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Implementation of the Restorative Justice Concept Based on Police Regulation No. 8 of 2021 in Criminal Offenses

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ABSTRACT

This study discusses the implementation of the Restorative Justice (RJ) concept based on Police Regulation No. 8 of 2021 concerning the Handling of Criminal Offenses in the East Java Regional Police. The background of this research stems from the emergence of the restorative justice paradigm as a response to the weaknesses of the system, which tends to neglect the rights of victims. Restorative justice offers a more humane and solution-oriented approach to criminal case resolution, emphasizing the restoration of harm and the relationship between the offender, the victim, and society. This research employs a normative method with a legislative and case study approach to analyze the juridical legitimacy and the implementation of the policy in practice. The results show that the implementation of restorative justice during the investigation process, particularly in the jurisdiction of the East Java Regional Police, has provided an alternative resolution that is faster, more efficient, and satisfying for all parties, especially in minor cases. Furthermore, restorative justice is considered to reduce the burden on the formal criminal justice system and foster substantive justice. However, challenges in implementation remain, particularly in terms of the readiness of law enforcement officers and public understanding of this new paradigm. This study recommends the strengthening of regulations, continuous training for officers, and the enhancement of public awareness to ensure the optimal application of restorative justice in accordance with the values of justice, utility, and legal certainty.

Keywords: Criminal Offense, Restoration, Restorative Justice

INTRODUCTION

The concept of restorative justice is a response to the failure of the retributive justice paradigm, which has significantly influenced the criminal justice system in Indonesia. Retributive justice focuses solely on the punishment of offenders, neglecting the rights of victims. As a result, the criminal justice system does not function as expected by the victims, as it is perceived to fail in accommodating their interests. In other words, the conventional justice system currently in place has led to widespread disappointment and dissatisfaction.¹

The restorative justice paradigm can be applied in the resolution of criminal cases to achieve substantive justice, while also creating balance for both the offender and the victim in relation to the crime committed.² Therefore, law enforcement institutions, at the stages of investigation (Police), prosecution (Prosecutors), and trial (Judges), must adopt an innovative and solution-oriented approach in handling criminal cases. This approach and innovation should address the interests of both the offenders and the victims, focusing not solely on procedural justice but also on achieving a fair and equitable resolution.³

Restorative justice has gained widespread attention in the face of public dissatisfaction with the formal legal system, which tends to be influenced by legal positivism and has not fully met the public's sense of justice. This system focuses primarily on legal certainty (*Rechtssicherheit*).⁴ Upon closer examination, a stark contrast emerges between the application of the restorative justice approach and the current criminal justice system. The conventional criminal justice system, characterized by the state's absolute authority over punishment, has established a criminal justice process that follows a rigid, procedural path.

Meanwhile, the restorative justice paradigm offers an alternative approach to addressing crimes outside the conventional criminal justice system. This includes methods such as arbitration and mediation, which are carried out freely and independently to determine the most equitable model for resolving criminal cases. Through this approach, the consideration of criminal matters shifts from being

¹ Destri Tsurayya Istiqamah, "ANALISIS NILAI KEADILAN RESTORATIF PADA PENERAPAN HUKUM ADAT DI INDONESIA," *Veritas et Justitia* 4, no. 1 (June 28, 2018): 201–26, <https://doi.org/10.25123/vej.v4i1.2914>.

² Hanafi Arief and Ningrum Ambarsari, "PENERAPAN PRINSIP RESTORATIVE JUSTICE DALAM SISTEM PERADILAN PIDANA DI INDONESIA," *Al-Adl : Jurnal Hukum* 10, no. 2 (August 13, 2018): 173–90, <https://doi.org/10.31602/al-adl.v10i2.1362>.

³ Hariman Satria, "RESTORATIVE JUSTICE: PARADIGMA BARU PERADILAN PIDANA," *Jurnal Media Hukum*, October 12, 2018, 111–23, <https://doi.org/10.18196/jmh.2018.0107.111-123>.

