Republic of Indonesia, which reads: “For the public interest and the welfare of society, officials of the National Police of the Republic

“In carrying out its functions, duties, and authorities, the police may act according to their own judgment.” Meanwhile, paragraph (2) of the Act explains that the implementation of the provisions referred to in paragraph (1) may only be carried out in circumstances of absolute necessity, in accordance with applicable laws and regulations, as well as the Code of Ethics for the Indonesian National Police (Ramadhan, 2021).

In carrying out their duties and authorities, police criminal investigators have the authority to exercise discretion in determining the next course of action. Simply put, understanding the concept of police discretion means recognizing that the police have the authority to make decisions and/or choose various courses of action in resolving criminal cases under their jurisdiction, based on the law, taking into account the specific circumstances and conditions, and guided by their personal judgment and conscience in the public interest (Sitompul, 2017).

Police discretion can be indirectly applied in the mediation process when handling cases between the two parties—namely, the perpetrator and the victim of a criminal act—to resolve legal issues effectively and to achieve justice and public benefit, which are part of the objectives of the law. Thus, in this context, the police can become heroes for their nation by making the right choices in carrying out their duties and exercising their authority as police professionals (Rahardjo, 2002).

The discretionary authority held by the police—as a state institution and as public officials in the realm of *law enforcement*—is well-known; however, when an criminal investigator handles a criminal case, they are sometimes faced with issues deemed minor, where conducting a full criminal investigation would be ineffective or inefficient before the case is transferred (P21) to the Public Prosecutor’s Office, and subsequently to the court stage for adjudication by a judge. Given this, the benefit of this police discretion is to ensure the implementation of policies grounded in professional conduct by the police, who are required to work to the best of their ability in enables the police to provide service, guidance, and protection to the general public and to enforce the law more effectively and efficiently (Faal, 1991).

The Concept of Restorative Justice in Law Enforcement

The development of the application of Restorative Justice within the criminal justice system indicates a positive trend. There are several common practices and principles in the implementation of restorative programs, ranging from the national level in various countries to the international level; for example, prioritizing the interests of victims, facilitating communication between offenders and victims, restoring the situation for victims and the community, and involving community groups rather than treating criminal punishment as a personal stigma (Hiariej, 2026).

In the context of current legislation, circulars, decrees, and agreements among law enforcement officials in Indonesia, there are various regulations that use the term “*Restorative Justice*,” generally rendered as “Keadilan Restoratif,” namely:

- a. Article 1, point 6 of Law No. 11 of 2012 on the Juvenile Criminal Justice System, enacted on July 30, 2012, stipulates:

“Restorative Justice is the resolution of criminal cases by involving the perpetrator, the victim, the families of the perpetrator and/or victim, and other relevant parties to jointly seek a just resolution that emphasizes restoration to the original state, rather than retribution”;

- b. Article 1, point 2 of the Joint Memorandum of Understanding between the Chief Justice of the Supreme Court, the Minister of Law and Human Rights, the Attorney General, and the Chief of the National Police on the Implementation of Adjustments to the Thresholds for Minor Criminal Offenses and the Amounts of Fines, Expedited Proceedings, and the Application of *Restorative Justice*, ratified on October 17, 2012, provides:

“Restorative Justice is the resolution of minor criminal cases conducted by criminal investigator during the criminal investigation stage or by judges from the outset of the trial, involving the perpetrator, the victim, the families of the perpetrator and victim, and relevant community leaders to jointly seek a fair resolution with an emphasis on restoring the situation to its original state”;

- c. Section 2(b) of the National Police Chief’s Circular on Restorative Justice in the Resolution of Criminal Cases, issued on July 27, 2018. This Circular does not provide a specific definition of Restorative Justice, but states that:

“... it reflects justice as a form of balance in human life, such that deviant behavior by offenders is viewed as behavior that disrupts that balance... the case resolution model employed is an effort to restore that balance by imposing obligations on the offender—based on their awareness of having committed the crime—to apologize and restore the victim’s damages and losses to their original state or at least to a condition resembling the original state, thereby fulfilling the victim’s sense of justice”;

- d. Article 1, point 27 of the Chief of Police Regulation No. 6 of 2019 on the Criminal Investigation of Criminal Offenses provides: “Restorative justice is the resolution of criminal cases involving the offender, the victim and/or their family, and relevant parties, with the aim of achieving justice for all parties”;

- e. Article 1, point 1 of the Attorney General’s Regulation No. 15 of 2020 on the Discontinuation of Prosecution Based on Restorative Justice provides:

