

THE ESSENCE OF RESTORATIVE JUSTICE BASED ON THE INDONESIAN NATIONAL POLICE REGULATION NUMBER 8 OF 2021 ON THE HANDLING OF CRIMINAL ACTS BASED ON RESTORATIVE JUSTICE

Harun

South Jakarta Metro Police, Indonesia,
harunsaja2001@gmail.com

Abstract

Police Regulation Number 8 of 2021 on Handling Crimes Based on Restorative Justice aims to resolve criminal cases through peaceful agreements. However, its implementation faces several potential problems, such as perpetrators who repeat their actions, which causes the impact of the deterrent effect not to be achieved. In addition, there is a risk of extortion by the victim against the perpetrator in the peace agreement process and the absence of legal rules governing both parties not to renege on the agreement. Another factor is the difference in understanding among investigators and investigators, which makes the application of Police Regulation Number 8 of 2021 subjective. This research aims to analyze the nature, implementation, and regulation of criminal acts based on restorative justice with legal certainty and justice within the Indonesian National Police. The method used is normative legal research with the support of empirical juridical research, as well as statute approach, conceptual approach, and case approach. The results show that the nature of restorative justice is an effort to restore the original state through a process that involves all parties involved in a particular criminal offense to jointly find a harmonious solution. Restorative justice is applied in various types of criminal offenses, including fraud, embezzlement, maltreatment, and murder, which involve people's lives. To increase the effectiveness of the implementation of this principle, structured collaboration between the courts, police, prosecutors' office, and correctional institutions is necessary. This research suggests two policies: first, improving the Standard Operating Procedure of Police Regulation Number 8 of 2021 by adding guidelines for procedures for handling criminal offenses using a restorative justice approach; second, drafting a special law regulating restorative justice as a guide for all law enforcement officials.

Keywords: *Restorative Justice; Law Enforcement; Peace Agreement*

1. INTRODUCTION

The concept of Restorative Justice is an approach to problem-solving that involves victims, offenders, and community elements to create justice. This concept is a form of criticism of the criminal justice system in Indonesia, which views crime as a violation of state law that must be punished according to applicable criminal sanctions. If the state has given a sanction or punishment to the offender, then the victim's issues are considered resolved. This will never have a positive impact on reducing crime rates because the root problem is not addressed, namely the sense of justice for the victim regarding the punishment imposed on the offender.

Restorative Justice in relation to the enforcement of Criminal Law is an effort to resolve criminal cases that shifts the focus or orientation from punitive mechanisms to a process of dialogue and mediation between the perpetrator, the victim, the families of the perpetrator or victim, and law enforcement, to collectively reach an agreement on resolving the criminal

case that is fair and proportional for both the victim and the perpetrator, while prioritizing the fundamental principle of restoring the original condition and re-establishing good relationships within society through peace. To address the evolving legal needs of society that fulfill the sense of justice for both victims and perpetrators, the Indonesian National Police has formulated the concept of Restorative Justice in enforcing criminal law by accommodating norms and values that prevail in society as a solution and legal certainty.

The Restorative Justice approach has been implemented in several cases, such as the traffic accident case involving Dul, the son of musician Ahmad Dhani, the motorcycle theft committed by Muhammad Arham to finance his wife's delivery, domestic violence committed by Rizky Billar against Lesti Kejora, threats and damage to a yellow Brio car, and so on. In its implementation, these cases or incidents have been resolved outside the judicial system through the application of Restorative Justice, prioritizing reconciliation based on a peace agreement between the victim and the perpetrator. However, in the implementation of Restorative Justice that prioritizes peace agreements, the consequences or problems arising from the execution of these peace agreements are often neglected. One issue that arises is when the perpetrator or the victim denies or fails to comply with the peace agreement made, where there is no adequate legal protection for either the victim or the perpetrator in such conditions.

The absence of a more constructive legal umbrella for both victims and offenders of crime regarding the violation of peace agreements as a basis or legal foundation under the provisions of the National Police Regulation of the Republic of Indonesia Number 8 of 2021 on Handling Criminal Acts Based on Restorative Justice (hereinafter referred to as Police Regulation Number 8 of 2021), as well as the concerns of investigators or examiners in accounting for the results of implementing the Restorative Justice approach in resolving issues if it turns out that these efforts are unsuccessful or lead to bigger problems in the future. On the other hand, the implementation of Restorative Justice has the potential to encourage offenders to repeat the same acts, as they feel that it can be resolved through a peace agreement and compensating the victim, thus failing to achieve a deterrent effect on the offender.

The implementation of Restorative Justice can also lead to extortion efforts against victims by perpetrators of crimes by determining the amount of losses that must be paid as a consequence of the agreed peace agreement. Moreover, it is not only extortion by victims towards perpetrators, but often the implementation of Restorative Justice is also used as a tool by certain law enforcement officers to extort perpetrators, especially in the creation of peace agreements, due to normative problems including the lack of transparency regarding the Restorative Justice process, the lack of proportionality in Restorative Justice, and the lack of accountability of law enforcement in the implementation of Restorative Justice.

