

## Disharmony in Regulations Concerning the Settlement of Criminal Cases Using a Restorative Justice Approach in the Criminal Justice System

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**Abstract:** This study examines the regulations governing the mechanism for resolving criminal cases through a restorative justice approach from the perspectives of Police Regulations (PERKAP), Prosecutor Regulations (PERJA), and Supreme Court Regulations (PERMA). The legal issue raised in this research concerns the overlapping norms regulating the mechanism for resolving criminal cases using a restorative justice approach. The formulation of the problems in this study are: how criminal case resolution through a restorative justice approach is viewed within these three regulations, and how the implementation of restorative justice is reviewed based on the Theory of Justice. The purpose of this research is to analyze the resolution of criminal cases through a restorative justice approach from the perspectives of PERKAP, PERJA, and PERMA, as well as to analyze the implementation of restorative justice based on the theory of justice. The results of the study reveal that the implementation of restorative justice within the perspectives of these three regulations experiences contradictions in terms of resolving criminal cases through a restorative justice approach. From the perspectives of PERKAP and PERJA, the resolution of criminal cases through restorative justice may be terminated if the restorative justice requirements as stipulated in PERKAP and PERJA have been fulfilled. Meanwhile, from the perspective of PERMA, the resolution of criminal cases through a restorative justice approach is not intended to eliminate criminal liability. This means that even if the restorative justice requirements between the victim and the perpetrator have been fulfilled during the trial process, the judge may continue the examination and the resolution may ultimately end with a judicial decision.

**Keywords:** Restorative Justice, Criminal Case Resolution, Legislation, Disharmony of Laws and Regulations.

## INTRODUCTION

Police Regulation Number 8 of 2021 concerning the handling of criminal cases with a restorative justice approach (hereinafter referred to as PERKAP) is; The resolution of criminal acts by involving the perpetrator, victim, the perpetrator's family, the victim's family, community leaders, religious leaders, traditional leaders or stakeholders to jointly seek a just resolution through peace with an emphasis on restoring the situation to its original state.

The provisions of Article 1 paragraph (1) of the Attorney General's Regulation No. 15 of 2020 concerning the Prosecution of Criminal Cases Based on Restorative Justice (hereinafter referred to as PERJA), define restorative justice as; "Resolving criminal cases by involving the perpetrator, victim, the perpetrator's/victim's family, and other related parties to jointly seek a just solution by emphasizing restoration to the original state, and not revenge."

Supreme Court Regulation Number 1 of 2024 concerning Guidelines for adjudicating criminal cases based on restorative justice (hereinafter referred to as (PERMA), in general

provisions Article 1 paragraph (1) defines restorative justice as; "An approach to handling criminal cases carried out by involving the parties, namely the victim, the victim's family, the defendant/child, the defendant's family/child, and/or other related parties, with a process and objective that seeks restoration, and not just revenge."

There are similarities in the concept of restorative justice regarding the formulation of "restoration to the original state," as defined in the provisions of the Chief of Police Regulations (PERKAP), the Chief of Police Regulations (PERJA), and the Supreme Court Regulations (PERMA). However, there are also differences in principle regarding the disharmony related to the termination and resolution of criminal cases, according to the three regulations. Therefore, an in-depth study is needed to first describe the provisions related to the restorative justice mechanism before addressing this disharmony.

As in the provisions of Article 2 of the PERJA, which regulates the termination of prosecution, namely as follows; "Termination of prosecution based on restorative justice is carried out based on: a) justice; b) public interest; c) proportionality; d) criminal as a last resort; and e) fast, simple, and low cost." The conditions for terminating prosecution based on restorative justice are regulated in the provisions of Article 4 paragraph (1) and paragraph (2) of PERJA, namely as follows; Paragraph (1) Termination of prosecution based on Restorative Justice is carried out by taking into account: a) the interests of the Victim and other protected legal interests; b) avoidance of negative stigma; c) avoidance of retaliation; response and harmony of society; and d) propriety, morality, and public order. Paragraph (2) Termination of prosecution based on Restorative Justice as referred to in paragraph (1) is carried out by considering: a) the subject, object, category, and threat of the crime; b) the background to the commission of the crime; c) the level of reprehensibility; d) losses or consequences arising from the crime; d) cost and benefit of handling the case; e) restoration to the original state; and f) reconciliation between the victim and the suspect.

In the context of PERMA, the concept of termination of criminal cases is not used, but rather the concept of trial guidelines is used. In the provisions of Article 5 of PERMA, it is stated; "Judges apply guidelines for trial of criminal cases based on Restorative Justice through the restoration of losses to the Victim and/or restoration of relations between the Defendant, the Victim, and the community through a decision. Conditions for peace according to the provisions of Article 18 paragraph (1); The peace agreement as referred to in Article 12 paragraph (3) and Article 13 may be in the form of: a) The Defendant compensates for losses; b) The Defendant carries out an act; and/or c) The Defendant does not carry out an act. Paragraph (2) The agreement as referred to in Article 12 paragraph (3) and Article 13 is prohibited from containing provisions that: a) are contrary to law, public order, and/or morality; b) violate human rights as regulated in laws and regulations related to human rights; c) harm third parties; or d) cannot be implemented.