“Restorative justice is the resolution of criminal cases by involving the perpetrator, the victim, the families of the perpetrator and/or victim, and other relevant parties to jointly seek a fair resolution that emphasizes restoration to the original state, rather than retribution”;

- f. Decision of the Director General of the General Judicial Agency of the Supreme Court of the Republic of Indonesia No. 1691/DJU/SK/PS.00/12/2020 on the Implementation of Guidelines for the Application of *Restorative Justice*, issued on December 22, 2020, provides:

“... is an alternative method for resolving criminal cases; within the criminal justice system, it shifts the focus from punishment to a process of dialogue and mediation involving the perpetrator, the victim, their families, the perpetrator, the victim, and other relevant

parties to jointly reach an agreement on a fair and balanced resolution of the criminal case for both the victim and the perpetrator, prioritizing restoration to the original state and the reestablishment of positive relationships within the community.” The definition explains that Restorative Justice is “the resolution of criminal cases by involving the offender, the victim, the families of the offender and/or the victim, and other relevant parties to jointly seek a fair resolution with an emphasis on restoring the situation to its original state”;

- g. Article 1, Point 3 of the Ministerial Regulation on Restorative Justice, enacted on August 19, 2021, stipulates:

“Restorative Justice is the resolution of criminal offenses by involving the offender, the victim, the victim’s family, community leaders, religious leaders, traditional leaders, or stakeholders

“the importance of working together to seek a fair resolution through peace, with an emphasis on restoring the situation to its original state.”

Based on the aforementioned regulations, there is a fundamental commonality in the understanding of Restorative Justice, in that all of these regulations remain centered on the orientation of “case resolution.” This implies that the orientation of Restorative Justice remains limited to a “goal or outcome” rather than a combination of “process and goal.” Even in the Police Regulation on Restorative Justice, the mechanism is restricted by specifying “through reconciliation.” In a previous circular issued by the National Police through the National Police Chief’s Circular Letter No. SE/8/2018 on the Implementation of Restorative Justice (National Police Chief’s Circular on Restorative Justice), the mechanism presented involved “imposing obligations on the offender based on their awareness of having committed the crime, requiring them to apologize, and to compensate the victim for damages and losses.” Similarly, in paragraph 2(f) of the previous National Police Chief’s Circular on Restorative Justice, it was emphasized:

“that the principle of restorative justice cannot be interpreted as a method for the amicable dismissal of a case, but rather encompasses the fulfillment of a sense of justice for all parties involved in a criminal case through efforts that involve the victim, the offender, and the local community, as well as preliminary inquiry officers / criminal investigators acting as moderators, whereas the resolution of a case— one form of which is a peace agreement and the withdrawal of the victim’s right to prosecute—requires a court order obtained through the public prosecutor to nullify the prosecutorial authority of both the victim and the public prosecutor.”

Restorative justice is a concept of criminal justice, but as such, it is not limited to the provisions of criminal law (both formal and substantive). Restorative justice must also be viewed from the perspectives of criminology and the correctional system. Based on current realities, the existing criminal justice system has not yet fully guaranteed “integrated justice”—that is, justice for the offender, justice for the victim, and justice for society. In his writing, Bagir Manan elaborates on the substance of “*Restorative Justice*,” which includes the following principles, among others (Manan, n.d.) :

- a. Fostering joint participation among the offender, the victim, and community groups to resolve an incident or criminal offense;

- b. Positioning offenders, victims, and the community as “stakeholders” who work together and directly strive to find a resolution deemed fair for all parties (*win-win solutions*);
- c. Encouraging the resolution of an incident or criminal offense through more informal and personal means, rather than through formal (rigid) and impersonal court proceedings, by utilizing approaches both before and after the judicial process begins.

“Before the judicial process” refers to the stage when the “case” is still with the police or the prosecutor’s office. Whether initiated by the police, the prosecutor’s office, an individual, or a community group, efforts are made to resolve the criminal act using the methods or principles of restorative justice. Restorative justice can also be implemented once a case has been transferred to court. A judge, for example, may recommend a resolution based on the methods and principles of restorative justice. It is also possible to pursue resolution methods based on the principles of restorative justice in the midst of the judicial process. When viewed from the perspective of the defendant and the victim, restorative justice is nothing more than a form of mediation aimed at achieving a “win-win solution,” as in civil cases.

Regulations on Restorative Justice by the Police

In the theory of restorative justice as an approach to justice as described in contemporary society, it is emphasized that there are two functions of restorative justice: crime control and the process of dealing with offenders. Both tasks in addressing crime are carried out through the criminal justice system; the primary tools for carrying out these tasks are all components of the criminal justice system and the enforcement of prison sentences, which are often and increasingly carried out in the form of incarceration (Johnstone, 2006).