On the other hand, not all investigators and investigators have the same understanding in applying Police Regulation Number 8 of 2021, resulting in the implementation of Restorative Justice being subjective. Although there is a gap in Police Regulation Number 8 of 2021 in Article 5 letter e regarding the material requirements of the Restorative Justice subject, which states that "...not a repeat offender based on a Court Decision," the

implementation of this article is felt to have no deterrent effect on offenders, as it can provide a loophole for individuals to repeat criminal acts.

For example, if someone who has never been convicted commits a crime, that person may pursue Restorative Justice, as long as the crime committed is categorized as one that can be resolved through Restorative Justice. However, the perpetrator has the potential to repeat their actions, as they have never been tried in court, thus still being classified as a subject of Restorative Justice according to Article 5 letter e concerning the Material Requirements of Restorative Justice Subjects. This creates a loophole in Police Regulation Number 8 of 2021, particularly Article 5, indicating the need for an update on this matter.

Starting from the existing constraints, it is essential to arrange and/or renew the procedures and systems regarding Restorative Justice for the enforcement of law in the Indonesian National Police to ensure it operates effectively and efficiently while prioritizing the principle of justice. Therefore, the aim of this research is to investigate how the regulation of Restorative Justice itself is implemented within the Indonesian National Police and what the picture of its practice is in the Indonesian National Police.

2. RESEARCH METHODS

This research utilizes a normative legal research methodology supported by empirical research. The focus of this study is on positive legal norms in the form of regulations relating to the resolution of criminal cases using a Restorative Justice approach, as well as the implementation of case resolution. The approach to be used in this research is the normative juridical approach and the empirical juridical approach. In this research, a distinction is made between data obtained directly from the community (primary data) and data obtained from literature (secondary data). The primary data obtained is individual or personal, sourced from police elements, while the secondary data in this research is conducted through literature studies that include primary legal materials, secondary legal materials, and tertiary legal materials.

3. ANALYSIS AND DISCUSSION

Restorative Justice emphasizes the pure willingness of the offender to repair the harm they have caused as a form of responsibility. In achieving peace among various parties (victims and offenders), formal discussions should be conducted, such as deliberations or mediation. The principles of applying Restorative Justice, as is known, include several aspects:¹

- a. The offender is liable to make good the damage caused to make good the damage done by his/her fault;
- b. An opportunity may be given to the offender to prove his capacity and quality in addition to overcoming his guilt;
- c. May involve victims, parents, family;
- d. Create a forum to work together to solve problems; and

¹ Marlina, *Peradilan Pidana Anak di Indonesia: Pengembangan Konsep Diversi dan Restorative Justice* (Bandung: Refika Aditama, 2009), 206.

- e. Establishing a direct and tangible link between wrongdoing and formal social reactions.

Based on this, the principle of Restorative Justice aims to produce restorative justice, which is a process where all parties involved in a specific criminal act work together to solve the problems of how to handle the consequences in the future. Criminal acts focus more on the victim, the perpetrator, and the community in order to create an obligation to make everything better by seeking solutions for restoration and peace. Restorative Justice is a new approach to addressing criminal issues. The Restorative Justice approach focuses more on the direct participation of various parties (perpetrators, victims, law enforcement officials, and others) in processing criminal cases.² Nonetheless, this question both theoretically and practically is often raised when applying the Restorative Justice approach to resolving issues.

According to Ivo Aertsen, important issues in the resolution of criminal cases have been addressed by Restorative Justice, namely:³

- a. Opportunities are given to victims (criminal justice system that disempowers individuals), where the implementation of Restorative Justice and Legal Pluralism in the Juvenile Criminal Justice System in Indonesia is not accommodated by the criminal justice system;
- b. The conflict between the perpetrator and the victim and the society (taking away the conflict from them) has been eliminated;
- c. Addressing the feelings of powerlessness experienced as a result of criminal acts. In principle, restorative justice can be applied at any stage in the criminal justice system and will be successfully implemented if certain conditions are met:⁴
 - 1) The perpetrator must confess or plead guilty;
 - 2) The victim must agree that the crime is resolved outside the criminal justice system;
 - 3) The police or the prosecutor's office as institutions with discretionary authority must approve the implementation of restorative justice; and
 - 4) The implementation of resolution outside the criminal justice system must be supported by the local community.

The police are not granted the authority to halt cases on the grounds of being resolved out of court or to dismiss cases for certain considerations or to resolve cases through a Restorative Justice approach. Such conditions have led police leadership to implement internal policy measures based on the awareness of the importance of the Restorative Justice concept as the spirit and personality (*volkgeist*) of Indonesian society and in order to realize a sense of justice in the community.

Restorative Justice actually reduces the government's role in monopolizing the formalism of the Criminal Justice System, which tends to be unsatisfactory for seekers of

² Edi Ribut Harwanto, *Keadilan Restorative Justice: Implementasi Politik Hukum Pidana Bernilai Filsafat Pancasila* (Lampung: Laduny Alifatama, 2021), 4.

³ O. C. Kaligis, *Perlindungan Hukum atas Hak Asasi Tersangka, Terdakwa dan Terpidana* (Bandung: Alumni, 2006), 125.

⁴ *Ibid.*, 30.

justice, especially for victims. Therefore, Restorative Justice places a higher value on the direct involvement of the parties, so that indirectly, victims are in a position of control, while offenders are encouraged to take responsibility as a step to correct the wrongs caused by their criminal acts and restore their social value system.

