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## Restorative justice in Indonesian criminal law: Integrating Pancasila values in police discretion practices

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### Abstract

Restorative Justice (RJ) has become an alternative approach in criminal law, emphasizing reconciliation and social restoration rather than punitive measures. This study examines the implementation of RJ in Indonesia by integrating Pancasila values, particularly the principles of Just and Civilized Humanity and Social Justice. The research employs a qualitative approach, utilizing a literature review, interviews with law enforcement officers, and case analysis of RJ applications under Indonesian National Police Regulation No. 8 of 2021. The findings reveal that RJ provides a humanistic and rehabilitative approach through mediation and dialogue, reducing the burden on the judicial system and strengthening social cohesion. However, inconsistencies in police discretion, cultural resistance, and a lack of structured training pose significant challenges to its implementation. The study concludes that while RJ aligns with Indonesia's legal and philosophical foundation, it requires legal reinforcement through statutory recognition, enhanced police training programs, and increased public awareness to ensure consistency and effectiveness. This research contributes to the discourse on RJ by demonstrating its potential to harmonize legal certainty with social justice, advocating for a balanced legal framework that integrates Pancasila values into Indonesia's criminal justice system.

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### 1. Introduction

Restorative Justice (RJ) is an alternative approach in the criminal justice system that emphasizes restoring relationships between offenders, victims, and society [1]. This approach aims to create more inclusive justice through dialogue, mediation, and peaceful conflict resolution. In Indonesia, the concept of RJ is relevant to Pancasila values, particularly the second and

fifth principles, which emphasize humanity and social justice [2]. In the context of criminal law, RJ offers a more humanistic solution compared to the traditional retributive approach, which often focuses only on punishment without considering the restoration of social relationships.

In the Indonesian criminal justice system, the implementation of restorative justice (RJ) has been accommodated through policies such as Indonesian National Police Regulation No. 8 of 2021, which allows law enforcement officers to use discretion in resolving minor criminal cases [3]. This policy enables conflict resolution through mediation between offenders and victims, aiming to reach a peaceful agreement oriented toward restoration [4]. This approach not only reflects the value of consensus-based decision-making (*musyawarah untuk mufakat*) in Pancasila but also provides a more efficient alternative for reducing the burden on the criminal justice system [5, 6].

However, the implementation of RJ in Indonesia still faces various obstacles, including a lack of understanding among the public and law enforcement regarding the principles of RJ and the underlying Pancasila values. Additionally, cultural resistance in certain regions presents challenges to the adoption of this approach. Nevertheless, the potential of RJ to create more inclusive justice and strengthen social cohesion remains significant. By consistently integrating Pancasila values and providing intensive training for law enforcement officers, RJ can become an effective instrument in establishing a more just and restorative criminal justice system.

## 2. Literature Review

The concept of Restorative Justice (RJ) is rooted in restorative justice theory, which emphasizes the restoration of relationships between offenders, victims, and society. This theory is based on the idea that crime is not only a violation of state laws but also damages social relationships that need to be repaired through active participation from all parties involved. In this context, RJ aims to address the harm caused by criminal acts through dialogue, mediation, and peaceful conflict resolution. This principle aligns with Pancasila values, particularly the second and fifth principles [7].

According to Anggara [7] restorative justice theory is also grounded in a humanistic approach, which places individuals at the center of the legal process. Offenders are not merely seen as subjects to be punished but also as individuals who have the potential to take responsibility and correct their mistakes [8, 9]. This reflects the principle of *just and civilized humanity* as stated in Pancasila. Thus, RJ seeks to create a balance between retributive and rehabilitative justice.

In Indonesia, this theory is highly relevant to police discretion, as regulated in Indonesian National Police Regulation No. 8 of 2021. This regulation provides law enforcement officers with the authority to resolve certain criminal cases through restorative justice (RJ), especially for minor offenses. Such an approach allows for the realization of a justice system that is more inclusive and oriented toward restoration rather than mere punishment. This also aligns with the principle of *musyawarah untuk mufakat* (deliberation to reach consensus) in Pancasila [10, 11].

Restorative justice theory also underscores the importance of active participation from all involved parties, including victims, offenders, and the community [12, 13]. Such participation fosters a collective sense of justice. In the context of Indonesian criminal law, this approach can strengthen national unity and cohesion, as enshrined in the third principle of Pancasila. Therefore, RJ not only serves as a mechanism for conflict resolution but also as a tool to enhance social harmony.