Imprisonment is generally—and specifically—used in an effort to prevent criminal offenders from reoffending, to deter others from committing crimes, to ensure they do not cause harm to those around them, to subject them to intensive supervision, and to express society’s rejection of criminal behavior. Imprisonment is also the method of choice for modern society today, to deliver justice after a crime has occurred. By defining the measure of suffering solely through the pain inflicted on those who violate the fundamental rights of others—and in the process intimidating society—the criminal justice system’s efforts to meet the needs of victims and society for justice today signify that justice must be prioritized.

Crime control is the duty and responsibility of the criminal justice system, and this gives rise to the idea that the best tool for carrying out these duties is the application of sanctions through a restorative justice model. Law enforcement officials, government officials, and various professional members of society tasked with addressing crime are required to apply the restorative justice model; victims of crime are also expected to play a role or participate in defining and resolving their own issues regarding the crimes that have occurred or that they have experienced. The role of criminal justice institutions, law enforcement officials, and all segments of society is to facilitate the process by which

ordinary people seek justice—not to usurp the duties and authority inherent to law enforcement agencies, one of which is the police.

The philosophical foundation for the police in carrying out their duties is based on the provisions of Article 30, Paragraph (4) of the 1945 Constitution, which states that the National Police of the Republic of Indonesia, as an instrument of the state that maintains public security and order, is tasked with protecting, safeguarding, and serving the public, as well as enforcing the law. Based on the provisions of Article 30, Paragraph (4) of the 1945 Constitution, the Government, together with the People's Representative Council (DPR), enacted regulations regarding the National Police of the Republic of Indonesia in Law No. 2 of 2002 as the legal basis for the performance of their duties.

Article 1 of Law No. 2 of 2002 on the Police stipulates that the Police encompass all matters related to the functions and institutions of the police in accordance with applicable laws and regulations. Meanwhile, Article 2 states that the functions of the police are among the functions of the state government in the areas of maintaining public security and order, law enforcement, protection, welfare, and service to the community. The police are an institution that plays a vital role in the process of law enforcement in Indonesia. Therefore, the police are an integral part of *the criminal justice system*.

In carrying out its duties in the field of law enforcement—such as the criminal investigation and inquiry into criminal offenses—based on Article 1(8) of the new Criminal Procedure Code (KUHAP), it is stipulated that “A criminal investigation is a series of actions taken by an investigator to search for and uncover events suspected of being criminal offenses in order to determine whether or not an inquiry may be conducted in accordance with the procedures set forth in this Act.” Meanwhile, a “criminal investigation,” as defined in Article 1(5) of the new Criminal Procedure Code, is described as “a series of actions taken by an investigator to search for and collect evidence to clarify the criminal offense and identify the suspect.”

Meanwhile, the definition of an Investigator under Article 1(7) of the new Criminal Procedure Code states: “An Investigator is an official of the Indonesian National Police or another official who, by law, is authorized to conduct a criminal investigation.” Furthermore, Article 1(2) of the new Criminal Procedure Code defines an “Investigator of the Indonesian National Police”—hereinafter referred to as a “Polri Investigator”—as “an official of the Indonesian National Police who is authorized by law to conduct criminal investigation.” In carrying out law enforcement duties, they always uphold human rights in accordance with the provisions of Article 14(g) and (i) of Law No. 2 of 2002 on the National Police of the Republic of Indonesia.

Satjipto Rahardjo refers to the Indonesian National Police (Polri) as “street-level law enforcement officers” (in a positive sense, meaning those who work directly in the field), and as such, the Polri has the most direct contact with the public compared to other law enforcement agencies. Therefore, the attitude and exemplary conduct of police personnel are key factors in whether or not they are respected by the public, even though the public's respect for law enforcement also significantly influences their compliance with the law (Heryani, 2012).

In Satjipto Rahardjo's view, law enforcement—carried out by agencies authorized to do so, such as the police, prosecutors, and government officials—has existed since the law itself contains commands and prohibitions of a coercive nature. Thus, from the very beginning, the law has required assistance to implement or enforce these commands; otherwise, the law would merely be a written regulation that does not have any meaning; therefore, provisions were established to regulate law enforcement agencies, which are granted authority by law to enforce the law (Rahardjo, 2002).