⁴ Afina Anindita Ektya Putri and Aidul Fitriadi Azhari, "Implementasi Prinsip Restorative Justice Tindak Pidana Penganiayaan Pada Tingkat Penyidikan (Studi Kasus Di Polresta Surakarta)," *UNES Law Review* 6, no. 3 (March 29, 2024): 8539–53, <https://doi.org/10.31933/unesrev.v6i3.1736>.

solely under the state's monopoly to recognizing the authority and agency of each individual involved.⁵

In recent years, the concept of restorative justice has gained prominence and developed, leading to its adoption by law enforcement agencies. The General Court, through the Director General of the General Court's Decree Number 1691/DJU/SK/PS.00/12/2020, mandates the implementation of restorative justice within the judicial system for the resolution of minor criminal cases, cases involving women in conflict with the law, and juvenile cases.⁶

The police institution has also formulated the concept of restorative justice as a paradigm shift through the Chief of Police Circular Letter Number: SE/8/VII/2018 on the implementation of restorative justice in the resolution of criminal cases, which was later updated by the Indonesian National Police Regulation Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice.⁷

The shift in the paradigm of sentencing from the conventional model to restorative justice represents a modern framework of thinking that is useful for responding to criminal acts by law enforcement and legal professionals.⁸ According to the National Police Commission (KOMPOLNAS) website, as many as 1,864 criminal cases have been resolved by the Indonesian National Police investigators using the restorative justice approach.⁹

Article 1, Paragraph (4) of the Indonesian National Police Regulation Number 8 of 2021 accommodates the definition of restorative justice, which states: "Restorative justice is the resolution of a criminal act 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 peace, emphasizing the restoration of the situation to its original state."

Based on the issues outlined above, it is necessary to focus on a clear and targeted study to generate concrete and systematic research. The research questions are formulated as follows: How is the implementation of criminal case handling through restorative justice according to the Indonesian National Police Regulation

⁵ Gregorius Widiartana, "PARADIGMA KEADILAN RESTORATIF DALAM PENANGGULANGAN KEJAHATAN DENGAN MENGGUNAKAN HUKUM PIDANA," *Justitia et Pax* 33, no. 1 (November 30, 2017), <https://doi.org/10.24002/jep.v33i1.1418>.

⁶ Mahkamah Agung Republik Indonesia, "Keputusan Direktur Jenderal Badan Peradilan Umum Nomor 1691/DJU/SK/PS.00/12/2020 Tentang Pemberlakuan Pedoman Penerapan Keadilan Restoratif (Restorative Justice)," 1691/DJU/SK/PS.00/12/2020 § (2020), <https://jdih.mahkamahagung.go.id/index.php/legal-product/sk-dirjen-badilum-nomor-1691djuskps00122020/detail>.

⁷ Kepolisian Negara Republik Indonesia, "Penerapan Keadilan Restoratif (Restorative Justice) Dalam Penyelesaian Perkara Pidana," SE/8/VII/2018 § (2018), <https://erepository.uwks.ac.id/7435/7/LAMPIRAN.pdf>.

⁸ Brilian Capera, "Keadilan Restoratif Sebagai Paradigma Pemidanaan Di Indonesia," *Lex Renaissance* 6, no. 2 (2021): 225–34, <https://doi.org/10.20885/JLR.vol6.iss2.art1>.

⁹ "Keadilan Restoratif Ala Polri: Saat Pemidanaan Jadi Nomor Dua," 2021, <https://www.alinea.id/nasional/keadilan-restoratif-polri-saat-pemidanaan-jadi-nomor-dua-b2c4393Ro>.

Number 8 of 2021 regarding the Handling of Criminal Acts Based on Restorative Justice at the East Java Regional Police? And, what is the legal strength in the enforcement of criminal law based on the Indonesian National Police Regulation Number 8 of 2021 on the Handling of Criminal Acts Based on Restorative Justice at the East Java Regional Police?