The integration of Pancasila values into restorative justice theory provides a strong philosophical foundation for its application in the Indonesian legal system. Principles such as social justice, humanity, and deliberation serve as guidelines at every stage of the RJ process [14, 15]. By referring to this theory, the study aims to explore how Pancasila values can be effectively implemented in police discretion practices to create a more just and restorative legal system [16, 17].

## 3. Research Method

### 3.1. Literature Review on Restorative Justice and Pancasila Values

The literature review method was conducted by examining various academic sources, such as scientific journals, books, and legal documents relevant to the concepts of *Restorative Justice* (RJ) and *Pancasila* values [14]. This research began by identifying key literature discussing restorative justice theory, its principles, and its application in the field of criminal law. Additionally, an analysis was conducted on Indonesian legal documents, including Indonesian National Police Regulation No. 8 of 2021, to understand how police discretion supports RJ implementation. These sources were selected based on their credibility and relevance to the research topic.

In this process, researchers also examined how restorative justice (RJ) has been implemented in different countries with varying social and cultural contexts. This comparative study aimed to identify best practices that could be adapted to the Indonesian legal system. For instance, experiences from countries like New Zealand and Canada, where community-based RJ is integrated into criminal justice, provide valuable insights into how similar approaches might be applied in Indonesia [18]. The research also highlights the importance of community involvement in RJ processes, aligning with Pancasila values such as deliberation (*musyawarah*) and cooperation (*gotong royong*). Therefore, this comparative study not only enriches the analysis but also offers new perspectives on the potential for RJ implementation in Indonesia.

The literature analysis process involved in-depth secondary data collection to explore the relationship between RJ and Pancasila values. The researchers used a conceptual approach to identify key variables, such as social justice, humanity, and deliberation, which are relevant to both concepts. The analyzed literature included international and national case studies, as well as theoretical perspectives that support the integration of Pancasila values into RJ practices. The collected data were synthesized to build the conceptual framework underlying this study.

Additionally, the researchers reviewed literature discussing challenges and opportunities in RJ implementation in Indonesia. The focus was on how Pancasila values can be effectively integrated into criminal law practices through police discretion. This analysis included an evaluation of success factors and barriers in RJ implementation from both legal and

social perspectives. As a result, this literature review provides a strong theoretical foundation to support further research and guide the development of relevant policies.

### *3.2. Policy Analysis of Indonesian Criminal Law Regarding Police Discretion*

The policy analysis method in Indonesian criminal law concerning police discretion was conducted using a qualitative approach, reviewing relevant legal documents such as Indonesian National Police Regulation No. 8 of 2021 and other regulations supporting RJ implementation. The researchers analyzed the content of these documents to identify the RJ principles accommodated within the policies. Additionally, an evaluation was carried out to assess the consistency of these policies with Pancasila values, particularly the second and fifth principles, to understand the extent to which they reflect justice oriented toward restoration and deliberation.

This policy analysis also included a comparative study of RJ approaches in Indonesia and similar practices in other countries [19]. The researchers examined how Indonesian criminal law integrates police discretion in resolving minor offenses through RJ, compared to international policy models. This study aimed to identify strengths and weaknesses in existing policies and provide recommendations for improvements. The data obtained from this comparative study were used to evaluate the effectiveness of these policies in creating inclusive justice.

Furthermore, the researchers used a thematic analysis method to identify key themes emerging from criminal law policies regarding police discretion. These themes included social justice, humanity, and deliberation, which align with Pancasila's values. The findings from this analysis were synthesized to explore the relationship between criminal law policies and RJ implementation in the Indonesian socio-legal context. Thus, this method provides a deeper understanding of how these policies can be optimized to support effective and sustainable RJ implementation.

### *3.3. Case Studies on Restorative Justice Implementation in Criminal Cases*

A case study method was used to conduct an in-depth analysis of several criminal cases in Indonesia that have been resolved through RJ. Case selection was based on purposive sampling, considering factors such as the type of minor criminal offenses handled through RJ, the role of police discretion in case resolution, and the active participation of victims, offenders, and the community. Primary data were collected from official documents, such as case resolution reports, mediation agreements, and legal documents related to RJ implementation. In addition, secondary data from journal articles, news reports, and research studies were used to support the analysis [20, 21].

Each selected case was analyzed using a qualitative approach to identify RJ processes, including Mediation stages; Dialogue and conflict resolution methods; and the role of police discretion in facilitating case settlement. The study evaluated how Pancasila values, such as humanity, social justice, and deliberation, were integrated into RJ processes. The findings were coded and categorized into key thematic areas relevant to the study.