According to the provisions of Article 19 paragraph (1) of the Supreme Court Regulation, it is explained that; The peace agreement and/or willingness of the Defendant to be responsible for the losses and/or needs of the Victim as a result of the crime is a reason to mitigate the sentence and/or be taken into consideration for imposing a conditional/supervisory sentence in accordance with the provisions of statutory regulations. Paragraph (2) In imposing a conditional/supervisory sentence, the Judge may apply general conditions and/or special conditions to: a) impose an alternative punishment other than imprisonment on the Defendant; and/or b) guarantee the fulfillment of the agreement between the Defendant and the Victim and restore the Victim's losses. Paragraph (3) General conditions in imposing a conditional/supervisory sentence by the Judge in the case of: a) the crime committed can be given a conditional/supervisory sentence and the

Defendant is worthy of being sentenced with a conditional/supervisory sentence; and b) the Defendant has implemented all agreements as referred to in Article 9 paragraph (2) or the Defendant has reached an agreement with the Victim as referred to in Article 10 paragraph (3). Article (4) Special conditions in imposing a conditional/supervisory sentence may be imposed by the Judge in the event that the Defendant has reached an agreement with the Victim but has not implemented all or part of the contents of the agreement or the Defendant and Victim cannot reach a peace agreement. Article (5) General conditions as referred to in paragraph (3) are imposed for a maximum of 3 (three) years. Article (6) In imposing special conditions as part of a conditional/supervisory sentence as referred to in paragraph (4), the Judge may refer to part or all of the contents of the agreement that have not been implemented by the Defendant. Provisions of Article 20; "In imposing a decision to restore the Victim's losses and/or fulfill the Victim's needs for the Defendant, the Judge shall apply the provisions referred to in Article 18 paragraph (1).

The legal issue in this study relates to the overlapping legal norms between PERKAP, PERJA, and PERMA regarding restorative justice. Therefore, there is disharmony/non-uniformity in the legislation regarding the resolution of criminal cases through a restorative justice approach. More specifically, there is conflicting regulations/overlapping regulations regarding the resolution of criminal cases in terms of the termination of criminal cases at the investigation and prosecution stages and settlement in court.

Termination of investigation by investigators and termination of prosecution by prosecutors can be done if they have fulfilled the requirements of restorative justice, as stipulated in the PERKAP and PERJA on restorative justice. Meanwhile, disharmony lies in the lack of uniformity of views regarding the termination of criminal cases from the perspective of PERKAP, PERJA and PERMA. In PERKAP, it is stipulated that investigators have the authority to terminate investigations if there has been an agreement through restorative justice. In the provisions of PERJA, prosecutors have the authority to terminate prosecution based on justice; public interest; proportionality; criminal as a last resort; and fast, simple, and low cost. If examined more deeply regarding the termination of criminal cases in the investigation and prosecution stages, there is a conflict between these two regulations and PERMA.

The Supreme Court Regulation (PERMA) stipulates that criminal cases can be resolved using a restorative justice approach through a judge's decision and a restorative justice approach. According to PERMA, this approach is not intended to eliminate criminal liability. However, from the perspective of the Chief Justice's Office (PERKAP) and the Chief Justice's Office (PERJA), criminal liability can be eliminated if the case has been successfully resolved using the restorative justice concept. The question is whether PERKAP and PERJA must also result in a judge's ruling or request a judge's ruling even after successfully resolving a criminal case through the investigation and prosecution stages.

Termination of investigation and termination of prosecution as regulated by PERKAP and PERJA, is the loss or elimination of criminal responsibility for the perpetrator of the crime, if there has been a peace agreement through the restorative justice mechanism. This becomes interesting when the provisions of PERKAP, PERJA with the provisions of PERMA, there are differences in meaning or conflict of meaning between these regulations regarding the meaning or spirit of restorative justice itself. It can be said that there is a disharmony in viewing the meaning of restorative justice. The meaning of the termination of a criminal case in the investigation and prosecution stages which culminates in the elimination of criminal responsibility for the perpetrator of the crime.

Therefore, if examined, the legal process implemented in PERKAP and PERJA is different or contradictory to PERMA.