According to Soerjono Soekanto, law enforcement officials are those who administer and uphold justice, take action against and prosecute those who are guilty and violate the law, uncover the truth, and educate the public to obey the law. The enforcement of criminal law is not aimed at practical goals, such as rehabilitating offenders; rather, it is the crime itself that contains the elements justifying the imposition of a criminal penalty. Meanwhile, current legal developments call for the restoration of the situation resulting from criminal acts, involving the perpetrator, the victim, the community, and the police—one example being the regulation established by the Ministerial Regulation on Restorative Justice.

The following are the requirements that must be met in the criminal investigation process regarding criminal offenses that can be resolved through restorative justice, according to Article 12 of the Ministerial Regulation on Restorative Justice, namely (Aprilianti, 2021) :

- a. "Substantive Requirements, including:
 - 1) It does not cause public unrest or face public opposition;
 - 2) It does not lead to social conflict;
 - 3) A statement from all parties involved indicating they have no objections and waive their right to pursue legal action;
 - 4) Limiting principles, including:
 - a) Regarding the perpetrator:
 - (1) The severity of the perpetrator's offense is relatively minor, specifically an intentional act;
 - (2) The perpetrator is not a repeat offender.
 - b) Regarding the criminal act under
 - (1) Criminal Investigation;
 - (2) Criminal Investigation, before the Letter of Commencement of Criminal Investigation (SPDP) is sent to the Public Prosecutor."
- b. "Formal requirements include:
 - 1) A letter of request for reconciliation from both parties (the complainant and the respondent);
 - 2) A statement of reconciliation (settlement agreement) and resolution of the dispute between the parties involved (the complainant and/or the complainant's family, the respondent and/or the respondent's family, and representatives of community leaders), acknowledged by the Criminal Investigator's superior;

- 3) Minutes of the supplementary examination of the parties involved following the resolution of the case through restorative justice;
- 4) Recommendation from a special case review panel approving the restorative justice resolution;
- 5) The offender has no objections and voluntarily accepts responsibility and compensation."

Effective January 2, 2026, Article 80 of the new Criminal Procedure Code (KUHAP) regulates the substantive requirements for criminal offenses to which restorative justice may be applied, as follows:

"(1) The Restorative Justice Mechanism may be applied to criminal offenses that meet the following requirements:

- a. criminal offenses punishable only by a fine of up to Category III or by imprisonment for a maximum of 5 (five) years;
 - b. criminal offenses committed for the first time; and/or
 - c. is not a repeat offense, except for criminal offenses for which the sentence is a fine or criminal offenses committed through negligence.
- (2) In cases where no criminal offense as referred to in paragraph (1) has yet been established, based on the victim's report, the restorative justice mechanism shall be implemented during the criminal investigation stage in the form of a settlement agreement between the perpetrator and the victim."

Similarly, the formal requirements for the application of restorative justice under Article 81 of the new Criminal Procedure Code stipulate:

"(1) The Restorative Justice mechanism is carried out through:

- a. a request submitted by the perpetrator of the criminal offense, the suspect, the defendant, or their family, and/or the victim of the criminal offense or their family; or
- b. an offer from a preliminary inquiry officer, criminal investigator, a prosecutor, or a judge to the victim, the perpetrator of a criminal act, a suspect, or a defendant.

(2) The Restorative Justice Mechanism as referred to in paragraph (1) shall be conducted without pressure, coercion, intimidation, deception, threats of violence, violence, torture, or acts that degrade human dignity against the suspect, defendant, victim, and/or their families."

Therefore, both criminal investigators and preliminary inquiry officers must not only observe the provisions in the Ministerial Regulation on Restorative Justice but also the provisions of Article 79, paragraphs (2), (3), and (5) of the new Criminal Procedure Code, particularly the provisions regarding restoration to the original state, which must be incorporated into the agreement; such agreements must be implemented within a maximum period of 7 (seven) days; and once all agreements have been fulfilled, the case must be discontinued and a court ruling must be sought.

Matters related to the application of the Restorative Justice Mechanism during the preliminary inquiry stage are regulated in Articles 15 through 16 of the Ministerial Regulation on Restorative Justice, as follows:

a. Article 15 of the Ministerial Regulation on Restorative Justice provides:

“(1) The termination of a preliminary inquiry or criminal investigation into a criminal offense as referred to in Article 2, paragraph (5), is carried out by submitting a written request to:

- a. the Head of the Indonesian National Police Criminal Investigation Agency, for the Indonesian National Police Headquarters level;
- b. the Head of the Regional Police, for the Regional Police level; or
- c. the Chief of the District Police, for the District Police and Sector Police levels.

(2) The written request referred to in paragraph (1) shall be submitted by the perpetrator, the victim, the perpetrator’s family, the victim’s family, or other relevant parties.