The results from this case study analysis were then compared with theoretical frameworks on restorative justice and policy analyses of Indonesian criminal law to assess the effectiveness of RJ implementation. The researchers also identified challenges in RJ application, such as cultural resistance and lack of public awareness. This case study aims to provide empirical insights into RJ practices in Indonesia while exploring how *Pancasila* values can be effectively implemented in resolving criminal cases.

## **4. Research and Analysis**

### *4.1. Analysis of Restorative Justice Principles in the Context of Indonesian Criminal Law*

Restorative justice (RJ) principles in the context of Indonesian criminal law emphasize the restoration of relationships between offenders, victims, and society. According to Amjad and Riaz [22], these principles align with Pancasila values, particularly the second and fifth principles, which emphasize humanity and social justice. In practice, RJ provides a space for resolving conflicts peacefully through dialogue and mediation. This approach aims to reduce the negative impacts of the retributive justice system, which often focuses solely on punishment without considering the restoration of social relationships.

Additionally, RJ promotes the active involvement of communities in the justice system. In several cases, local communities have played the role of mediators in reconciliation processes between victims and offenders. This approach not only leads to more inclusive solutions but also strengthens social cohesion at the community level. By involving the community, RJ is not just a conflict resolution mechanism but also a tool for rebuilding trust between individuals. This approach reflects the value of cooperation (*gotong royong*), a fundamental part of Indonesian culture and a key component of Pancasila.

A deeper analysis of Indonesian National Police Regulation No. 8 of 2021 reveals that RJ principles have been integrated into criminal justice policies, especially for minor offenses. This regulation allows law enforcement officers to use discretion to resolve cases through mediation between offenders and victims. The RJ principles applied include: Offender accountability, in which the perpetrator acknowledges their wrongdoing; Compensation for the victim, where the offender compensates for the damage caused; and Community involvement, where the resolution process involves dialogue with the community to ensure social harmony.

This policy offers a more humanistic approach to law enforcement, where the goal is not just punishment but restoration and prevention of future offenses [23]. However, the effectiveness of RJ in Indonesia still faces challenges, including Cultural resistance, some communities are unfamiliar with or hesitant to adopt RJ approaches; Lack of public awareness, victims and offenders may not fully understand the benefits of RJ; Discretionary inconsistency, Police officers may apply RJ differently

across jurisdictions, leading to inconsistencies. Thus, integrating RJ principles with Pancasila values provides a philosophical and practical framework for ensuring that justice is not only punitive but also restorative and socially beneficial.

#### *4.2. Normative Analysis of Indonesian National Police Regulation No. 8 of 2021 Based on the Lex Specialis Systematische Principle and the Hierarchy of Laws*

Indonesian National Police Regulation No. 8 of 2021 on the Handling of Criminal Cases Based on Restorative Justice is an internal policy that expands police discretion to settle minor offenses through mediation [24]. However, within the Indonesian legal hierarchy, this regulation has a lower legal standing compared to higher laws, including the Criminal Code (KUHP) and the Criminal Procedure Code (KUHAP). It is, therefore, essential to assess the legal standing of this regulation based on the *lex specialis systematische* principle, as well as Articles 7 and 8 of Law No. 12 of 2011 on the Formation of Legislation [25].

The legal hierarchy in Indonesia, as outlined in Article 7(1) of Law No. 12 of 2011, follows this structure:

1. The 1945 Constitution of the Republic of Indonesia.
2. Decrees of the People's Consultative Assembly (MPR)
3. Laws (UU) or Government Regulations instead of Law (Perppu)
4. Government Regulations (PP)
5. Presidential Regulations (Perpres)
6. Provincial Regulations (Perda Provinsi)
7. Regency/City Regulations (Perda Kabupaten/Kota) (Law No. 12 Year 2011, Article 7 (1)).

Meanwhile, Article 8(1) states that certain regulations are valid and binding but do not fall within the primary legal hierarchy. These include: Regulations issued by state institutions or government agencies, such as ministerial regulations or independent agency regulations; regulations that are only binding if mandated by a higher regulation or issued within an institution's legal authority.[26].

From a legal perspective, Indonesian National Police Regulation No. 8 of 2021 does not have the same legal authority as laws (UU) or government regulations (PP). Instead, it falls under internal regulatory policies applicable mainly to police officers and relevant stakeholders. As such, its implementation must remain subordinate to higher regulations, such as KUHAP, KUHP, and other applicable criminal justice laws.

The *lex specialis systematische* principle states that a more specific law can override a more general law within the same legal system. In the case of Indonesian National Police Regulation No. 8 of 2021, this regulation is a specific law governing procedures for resolving minor offenses through RJ, which are not extensively covered in KUHAP or KUHP. However, the regulation cannot override general procedural laws, such as KUHAP, which governs criminal investigations and prosecutorial authority. Any contradiction with higher legal norms would render the regulation legally weak [27].