## RESEARCH METHOD

The normative legal research method is library legal research which is carried out by examining library materials or secondary data.<sup>1</sup>In this research, the type of research used is normative juridical research. This type of research always addresses issues from law as a system of norms used to provide prescriptive "justification" for a related legal event, as it should be according to law. Therefore, normative legal research makes the norm system the center of its study. A norm system, in simple terms, is a system of rules or regulations.<sup>2</sup>Therefore, the normative system intended in this research is; PERKAP, PERJA and PERMA regarding restorative justice.

Normative legal research is research that focuses on legal rules or regulations. Normative legal research examines legal rules or regulations as a system of structures related to a legal event. This research is conducted with the aim of providing legal arguments as a basis for determining whether an event is right or wrong and how the event should be handled according to law.<sup>3</sup> The research was conducted by reviewing primary legal materials in the form of PERKAP Number 8 of 2021, PERJA No. 15 of 2020 and PERMA No. 1 of 2024 as the objects of study in this research. By examining the synchronization of the laws and regulations of the three provisions in question, in a vertical synchronization manner, as with laws and regulations that are not of equal rank but regulate the same field. Examining the harmonization/alignment of PERKAP, PERJA and PERMA in terms of resolving criminal cases through a restorative justice approach.

## RESULT AND DISCUSSION

### Analysis of Criminal Case Settlement Using a Restorative Justice Approach Reviewed from the Provisions of PERKAP, PERJA and PERMA

Based on the provisions of Article 15 paragraph (1) and paragraph (2) of the Police Regulation, investigators are given the authority to stop criminal cases using a restorative justice approach. The conditions for stopping a criminal case are based on a request submitted to the investigator's superior by the perpetrator, victim, the families of both parties, or other interested parties. One of the conditions that must be met is a statement of peace and restitution of losses for the victim. Article 16 paragraph 2 letters (e) and (f) explicitly explains that if all processes have been fulfilled and the conditions for restorative justice have been met, investigators can stop the investigation of a criminal case by issuing SP3 (*Letter of Notification of Termination of Investigation*) for the reason; "by law". Then, in letter (f) the termination of the investigation is recorded in the restorative justice register as a settlement of the case.

One important distinction to note regarding the restorative justice approach from the PERMA perspective is that "the application of restorative justice principles does not aim to eliminate criminal responsibility." Thus, there is a clear difference in terms of the handling process. Even if reconciliation has occurred between the victim and the perpetrator, this does not automatically eliminate criminal responsibility.

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<sup>1</sup>Soerjono Soekanto, Sri Mahmudji, *Normative Legal Research, A Brief Review* (Jakarta: Raja Grafindo Persada, 2003), p. 23.

<sup>2</sup>Ranuhandoko, *Legal Terminology*, (Grafika. Jakarta, 2003), p. 419.

<sup>3</sup>Sigit Sapto Nugroho, et.al, *Legal Research Methodology*, (Oase Pustaka, Surakarta, First Edition: March 2020), ISBN: 978-602-457-415-4, p. 36.

Even in the Criminal Procedure Code which was just ratified in 2025, a restorative justice mechanism has been regulated in every stage of criminal justice, if a peace agreement has been reached, then a judge's determination is requested. The judge's determination in the settlement of criminal cases from the PERMA perspective is regulated in Chapter IV (four), regarding the restorative justice mechanism which is explicitly explained in the provisions of Article 79 paragraph (5), which states;<sup>4</sup> “*After all agreements are implemented, the case must be stopped and a court decision must be requested.*” Therefore, to prevent disharmony, harmonization of each norm is needed, so that all of them have the same principles in terms of handling criminal cases using a restorative justice approach.

In the provisions of PERJA, prosecutors are given the authority to stop a case in the interests of the law based on the principle of restorative justice. In these provisions, the public prosecutor is authorized to close a case if one of the conditions in Article 2 paragraph (1) letter (e) is met, when the case has been resolved outside the judicial process (*settlement outside of proceedings*). If we look closely at the related *settlement outside of proceedings*, in the context of PERJA, it can be said that this is the same as what is meant in PERKAP regarding settlement outside the investigation process which is proven on the basis of a peace statement.

The PERJA also emphasizes that the settlement must restore the situation to its original state through a restorative justice approach. Furthermore, if there has been a return to the original state, the prosecutor can terminate the prosecution. Meanwhile, paragraph (5) emphasizes that the termination of the prosecution is carried out by the public prosecutor responsibly and submitted in a hierarchical manner to the Chief Prosecutor of the High Prosecutor's Office. If you look closely at that *settlement outside process*/Cases that have been resolved outside the judicial process can be equated with the regulation of the Chief of Police which also provides space for resolving cases outside the investigation process by means of a peace statement. That *settlement outside of proceedings* with the restorative justice mechanism resulting in the termination of prosecution.