The urgency of this research is that the concept of restorative justice according to the Indonesian National Police Regulation Number 8 of 2021 on the Handling of Criminal Acts Based on Restorative Justice is a concept for resolving criminal acts outside the court, emphasizing the restoration of the situation to its original state and ensuring a balance in the protection of the interests of both the victim and the perpetrator at the investigation and inquiry stages, according to police authority, without focusing on sentencing. The Indonesian National Police Regulation Number 8 of 2021 on the Handling of Criminal Acts Based on Restorative Justice is binding internally within the scope of the police's administrative authority as a new concept in the law enforcement system that accommodates the norms and values prevailing in society for certainty, benefit, and justice.

Based on the explanation above, the central theme that can be drawn from this research is that the implementation of the restorative justice paradigm should not only be applied at the judicial or prosecutorial level, but rather during the investigation process by the police, as this approach is more effective and efficient, given that cases successfully resolved with restorative justice do not need to be brought to court. Therefore, the author is interested in conducting a study with the title: "The Implementation of the Restorative Justice Concept Based on Indonesian National Police Regulation Number 8 of 2021 on the Handling of Criminal Acts at the East Java Regional Police."

RESEARCH METHODOLOGY

The research method is a process of examination or investigation that uses reasoning and logical theories based on propositions and formulas of a particular science to test the truth of a hypothesis in a specific legal event. This study is a normative legal research, which is a study that uses library materials.¹⁰ The research employs a statute approach and a case approach.¹¹ The statute approach is essential for this study to clarify the legitimacy and legal strength of a norm, as well as to closely examine the regulations related to criminal law. The case approach is carried out by analyzing cases related to the legal issues at hand, which have been adjudicated and possess final and binding legal authority. The legal materials used in this research include primary and secondary legal

¹⁰ Prof Dr Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi* (Prenada Media, 2017).

¹¹ M. Tohir, *Metode Penelitian Hukum Dengan Pendekatan Perundang-Undangan Dan Kasus* (Jakarta: Sinar Grafika, 2013).

materials. These legal materials are the most important in the context of normative legal research. Secondary data includes books (references), scholarly articles, academic journals, government data archives, documentation studies, and magazines related to the topic of this research.

RESULT AND DISCUSSION

The Concept of Restorative Justice in the Criminal Justice System

Instead of concentrating only on punishment, the criminal court system's restorative justice (RJ) approach aims to mend relationships affected by criminal activities.¹² This concept emphasizes the importance of dialogue and reconciliation between the offender, the victim, and the community to achieve a more sustainable resolution. In restorative justice, offenders are confronted with the moral consequences of their actions and are given the opportunity to make amends in a more constructive manner, such as through compensation or rehabilitative actions.¹³ This contrasts with the retributive justice model, which focuses more on punishing the offender as a form of retaliation for the wrong committed.¹⁴

The main principle of restorative justice is restoration, not merely punishment. The focus is on repairing the harm experienced by the victim and providing the offender with an opportunity to rectify their actions. In this approach, the victim plays an important role in the resolution process, not only as a witness but also as a party able to express the impact of the crime they have endured.¹⁵ Restorative justice prioritizes open dialogue involving all relevant parties to find a fair solution and restore the harm experienced by the victim. This process may include meetings between the offender and the victim, facilitated by a neutral third party, such as a mediator.¹⁶

In addition, restorative justice encourages community involvement in the recovery process. The community is seen as having a responsibility to support both the victim and the offender in the healing process. This approach helps foster a greater sense of social responsibility for harmful individual actions. Therefore, restorative justice focuses not only on the individual but also on the broader societal impact. This can strengthen social bonds and reduce the likelihood of

¹² Afthonul Afif, *Pemaafan, Rekonsiliasi Dan Restoraive Justice* (Yogyakarta: Pustaka Pelajar, 2015).

¹³ Eko Syaputra, "PENERAPAN KONSEP RESTORATIVE JUSTICE DALAM SISTEM PERADILAN PIDANA DI MASA YANG AKAN DATANG," *Lex LATA 3*, no. 2 (2021): 233–47, <https://doi.org/10.28946/lexl.v3i2.1209>.

¹⁴ Howard Zehr, *Little Book of Restorative Justice: Revised and Updated*, 2nd Edition, Second (Intercourse, PA: Good Books, 2015).