The mechanism for resolving cases out of court (penal mediation) between the perpetrator and the victim is closely related to the existing criminal procedural law. As is known, criminal procedural law is a process or procedure that must be carried out or applied by law enforcement officials when a criminal act occurs. This entails a logical consequence that the norms regulated by criminal procedural law are norms of authority.⁵

Criminal cases, as is known, do not always reach the trial stage, but the parties involved (the perpetrator and the victim) often prefer to engage in mediation (reconciliation) regarding the existing criminal case, resulting in a Request for Withdrawal of Report so that the criminal report is not pursued to the next stages. Regarding the issues raised above, resolving criminal cases in a more effective and efficient manner is deemed necessary as a control mechanism for the development of criminal acts themselves. The involvement of perpetrators and victims in resolving conflicts resulting from criminal acts has piqued the author's interest to examine this in legal research. The fundamental issues surrounding the resolution of cases between victims and perpetrators are essential to reformulate regarding the criminal justice system that emphasizes out-of-court resolutions based on the Restorative Justice System.⁶

Restorative Justice is one of the approaches to resolving criminal cases by involving parties such as the perpetrator, victim, families of the perpetrator/victim, and other related parties to collectively seek a fair resolution that emphasizes restoring the situation to its original state, rather than retaliation. In the process of resolving criminal cases using the restorative justice approach, individuals are required to actively participate in problem-solving, and the state is positioned as a party that must provide support for individuals or communities wishing to resolve their conflicts. From a restorative perspective, it is indeed individuals who must play their roles and responsibilities in collectively resolving conflicts, and not be burdened by the state. The country is considered to have no exclusive or dominant role in the settlement process. The dispute resolution mechanism based on restorative justice is based on consensus deliberation where the parties are asked to compromise to reach an agreement.⁷

Musyawarah Mufakat (deliberation and consensus) itself is a hallmark of Pancasila as the ideology and foundation of the state, akin to a captain who always directs the lives of its citizens. This is to ensure that life is carried out in accordance with the norms and laws that apply in Indonesia. With the rapid flow of globalization and cultural exchange, the values of Pancasila are gradually fading from the lives of the Indonesian people. Pancasila is the

⁵ Didik Endro Purwoleksono, *Hukum Acara Pidana* (Surabaya: Airlangga University Press, 2015), 16.

⁶ Agus Andrianto, *Strategi Penerapan Prinsip Restorative Justice Guna Meningkatkan Pelayanan Prima dalam Rangka Terwujudnya Kepercayaan Masyarakat* (Jakarta: Mabes Polri, Pendidikan SESPIMTI Dikreg ke-20, 2012).

⁷ Stephen Benton and Bernadette Setiadi, "Mediation and Conflict Management in Indonesia," in *Conflict Management in the Asia Pacific: Assumptions and Approaches in Diverse Cultures*, ed. Kwok Leung and Dean Tjosvold (Singapore: Wiley, 1998), 228.

source of all sources of law that apply in Indonesia, meaning that in conducting community life, nationhood, and statehood, one must submit to and comply with all the values contained in each principle enshrined in Pancasila. Pancasila must truly be implemented through its application as the foundation of its society.

Laksono stated that the source of strength for the struggle of the Indonesian nation is the material values of Pancasila.⁸ All the values contained in Pancasila have become a binding thread that can drive efforts to uphold and fight for independence, which has proven that Pancasila truly aligns with the soul of the Indonesian people. Syam stated that Pancasila has the obligation to guide the law and the behavior of society towards the hopes and ideals desired by the citizens of Indonesia.⁹ Therefore, the values of Pancasila as a philosophical system in building the character and behavior of its society play a role as the spiritual foundation of the nation.

The implementation of Pancasila values in community life is related to the application or acts of applying, or about practicing. Meanwhile, according to Usman, implementation refers to stimulating an action or activity that is planned to achieve a goal.¹⁰ Based on this definition, it can be concluded that implementation is a behavior carried out based on a belief in a certain value, theory, method, etc., in which everything related to the implementation is planned with a good structure so that the goals achieved also yield satisfactory results. In the KBBI (*Kamus Besar Bahasa Indonesia/Indonesian Dictionary*), life comes from the word '*hidup*' which means moving, still existing, functioning. Meanwhile, White expresses the understanding of life as a measure of balance in a psychological context that is closely related to positive emotions. Life also has meaning as a process or journey towards happiness. To live in a community, according to KBBI, comes from the word '*masyarakat*' which means a number of people in a very broad sense and is bound by the same culture. Therefore, from these definitions, it can be concluded that community life is a journey of life that is traversed together with a group that has the same goals.

The concept of restorative justice is fundamentally related to the idea that in resolving an issue in criminal law, it should not only be based on resolution through formal criminal law procedures.¹¹ In this context, criminal law should indeed facilitate certain procedures that help both the perpetrator and the victim to resolve criminal legal issues amicably. According to Tony F. Marshall, restorative justice is a criminal justice process that emphasizes a collective resolution among the parties involved (law enforcement, the perpetrator, and the victim) to restore the victim, treat the perpetrator proportionally, and be

⁸ Danang Tanjung Laksono, "Pemahaman Pancasila sebagai Pandangan Hidup dan Intensitas Bimbingan Moral oleh Orang Tua Pengaruhnya terhadap Kesadaran Bahaya Perilaku Menyimpang pada Remaja di Kabayanan II Desa Mulur Kecamatan Bendosari Kabupaten Sukoharjo Tahun 2008" (Undergraduate thesis, Universitas Muhammadiyah Surakarta, 2008), 2, UMS Library.