The provisions of the Chief of Police Regulations (PERKAP) and the Criminal Procedure Code (PERJA) explain that criminal proceedings during the investigation and prosecution stages can be stopped as long as the previously outlined provisions regarding the termination of investigations and prosecutions through restorative justice mechanisms are met. However, a closer look at the provisions of the Supreme Court Regulation (PERMA) reveals a very different situation. The provisions of Article 3 paragraph (2), PERMA state that; “*The application of the principles of Restorative Justice does not aim to eliminate criminal responsibility.*” Therefore, resolving criminal cases using a restorative justice approach does not aim to eliminate criminal liability when examined according to PERMA. If we examine the provisions of Article 3, it is explicitly known that, in the criminal justice process at the examination stage in court, the judge applies the principle of restorative justice, not aiming to eliminate criminal liability. Several things that have been stated previously are the reasons for the disharmony/non-uniformity of legal norm views between PERKAP, PERJA and PERMA, related to the resolution of criminal cases through restorative justice mechanisms.

In previous research conducted by Lutfi Yusuf Ramathoni, with the title; “*Difference in Meaning of Restorative Justice Post Supreme Court Regulation No. 1 of 2024 on the Criminal Legal System in Indonesia*” declare;

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<sup>4</sup>The provisions of Article 79 paragraph (5), *Body of the Criminal Procedure Code Bill*, (Final Plenary Session, 2025).

Differences in the application of restorative justice across agencies can lead to misunderstandings that affect the integration of restorative justice into the overall justice system. If the police and prosecutors view restorative justice solely as a settlement method, cases may be dismissed without further litigation. Conversely, if the courts adopt a more holistic approach, they may still review cases with restorative justice principles in mind, even if the perpetrator and victim have reached a settlement agreement outside of court.<sup>5</sup>

Referring to the description of the research results related to the three regulations, namely PERKAP, PERJA, and PERMA above, it can be explicitly described that the titles of each regulation differ in viewing restorative justice, especially related to its resolution through the termination of criminal cases through a restorative justice approach. As can be elaborated by the author, namely in PERKAP the title is, "*resolving criminal cases using a restorative justice approach*"; in PERJA the title is, "*termination of prosecution with a restorative justice approach*"; in PERMA the title is, "*guidelines for trying criminal cases based on restorative justice*". If we examine the meaning of the titles of each regulation, we find that they have different definitions. In PERKAP, the meaning of the regulation's title is: "*resolving criminal cases using a restorative justice approach*". Then in PERJA the meaning of the title PERJA is, "*Stopping Criminal Prosecutions with a Restorative Justice Approach*". Meanwhile, if we look closely at the title of the PERMA, the regulation is, "*guidelines for trying criminal cases using a restorative justice approach*".

PERKAP with the meaning of resolving criminal cases with a restorative justice approach, if we look closely at the word "settlement" then the resolution of criminal cases normally comes down to a judge's decision which has been...*incraht*, then the criminal case is said to be finished. Then in PERKAP, the meaning of termination of prosecution means that the prosecution is stopped on the basis of restorative justice. Meanwhile, these two regulations differ from the provisions of PERMA, whose title means "guidelines". This means that if the word guidelines is interpreted, another meaning is instructions. If so, then the judge can use PERMA as a guideline/instruction in trying criminal cases with a restorative justice approach. Therefore, it is appropriate to be in line with the provisions of Article 3 paragraph (2) regulated in PERMA, namely as follows; "*The application of the principles of Restorative Justice does not aim to eliminate criminal responsibility*". Therefore, resolving criminal cases using a restorative justice approach does not aim to eliminate criminal responsibility if examined according to PERMA.

Based on the analysis of the meaning of these three regulations, the author once again emphasizes that this is not the focus of this research. Rather, it serves only as a redefinition of the differences between the three norms, which are related to overlap/*overlapping*. From the termination of criminal cases, the perspective of PERKAP and PERJA differs from PERMA in viewing the restorative justice process, especially in terms of termination and resolution of criminal cases with restorative justice mechanisms. Although the authority has been given as regulated in each of the regulations that underlie it, it does not guarantee that the meaning of restorative justice can be uniform/have a common view in an integrated manner and contain consistency in its application which can lead to the final goal of restoring the original state. As in previous research conducted by; Airlangga Surya Nagara with the title; "*The Impact of the Implementation of Termination of Prosecution Based on Restorative Justice on Victims and Perpetrators*", namely as follows;

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<sup>5</sup>Lutfi Yusup Rahmathoni, Difference in Meaning of Restorative Justice Post Supreme Court Regulation No.1 of 2024 on the Criminal Legal System in Indonesia, *Rewang Rencang: Jurnal Hukum Lex Generalis*. Vol. 5. No. 10, P. 10.