¹⁵ Syaputra, "PENERAPAN KONSEP RESTORATIVE JUSTICE DALAM SISTEM PERADILAN PIDANA DI MASA YANG AKAN DATANG."

¹⁶ Elmar G. M. Weitekamp and Hans-Jürgen Kerner, eds., *Restorative Justice: Theoretical Foundations: Theoretical Foundations* (Cullompton: Willan, 2002).

future criminal behavior, as both the victim and the offender feel acknowledged and valued in the resolution process.¹⁷

While the concept of restorative justice has many positive potentials, its implementation in the criminal justice system is not always straightforward. The public's and law enforcement officials' comprehension and awareness of restorative justice represents a few of the major obstacles. Additionally, this approach is more suitable for minor offenses or crimes that do not cause significant harm, while for more serious crimes, such as violent offenses, the application of restorative justice may require more thorough consideration.¹⁸ However, with support from clear regulations, such as those outlined in Police Regulation Number 8 of 2021, restorative justice can provide a more humane and effective alternative in the resolution of criminal cases.¹⁹

Restorative justice also offers advantages in the context of offender rehabilitation. In traditional approaches that focus primarily on punishment, offenders are often not given the opportunity to understand the impact of their actions or to make positive changes. Through restorative justice, offenders are confronted with the reality that their actions have harmed others, both emotionally, socially, and materially. This process provides offenders with the chance to acknowledge their mistakes, take responsibility for their actions, and take steps to remedy the harm caused. This approach is believed to reduce the likelihood of reoffending, as offenders feel more involved in the recovery process and accept the consequences of their actions in a more meaningful way.

Furthermore, restorative justice provides a new perspective on achieving justice, where resolution is not only viewed from a legal standpoint, but also from a humanitarian perspective. This model emphasizes the importance of solutions that prioritize the balance of interests between the victim, offender, and society, and focuses on the restoration of damaged relationships. The restorative justice process teaches values of empathy, mutual understanding, and reconciliation, which not only provide solutions to specific legal cases but also encourage the creation of a more just and harmonious society. This becomes increasingly relevant in the modern era, where the focus on social justice and the restoration of relationships between individuals and communities is of paramount importance.

¹⁷ Nikmah Rosidah, *Budaya Hukum Hakim Anak Di Indonesia* (Semarang: Pustaka Magister, 2014), https://www.academia.edu/32086306/Budaya_Hukum_Hakim_Anak_di_Indonesia.

¹⁸ I. Made Tambir, "Pendekatan Restorative Justice Dalam Penyelesaian Tindak Pidana Di Tingkat Penyidikan," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 8, no. 4 (December 31, 2019): 549–74, <https://doi.org/10.24843/JMHU.2019.v08.i04.p09>.

¹⁹ Kepolisian Negara Republik Indonesia, "Perpol No. 8 Tahun 2021" (2021), <http://peraturan.bpk.go.id/Details/225020/perpol-no-8-tahun-2021>.

Criminal Offenses Eligible for Restorative Justice under Indonesian National Police Regulation Number 8 of 2021

The Indonesian National Police Regulation Number 8 of 2021 specifically governs the application of the restorative justice approach in handling criminal cases. This approach offers an alternative method for resolving criminal matters, focusing not only on punishing the offender but also on restoring the relationships between the offender, the victim, and the community. This regulation emerged as part of the reform of the criminal justice system to create a more humane and just legal framework.²⁰

Restorative justice, in the context of this regulation, is applied to certain types of criminal offenses that are considered minor or do not result in significant harm.²¹ The main objective of this mechanism is to create a peaceful solution that is acceptable to all parties involved, while also avoiding lengthy and costly judicial processes. The implementation of restorative justice is expected to reduce the burden of criminal cases in courts and improve the efficiency of law enforcement.²²

The types of crimes that can be subject to restorative justice include petty theft, minor property damage with small value, minor assault that does not cause serious injury, and traffic violations that do not result in fatalities or significant losses.²³ In cases like these, the restorative justice approach is considered relevant because it allows for resolution without the need to bring the matter through complex legal proceedings.

