

## Critique of Judicial Scrutiny in the Restorative Justice Mechanism of the Draft Criminal Procedure Code



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### Abstract

The article's novelty serves critical analysis on the current legislative process concerning the restorative justice mechanism in the Draft Criminal Procedure Code that published in June 2025. The draft stipulates a restorative justice mechanism as a means of criminal case resolution outside of the courtroom. It requires critical evaluation because it undermines the central role of the judge which conducting checks and balances through Judicial Scrutiny over the processes carried out by other institutions, particularly the Police and the Prosecutor's Office. This study is aimed at answering the question: How should the restorative justice mechanism within the inquisitorial system be structured to provide protection for human rights? To address this question, we analysis using inquisitorial model system, and employ a comparative law approach to the Netherlands. The findings of this study indicate that the challenge of implementing a restorative justice mechanism in diverse social, cultural, economic and political contexts like Indonesia. The restorative justice can achieve the objective only if it is detached from the factor of power exercised by law enforcement officials. There is a necessity for professional mediators to fulfill the role of achieving consensus between the victim and the offender. The involvement of the Police and the Prosecutor is required in the initial stages to encourage the commencement of the restorative justice mechanism. However, the judge's role must be central; not only to formulize the agreement, but also actively assess, evaluate the execution of that agreement and even reopen the case should the agreement not be fulfilled.

**Keywords:** Restorative Justice; Judge; Judicial Scrutiny; Check and Balance; Human Rights

## I. Introduction

Law Number 1 of 2023 concerning the Indonesian Penal Code does not explicitly delineate restorative justice; however, its principles are incorporated across various articles, notably those concerning the aims of sentencing, considerations for victim pardon, and restitution. This signifies a paradigm shift in the Indonesian Penal Code's sentencing focus, moving away from a purely retributive approach. The mechanism for achieving restorative justice can be executed via the resolution of criminal matters outside of the courtroom.

Restorative justice is not a novel concept within the Republic of Indonesia. The genesis of this concept dates to Law Number 11 of 2012 concerning the Juvenile Justice System, which introduced diversion – the transfer of juvenile case resolution from the criminal judiciary to attain a negotiated settlement between the offender and the victim. Subsequently, key law enforcement institutions – namely the National Police, the Prosecutor's Office and the Supreme Court – have promulgated internal regulations governing the application of restorative justice. These include:

Regulation of the Indonesian National Police Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice (*PerKapolRI No. 8 of 2021*); Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice (*Perja No. 15 of 2020*); and Supreme Court Regulation Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice (*Perma No. 1 of 2024*). Statistical data from 2023 and 2024 sourced from these three institutions demonstrate an escalation in cases resolved by utilizing the restorative justice approach.

**Table 1.** Data on Cases Resolved through the Restorative Justice Approach

Agencies for the Execution of Restorative Justice	2023	2024
The Police	18,175	21,063
The Attorney General Office	2,407	6,168
The Supreme Court	464	1,425

**Source:** Processed from various secondary sources (processed in 2025)<sup>1</sup>

Notwithstanding the high volume of case resolutions achieved via restorative justice, prior studies indicate several inherent difficulties with this approach. A study conducted by Muhammad Fatahillah Akbar suggests that the regulations regarding restorative justice at each institutional tier exhibit disparity and inconsistency, thereby impeding the provision of legal certainty.<sup>2</sup> Trianti Rizka Kusumawardhini's study shows that the application of restorative justice in rape cases by conditioning the marriage of the perpetrator and the victim constitutes a form of gender-based violence that infringes upon the rights of women.<sup>3</sup> A study by Iqbal Felisiano and Amira Paripurna highlights that the implementation of restorative justice at the police level may reflect corrupt practices. Restorative justice is often narrowly interpreted as merely monetary compensation intended to restore the victim and the community. Police officers, acting as mediators, reportedly solicit 'peace money' to cover the costs associated with case revocation, supplementary examinations, and case review meetings, fees which should not be levied upon the public.<sup>4</sup> However, previous studies did not discuss the restorative justice mechanism should be regulated in a legislation. Consequently, the establishment of a law governing the standard procedures and application protocols for restorative justice is imperative.

The Draft Criminal Procedure Code published June 2025 specifically addresses the restorative justice mechanism. However, its provisions position restorative justice primarily as an approach for a case termination. In fact, the fundamental objective of restorative justice is to foster communal peace by reconciling the perpetrator and the victim, necessitating that the criminal justice process proactively facilitate the engagement of the offender, victim, and community in finding a resolution to the conflict.<sup>5</sup> Moreover, the restorative justice mechanism in the Draft Criminal Procedure Code delegates operational authority to investigators and public prosecutors, while confining the judge's role to merely providing a decree endorsing the peace agreement. This mechanism ostensibly marginalizes the judge's pivotal role within the criminal justice system. Restorative justice should be understood not as an alternative dispute resolution

<sup>1</sup> Directorate General of Public Courts, "2024 Annual Report" (Jakarta, 2025). Hlm 30; M. Agus Yozami, "Kejagung Sebut 6.168 Kasus Selesai Melalui Restoratif Justice" 14 November 2024, <https://www.hukumonline.com/berita/a/kejagung-sebut-6168-kasus-selesai-melalui-restoratif-justice-1t673564009c8aa/>; Dinda Sabrina, "Polri Klaim Keberhasilan Penerapan Restorative Justice Pada 2024," 31 Desember 2024, [https://www.tempo.co/arsip/polri-klaim-keberhasilan-penerapan-restorative-justice-pada-2024-1188218#goog\\_rewarded](https://www.tempo.co/arsip/polri-klaim-keberhasilan-penerapan-restorative-justice-pada-2024-1188218#goog_rewarded).

