

Disharmony and Transformation of Restorative Justice in the Criminal Justice System: A Comparative Study of Police Regulation No. 8 of 2021 and the 2025 Criminal Procedure Code

Dedi Irawan, Mhd Azhali Siregar, Fitri Rafianti

Abstract

Restorative justice is an alternative approach to resolving criminal cases that emphasizes restoring relationships between perpetrators, victims, and the community. However, before being explicitly regulated in Law Number 20 of 2025 concerning the Criminal Procedure Code (KUHAP), the implementation of restorative justice in Indonesia was sectoral through internal regulations of law enforcement agencies, including Regulation of the Republic of Indonesia National Police Number 8 of 2021. This condition has led to disharmony of norms and legal uncertainty in law enforcement practices. This study aims to analyze the differences in restorative justice mechanisms between Regulation of the Republic of Indonesia Number 8 of 2021 and the 2025 Criminal Procedure Code and examine the legal implications of these differences. The research method used is normative juridical with a statutory and conceptual approach. The results show that Regulation of the Republic of Indonesia regulates restorative justice in a limited manner as a form of investigator discretion during the inquiry and investigation stages without judicial oversight, while the 2025 Criminal Procedure Code integrates restorative justice as a formal mechanism in all stages of the criminal justice system by strengthening the oversight function of the courts. However, normative issues remain, particularly in the application of restorative justice during the investigation stage, which can potentially lead to multiple interpretations. Therefore, regulatory harmonization and strengthened oversight are needed to ensure legal certainty and substantive justice.

Keywords: Restorative Justice, Criminal Procedure Code 2025, Police Regulation 8/2021, Criminal Justice System, Legal Harmonization

Dedi Irawan¹

¹Law, Universitas Pembangunan Panca Budi, Indonesia e-mail:
irawandedi1112@gmail.com¹

Mhd Azhali Siregar², Fitri Rafianti³

^{2,3}Law, Universitas Pembangunan Panca Budi, Indonesia

e-mail: azhalisiregar@dosen.pancabudi.ac.id², fitirafianti@dosen.pancabudi.ac.id³

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Introduction

The criminal justice system in Indonesia has historically been built on a retributive paradigm that positions punishment as a means of retribution against perpetrators of criminal acts. This approach is punishment-oriented, emphasizing the imposition of sanctions as a form of accountability for the perpetrator for their actions. However, developments in modern criminal law have shown that a retributive approach alone is no longer adequate to address the complexity of crime, particularly those related to victim recovery and social harmony.

In line with these developments, the restorative justice approach has emerged as an alternative to the criminal justice system, emphasizing restoration rather than retribution. Restorative justice aims to repair the harm caused by criminal acts by actively involving the perpetrator, victim, and community in the case resolution process. This approach focuses not only on the perpetrator but also on the needs of the victim and the social balance disrupted by the crime.

In the Indonesian context, the concept of restorative justice is not entirely new, as it has long been sociologically recognized in customary law practices that prioritize conflict resolution through deliberation and family. These values align with the Pancasila philosophy, which emphasizes balance, harmony, and social justice. Therefore, the adoption of restorative justice in the national legal system can be seen as an effort to integrate local values into the formal legal system.

Restorative justice regulations in the Indonesian legal system began to receive serious attention through Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which introduced the concept of diversion as a form of out-of-court case resolution. Diversion is a concrete implementation of restorative justice that aims to prevent children from being excluded from the formal criminal justice process and prioritizes recovery and rehabilitation.

Furthermore, the restorative justice approach began to be adopted in various internal regulations of law enforcement agencies, such as Attorney General Regulation Number 15 of 2020 and Indonesian National Police Regulation Number 8 of 2021. The presence of these regulations demonstrates the practical need to implement restorative justice in resolving criminal cases, particularly for minor crimes and cases that do not have a broad impact on society.