⁹ Sutan Zabda, "Aktualisasi Nilai-nilai Pancasila Sebagai Dasar Falsafah Negara dan Implementasinya dalam Pembangunan Karakter Bangsa," *Jurnal Pendidikan Ilmu Sosial* 26, no. 2 (2016): 106–114, <https://doi.org/10.2317/jpis.v26i2.3355>.

¹⁰ Urdin Usman, *Konteks Implementasi Berbasis Kurikulum* (Jakarta: Raja Grafindo Persada, 2002).

¹¹ Melvin Vooren, Iryna Rud, Ilja Cornelisz, Chris Van Klaveren, Wim Groot, and Henriëtte Maassen van den Brink, "The Effects of a Restorative Justice Programme (Halt) on Educational Outcomes and Recidivism of Young People," *Journal of Experimental Criminology* 19 (2023): 6, <https://doi.org/10.1007/s11292-022-09502-4>.

forward-looking to prevent the occurrence of future crimes.¹² Furthermore, Adrianus Meliala, a criminologist, asserts that the concept of restorative justice is essentially a critique of the criminal justice system, which presents inefficient procedures and results in injustice.

Clifford Dorn, from a philosophical perspective, defines restorative justice as a movement regarding the orientation in the criminal justice system that emphasizes the sources of crime in the effort to resolve it.¹³ Referring to the sources and causes of criminal acts, restorative justice seeks not only to 'judge' the perpetrators of crimes but also to prioritize the aspect of justice in resolving a criminal case. In this case, restorative justice does not view criminal acts as a 'single skeleton' standing alone, but as a systemic unity with the factors that cause the emergence of criminal acts.¹⁴ Because it has an orientation to comprehensively and substantively resolve a criminal legal issue, restorative justice emphasizes social resolution by involving the community (social aspect of criminal law) as well as healing, restoring, and providing compensation to the victim.¹⁵

Referring to the various views above regarding restorative justice, from the perspective of experts from the 'West', restorative justice is understood as an effort to resolve disputes that is oriented towards victims and the values of justice in society.¹⁶ The victim-oriented approach means that the resolution of modern crimes does not only focus on punishing the perpetrators but also on how to heal and restore the victims as a result of the crime. In this context, restorative justice emphasizes punitive measures that are retributive (compensation/reparations). From the value aspect in society, restorative justice seeks to view a crime as a form of 'disgraceful' behavior or action from a social-community perspective. This is the responsibility of society and the social environment to address the crime and also to prevent potential crimes in the future.

Restorative justice is viewed in the aspect of Indonesian identity as having relevance to the legal ideals of Pancasila.¹⁷ In the author's opinion, there are three relevances between restorative justice and the legal ideals of Pancasila, namely: first, restorative justice emphasizes the resolution of a criminal case by optimizing the balance of interests between the values that develop in society, the recovery of victims, and proportional treatment of the perpetrator. This is essentially in line with the values of humanity in Pancasila, particularly the second principle which emphasizes that humanity must be an important value and

¹² Randi Hernanto Madu, "The Restitution of Children as Victims of the Crime of Obscenity in the Principles of Restorative Justice," *Estudios de Derecho Journal* 2, no. 3 (2020): 530–546, <https://doi.org/10.33756/eslaj.v2i3.14598>.

¹³ Annemieke Wolthuis, Jacques Claessen, Gert Jan Slump, and Anneke Van Hoek, "Dutch Developments: Restorative Justice in Legislation and Practice," *The International Journal of Restorative Justice* 2, no. 1 (2019): 119, <http://doi.org/10.5553/IJRJ/258908912019002001007>.

¹⁴ Ariani Hasanah Soejoeti and Vinita Susanti, "Diskusi Keadilan Restoratif dalam Konteks Kekerasan Seksual di Kampus," *Deviance* 4, no. 1 (2020): 67–83, <https://doi.org/10.36080/djk.1311>.

¹⁵ Cholida Hanum, "Prospek Keadilan Restoratif dalam Peraturan Perundang-undangan di Indonesia," *Veritas* 7, no. 1 (2021): 3, <https://doi.org/10.34005/veritas.v7i1.1231>.

¹⁶ Muhammad Rusydianta, "Reformulating Fraud Crimes Under Article 378 of the Criminal Code Based on Restorative Justice Values," *Prophetic Law Review* 3, no. 2 (2021): 221, <http://doi.org/10.20885/PLR.vol3.iss2.art6>.

¹⁷ Yuli Asmara Triputra, "Implementasi Nilai-Nilai HAM Global ke dalam Sistem Hukum Indonesia yang Berlandaskan Pancasila," *Jurnal Hukum Ius Quia Iustum* 24, no. 2 (2017): 279–300, <https://doi.org/10.20885/iustum.vol24.iss2.art6>.

orientation in the life of the nation and state.¹⁸ In this case, restorative justice essentially aims to implement the second principle of Pancasila, particularly the value of humanity.