Although the concept of restorative justice has increasingly gained normative legitimacy through Prosecutor's Regulation No. 15 of 2020, National Police Regulation No. 1 of 2024, and recognition in the 2023 National Criminal Code, its implementation still faces fundamental challenges. Data from the Attorney General's Office in 2023 shows that of the 2,784 cases submitted for termination of prosecution based on RJ, only around 62% were successfully resolved through peace agreements. This achievement confirms that the obstacles faced are not only technical but also encompass philosophical, structural, and cultural dimensions. First, the lack of a unified and binding regulatory framework makes the implementation of RJ sectoral and inconsistent. Although there are Perja (Working Regulation), National Police Regulation, and Supreme Court Regulation, the lack of an umbrella law results in multiple interpretations and legal uncertainty in practice.<sup>6</sup>

Although the Regional Regulations (PERKAP), Regional Regulations (PERJA), and Regional Regulations (PERMA) exist as legal frameworks for implementing restorative justice, the lack of a unified and uniform framework also makes practice in the field vulnerable to differing interpretations and legal uncertainty. Philosophical, structural, and cultural aspects need to be carefully considered. Such regulatory frameworks are not yet comprehensive and binding. This can lead to the implementation of restorative justice being sectoral and inconsistent. The author's research found overlapping legal norms/disharmonization between PERKAP, PERJA, and PERMA.

PERMA does not give the judge the authority to stop the process immediately, if during the trial the victim and perpetrator are willing to reconcile. Meanwhile, PERKAP and PERJA, if they have met the requirements as stipulated in the provisions of the law, investigators and prosecutors can stop the investigation and/or prosecution immediately. However, the difference here is that PERKAP and PERJA are not accompanied by a judge's decision. Whereas in PERMA, if both parties, the victim and perpetrator agree to reconcile through the restorative justice process, the judge must still continue the legal process to the main point of the case and will culminate in a final decision. This means that the restorative justice process is only one of the prerequisites for reducing the sentence for the perpetrator.

### **Discussion of Criminal Case Resolution Using a Restorative Justice Approach Reviewed from the Provisions of PERKAP, PERJA and PERMA from the Perspective of Justice Theory**

*Justice as Fairness* John Rawls's theory provides a strong philosophical foundation for organizing and harmonizing norms, including the application of restorative justice. Rawls positions the principles of justice that rational, impartial individuals would choose in the "original position" behind a veil of ignorance. In this situation, each person is unaware of their social status, abilities, or personal interests, thus creating norms that are most just for all parties.

Relevant to restorative justice within the framework of norm harmonization, Rawls's approach helps ensure that the implementation of restorative justice is not only procedurally effective, but also morally legitimate and fair for all parties, including victims, perpetrators, and the community. Rawls's first principle affirms that everyone has the right to equal basic liberties. In the context of restorative justice, this means that the case resolution process must guarantee the fundamental rights of both victims and perpetrators, such as the right to express their views, the right to dignified treatment, and freedom from coercion. Restorative justice must preserve basic liberties, not sacrifice them for the sake

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<sup>6</sup>Airlangga Surya Nagara, Elizabeth Ayu Puspita Adi, and Reza Ilham Maulana, The Impact of the Implementation of Termination of Prosecution Based on Restorative Justice on Victims and Perpetrators, *Jolsic* Volume 13 Number 2 – October 2025, p. 162.

of efficiency in case resolution. The Principle of Difference/*Difference Principle* Rawls's theory of equality argues that inequality is only acceptable if it benefits the most vulnerable. This principle aligns with RJ, which prioritizes the reparation of victims and the protection of vulnerable groups.

In Rawls's view, in relation to this issue, Rawls demands that everyone have equal opportunities without structural barriers. This means equal opportunities for both victims and suspects to obtain a uniform resolution. In restorative justice, this principle is reflected in equal access for all parties to engage in the process of dialogue, mediation, and healing. Rawls's concept of the starting position emphasizes the importance of fair procedures to produce just decisions. The implementation of restorative justice must follow the principle of meaningful participation (*meaningful participation*), transparency, and neutrality of the facilitator, so that the agreement reached truly reflects the free will and equality of the parties. Overall, Rawls's theory of justice provides an ethical compass for the harmonization of restorative justice norms, ensuring that the mechanism is not only an alternative for resolving cases, but also in line with the basic values of freedom, equality, and protection of the most vulnerable groups. Thus, the integration of restorative justice mechanisms into the legal system can be more consistent, fair, and humanity-oriented. Referring to Rawls's theory of justice, it is appropriate that in the context of the norms that are the object of study in this research, namely; PERKAP, PERJA and PERMA should be standardized to harmonize these provisions in viewing the meaning of restorative justice.