However, not all minor offenses can automatically be resolved through restorative justice. Police Regulation Number 8 of 2021 sets several conditions that must be met, including the victim's consent to settle the case amicably, the perpetrator's acknowledgment of their wrongdoing, and the absence of deep hatred or resentment.²⁴ In other words, restorative justice is voluntary and cannot be imposed on either party.

The restorative justice process itself is carried out through mediation between the victim, the offender, and the police. In this process, the parties are

²⁰ Siprianus Damai Nar, Simplexius Simplexius, and Orpa G. Manuain, "Tinjauan Yuridis Terhadap Keadilan Restoratif Dalam Pidana Penyelesaian Perkara Di Kepolisian Resort Kota (Polresta) Kupang," *Pemuliaan Keadilan* 1, no. 4 (October 6, 2024): 95–108, <https://doi.org/10.62383/pk.v1i4.172>.

²¹ Sukardi, *Restorative Justice Dalam Penegakan Hukum Pidana Indonesia* (Depok: PT. Raja Grafindo Persada, 2020).

²² Erdianto Effendi, "Settlement of Crime of Light Maltreatment Through Restorative Justice Approach in the Legal Area of Pekanbaru Police.," *DELICTUM : Jurnal Hukum Pidana Islam* 3, no. 1 (September 30, 2024): 31–52, <https://doi.org/10.35905/delictum.v3i1.9678>.

²³ Vivi Arfiani Siregar, "PERSPEKTIF RESTORATIVE JUSTICE DALAM PERLINDUNGAN ANAK SEBAGAI SISTEM PERADILAN PIDANA DI INDONESIA," *Jurnal Hukum Das Sollen* 4, no. 1 (2020), <http://ejournal.unisi.ac.id/index.php/das-sollen/article/view/1149>.

²⁴ Jenifer Tio Novalna Br Manalu, "Kewenangan Kepolisian Dalam Pemberlakuan Kebijakan Penghentian Penyidikan Berdasarkan Keadilan Restoratif Ditinjau Dari Teori Kewenangan," *Jurnal Kewarnageraraan* 8, no. 1 (2024): 1153–66, <https://doi.org/10.31316/jk.v8i1.6556>.

facilitated to engage in open dialogue regarding the incident, its impact, and the steps that can be taken to restore the situation. The agreement reached through mediation may include an apology, compensation for damages, or other forms of social responsibility.

This mechanism not only focuses on resolving conflicts but also on restoring public trust in the legal system. By bringing the offender and the victim face-to-face, this approach encourages the offender to acknowledge their wrongdoing and creates space for the victim to receive justice that is personal and holistic. This reflects the spirit of deliberation, which is a key aspect of legal values in Indonesia.

On the other hand, there are crimes that cannot be resolved through restorative justice. The regulation specifies that serious crimes such as sexual offenses, domestic violence (DV), terrorism, human trafficking, and large-scale drug trafficking must still be processed through formal legal channels. This is because these crimes have widespread social impacts and require stronger legal protection for the victims.

Overall, Police Regulation No. 8 Tahun 2021 opens opportunities for the criminal justice system in Indonesia to evolve toward a more inclusive, responsive, and efficient direction. The implementation of restorative justice not only benefits the offender and the victim but also contributes to maintaining public order comprehensively. With this regulation, it is hoped that justice can be experienced not only in the courtroom but also in the social life of the community.

The Application of Restorative Justice Concept in Criminal Offenses

Restorative Justice (RJ) is an approach within the criminal justice system that prioritizes the restoration and healing of all parties involved in a criminal offense, namely the offender, the victim, and the community. Unlike the retributive approach, which focuses on punishing the offender, RJ emphasizes repairing relationships and providing the offender with an opportunity to take responsibility for their actions.²⁵ This approach aims to reduce the negative impacts of criminal offenses on the victim and society, while providing the offender with an opportunity for self-improvement. In practice, RJ involves dialogue, mediation, and resolutions based on mutual agreement.