Secondly, restorative justice emphasizes the implementation of crime resolution that refers to community values. In this case, restorative justice implements the value of popular sovereignty in the fourth principle. The fourth principle of Pancasila essentially contains several important substances including: the value of popular sovereignty, wisdom, and deliberation-consensus.¹⁹ The three substances in the fourth principle essentially become things that are implemented through restorative justice practices. Third, restorative justice places victims and offenders like a 'family' trying to resolve issues together.²⁰ When compared to solutions in court through litigation, the resolution in court is *vis-à-vis*, where the victims and the perpetrators of criminal acts are seen as 'opponents' facing each other.²¹ Restorative justice practices do not view the relationship between the victim and the perpetrator as adversarial, but rather consider them as part of a 'large family', thus emphasizing a familial dimension in the resolution. When related to the values of Pancasila, resolution through familial means is essentially a manifestation of the implementation of the third principle, which is the unity of Indonesia.

The relevance between restorative justice practices and Pancasila mentioned above has shown that restorative justice practices are not something that is considered 'imported' and completely unknown in Indonesia. Restorative justice indeed originates from the West in terms of terminology, but substantively, the practice of restorative justice has become ingrained in Indonesian society. Therefore, the efforts to implement restorative justice also include efforts to strengthen the legal ideals of Pancasila and the dimension of Indonesian identity.

Definitively, Police Regulation Number 8 of 2021 states that restorative justice refers to the resolution of criminal cases involving the perpetrators, victims, and/or their families as well as related parties, with the aim of achieving justice for all parties. Justice in this regulation is the product of the interaction process of several actors. Justice as a process of discussion, it is a product of agreement. In a pragmatic framework, by members or officers in the field (in limited discussions with detectives, the police chief, and community policing), justice is considered to have been realized as long as the interaction process between parties aligns with the 'manual' in Police Regulation Number 8 of 2021.

The implication of justice understood as a product of agreement is that its basic orientation lies in peace or order. This is where the fundamental difference exists with cases that advance in the criminal justice system, where justice is 'defined' by the state through judges. The social distance between the role of judges and the socio-cultural realities living

¹⁸ Amran Suadi, *Filsafat Hukum Refleksi Filsafat Pancasila* (Jakarta: Prenada Media, 2019).

¹⁹ Fradhana Putra Disantara, "Perspektif Keadilan Bermartabat dalam Paradoks Etika dan Hukum," *Jurnal Litigasi* 22, no. 2 (2021): 205–229, <https://doi.org/10.23969/litigasi.v22i2.4211>.

²⁰ Dicky Eko Prasetyo, Fradhana Putra Disantara, Nadia Husna Azzahra, and Dita Perwitasari, "Strategi Pluralisme Hukum Peradilan Adat Sendi dalam Era Modernisasi Hukum," *Rechtsidee* 8, no. 1 (2021): 9, <https://doi.org/10.21070/jihr.2021.8.702>.

²¹ David McQuoid-Mason, "Could Traditional Dispute Resolution Mechanisms Be the Solution to Reducing the Volume of Litigation in Post-Colonial Developing Countries— Particularly in Africa?" *Oñati Socio-Legal Series* 11, no. 2 (2021): 591, <https://doi.org/10.35295/osls.iisl/0000-0000-0000-1145>.

in society causes their decisions to be (merely) legally formal: justice is a product of the judge's definition through texts with contexts. Viewed from the perspective of state-civil society relations, the existence of Police Regulation Number 8 of 2021 means that the state provides space for society (civil society) to construct its own meaning of justice. In the process of Restorative Justice, a person who has suffered a loss of 100 million may not necessarily be defined as being fairly compensated with the same amount; such matters are difficult to comprehend from the perspective of a judge. The social process is so complex, with cultural aspects and deep moral dimensions that are alive in society often inadequately represented through the reification of Weberian instrumental rationality (positivistic legal). Thus, it is understandable to relativize the monetary figure.

Since the issuance and enforcement of the Police Regulation Number 8 of 2021 in August 2021, the National Police of the Republic of Indonesia has implemented the resolution of criminal cases through Restorative Justice at the highest level (National Police Headquarters), regional level police (*Kepolisian Daerah/Polda*), regency/city level police (*Kepolisian Resor/Polres*), and down to the lowest level at the sector police (*Kepolisian Sektor/Polsek*), both at the investigation stage and the inquiry stage, as well as handling minor criminal offenses. In the implementation of the resolution of cases based on restorative justice, this responsibility lies with the officers carrying out the investigative functions, specifically the community development officers (*Bimbingan Masyarakat/Binmas*) and the *Samapta* function officers for the resolution of minor criminal offenses (*Tindak Pidana Ringan/tipiring*). Meanwhile, for the resolution of criminal cases during the investigation or inquiry phase, it is the responsibility of the Criminal Investigation Unit of the National Police (*Satuan Reserse Kriminal/Reskrim*).