(3) The written request referred to in paragraph (2) shall be accompanied by the following documents:

- a. a statement of reconciliation; and
- b. evidence that the victim’s rights have been restored.

(4) The provisions referred to in paragraph (3) does not apply to drug-related criminal offenses.”

b. Article 16, paragraph (1) of the Ministerial Regulation on Restorative Justice provides:

“Based on the request letter referred to in Article 15(1), the investigator conducting the preliminary inquiry shall:

- a. verify the completeness of the documents as referred to in Article 15, paragraph (3);
- b. clarification with the parties, which is recorded in the official minutes;
- c. submit a request for approval to conduct a special case review, if the results of the examination referred to in subparagraph (a) and the results of the clarification referred to in subparagraph (b) are met;
- d. prepare a report on the results of the special case review; issue a warrant to terminate the preliminary inquiry and a decision to terminate the preliminary inquiry on legal grounds;
- e. recording the termination of the preliminary inquiry in the Restorative Justice Register and counting it as a case resolution; and
- f. entering the data into the electronic criminal investigation management system”

c. Article 17 of the Restorative Justice Regulation stipulates:

“(1) A request for approval to conduct a special case review as referred to in Article 16, paragraph (1), letter c, and paragraph (2), letter c, shall be submitted to:

- a. the Head of the Indonesian National Police Criminal Investigation Agency, at the Indonesian National Police Headquarters level;
- b. the Director of General Criminal Investigation /Director of Special Criminal Investigation /Director of Narcotics Investigation, at the Regional Police level; or
- c. the Chief of the District Police, at the District and Sector Police levels;

(2) The special case review referred to in paragraph (1) shall be attended by:

- a. the criminal investigator in charge, the supervising criminal investigator officer, internal oversight officials, and legal counsel; and
- b. the complainant and/or the complainant's family, the respondent and/or the respondent's family, and/or representatives of community leaders, religious leaders, traditional leaders, or stakeholders."

d. Article 18 of the Ministerial Regulation on Restorative Justice provides:

"(1) In the event that coercive measures have been taken, upon terminating a criminal investigation or inquiry based on restorative justice, the criminal investigator or examining officer shall immediately:

- a. Return seized items to their rightful owners after the decision to terminate the preliminary inquiry or criminal investigation is issued, if there has been a seizure of items related to a criminal offense;
 - b. Destroy seized items consisting of narcotics or other dangerous substances after the decision to terminate the preliminary inquiry or criminal investigation is issued; and/or
 - c. Release the perpetrator or suspect after a decision to terminate the preliminary inquiry or criminal investigation is issued, if the perpetrator or suspect has been arrested or detained;
- (2) The return and destruction of seized goods or items, as well as the release of the perpetrator or suspect as referred to in paragraph (1)(a) and (c), shall be documented in a written order and an official record;
- (3) In the case of drug-related crimes, the release of the suspect shall be carried out by attaching the assessment results recommendation from the integrated assessment team."

e. Article 20 of the Ministerial Regulation on Restorative Justice provides:

"(1) Oversight of the termination of an preliminary inquiry or criminal investigation based on restorative justice in the handling of criminal offenses by an investigator or examining magistrate shall be carried out through a special case review;

(2) The oversight referred to in paragraph (1) is carried out by:

- a. the Criminal Investigation Oversight Bureau of the Indonesian National Police's Criminal Investigation Agency, at the Indonesian National Police Headquarters level;
- b. the Criminal Investigation Oversight Section at the Regional Police level; and

- c. the Head of the Criminal Investigation Unit at the District Police and Sector Police levels.”

Barriers to the Implementation of Restorative Justice Mechanisms During the Preliminary Inquiry Stage

In its implementation, the Restorative Justice Mechanism must be carried out voluntarily and free from all forms of pressure, coercion, intimidation, deception, threats of violence, violence, torture, or treatment that degrades human dignity. This principle applies to all parties involved without exception, so that the resulting agreement truly reflects free will and guarantees the protection of human rights in the process of resolving criminal cases. The provisions in Article 82 of the new Criminal Procedure Code (KUHP) specify exceptions to the application of the Restorative Justice Mechanism

whose nature and impact are inconsistent with the fundamental principles of *Restorative Justice*. This exclusion is based on the consideration that *Restorative Justice* is only appropriate for cases where the harm is of an individual nature, the level of danger is limited, and fair restitution remains possible without sacrificing the public interest (Hiariej, 2026).