One of the key applications of RJ in criminal offenses is through the process of mediation or dialogue between the offender and the victim. In this process, both parties are given the opportunity to speak and listen to the impact caused by the crime. The victim can express the suffering or losses they have experienced, while the offender can acknowledge their wrongdoing and take responsibility for their actions. This mediation serves not only to provide a sense of justice to the

²⁵ Erdianto Effendi, Fitri Wahyuni, and Nilma Suryani, "Implementation of Restorative Justice to Corruption Crimes According to The Perspective of Indonesian Criminal Law And Islamic Law," *Nagari Law Review* 6, no. 2 (2023): 65–71, <https://doi.org/10.25077/nalrev.v.6.i.2.p.65-71.2023>.

victim but also offers the offender a chance to show remorse and amend their behavior. As a result, this process can foster the restoration of a more positive relationship between the offender and the victim.²⁶

The implementation of RJ can also be carried out through out-of-court settlements, commonly referred to as diversion. Diversion is a process of resolving cases outside the formal judicial system, especially in minor cases or those involving children and adolescents. This approach allows the offender to participate in rehabilitation programs or take corrective actions that are more educational than imprisonment. In Indonesia, diversion is regulated under Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, which provides space for restorative resolution of juvenile cases, without the need for formal judicial processes focused on punishment.²⁷

In addition, in the implementation of RJ, offenders are often asked to take concrete actions that can repair the harm suffered by the victim, such as compensating for material losses or participating in rehabilitation programs. These rehabilitation programs aim to change the offender's behavior, thereby preventing similar offenses in the future. Rehabilitation also includes psychological aspects, such as counseling or therapy, which can help the offender gain a deeper understanding of the impact of their actions on others and encourage them to take social responsibility. This approach aims to provide opportunities for the offender to reintegrate into society positively.²⁸

The community also plays a crucial role in the implementation of RJ. In many cases, the community could be involved in the mediation process and provide support to both the victim and the offender. The community helps create an environment that supports the recovery of both the victim and the offender. Furthermore, the community can facilitate the implementation of the agreements reached during mediation, such as assisting the offender in fulfilling compensation or rehabilitation programs. The presence of the community in criminal case resolution reduces the perception that the legal process is detached from social life and brings justice closer to individuals and society.²⁹

However, the implementation of the RJ concept also faces several challenges. One of the main difficulties lies in handling cases involving very serious crimes or extreme violence, where the mediation process may be ineffective or even pose a risk to the victim. Additionally, the success of RJ heavily depends on the readiness and openness of all parties involved, including victims who may feel traumatized or unprepared to interact with the offender.

²⁶ Zehr, *Little Book of Restorative Justice*.

²⁷ Muhammad Arham and Abdul Rahman, "DIVERSI DALAM SISTEM PERADILAN PIDANA ANAK" 1, no. 1 (2024).

²⁸ John Braithwaite, *Restorative Justice & Responsive Regulation*, Online (New York: Oxford Academic, 2023), <https://doi.org/10.1093/oso/9780195136395.001.0001>.

²⁹ Gerry Johnstone and Daniel Van Ness, *Handbook of Restorative Justice* (Routledge, 2013).

Therefore, it is crucial for the justice system to ensure that RJ is applied wisely, taking into account the circumstances of each party, and providing training to mediators so that the process can be carried out fairly and effectively.³⁰

CONCLUSION

The implementation of the Restorative Justice concept based on the Indonesian National Police Regulation No. 8 of 2021 on Criminal Offenses underscores the importance of a restorative approach that involves the victim, offender, and society in the resolution of criminal cases. This regulation provides a legal foundation for the police to apply Restorative Justice in handling criminal cases, prioritizing the restoration of relationships among the parties involved, rather than focusing solely on punishment. However, its implementation requires strict oversight and alignment with existing legal principles, as well as a thorough understanding by law enforcement officials to prevent potential misuse of the concept. Thus, the Restorative Justice concept outlined in this regulation has the potential to create a more inclusive and sustainable form of justice, while strengthening social integration through fair and humane resolutions.

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³⁰ Gabriel Oluseyi Akinyemi, "Restorative Justice: A Critical Review," *EC PSYCHOLOGY AND PSYCHIATRY* 7, no. 11 (2018): 862–68.

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