Since the enactment of the Police Regulation Number 8 of 2021 in August 2021 until the end of 2021, there have been resolutions of cases through the Restorative Justice mechanism carried out by the Indonesian National Police at all levels, from the National Police Headquarters (*Badan Reserse Kriminal/Bareskrim*) to the regional police (*Polda*) across Indonesia, totaling 15,738 (fifteen thousand seven hundred thirty-eight) cases. This number of resolutions is from a total of 275,539 (two hundred seventy-five thousand five hundred thirty-nine) Police Reports (*Laporan Polisi/LP*) received throughout 2021. From the number of Police Reports in 2021, a total of 8,912 (eight thousand nine hundred twelve) cases were resolved through a restorative justice mechanism in the investigation stage with the status of cessation of investigation, which of course involved the implementation of restorative justice in the ways outlined in the technical implementation of restorative justice that has been specified with the product of case cessation in the form of a Letter of Cessation of Investigation (*Surat Perintah Penghentian Penyelidikan/SP2 Lidik*). Next, a total of 6,826 (six thousand eight hundred twenty-six) cases were resolved at the investigation stage with a status of termination of the investigation and the product issued was Letter of Termination of Investigation (*Surat Perintah Penghentian Penyidikan/SP3*). Both the termination of cases at the investigation and inquiry stages are efforts to provide legal certainty to the public in upholding the law and seeking justice in handling their cases through the application of restorative justice.

Based on the data above, it is found that throughout the year 2022, the National Police of the Republic of Indonesia, along with all its units across Indonesia, received reports from the public in the form of Police Reports (LP) totaling 326,266 (three hundred twenty-six thousand two hundred sixty-six) cases. From the total amount of Police Reports in 2022, 22,500 (twenty-two thousand five hundred) cases were successfully resolved through the mechanism of Restorative Justice. From the number of cases resolved based on restorative justice in 2022, there were 13,169 (thirteen thousand one hundred sixty-nine) cases settled through Restorative Justice at the Investigation stage with the status of Termination of Investigation resulting in a termination order in the form of a Letter of Termination of Investigation (SP2 Lid). Furthermore, a total of 9,331 (nine thousand three hundred thirty-one) reported cases were resolved at the investigation stage with the status of termination of investigation, and the product issued was a Letter of Termination of Investigation.

The facts show that there is a resolution of cases through the mechanism of Restorative Justice by implementing the Police Regulation Number 8 of 2021 in resolving criminal acts that occurred throughout the year 2023, carried out by the Indonesian National Police across all regions of Indonesia at all levels of units, from the National Police Headquarters to the Police Sector, as well as in the stages of investigation and inquiry, with an increasing trend from the first year (2021) of 15,738 (fifteen thousand seven hundred thirty-eight) cases to the second year (2022) of 22,500 (twenty-two thousand five hundred) cases. In the year 2023, of the total number of 431,021 (four hundred thirty-one thousand twenty-one) Police Reports (LP) received or reported by the public, there were a total of 24,808 (twenty-four thousand eight hundred eight) cases successfully resolved through the mechanism of restorative justice.

The number of case resolutions based on restorative justice in the year 2023 is a total of 14,697 (fourteen thousand six hundred and ninety-seven) cases resolved at the Investigation stage with a status of termination of investigation, resulting in an Investigation Termination Order. Furthermore, a total of 10,111 (ten thousand one hundred and eleven) cases were resolved at the Investigation stage with a termination status of investigation and the product created is an Investigation Termination Order (SP3).

Facts show that there is a resolution of cases through the Restorative Justice mechanism in 2024 conducted by the Indonesian National Police throughout Indonesia, with a total of 332,494 (three hundred thirty-two thousand four hundred ninety-four) Police Reports (LP) received, out of which there were 11,768 (eleven thousand seven hundred sixty-eight) cases successfully resolved through the Restorative Justice mechanism. Of this number, there were 7,494 (seven thousand four hundred ninety-four) cases resolved at the Investigation stage with the status of termination of the investigation, and 4,274 (four thousand two hundred seventy-four) cases resolved at the Inquiry stage with the status of termination of the inquiry.

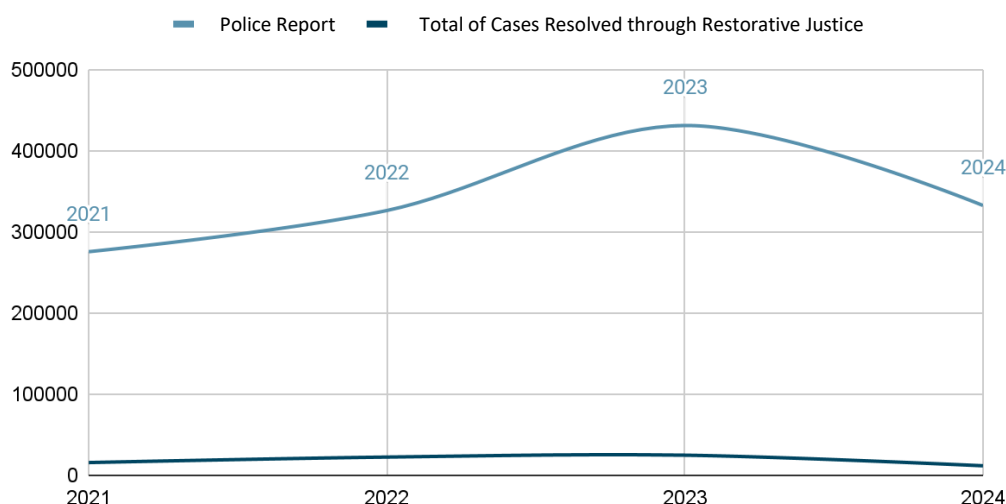


Figure 1. Restorative Justice Implementation by Indonesian National Police in Indonesia