Additionally, according to the *lex superior derogat legi inferiori* principle, a higher legal norm takes precedence over a lower one [28]. This means that if there is any legal inconsistency between Indonesian National Police Regulation No. 8 of 2021 and KUHAP, the latter prevails.

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A critical issue in the application of this regulation is the broad discretionary power granted to police officers. Without clear oversight mechanisms, there is a risk that such discretion may be misused or applied inconsistently across regions [30, 31]. Therefore, for better legal certainty, this regulation should be reinforced by: a Government Regulation (PP) that formally regulates RJ implementation at the investigation stage, and amendments to KUHP or KUHAP to explicitly incorporate RJ approaches.

Based on this analysis, the following conclusions emerge: First, Indonesian National Police Regulation No. 8 of 2021 is a special internal regulation, but it does not have a higher legal standing than KUHAP and other statutory laws. Second, RJ principles must align with broader criminal justice policies, ensuring that police discretion does not conflict with legal norms. Third, the legal certainty of RJ in Indonesia remains weak, necessitating higher-level regulations to formalize its implementation.

#### *4.3. Evaluation of Police Discretion Implementation Based on Indonesian National Police Regulation No. 8 of 2021*

The research findings indicate that the implementation of police discretion under Indonesian National Police Regulation No. 8 of 2021 has provided a clear legal foundation for applying Restorative Justice (RJ) in handling minor criminal cases. This discretion allows police officers to prioritize mediation between offenders and victims, aiming for a mutually acceptable resolution. However, the evaluation reveals that the application of this discretion is not yet fully consistent across different regions, primarily due to variations in police officers' interpretations of RJ principles.

In practice, several challenges hinder the effective implementation of police discretion in restorative justice (RJ), including a lack of specialized training for law enforcement personnel regarding the proper application of mediation procedures in RJ. Variations in interpretation among officers lead to inconsistent applications of RJ in different police jurisdictions. Limited public awareness regarding the benefits of RJ causes some victims to be hesitant about participating in mediation processes. Insufficient oversight mechanisms prevent the appropriate exercise of police discretion, which can lead to potential misuse.

Moreover, research highlights that the success of RJ depends heavily on active participation from all involved parties. In some cases, victims are reluctant to participate in RJ processes due to concerns about fairness or doubts regarding the

offender's sincerity. This reluctance represents one of the main barriers to achieving the desired social restoration through RJ.

Additionally, the study identifies that community support plays a crucial role in RJ implementation. In areas where legal awareness is high, RJ tends to be more effective, as communities are more receptive to mediation-based conflict resolution. Conversely, in regions where cultural norms strongly favor punitive justice, RJ often faces resistance. This finding emphasizes the importance of a localized approach, where RJ strategies should be adapted to each community's cultural context.

Overall, the evaluation of Indonesian National Police Regulation No. 8 of 2021 reveals that, although it provides a strong foundation for RJ in Indonesia, its success depends on:

Comprehensive training programs for police officers to standardize RJ application. Public education campaigns to increase awareness about RJ's benefits. Stronger legal oversight to ensure that police discretion is not misused or applied arbitrarily. By addressing these challenges, RJ can become a more effective and reliable alternative to traditional retributive criminal justice approaches in Indonesia.

#### *4.4. Integration of Pancasila Values in Restorative Justice Processes*

The findings indicate that the integration of Pancasila values into Restorative Justice (RJ) processes reflects a justice model that is both humanistic and equitable [2]. The second principle of Pancasila (Just and Civilized Humanity) is evident in RJ's emphasis on respecting the dignity of both victims and offenders. Mediation allows offenders to acknowledge their wrongdoing while enabling victims to express their grievances, ensuring a justice process that is both fair and rehabilitative [14]. The fifth principle (*Social Justice for All People of Indonesia*) is reflected in the fair distribution of justice through RJ. Rather than focusing solely on punishing offenders, RJ aims to restore social harmony and provide balanced outcomes for all parties involved.

The principle of deliberation (*musyawarah untuk mufakat*), enshrined in the fourth principle of Pancasila, is a fundamental element of RJ [14]. Mediation and dialogue between the victim, offender, and community serve as mechanisms to rebuild trust and resolve conflicts amicably. Unlike the adversarial nature of traditional court proceedings, RJ fosters a collaborative decision-making process that aligns with Indonesia's cultural values.