As Rawls argues, justice is not measured by the outcome, but rather by the system and/or process itself. Regarding restorative justice, resolving criminal cases using the restorative justice approach through these three legal norms requires prioritizing a just system and/or process. This means that the termination or resolution process must be harmonized to be considered just. In previous research conducted by Maidina Rahmawati, entitled "*Opportunities and Challenges of Implementing Restorative Justice in the Criminal Justice System in Indonesia*" also explains that resolving criminal cases with restorative justice, or what law enforcement officials still narrowly define as restorative justice, is results-oriented and not process-oriented. This can be seen in previous research, as follows:

The fundamental thing to note is that RJ is still interpreted narrowly by law enforcement officers as an effort to achieve peace, with an orientation towards results *outcome* This can take the form of peace settlements or case terminations through formal judicial or extrajudicial mechanisms. However, the concept of RJ is not always outcome-oriented, but rather focused on the process, program, and ultimately, its outcome or goal. In the Indonesian context, there is no comprehensive policy explanation that defines and principles RJ, particularly within the Indonesian criminal justice system. Definitions and principles are needed to provide answers regarding the orientation or purpose of RJ implementation and under what circumstances law enforcement officials can implement RJ.<sup>7</sup>

The intended process is to handle criminal cases using restorative justice mechanisms. Therefore, this process must be able to harmonize these legal provisions. Therefore, if this process is harmonized, then justice should be served. *fairness* as stated by Rawls, it can be manifested in restorative justice as regulated in the provisions of PERKAP, PERJA and PERMA. Therefore, for the purpose of justice as *fairness* Thus, it produces

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<sup>7</sup>Maidina Rahmawati, et.al, *Opportunities and Challenges of Implementing Restorative Justice in the Criminal Justice System in Indonesia*, (Publisher: Institute for Criminal Justice Reform, 2022), pp. 16- 17.

genuine procedural justice. In this way, the meaning of restorative justice as justice that restores or restores everything to its original state can truly be reflected in the criminal procedure process during the investigation, prosecution, and trial.

In line with pure procedural justice, as intended by Rawls, the priority is the process, not the outcome. This is also in accordance with the theory in the criminal justice system known as "*Due Process Of Model*". *Due Process Of Model*, is a reaction to *crime control model* with the implementation of a criminal justice system that is obliged to uphold human rights. Procedures for resolving criminal cases with *due process of model*, is obliged to uphold human rights values, and does not prioritize the efficiency of law enforcement but rather the process of enforcing law that values human rights. As noted in the quote below by Mardjono Reksodiputro in his book entitled; "*Indonesian Criminal Justice System*" (*Looking at Crime and Law Enforcement Within the Bounds of Tolerance*)), as follows;

*Due Process Of Model* basically emphasizes individual rights and attempts to impose restrictions on the authority of the ruler. In other words, it can be stated that the process must be supervised and controlled by human rights and not only emphasized on maximum and efficiency as stated in *crime control model*, but also on the case resolution procedure. *crime control model* more mechanical on *presumption of innocence* (presumption of innocence). *Presumption of guilt* (the principle of presumption of guilt) can clearly be said to be more factual (as *factual guilt*) while the presumption of innocence is *normative (legal guilt)*.<sup>8</sup>

Referring to Rawls's thinking also emphasizes how the principle of justice must be applied in state policy. This means that policymakers, in this case criminal law policy, in the form of legislative policies that establish restorative justice norms, must be able to create principles of justice within restorative justice. Specifically, the principle of justice in question means that justice within the same process as the provisions of the Regional Criminal Procedure Code (PERKAP) and the Regional Criminal Procedure Code (PERJA) must be aligned with the resolution of criminal cases using a restorative justice approach. Rawls' theory of justice is one of the important modern theories of justice. The core of his thinking includes the concept *justice as fairness*, the basic structure of society, *original position*, and *veil of ignorance*. *Justice as fairness* This means that justice is understood as equality for all. Rawls's thinking is also related to legal theory, as he emphasized how the principle of justice should be applied in state policy. According to Rawls, there is a basic structure in society that serves as the basis for every policy. He envisioned decision-makers as rational agents with rights, obligations, and personal interests that could conflict with each other. These differences in interests actually encourage cooperation. Rawls believed that there are ideal moral values and justice that are mutually recognized, so that these agents can work together for the common good. This idea was inspired by social contract theory, but Rawls emphasized cooperation rather than the transfer of rights to the state. To ensure that policies are truly just, Rawls introduced the concept of *veil of ignorance*. Under these conditions, the decision-maker must imagine that he or she does not know his or her social, economic, racial, or ability position in society. Because he or she does not know which class he or she will fall into, he or she will design policies that are impartial and benefit all parties, including the least advantaged groups. *Veil of ignorance* This is a thought experiment, but through this approach, Rawls shows how to design just policies or laws.<sup>9</sup>

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<sup>8</sup>Mardjono Reksodipoetro, *Op.Cit*, pp. 73-74.