However, these sectoral restorative justice regulations create serious problems in practice, particularly related to disharmonious norms and legal uncertainty. Each law enforcement agency has different standards, procedures, and criteria for implementing restorative justice, potentially leading to disparate treatment of similar cases. This situation contradicts the principles of legal certainty and equality before the law.

Police Regulation Number 8 of 2021 is one regulation that specifically regulates the mechanism for resolving criminal cases based on restorative justice within the police force. In this regulation, restorative justice is positioned as part of the investigator's discretion to terminate the investigation and inquiry process, taking into account aspects of fairness and expediency. However, this mechanism still has limitations because it does not involve direct judicial oversight.

The absence of a judicial oversight mechanism for the implementation of restorative justice at the police level creates the potential for abuse of power and opens up space for nontransparent practices. Furthermore, case termination through this mechanism does not result in a court decision, thus creating certain legal implications, such as the failure to register recidivist status for repeat offenders.

To address these issues, the government reformed criminal procedural law through Law Number 20 of 2025 concerning the Criminal Procedure Code (KUHAP). One fundamental reform in this law is the regulation of restorative justice as an integral part of the national criminal justice system, which is regulated comprehensively and systematically.

The new Criminal Procedure Code (KUHAP) not only recognizes restorative justice as an alternative case resolution but also integrates it into all stages of the criminal justice process,

from investigation to post-trial. This demonstrates a significant paradigm shift in the Indonesian criminal justice system, from its original repressive nature to a more humanistic and restorative approach.

Nevertheless, the regulation of restorative justice in the new KUHAP still leaves a number of normative issues, particularly regarding its application at the investigation stage. Conceptually, the investigation stage aims to determine whether an incident constitutes a crime, so the application of restorative justice at this stage has the potential to lead to multiple interpretations and unclear norms.

Furthermore, the fundamental differences between the restorative justice mechanisms in Perpol Number 8 of 2021 and the 2025 KUHAP indicate an incompletely harmonious legal transition. On the one hand, Perpol still serves as a sectoral regulation, while on the other hand, the KUHAP has introduced more comprehensive regulations. This situation has the potential to create normative conflicts in implementation on the ground.

Based on this description, it is important to conduct an in-depth legal analysis of the differences in restorative justice mechanisms in the two regulations. This analysis aims not only to identify normative differences but also to examine the legal implications and provide recommendations for harmonizing the criminal justice system in Indonesia to make it more effective, fair, and oriented towards substantive justice.

Research Methodology

This research employs a normative legal research method (normative juridical), focusing on the study of legal norms enshrined in legislation and various legal doctrines and principles developed in the literature. Normative legal research is conducted by reviewing library materials as the primary source, thus eliminating the need for field data, but instead emphasizing the analysis of the applicable legal norm system.

The approaches used in this research include a statutory approach and a conceptual approach. The statutory approach involves an in-depth examination of various regulations related to restorative justice, particularly Indonesian National Police Regulation Number 8 of 2021 and Law Number 20 of 2025 concerning the Criminal Procedure Code. Through this approach, the researcher examines the consistency, synchronization, and hierarchy of applicable legal norms.

Furthermore, this research employs a conceptual approach to understand the basic concepts and theories related to restorative justice in criminal law. This approach is important to provide a theoretical foundation for analyzing the differences in restorative justice mechanisms stipulated in the two regulations, as well as for assessing whether these provisions comply with the principles of substantive justice.

The legal sources in this study consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials are binding legal materials, such as statutory regulations, which in this study include Law Number 20 of 2025 concerning the Criminal Procedure Code, Law Number 1 of 2023 concerning the Criminal Code, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, and Police Regulation Number 8 of 2021.

Secondary legal materials are legal materials that provide explanations to primary legal materials, such as legal literature books, scientific journals, research results, and the opinions of legal experts relevant to this research. In this regard, the author also utilized various scientific works discussing restorative justice, criminal procedure law, and legal theories to support the research analysis.