The graph above shows that since the implementation of case resolution based on restorative justice, based on the Police Regulation Number 8 of 2021, namely from 2021 to 2024, the number of criminal resolutions through restorative justice conducted by the Indonesian National Police has remained stable, and there is a trend of increasing resolutions each year, although there was a decrease in 2024, which is due to the data received only up to August 2024. From the available data, it appears there is still a significant disparity between community reports through Police Reports and the number of criminal cases resolved through restorative justice. This is certainly influenced by various factors, one of which is that not all cases reported based on the incoming Police Reports can be resolved through restorative justice. For criminal cases to be resolved based on restorative justice, they must first meet both material and formal requirements for resolution under restorative justice principles. Therefore, there is a considerable disparity between the incoming police reports and the resolutions of cases based on restorative justice.

Efforts for certainty and fairness in law enforcement, "A humanistic approach or one oriented towards humanitarian values should be prioritized in resolving criminal cases, as this method will prevent us from being labeled or branded as criminals if we must be imprisoned." It is further explained that "Peaceful resolution of criminal cases is very beneficial, as the rights to compensation can be fulfilled, because if a crime occurs, the ones who are actually harmed are primarily the victims, not the general public or the state." The application of restorative justice by the police institution in relation to the principles of justice and legal certainty actually reflects a sense of justice. This is because both parties get what they want through the mediation process conducted by the police investigators as facilitators and mediators. Unfortunately, the restorative justice carried out by the police has not been able to accommodate the principle of legal certainty, where legal certainty means that all rules or laws and their implementation create certainty for the community in knowing the limits that burden or allow them to act as individuals. In practice, restorative justice does not fully achieve the principle of legal certainty. This is due to the lack of a court decision,

which means that this restorative resolution does not have permanent legal force (a gap in Article 5 of Police Regulation Number 8 of 2021), thus complicating its implementation. This has led to multiple interpretations in the legislation. In addition, there is no detailed explanation regarding the maximum limits of prison threats or fines that can be resolved through restorative justice. This creates confusion about what cases can and how they can be resolved through restorative means.²²

Although the Indonesian criminal justice system has adopted the concept of Restorative Justice as an alternative process for handling certain crimes more humanely, with a focus on finding a fair resolution for all parties, there is still a need to renew norms, especially as implemented in the Police Regulation Number 8 of 2021, aimed at better ensuring legal certainty and justice. This means ensuring the role and position of the Indonesian National Police investigators in supporting, assisting, and facilitating the application of Restorative Justice procedures and processes without being perceived as biased towards one party in a case. With clearer roles and functions, the existence and presence of Indonesian National Police investigators can remain neutral and can direct the realization of services in the implementation of Restorative Justice effectively and adequately.

4. CONCLUSION

Restorative Justice is a process of resolving cases that focuses on restoration rather than punishment. The essence of restorative justice is the restoration of the order of life, especially in social human relationships that have been harmed by criminal acts committed by members of society, as well as restoring the harmony of social life with a more humane approach, namely not applying criminal law rules that are oriented towards punishment and retribution. Meanwhile, in realizing the philosophy of Pancasila in the Criminal Justice System in Indonesia, an important concept that is needed is to formulate the idea of Restorative Justice in appropriate and adequate legislation in Indonesia. Social Justice, as emphasized in the fifth principle of Pancasila, serves as the philosophical foundation that every legal issue must be resolved fairly with both parties regarded as equals. This thinking aligns with the provisions of Article 1 number 3 of Police Regulation Number 8 of 2021, which states that restorative justice is the resolution of criminal acts involving the perpetrator, the victim, the perpetrator's family, the victim's family, community leaders, religious leaders, traditional leaders, or stakeholders to jointly seek a fair resolution through reconciliation, emphasizing efforts to restore relationships to a peaceful state as they were before.

REFERENCES

Andrianto, Agus. *Strategi Penerapan Prinsip Restorative Justice Guna Meningkatkan Pelayanan Prima dalam Rangka Terwujudnya Kepercayaan Masyarakat*. Jakarta: Mabes Polri, Pendidikan SESPIMTI Dikreg ke-20, 2012.

²² Alifianissa Puspaningtyas Nugroho, "Restorative Justice: Terwujudnya Asas Keadilan dan Asas Kepastian Hukum Pada Instansi Kepolisian," *Recidive* 13, no. 2 (2023): 218–229, <https://doi.org/10.20961/recidive.v12i2.71620>.