This understanding, based on the implementing regulations or technical guidelines for the application of the Restorative Justice Mechanism during the criminal investigation stage, has so far been subject to a legal vacuum (*Rechtsvacuum*) because the Chief of Police Regulation on Restorative Justice is based on Articles 16 and 18 of the National Police Law; thus, a new concept in criminal law enforcement must be formulated to accommodate the norms and values prevailing in society, rather than relying on Article 83 of the new Criminal Procedure Code. So far, preliminary inquiry officers applying the Restorative Justice Mechanism during the preliminary inquiry phase have been guided by the Chief of Police Circular on Restorative Justice. This process is initiated upon request; both the perpetrator and the victim may submit a request for the application of *Restorative Justice* during the preliminary inquiry phase. The police will then assess the case, including the type of criminal offense, the resulting damages, and the willingness of both parties to reconcile. If the criteria are met, the police will conduct a criminal investigation to gather evidence. If the results of the criminal investigation indicate that the case qualifies for diversion, the police will direct the case toward the *Restorative Justice* process. The police will facilitate mediation between the perpetrator and the victim to reach an agreement. If consent is reached, the police may halt the criminal investigation, and the case will not proceed to the prosecution stage. The police will monitor the implementation of the agreement reached.

A fundamental difference since the enactment of Article 79(5) of the new Criminal Procedure Code (KUHP) compared to the provisions in the Chief of Police Regulation on Restorative Justice and the Chief of Police Circular on Restorative Justice is stipulated as follows: “Once all agreements have been implemented, the case must be discontinued and a court ruling must be sought.” This has led to *multiple interpretations* among preliminary inquiry officers, because to date, the draft Government Regulation on *Restorative Justice* — which is intended to be a derivative of the New Criminal Procedure Code — has not yet been enacted; consequently, its practical application will pose challenges for law

enforcement officials, particularly preliminary inquiry officers, in implementing *restorative justice* at the investigative stage;

In this context, the Police Regulation on Restorative Justice must be positioned as a regulatory instrument of an administrative and operational nature, serving to elaborate on the police's authority as granted by law, the National Police Law, and the provisions of the new Criminal Procedure Code. Thus, the existence of this Regulation is not intended to establish new criminal norms, but rather to serve as a technical guideline for police officers in exercising their criminal investigation authorities, including in the application of the *Restorative Justice* approach through the criminal investigators' discretion.

Clarifying the status of this regulation is crucial to ensure that the police's application of *Restorative Justice* remains consistent with the principle of legality and the principle of legal certainty, so that the exercise of discretion remains within the limits of authority established by law. Although the Restorative Justice Police Regulation provides an administrative basis for criminal investigators to apply the *Restorative Justice* approach, questions remain regarding the extent to which the normative force of this regulation can serve as a basis for terminating a criminal case. In the Indonesian criminal justice system, the termination of a preliminary inquiry is, in principle, regulated under Article 83(3) of the new Criminal Procedure Code (KUHP), which recognizes the Restorative Justice mechanism based on a case settlement agreement signed by the perpetrator, the victim, and the investigator.

Article 84 of the new Criminal Procedure Code does not comprehensively regulate the procedural consequences of restorative justice at the preliminary inquiry stage. The legal gap does not concern the recognition of restorative justice itself, because Article 79 expressly accommodates its implementation during the preliminary inquiry stage. Rather, the gap concerns the absence of a complete procedural framework governing the authority and obligations of preliminary inquiry officers after a restorative justice agreement has been initiated or reached.

Several procedural matters therefore remain insufficiently regulated. First, the new Criminal Procedure Code does not clearly specify the procedural steps through which a preliminary inquiry officer may actively initiate, assess, facilitate, or decline a restorative justice process. Second, there is no detailed mechanism for documenting the voluntary consent of the victim and the alleged offender when restorative justice is offered by a law-enforcement official. Third, the Code does not clearly regulate the verification of whether the substantive obligations contained in a restorative justice agreement have actually been fulfilled. Fourth, there is no specific procedural mechanism governing cases in which the agreed obligations cannot reasonably be completed within the prescribed period, particularly where restitution, medical treatment, or psychological recovery requires continuing performance. Fifth, the Code does not yet provide a detailed procedure for supervisory review, notification to the public prosecutor, submission of the agreement to the court, and the legal consequences of partial or non-performance. The legal vacuum (*Rechtsvacuum*) should therefore be understood not as the complete absence of a legal basis for restorative justice at the preliminary inquiry stage, but as the absence of sufficiently

detailed procedural rules governing the transition from preliminary inquiry, restorative assessment, agreement, fulfillment, supervisory verification, judicial authorization, and formal termination of the case. Consequently, preliminary inquiry officers continue to rely substantially on the existing Police Regulation on Restorative Justice and internal procedural mechanisms, creating the possibility of inconsistent implementation between different police institutions and jurisdictions.