<sup>9</sup>Tisa Windayani Nugroho Adipradana, "*Restorative Justice as an Alternative for Resolving Medical Negligence Disputes*" (Faculty of Law, Atma Jaya Catholic University of Indonesia), p. 62.

Plato's theory of justice emphasizes that justice is achieved through harmony, both at the individual and state level. Within the individual, justice arises when reason, courage, and will work in balance, while within the state, justice is realized when each class of leaders, guardians, and producers carries out their respective functions according to their respective capacities and roles without interfering with the duties of others. Plato's central principle is that each party fulfills its natural function, thus creating order and the common good.

In relation to harmonizing norms on restorative justice, Plato's thought provides an important philosophical foundation. Restorative justice aims to create a balance between the interests of the victim, the perpetrator, and the community. Plato's principle of harmony can be applied by ensuring that: Each party plays a role according to their capacity; the victim, the perpetrator, and the mediator carry out their roles optimally in the recovery process. The function and authority of the restorative justice mechanism are clear, following fair procedures, so that no party dominates or is systemically disadvantaged. Justice as the common good is the ultimate goal of restorative justice, not only resolving cases but also restoring social relations and restoring community balance.

Restoring the relationship between victim and perpetrator to its original state by creating a balance of rights and obligations is in line with Plato's principle that justice brings harmony to society, if the three norms are in agreement and uniform in resolving criminal cases using a restorative justice approach. Thus, Plato's thinking can serve as a philosophical guideline in aligning legal, ethical, and social norms in the practice of restorative justice, ensuring that the process and its outcomes are fair, balanced, and considerate of the interests of all parties.

Plato's idea of justice is the originator of dualistic idealism, that an object or truth about an object must always be approached from a dualistic perspective: matter and substance/body and soul. Therefore, when describing the idea of justice, this dualism is also apparent. Plato recognized that justice requires a subject. This means that in an effort to establish objectivity about justice, it is necessary to first recognize that justice is subjective. Ultimately, Plato proposed a model of justice according to the state, juxtaposed with individual justice. Plato said:<sup>10</sup> *"let us enquire first what it is the cities, then we will examine it in the single man, looking for the likeness of the larger in the shape of the smaller"*. If translated or interpreted into Indonesian, it means; "let's first investigate what a country/society as a whole is, then we will examine it in one person, by looking for similarities between the big in the small." In us understanding the concept of justice or structure in a larger society first, then looking for it in individuals as smaller versions.

The principle of resorptive justice, as a restoration of the situation between the victim and the perpetrator, can truly be felt when the principle of justice is applied and each state apparatus and each individual carries out their roles properly and correctly. Of course, this is not enough; it must be supported by cooperation between the state and its individuals. Essentially, it is about restoring justice from the path of punishment toward restorative justice or restorative justice. From Plato's perspective, justice must be the foundation of the state in formulating policies and making laws. Therefore, the provisions that are the object of this research should be based on justice in their implementation. For example, in handling criminal cases with PERKAP, PERJA must truly provide justice by streamlining the process.

For Plato, justice involves empowering citizens to contribute ideas about the good of the state, which then becomes the philosophical basis for the formation of laws. Justice is realized when each person carries out their role according to their abilities, thus creating

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<sup>10</sup>The Liang Gie, *Theories of Justice, Source of Success*, Yogyakarta: 2002, p. 22.

harmony in society. He also viewed justice as a form of emancipation that provides space for citizens to participate in decision-making. Thus, justice is not only about compliance with rules, but also about freedom, participation, and social balance. In short, for Plato, justice is the foundation of a good state and must be the basis for all lawmaking.<sup>11</sup>

Plato's principles can be used as a guideline for harmonizing PERKAP, PERJA, and PERMA. Within these provisions, the restorative justice process must allow all parties, including victims, perpetrators, and the community, to play their part, express their views, and participate in determining a just solution. Therefore, justice in the context of restorative justice is not only about compliance with the law, but also about freedom, meaningful participation, and social balance. Overall, justice, according to Plato, is the foundation for creating rules and practices that truly reflect the common good. In resolving criminal cases, both at the investigation and prosecution levels, the process must be aligned with PERMA provisions, so that they can result in or culminate in a judge's decision. The rights of victims and perpetrators stipulated in these provisions need to be adjusted. Even if reconciliation has occurred through restorative justice mechanisms, a judge's decision is still necessary to ensure legal certainty and prevent future duplication of legal proceedings.

In the context of restorative justice, it is crucial that case resolution is not only recorded in the case termination register at the police or prosecutor's office, but also formally acknowledged by the judge. The judge's decision, in the form of a ruling, explicitly states that the case has been resolved through restorative justice, thereby providing legal certainty for all parties, including the victim, the perpetrator, and the community. Therefore, the integration of restorative justice into the formal legal process ensures that case resolution is legitimate, fair, and legally protected.