- Benton, Stephen, and Bernadette Setiadi. "Mediation and Conflict Management in Indonesia." In *Conflict Management in the Asia Pacific: Assumptions and Approaches in Diverse Cultures*, edited by Kwok Leung and Dean Tjosvold. Singapore: Wiley, 1998.
- Disantara, Fradhana Putra. "Perspektif Keadilan Bermartabat dalam Paradoks Etika dan Hukum." *Jurnal Litigasi* 22, no. 2 (2021): 205–229. <https://doi.org/10.23969/litigasi.v22i2.4211>.
- Hanum, Cholida. "Prospek Keadilan Restoratif dalam Peraturan Perundang-undangan di Indonesia." *Veritas* 7, no. 1 (2021): 1–18. <https://doi.org/10.34005/veritas.v7i1.1231>.
- Harwanto, Edi Ribut. *Keadilan Restorative Justice: Implementasi Politik Hukum Pidana Bernilai Filsafat Pancasila*. Lampung: Laduny Alifatama, 2021.
- Kaligis, O.C. *Perlindungan Hukum atas Hak Asasi Tersangka, Terdakwa dan Terpidana*. Bandung: Alumni, 2006.
- Laksono, Danang Tanjung. "Pemahaman Pancasila sebagai Pandangan Hidup dan Intensitas Bimbingan Moral oleh Orang Tua Pengaruhnya terhadap Kesadaran Bahaya Perilaku Menyimpang pada Remaja di Kabayanan II Desa Mulur Kecamatan Bendosari Kabupaten Sukoharjo Tahun 2008." Undergraduate Thesis, Universitas Muhammadiyah Surakarta, 2008. UMS Library.
- Madu, Randi Hernanto. "The Restitution of Children as Victims of the Crime of Obscenity in the Principles of Restorative Justice." *Estudios de Derecho Journal* 2, no. 3 (2020): 530–546. <https://doi.org/10.33756/eslaj.v2i3.14598>.
- Marlina. *Peradilan Pidana Anak di Indonesia: Pengembangan Konsep Diversi dan Restorative Justice*. Bandung: Refika Aditama, 2009.
- McQuoid-Mason, David. "Could Traditional Dispute Resolution Mechanisms Be the Solution to Reducing the Volume of Litigation in Post-Colonial Developing Countries– Particularly in Africa?" *Oñati Socio-Legal Series* 11, no. 2 (2021): 590–604. <https://doi.org/10.35295/osls.iisl/0000-0000-0000-1145>.
- Nugroho, Alifianissa Puspaningtyas. "Restorative Justice: Terwujudnya Asas Keadilan dan Asas Kepastian Hukum Pada Instansi Kepolisian." *Recidive* 13, no. 2 (2023): 218–229. <https://doi.org/10.20961/recidive.v12i2.71620>.
- Prasetio, Dicky Eko, Fradhana Putra Disantara, Nadia Husna Azzahra, and Dita Perwitasari. "Strategi Pluralisme Hukum Peradilan Adat Sendi dalam Era Modernisasi Hukum." *Rechtsidee* 8, no. 1 (2021): 1–12. <https://doi.org/10.21070/jihr.2021.8.702>.
- Purwoleksono, Didik Endro. *Hukum Acara Pidana*. Surabaya: Airlangga University Press, 2015.
- Rusydia, Muhammad. "Reformulating Fraud Crimes Under Article 378 of the Criminal Code Based on Restorative Justice Values." *Prophetic Law Review* 3, no. 2 (2021): 220–243. <http://doi.org/10.20885/PLR.vol3.iss2.art6>.
- Soejoeti, Ariani Hasanah, and Vinita Susanti. "Diskusi Keadilan Restoratif dalam Konteks Kekerasan Seksual di Kampus." *Deviance* 4, no. 1 (2020): 67–83. <https://doi.org/10.36080/djk.1311>.
- Suadi, Amran. *Filsafat Hukum Refleksi Filsafat Pancasila*. Jakarta: Prenada Media, 2019.

- Triputra, Yuli Asmara. "Implementasi Nilai-Nilai HAM Global ke dalam Sistem Hukum Indonesia yang Berlandaskan Pancasila." *Jurnal Hukum Ius Quia Iustum* 24, no. 2 (2017): 279–300. <https://doi.org/10.20885/iustum.vol24.iss2.art6>.
- Usman, Urdin. *Konteks Implementasi Berbasis Kurikulum*. Jakarta: Raja Grafindo Persada, 2002.
- Vooren, Melvin, Iryna Rud, Ilja Cornelisz, Chris Van Klaveren, Wim Groot, and Henriëtte Maassen van den Brink. "The Effects of a Restorative Justice Programme (Halt) on Educational Outcomes and Recidivism of Young People." *Journal of Experimental Criminology* 19 (2023): 691–711. <https://doi.org/10.1007/s11292-022-09502-4>.
- Wolthuis, Annemieke, Jacques Claessen, Gert Jan Slump, and Anneke Van Hoek. "Dutch Developments: Restorative Justice in Legislation and Practice." *The International Journal of Restorative Justice* 2, no. 1 (2019): 117–133. <http://doi.org/10.5553/IJRJ/258908912019002001007>.
- Zabda, Sutan. "Aktualisasi Nilai-nilai Pancasila Sebagai Dasar Falsafah Negara dan Implementasinya dalam Pembangunan Karakter Bangsa." *Jurnal Pendidikan Ilmu Sosial* 26, no. 2 (2016): 106–114. <https://doi.org/10.2317/jpis.v26i2.3355>.