Furthermore, tertiary legal materials provide guidance and explanations to primary and secondary legal materials, such as legal dictionaries, encyclopedias, and other relevant sources. Tertiary legal materials are used to clarify legal concepts and terms used in this research to avoid misinterpretation.

The legal material collection technique in this research was conducted through library research, namely by collecting, reading, and analyzing various legal materials relevant to the research topic. Legal material searches were conducted through various sources, such as books, scientific journals, laws and regulations, and credible electronic sources.

The legal material analysis technique used in this research is qualitative analysis with a descriptive-analytical approach. Qualitative analysis is conducted by describing and interpreting the collected legal materials and then systematically organizing them to answer the problem formulation. A descriptive-analytical approach was used to clearly illustrate the differences between the restorative justice mechanisms in Police Regulation No. 8 of 2021 and the 2025 Criminal Procedure Code (KUHAP) and to analyze the legal implications of these differences.

During the analysis process, the researcher also employed legal interpretation methods, such as grammatical, systematic, and teleological interpretation, to understand the meaning of the legal norms contained in the laws and regulations under review. This interpretation aims to find the precise meaning of legal provisions relating to restorative justice and to avoid misinterpretation.

By using this research method, it is hoped that this study will provide a comprehensive and in-depth analysis of the differences between the restorative justice mechanisms in Police Regulation No. 8 of 2021 and the 2025 Criminal Procedure Code, and contribute to the development of legal science, particularly in the field of criminal procedure law in Indonesia.

Results 1. The Mechanism for Implementing Restorative Justice in Police Regulation Number 8 of 2021 and the 2025 Criminal Procedure Code

Restorative justice is a new paradigm in the criminal justice system that prioritizes restoration over retribution. In the context of modern criminal law, this approach developed in response to the weaknesses of the retributive system, which tends to ignore the interests of victims and is unable to restore social relationships disrupted by criminal acts. Therefore, restorative justice emerged as an approach that emphasizes dialogue, reconciliation, and the perpetrator's responsibility for the harm caused.

In the Indonesian legal system, the application of restorative justice has begun to gain normative legitimacy through various sectoral regulations, one of which is Indonesian National Police Regulation Number 8 of 2021. This regulation marked the beginning of the formal implementation of restorative justice within the police force, particularly in the investigation and prosecution of criminal cases. The presence of this regulation reflects the practical need to resolve criminal cases more quickly, simply, and with a focus on substantive justice.

The restorative justice mechanism in Police Regulation Number 8 of 2021 essentially represents a form of investigator discretion in handling certain criminal cases. This discretion allows investigators to terminate the legal process if a peace agreement is reached between the perpetrator and the victim. Thus, case resolution does not always have to go through a formal judicial process, but can instead be resolved through a more humane and efficient nonlitigation approach.

However, the application of restorative justice in the Police Regulation cannot be carried out haphazardly; it must meet certain requirements stipulated in the regulation. These requirements include material and formal requirements that serve as the basis for determining the eligibility of a case for resolution through restorative justice mechanisms. This demonstrates that, despite its flexibility, the application of restorative justice must remain within clear and measurable legal boundaries.

The material requirements in Police Regulation Number 8 of 2021 include that the crime committed must not cause public unrest, not impact social conflict, not constitute a serious crime such as terrorism, corruption, or crimes against life, and not constitute a repeat offense. These provisions demonstrate that restorative justice in the Police Regulation is only intended for crimes of relatively low severity.

Furthermore, the formal requirements in the Police Regulation require a voluntary peace agreement between the perpetrator and the victim, without pressure or coercion. This agreement must reflect restitution for the victim's losses, whether in the form of the return of goods, compensation, or other forms of restitution. Therefore, restorative justice in the Police Regulation is not only oriented towards dismissal of the case, but also towards fulfilling the victim's rights.