The author believes that it is necessary for the resolution of criminal cases through the PERKAP and PERJA mechanisms to result in a judge's decision as stated in the PERMA, because a decision taken or determined by a judge guarantees justice and legal certainty, as contained in the decision. As explicitly stated in the head of the decision, "*Rites for Justice Based on the One God*". This is actually different from the termination of investigation and prosecution which is only in case files or related files in the context of terminating investigation and prosecution, only based on "*For Justice*"/for law enforcement.

## CONCLUSION

Based on the results of the analysis of the settlement of criminal cases with a restorative justice approach reviewed from the provisions of PERKAP, PERJA and PERMA, that in the settlement of criminal cases with a restorative justice approach, if examined in context, PERKAP and PERJA are different from the context of PERMA. The differences found are related to the termination of criminal cases with restorative justice mechanisms. In PERKAP and PERJA, the settlement of criminal cases can be done through the termination of criminal cases through the termination of investigations based on SP3 and Termination of Prosecution by the Prosecutor. Meanwhile, from the perspective of PERMA, the settlement of criminal cases with a restorative justice approach is different because even though there has been a peace agreement, the Judge continues the examination until a final decision.

The reaffirmation of criminal liability is contained in Article 3 paragraph (2), which states that even if a settlement has been reached, criminal liability remains. Therefore, criminal liability is not immediately removed in the context of PERMA. Meanwhile,

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<sup>11</sup> Ibid, The Liang Gie, hlm, 22-23

criminal liability for suspects or defendants can be removed if the investigation and prosecution process has fulfilled the requirements for restorative justice, according to PERKAP and PERJA.

John Rawls's thinking, through the concept of justice as fairness, provides a strong philosophical basis for assessing and organizing the implementation of restorative justice in the Indonesian criminal law system. Rawls emphasized that justice is not determined by the final outcome but by a fair, equal, transparent, and impartial process. The principles of fundamental freedoms, the principle of difference, equal opportunity, as well as the original position and the veil of ignorance serve as important guidelines so that every policy, including PERKAP, PERJA, and PERMA, can reflect protection for victims, perpetrators, and the most vulnerable groups. Therefore, restorative justice must be understood as a recovery process oriented towards basic rights and procedural justice, not simply producing peace or dismissal of cases.

Previous research, as analyzed in the previous chapter on the results of the analysis, shows that law enforcement officials still interpret restorative justice narrowly, results-oriented, and are not yet supported by a comprehensive definition and principles in state policy to harmonize norms related to the resolution of criminal cases with a restorative justice approach in the criminal justice system. Therefore, the process of resolving criminal cases through the restorative justice mechanism must be consistently harmonized between PERKAP, PERJA, and PERMA in order to create a uniform procedure and reflect justice as fairness.

Plato's thinking also enriches the philosophical basis for norm harmonization. For Plato, justice is harmony: each party fulfills its function according to its role for the common good. In the context of restorative justice, this harmony is achieved when the victim, perpetrator, mediator, and state play proportional roles in the recovery process. Legal norms provide space for meaningful participation, balance, and freedom for each party. Justice, according to Plato, must be the foundation of legal formation; therefore, norms regarding restorative justice must reflect these values. To ensure genuine procedural justice according to Rawls and social harmony as Plato, the integration of the restorative process cannot simply stop at the termination of the investigation or prosecution. Settlement of criminal cases through PERKAP or PERJA must culminate in a Judge's Decision as in PERMA. The judge's decision provides legal legitimacy, legal certainty, and a stronger guarantee of justice than merely administrative dismissal of the case. The judge's decision with the *irah-irah* "For the Sake of Justice Based on the One Almighty God" confirms that the recovery has been fully and finally recognized by the legal system. Overall, the harmonization of norms between PERKAP, PERJA, and PERMA must be based on the principles of justice of Rawls and Plato: justice as fairness, equality, participation, protection of the vulnerable, and the creation of social harmony.

Thus, restorative justice is not merely an alternative case resolution, but a legitimate, fair, humane, and integrated recovery mechanism throughout the criminal justice process, from investigation to prosecution to sentencing. This harmonious implementation allows the true meaning of restorative justice—returning to the original state—to be truly realized in legal practice in Indonesia.

### **Thank-you note**

Regulation harmonization between the PERKAP (Chief Criminal Apparatus Regulation), PERJA (Job Procedures Regulation), and PERMA (Major Criminal Apparatus Regulation) is necessary. The government and law enforcement agencies need to develop uniform and integrated regulations regarding the implementation of restorative

justice. The fundamental differences regarding case termination in PERKAP and PERJA and the resolution mechanism in PERMA must be harmonized to avoid legal uncertainty or differences in procedural standards at each stage of the criminal justice process.

And thank you to the lecturers and my parents and all my friends who have supported me.

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