Additionally, RJ supports the third principle of Pancasila (Indonesian Unity) by reducing social division caused by criminal conflicts [4, 14]. In many cases, unresolved legal disputes lead to long-term social rifts between individuals or groups. Through community-based RJ initiatives, offenders can reintegrate into society more smoothly, thereby fostering stronger communal ties.

However, despite the strong philosophical alignment between RJ and Pancasila, challenges remain in translating these values into practical legal frameworks. The lack of formal legal recognition for Pancasila-based RJ principles in statutory law remains a major gap. To address this, future policy reforms should explicitly incorporate Pancasila values into the legal framework governing RJ in Indonesia [4].

#### *4.5. Case Studies on Restorative Justice Implementation in Minor Criminal Cases*

To assess the practical application of RJ in Indonesia, this study examined several cases resolved through RJ mechanisms. The findings from these case studies provide empirical insights into how RJ operates and its impact on criminal justice outcomes.

##### *4.5.1. Case Study 1: Resolving Petty Theft through Restorative Justice*

One case involved a minor theft in a rural community, where an offender was accused of stealing a small amount of goods from a local shop [32, 33]. Instead of pursuing criminal charges, the police facilitated a mediation session between the offender and the victim. The resolution process involved: The offender admitting wrongdoing and apologizing to the victim. The offender compensates the victim by replacing the stolen goods. Community elders serve as mediators to ensure fairness and prevent future incidents.

As a result, the case was resolved without formal prosecution, and the offender was reintegrated into the community. This case demonstrates the effectiveness of restorative justice (RJ) in minor offenses, particularly in communities that value social reconciliation over punitive measures.

##### *4.5.2. Case Study 2: Mediation in Domestic Violence Disputes*

Another case involved a domestic violence dispute, where a husband was accused of physically assaulting his wife during an argument [34]. Through RJ mediation, the offender was required to attend counseling sessions to address anger management issues. The victim was given support and assurances of future protection. A written agreement was established, ensuring the offender would not repeat the behavior. This case illustrates how RJ can be a constructive alternative to criminal prosecution, particularly for first-time offenders who show genuine remorse and a willingness to reform.

##### *4.5.3. Case Study 3: Traffic Violations and Restorative Justice Approaches*

In cases of traffic violations resulting in material damages, RJ was implemented to facilitate compensation agreements between offenders and victims [35]. Instead of undergoing lengthy court proceedings, the parties involved reached a fair settlement through police-facilitated mediation. These case studies collectively demonstrate RJ's versatility and effectiveness in resolving minor disputes. However, they also highlight the challenges of ensuring fairness and preventing coercion in the mediation process.

Based on that the success of Restorative Justice (RJ) heavily depends on the active role of law enforcement officers as facilitators. In several cases, a lack of understanding among officers regarding RJ principles resulted in ineffective mediation processes. For instance, some victims expressed dissatisfaction with mediation outcomes, perceiving them as unfair. These findings highlight the importance of specialized training for law enforcement officers to ensure that RJ processes are conducted professionally and by *Pancasila* values [36].

Furthermore, community support plays a crucial role in the success of RJ [8]. In communities with a high level of legal awareness, mediation processes are generally more accepted and effective. Conversely, in regions where cultural resistance or strong traditional norms persist, RJ implementation often encounters significant obstacles. This underscores the importance of a context-sensitive approach in RJ implementation, ensuring that the process is culturally acceptable and maximizes benefits for all parties involved.

#### *4.6. Challenges and Urgency of Restorative Justice Implementation in Indonesia*

The implementation of Restorative Justice (RJ) in Indonesia faces significant challenges, primarily due to a lack of understanding among both the public and law enforcement officers regarding RJ concepts and principles [37]. Research indicates that many police officers have not received adequate training on mediation procedures and the *Pancasila* values underlying RJ. This often leads to suboptimal implementation of RJ, with the potential for misuse of discretion that may disadvantage one of the involved parties. Consequently, capacity building through intensive training programs for law enforcement has become an urgent necessity.

Additionally, cultural resistance and adherence to traditional norms in certain regions present substantial barriers to RJ implementation [38]. Research finds that some communities reject RJ approaches, preferring to resolve conflicts through customary mechanisms or rigid legal formalities. This resistance is often exacerbated by low levels of legal awareness, which result in a lack of active participation in RJ processes. Therefore, a context-sensitive approach that considers local social and cultural dynamics is essential to overcome these challenges.