The Ideal Model of Restorative Justice Mechanisms in the New Criminal Procedure Code

In the new Criminal Procedure Code, Restorative Justice serves as a formal legal instrument to redress victims' losses and reintegrate offenders, rather than merely an informal resolution. The ideal model requires that a peace agreement be ratified through a court order to ensure legal certainty. The following outlines the proposed ideal model and procedures for Restorative Justice under the new Criminal Procedure Code, including:

a. Stages and Authority for Implementation

Restorative Justice may be initiated by the offender, the victim, or the victim's family and is facilitated across three stages of law enforcement, particularly during the Preliminary Inquiry and Criminal Investigation stages, where preliminary inquiry officers / criminal investigators are mandated to facilitate a peace agreement. If an agreement is reached, the preliminary inquiry is terminated (SP3), and the Public Prosecutor must be notified; a request for a court order of ratification must then be submitted to the Chief Judge of the District Court;

b. Parameters for Criminal Offenses

Not all cases can be resolved through restorative justice. The ideal model under the new Criminal Procedure Code imposes strict limitations:

- 1) Penal threat: Maximum of 5 (five) years' imprisonment or less;
- 2) not a serious crime, excluding offenses such as terrorism, corruption, sexual violence, crimes against life, national security, and drug-related crimes (except for users);

c. Substantive Requirements (qualifications of the perpetrator and victim)

To ensure that the restorative justice mechanism operates fairly and equitably, there are absolute criteria that must be met:

- 1) The victim's consent: forgiveness and voluntary consent from the victim are mandatory;
- 2) The offender must not be a repeat offender for specific crimes and, generally, must be a first-time offender;

d. Forms of Perpetrator Accountability

In the ideal model of restorative justice, the offender must carry out mutually agreed-upon restitution obligations, including:

- 1) Restitution or material compensation to the victim.
- 2) Returning property or repairing damage;
- 3) Efforts toward the victim's medical or psychological recovery;

e. Supervision and Legal Certainty

To prevent abuse of authority, unequal access, extortion, or the use of restorative justice as an informal mechanism for terminating cases, the restorative justice process should not end solely with an internal police decision. Every decision to suspend or terminate a case on the basis of restorative justice should be supported by a documented eligibility assessment, a written statement of voluntary consent, a record of the mediation or facilitation process, the restorative agreement, evidence of fulfillment or an approved implementation schedule, and the results of supervisory review. Police discretion exercised under Article 18 of Law No. 2 of 2002 should therefore be governed by objective criteria. The exercise of discretion should be lawful, necessary, proportionate, based on documented reasons, consistent with equal treatment, and subject to hierarchical and institutional supervision. Similar cases should not receive materially different restorative treatment without clear and recorded justification. Each decision to approve or reject restorative justice should consequently be entered into a standardized register and remain subject to internal oversight and complaint mechanisms. Judicial review should not be limited to merely verifying the existence of documents. The court should examine at least four substantive elements: (1) legal eligibility of the offense; (2) genuine voluntariness and informed consent of the parties; (3) fairness and proportionality of the agreement, particularly in relation to the victim's interests; and (4) compliance of the agreement with law, public interest, and fundamental rights. The court should not replace the parties' negotiated settlement with its own preferred arrangement, but it must refuse authorization where the agreement was produced through coercion, fraud, serious inequality of bargaining power, or an arrangement contrary to law. Judicial authorization should therefore function as an external safeguard ensuring that restorative justice remains a legitimate mechanism of criminal justice rather than an uncontrolled exercise of police discretion.

Conclusion

Provisions regarding Restorative Justice Mechanisms during the Preliminary Inquiry stage are accommodated through Article 79(8)(a) of Law No. 25 of 2025 on the Criminal Procedure Code. A fundamental difference since the enactment of Article 79(5) of the new Criminal Procedure Code (KUHAP) compared to previous regulations is the provision stating: "After all agreements have been implemented, the case must be discontinued and a court ruling must be sought." This has led to multiple interpretations among preliminary inquiry officers, as the draft Government Regulation on Restorative Justice—which is intended to serve as a derivative of the new Criminal Procedure Code—has not yet been enacted. Consequently, current practices create a legal vacuum (*Rechtsvacuum*) for law enforcement officials, particularly preliminary inquiry officers, in implementing restorative justice at the preliminary inquiry stage. Therefore, there is a need to amend the Police Regulation on Restorative Justice, positioning it as a regulatory instrument of an administrative and operational nature, which serves to elaborate on the police's authority as granted by law, particularly regarding the mechanisms of Restorative Justice at the preliminary inquiry stage based on the new Criminal Procedure Code (KUHAP).