In practice, the restorative justice mechanism at the police level is implemented through a mediation process facilitated by investigators. The investigator acts as a mediator, bringing the perpetrator and victim together to reach a peace agreement. If such an agreement is reached and all requirements are met, the investigator can dismiss the case by issuing a letter of termination of investigation. This mechanism demonstrates the investigator's dominant role in determining the success of restorative justice implementation.

However, the investigator's dominant role in this mechanism raises serious issues related to oversight and accountability. The absence of judicial involvement in the case dismissal process has the potential to open up room for abuse of authority and create legal uncertainty. Furthermore, case termination through this mechanism does not result in a court decision, and therefore does not have the same legal force as a judge's decision.

Unlike the Police Regulation, the restorative justice provisions in Law Number 20 of 2025 concerning the Criminal Procedure Code (KUHAP) demonstrate a more advanced and comprehensive development. The new KUHAP explicitly regulates restorative justice in Articles 79 to 88 as an integral part of the national criminal justice system. This provision provides a stronger and more systematic legal basis than previous sectoral regulations.⁹

In the 2025 KUHAP, restorative justice mechanisms are not limited to the investigation stage but can be applied to all stages of the criminal justice process, from pre-investigation, prosecution, and trial. This demonstrates an expansion of the scope of restorative justice, which was previously limited to the Police Regulation. Thus, restorative justice becomes an integrated part of the overall criminal justice system.

Furthermore, the 2025 Criminal Procedure Code emphasizes that the primary goal of restorative justice is to restore the victim to their original state. This restoration encompasses various forms, such as forgiveness, compensation, and psychological recovery. Therefore, restorative justice in the Criminal Procedure Code is not only oriented toward case resolution but also toward comprehensive recovery for the victim.

One of the most important aspects of the restorative justice mechanism in the Criminal Procedure Code is judicial oversight through court rulings. Every settlement agreement reached must be approved by the district court, thus providing stronger legal legitimacy and creating a mechanism of checks and balances in its implementation. This is a key difference from the Police Regulation, which does not involve judicial oversight in the case termination process.

2. Differences and Legal Implications of the Restorative Justice Mechanism between Police Regulation Number 8 of 2021 and the 2025 Criminal Procedure Code

The differences in restorative justice mechanisms between Police Regulation Number 8 of 2021 and Law Number 20 of 2025 concerning the Criminal Procedure Code reflect the dynamics of criminal law reform in Indonesia, which is moving from a sectoral approach to a more integrated system. This difference is not only procedural but also reflects a paradigm shift in understanding the purpose of criminal law, from mere punishment to restoration and substantive justice.

The first difference can be seen in the hierarchy of laws and regulations. The Police Regulation is an internal regulation that only binds the police institution, while the Criminal Procedure Code is a law that has national binding force for all law enforcement agencies. The legal consequence of this difference is that the Criminal Procedure Code holds a higher position and serves as a general standard for the application of restorative justice, while the Police

Regulation is merely complementary as long as it does not conflict with the Criminal Procedure Code.

The second difference lies in the scope of restorative justice. Under Police Regulation Number 8 of 2021, restorative justice can only be applied during the investigation and inquiry stages, making it limited and not encompassing the entire criminal justice process. In contrast, the 2025 Criminal Procedure Code (KUHAP) extends the application of restorative justice to all stages of the judicial process, from investigation to post-trial, demonstrating the integration of this mechanism into the criminal justice system as a whole.

The third difference relates to judicial oversight. In the Police Regulation, case termination through restorative justice rests entirely with the investigator's authority, without any court involvement. This differs from the Criminal Procedure Code, which requires a court order for every case resolution through restorative justice. This oversight is crucial to ensure transparency and accountability, and to prevent abuse of authority by law enforcement officials.

The fourth difference lies in the orientation of restorative justice goals. In the Police Regulation, restorative justice mechanisms tend to prioritize case termination as the primary goal, thus often neglecting victim recovery. Meanwhile, the 2025 Criminal Procedure Code (KUHAP) explicitly prioritizes victim recovery as the primary goal, regulating various forms of recovery, such as restitution, compensation, and psychological recovery.