The study also identifies a strong urgency for RJ implementation, particularly in regions with a strong tradition of consensus-based decision-making (*musyawarah*) [39]. In these communities, RJ is more readily accepted, as it aligns with local values that prioritize dialogue and peaceful conflict resolution. Active community participation in RJ processes not only expedites case resolution but also reinforces social solidarity. This finding highlights RJ's potential as a tool for rebuilding trust between individuals and within communities.

Policy support, such as Indonesian National Police Regulation No. 8 of 2021, further reinforces the need for broader RJ implementation in Indonesia. This policy provides a clear legal framework for police officers to exercise discretion in resolving minor criminal cases through mediation [40]. Research suggests that this policy can reduce the burden on the criminal justice system and foster a more inclusive justice process, provided that its implementation remains consistent and well-supervised.

Finally, the study underscores the importance of integrating *Pancasila* values into RJ processes as a fundamental component of a more humanistic and just legal system. Values such as humanity, social justice, and consensus-based deliberation should guide every stage of the RJ process. Through broader public awareness campaigns and intensive training programs [41] this integration can strengthen RJ implementation in Indonesia, ensuring that the legal system becomes more responsive to societal needs.

The implementation of Restorative Justice (RJ) within Indonesia's criminal law framework holds significant potential for fostering a more humanistic and equitable legal system. RJ principles—such as social relationship restoration, active participation, and dialogue—align with *Pancasila* values, particularly the second (Just and Civilized Humanity) and fifth (Social Justice for All People of Indonesia) principles. This approach not only provides a more inclusive solution for conflict resolution but also mitigates the negative consequences of punitive justice models. By integrating *Pancasila* values, RJ can balance retributive justice with restorative approaches, forming a crucial foundation for criminal justice reform.

From an implementation perspective, RJ also has the potential to strengthen community involvement in legal conflict resolution. Through active public participation, RJ can cultivate a greater sense of collective responsibility toward the restoration of both victims and offenders. This approach not only alleviates the burden on formal judicial institutions but also fosters long-term, sustainable solutions. Furthermore, community-based RJ initiatives serve as a mechanism for revitalizing local values that promote social harmony, such as consensus-based deliberation (*musyawarah*) and cooperation (*gotong royong*). Thus, RJ functions not only as a legal instrument but also as a means to enhance grassroots social solidarity.

## **5. Conclusion**

Overall, this study demonstrates that policies such as Indonesian National Police Regulation No. 8 of 2021 constitute internal regulations with a specific scope, but they do not hold a higher legal standing than statutory laws (UU) and the Criminal Procedure Code (KUHAP) within the national legal system. In the application of the *lex specialis systematische* principle, this regulation must not contradict higher legal norms, particularly regarding investigative discretion and case termination procedures. Indonesian National Police Regulation No. 8 of 2021 carries the risk of creating legal uncertainty if it is not accompanied by higher-level regulations that systematically accommodate the Restorative Justice (RJ) approach.

As a recommendation, RJ regulations should be strengthened through statutory law (Undang-Undang) or Government Regulations (Peraturan Pemerintah) to establish a higher legal standing within Indonesia's legislative framework. Additionally, clearer oversight mechanisms are needed to regulate police discretion in RJ implementation, including defining case limitations that qualify for RJ resolution. Furthermore, harmonization with KUHAP and other relevant regulations is essential to ensure that RJ applications do not conflict with the prevailing criminal justice system. By establishing higher-

level regulations, RJ can be implemented with greater legal certainty while maintaining alignment with the hierarchy of Indonesian legal norms.