References

- Alkostar, A. (n.d.). *The Need for Responsiveness in Criminal Procedure, the Basis for Sentencing Considerations, and Judicial Immunity (Paper Presented at the National Working Meeting)*.
- Aprilianti, R. (2021). The Application of Restorative Justice to Cases of Minor Criminal Offenses. *Scientific Journal of the Faculty of Law Mataram University*.
- Barlian, Aristo Evandy A., & Arief, B. N. (2017). Formulating the Concept of Judicial Pardon (Rechterlijk Pardon) in the Reform of the Criminal Sanction System in Indonesia. *Jurnal Law Reform*.
- Faal, M. (1991). *Screening of Criminal Cases by the Police (Police Discretion)*. Jakarta: Pradanya Paramita.
- Gizella, B. B. A. (2025). Toward a Just Penal System to Achieve a Balance Between Legal Certainty and Humanity in the Revision of the Criminal Code. *AL-BALAD: JOURNAL OF CONSTITUTIONAL LAW*.
- Government Regulation of The Republic of Indonesia Number 1 of 2024 on Harmonization of National Fiscal Policy (2024).
- Heryani, A. A. and W. (2012). *Exploring Empirical Studies on Law*. Jakarta: Kencana.
- Hiariej, E. O. S. (2026). *Annotated Criminal Procedure Code: Law of the Republic of Indonesia No. 20 of 2025 on the Criminal Procedure Code*. Depok: PT. RajaGrafindo Persada.
- Hutahean, A. (2026). Authority for Criminal Investigation, Inquiry, and Prosecution in the Indonesian Law Enforcement System. *To-Ra Law Journal: Law to Regulate and Protect Society*, 12(1).
- Johnstone, G. (2006). *A Restorative Justice Reader: Texts, Sources, Context*. Willan Publishing, T.J. International Ltd., Padstow, Cornwall.
- Kadri Husin, B. R. H. (2016). *The Criminal Justice System in Indonesia*. Jakarta: Sinar Grafika.
- Kurniawati, R., Mulyadi, A., & Agustanti, R. D. (2021). Analisis Yuridis Terhadap Pembuktian Tindak Pidana Penyebaran Konten Asusila. *Hukum Dan Masyarakat Madani*, 11(Mei), 151–162.
<https://tekno.kompas.com/read/2020/01/10/08060037/kominfo-terima-lebih-dari-244.000-aduan-konten->
- Manan, B. (n.d.). *Restorative Justice (An Introduction)" in Reflections on the Dynamics of Law: A Series of Thoughts from the Last Decade*. Jakarta: Perum Percetakan Negara RI.
- Packer, H. L. (n.d.). *The Limits of the Criminal Sanction*. Stanford: Stanford University Press.
- Rahardi, P. (2007). *Police Law (Professionalism and Reform of the Indonesian National Police)*. Surabaya: Laksbang Mediatama.
- Rahardjo, S. (2002). *Issues in Law Enforcement: A Sociological Review*. Bandung: Sinar Baru.
- Rahmawati, M. (2022). Introduction in the book *Opportunities and Challenges in the Application of Restorative Justice in the Criminal Justice System in Indonesia*. Jakarta: Institute for Criminal Justice Reform.
- Ramadhan, A. (2021). The Discretion of National Police Criminal Investigators as an Alternative Approach to Handling Criminal Cases. *Lex Renaissance Journal*, 6(1).
- Renggong, R. (2014). *Criminal Procedure Law (Understanding Human Rights Protection in the Detention Process in Indonesia)*. Jakarta: Kencana.

-
- Samosir, D. (1992). *The Function of Imprisonment in the Indonesian Penal System*. Bandung: Bina Cipta.
- Santoso, U. (2014). Reconstruction of the National Social Security System in the Health Sector Based on Welfare Values (atau gunakan judul asli: Rekonstruksi Sistem Jaminan Sosial Nasional Bidang Kesehatan Berbasis Nilai Kesejahteraan). *Jurnal Pembaharuan Hukum*.
- Sitompul, D. P. M. (2017). Peranan Penyidik POLRI dalam Sistem Peradilan Pidana. *Jurnal Hukum & Pembangunan*, 23(6), 565.
- Susanto, A. F. (2004). *The Face of Our Judiciary: Social Constructions of Deviance, Control Mechanisms, and Accountability in the Criminal Justice System*. Bandung: Refika Aditama.