The fifth difference relates to the standards and criteria for implementing restorative justice. In the Police Regulation, the criteria used are relatively flexible and depend on the investigator's discretion, thus allowing for subjectivity in their application. In contrast, the Criminal Procedure Code (KUHAP) establishes more measurable criteria, such as limits on maximum criminal penalties and the requirement that the perpetrator is not a repeat offender. This standardization aims to create legal certainty and uniformity in the application of restorative justice.

The sixth difference is evident in the coordination between law enforcement agencies. In practice prior to the 2025 Criminal Procedure Code, the implementation of restorative justice tended to be sectoral without adequate coordination between agencies, resulting in disharmony and a lack of synchronization in case handling. The new Criminal Procedure Code (KUHAP) was created to address this issue by establishing an integrated criminal justice system that prioritizes coordination between law enforcement agencies.

These differences have significant legal implications for the criminal justice system in Indonesia. One key implication is increased legal certainty in the application of restorative justice. With more comprehensive provisions in the KUHAP, it is hoped that differences in interpretation between law enforcement agencies in resolving cases through restorative means will no longer arise.

However, the implementation of the 2025 Criminal Procedure Code (KUHAP) also presents its own challenges, particularly related to potential normative conflicts. For example, the provisions regarding the limits of criminal penalties in the application of restorative justice, which are still open to multiple interpretations, indicate that normative harmonization has not yet been fully achieved. This situation could lead to legal uncertainty if not immediately addressed through clear implementing regulations.

Another implication is the changing role of law enforcement officials, particularly investigators and judges. Under the KUHAP, investigators are no longer the sole parties determining whether to terminate a case, but must instead coordinate with the court. This demonstrates a shift from a dominant discretionary system to a more controlled and accountable system.

Furthermore, the implementation of restorative justice in the KUHAP also impacts the protection of victims' rights. With more detailed regulations regarding the form of reparation, victims are no longer positioned as passive parties but rather as subjects with the right to comprehensive reparation. This aligns with developments in modern criminal law, which places victims at the center of attention in the criminal justice system.

Therefore, it can be concluded that the differences in restorative justice mechanisms between Police Regulation No. 8 of 2021 and the 2025 Criminal Procedure Code not only reflect technical differences but also indicate a fundamental transformation in the Indonesian criminal justice system. This transformation leads to a more integrated, accountable, and substantive justice-oriented system, although its implementation still requires refinement.

Conclusion

1. The mechanisms for implementing restorative justice in Police Regulation No. 8 of 2021 and Law No. 20 of 2025 concerning the Criminal Procedure Code (KUHAP) demonstrate fundamental differences in terms of their structure and scope. Police Regulation No. 8 of 2021 regulates restorative justice in a limited manner, as a form of investigator discretion during the inquiry and prosecution stages, with an internal and sectoral approach. In contrast, the 2025 Criminal Procedure Code (KUHAP) regulates restorative justice comprehensively and integrately across all stages of the criminal justice system, from investigation to post-adjudication, and is complemented by a judicial oversight mechanism through court orders. This demonstrates a shift in the paradigm of criminal law from a retributive approach to a more systematic and recovery-oriented restorative approach.
2. These differences in mechanisms have significant legal implications for Indonesia's criminal justice system, both in terms of legal certainty, accountability, and protection of victims' rights. The 2025 Criminal Procedure Code (KUHAP) provides stronger legal certainty through standardized procedures and judicial oversight, thereby minimizing the potential for abuse of authority previously stipulated in the Police Regulation. However, normative issues remain, particularly regarding the application of restorative justice during the investigation stage, which has the potential to lead to multiple interpretations. Therefore, further harmonization through implementing regulations and strengthening the capacity of law enforcement officials is needed to ensure the effective and equitable implementation of restorative justice.

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