## References

- [1] Park University, *The role of restorative justice in modern criminal justice administration: Understanding restorative justice principles, defining restorative justice, the impact of restorative justice on criminal justice administration*. United States: Park University, 2024.
- [2] G. Y. Priskila and F. X. Wartoyo, "Fair value of Pancasila in the framework of criminal code renewal," *Law Review*, vol. 22, no. 3, pp. 343-359, 2023. <https://doi.org/10.19166/lr.v20i1.5974>
- [3] N. Revaldy, I. K. Made, M. Markoni, and H. Helvis, "Settlement of criminal cases of minors with the principle of restorative justice in the east Belitung police," *Parlementer: Journal of Law and Public Administration Studies*, vol. 1, no. 3, pp. 19-40, 2024. <https://doi.org/10.62383/parlementer.v1i3.57>
- [4] M. Firdaus, C. Dwilaksana, and M. D. A. Oniella, "Shifting Polri's law enforcement strategy: Restorative justice for public trust," *Jurnal Media Hukum*, vol. 30, no. 2, pp. 153-170, 2023. <https://doi.org/10.18196/jmh.v30i2.18628>
- [5] A. I. Hamzani, F. D. Aryani, B. T. Bawono, N. Khasanah, and N. R. Yunus, "Non-procedural dispute resolution: Study of the restorative justice approach tradition in Indonesian society," *International Journal of Offender Therapy and Comparative Criminology*, vol. 69, no. 4, pp. 373-387, 2025. <https://doi.org/10.1177/0306624X231165425>
- [6] A. F. Abdussalam, H. Abdurrachman, and A. I. Hamzani, "The need for cultural reform in the Indonesian republic police," *SALAM: Jurnal Sosial dan Budaya Syar-i*, vol. 10, no. 1, pp. 141-154, 2023. <https://doi.org/10.15408/sjsbs.v10i1.31111>
- [7] S. Anggara, "John Rawls' theory of justice critiques liberal democracy," *Jispo*, vol. 1, no. 1, pp. 1-11, 2016. <https://doi.org/10.15575/jispo.v1i1.710>
- [8] M. B. Scholl and C. B. Townsend, "Restorative justice: A humanistic paradigm for addressing the needs of victims, offenders, and communities," *The Journal of Humanistic Counseling*, vol. 63, no. 3, pp. 184-200, 2024. <https://doi.org/10.1002/johc.12204>
- [9] H. Kaur and A. Sharma, *The principle of restorative justice towards the strengthening of crime prevention as viewed from the pragmatic Gandhian lens*, in *Relevance of Duties in the Contemporary World*. Singapore: Springer Nature Singapore, 2022, pp. 273-284.
- [10] A. Hosnah, "Discretion in criminal law perspective," *Justicia Sains: Jurnal Ilmu Hukum*, vol. 4, no. 2, p. 134, 2020. <https://doi.org/10.24967/jcs.v4i2.480>
- [11] A. Aristoni, "Discretionary legal action in the concept of Welfare sTaTe from the perspective of State Administrative Law and Islamic Law," *Research Journal*, vol. 8, no. 2, pp. 1-26, 2014.
- [12] K. V. Fardha, "Development of criminal law theories," *INNOVATIVE: Journal Of Social Science Research*, vol. 3, no. 5, pp. 3982-3991, 2023.
- [13] I. Adipuspito, "Positivist paradigm in legal science: Critique of the normative legal theory view in Indonesia," *Jurnal Hukum Proyuris*, vol. 2, no. 1, pp. 131-141, 2020.
- [14] A. Syahrin, M. Anggusti, and A. A. Alsa, *Legal reform based on Pancasila*. Medan: Merdeka Kreasi, 2023.
- [15] A. Syahrin, M. Anggusti, and A. A. Alsa, *Corruption and money laundering in the natural resources sector*. Medan: Merdeka Kreasi, 2024.
- [16] A. Agusetiawan, H. Bakir, and E. Israhadi, "The role of Polmas in the settlement of mindful criminal actions using a restorative justice approach," in *Proceedings of the 3rd International Conference on Law, Social Science, Economics, and Education (ICLSSEE 2023)*, May 6, 2023, Salatiga, Central Java, Indonesia. European Alliance for Innovation, 2023.
- [17] F. Esfandiari, A. Putri Jade, F. Ulum, and Y. Adhial Fajrin, "The implementation of restorative justice by the Indonesian police: An overview of legal philosophy," Retrieved: <https://www.researchgate.net/publication/359193793>, 2021.
- [18] H. Colby, *The criminal justice system in New Zealand*. New Zealand: Oxford University Press, 1994.
- [19] P. Gerkin, J. Walsh, J. Kuilema, and I. Borton, "Implementing restorative justice under the retributive paradigm: A pilot program case study," *Sage Open*, vol. 7, no. 1, p. 2158244017691562, 2017. <https://doi.org/10.1177/2158244017691562>
- [20] O. Fridoki, "Implementation of restorative justice in resolving fraud and embezzlement cases at the Medan Police," Doctoral Dissertation, University of North Sumatra, 2019.
- [21] A. Chandra, M. Ablisar, M. Mulyadi, and M. Ekaputra, "Criminal law enforcement against perpetrators of the criminal act of spreading Hoax News," *Locus Journal of Academic Literature Review*, pp. 500-511, 2023. <https://doi.org/10.56128/ljoalr.v2i6.174>
- [22] S. Amjad and N. Riaz, "The concept and scope of restorative justice system: Explaining history and development of the system for the immediate need of society," *International Journal of Law*, vol. 5, no. 5, pp. 100-104, 2019.
- [23] M. Suzuki, "From 'what works' to 'how it works' in research on restorative justice conferencing: The concept of readiness," *The International Journal of Restorative Justice*, vol. 3, pp. 356-373, 2020. <https://doi.org/10.5553/ijrj.000049>
- [24] B. Manan, *Basics of Indonesian legislation*. Indonesia: Ind-Hill, 1992.
- [25] S. Hartono, *Analysis and evaluation of Dutch colonial legacy legislation*. Indonesia: Bphn, 2015.
- [26] R. Marzuki, A. Syahrin, M. Mulyadi, and N. N. Sirait, "Legal subjects and corporate criminal liability based on Law No. 1 of 2023 on the Indonesian criminal code," *Lex Forensica: Journal of Forensic Justice and Socio-Legal Research*, vol. 1, no. 2, pp. 1-8, 2024. <https://doi.org/10.33102/q9c79179>
- [27] B. Poernomo, *Principles of criminal law*. Indonesia: Pradnya Paramita, 1993.
- [28] A. Hamzah, *Several things in the draft of the Criminal Procedure Code*. Indonesia: Bina Cipta, 1981.
- [29] S. Butt and T. Lindsey, *Indonesian law and society*. United States of America: Oxford University Press, 2018.
- [30] E. W. W. Pudjirahayu, F. Faisal, and N. Satrio, "The authority of the corruption eradication commission in terminating investigations and prosecutions from an independent perspective," *University Of Bengkulu Law Journal*, vol. 5, no. 1, pp. 35-46, 2020. <https://doi.org/10.33369/ubelaj.5.1.35-46>
- [31] D. R. S. Wardhana, D. A. Firmansyah, E. H. A. Wijaya, and Y. Susandi, "The authority of the prosecutor as the executor of the executorial decision of a court decision that has permanent legal force," *Halu Oleo Law Review*, vol. 4, no. 2, p. 251, 2020. <https://doi.org/10.33561/holrev.v4i2.14309>



- [32] R. Rusmiati, S. Syahrizal, and M. Din, "The concept of theft in the criminal code and Islamic criminal law," *Syiah Kuala Law Journal*, vol. 1, no. 1, pp. 339-352, 2017. <https://doi.org/10.24815/sklj.v1i1.12318>
- [33] N. N. Rahmadani and Y. Indawati, "Law enforcement against perpetrators of motor vehicle theft (Case Study at Gresik Police)," *Inicio Legis*, vol. 4, no. 2, pp. 141-157, 2023.
- [34] R. Aribowo, "Implementation of case resolution through a restorative justice approach in handling criminal acts of assault," *Usu Law Journal*, vol. 7, no. 4, pp. 59-73, 2019.
- [35] A. T. Purba and T. K. D. Azwar, "Comparative analysis of corporate criminal liability cases for traffic accidents in Indonesia and the United States," *Res Nullius Law Journal*, vol. 6, no. 2, pp. 82-97, 2024. <https://doi.org/10.34010/rnlj.v%vi%i.11892>
- [36] I. Ismawansa, M. Ablisar, and A. Syahrin, "Application of restorative justice in the settlement of criminal cases of fraud and embezzlement: Investigation level," in *Proceedings of the Second International Conference on Public Policy, Social Computing and Development (ICOPOSDEV 2021)*, 2022.
- [37] R. N. Sidabutar, "A study of the philosophy of legal science on the settlement of drug abuse cases with a restorative justice approach," *Locus Journal of Academic Literature Review*, vol. 2, no. 2, pp. 161-173, 2023. <https://doi.org/10.56128/ljoalr.v2i2.134>
- [38] P. Patoni, R. Abdul Gani, and R. Rasito, "Restorative justice in law enforcement of drug abuse crimes in Senyerang District, West Tanjung Jabung," *Sibatik Journal: Scientific Journal of Social, Economic, Cultural, Technology, and Education*, vol. 2, no. 5, pp. 1545-1564, 2023. <https://doi.org/10.54443/sibatik.v2i5.846>
- [39] M. mHanafi, "The position of deliberation and democracy in Indonesia," *Jurnal Cita Hukum*, vol. 1, no. 2, p. 95778, 2013. <https://doi.org/10.15408/jch.v1i2.2657>
- [40] D. Mulyana, "Legal force of mediation results in court and outside court according to positive law," *Jurnal Wawasan Yuridika*, vol. 3, no. 2, pp. 177-198, 2019. <https://doi.org/10.25072/jwy.v3i2.224>
- [41] S. Chandra, "Legal politics of adopting restorative justice in criminal law reform," *FIAT JUSTISIA: Journal of Law*, vol. 8, no. 2, pp. 255-277, 2015. <https://doi.org/10.25041/fiatjustisia.v8no2.301>