<sup>2</sup> Muhammad Fatahillah Akbar, "Pembaharuan Keadilan Restoratif Dalam Sistem Peradilan Pidana Indonesia," *Masalah-Masalah Hukum* 51, no. 2 (2022). p. 199.

<sup>3</sup> Trianti Rizka Kusumawardhini, "Perkawinan Paksa Antara Korban Dan Pelaku Pemerkosaan Dalam Perspektif Hak Asasi Manusia Berperspektif Gender Dan Restorative Justice," *Jurnal Hukum Lex Generalis* 6, no. 4 (2025). pp. 12-13.

<sup>4</sup> Iqbal Felisiano and Amira Paripurna, "Penerapan Keadilan Restoratif Dan Celah Praktik Korupsi," *Integritas : Jurnal Antikorupsi* 9, no. 1 (2023). Hlm. 147-148.

<sup>5</sup> Eva Achjani Zulfa, "Restorative Justice in Indonesia: Traditional Value," *Indonesia Law Review* 1, no. 2 (2011). p. 35.

method supplanting the criminal judiciary but rather as a supplementary component of the criminal justice system.<sup>6</sup>

In addition to the Draft Criminal Procedure Code, which is included in the 2025 Priority National Legislation Program, the government is simultaneously developing the Draft Law on Restorative Justice in the Criminal Justice System. The proposed regulations regarding the principles, standards, and mechanisms of restorative justice within the Draft Law on Restorative Justice in the Criminal Justice System are more comprehensive. However, the stipulations within the Draft Law on Restorative Justice in the Criminal Justice System diverge from the norms contained in the Draft Criminal Procedure Code.

Indonesia operates under a civil law system employing the inquisitorial system. Pursuant to this system, the judge plays a more active role in the criminal process, which also encompasses sentencing.<sup>7</sup> The proactive function of the judge is central to the court's exercise of oversight over the authority vested in law enforcement officials within the criminal justice system. The objective of Judicial Scrutiny is to furnish a mechanism for checks and balances regarding the discretionary power exercised by the law enforcement agencies, concurrently protecting fundamental human rights, particularly those of the suspect or the defendant. According to Chairul Huda<sup>8</sup> and Harkristuti Harkrisnowo,<sup>9</sup> Judicial Scrutiny manifests in two forms: first, *pre factum*, which entails enforcement prior to law enforcement officials exercising their authority. This mechanism is actualized through the presence of a Commissioner Judge or Preliminary Examination Judge. Second, *post factum*, which entails enforcement after law enforcement officials have exercised their authority. This mechanism is executed through the pre-trial institution. Should a party file an objection to the actions of a law enforcement official, a petition may be submitted to the pre-trial institution for judicial review concerning the legality of the official's conduct. Within the framework of the inquisitorial system, the judge's active involvement in the criminal justice process is effectuated through *pre factum*. However, the Draft Criminal Procedure Code omits the concept of the Commissioner Judge or the Preliminary Examination Judge. This omission is significant, given the pre-trial institution has often been assessed as ineffective inadequately protecting against the extensive authority held by law enforcement officials.<sup>10</sup>

Restorative justice constitutes an integral component of fulfilling the aims of sentencing. The active role of the judge becomes central, not only for supervising law enforcement authority and guaranteeing human rights protection but also for ensuring that these sentencing goals are realized. The provisions articulated in the Draft Criminal Procedure Code should appropriately accommodate this requirement.

The restorative justice approach implemented in the Netherlands can serve as a reference for Indonesia. In 2012, the Netherlands incorporated restorative justice into Article 5th of its Criminal Procedure Code. The Police and the Prosecutor are mandated to inform victims and offenders regarding the potential for mediation. The agreement between the perpetrator and the victim serves as a factor for the judge's consideration when imposing a sanction.<sup>11</sup> Furthermore, Article 9a of the Dutch Penal Code provides the legal foundation for the judge to consider the victim's perspective on the defendant's actions prior to issuing a judgment that includes a judicial

<sup>6</sup> Ady Thea DA, "Jelang Berlaku KUHP Nasional, Aturan Restorative Justice Perlu Sinkronisasi", 26 Maret 2024, <https://www.hukumonline.com/berita/a/jelang-berlaku-kuhp-nasional--aturan-restorative-justice-perlu-sinkronisasi-lt6602a44314216/?page=2>.

<sup>7</sup> Julian V. Roberts and Anneke Petzsche, "Sentencing Procedures under the Adversarial and Inquisitorial Models of Justice: A Comparative Analysis," *Criminal Law Forum* 36, no. 2 (2025). Hlm. 330.

<sup>8</sup> Ady Thea DA, "Pengawasan Penegakan Hukum Tak Cukup Melalui Praperadilan", 11 Juni 2025, <https://www.hukumonline.com/berita/a/pengawasan-penegakan-hukum-tak-cukup-melalui-praperadilan-lt6848d4d1aec18/?page=2>.

<sup>9</sup> Ady Thea DA, "Prof Harkristuti Tegaskan Pentingnya Pengaturan Judicial Scrutiny dalam RUU KUHP", <https://www.hukumonline.com/berita/a/prof-harkristuti-tegaskan-pentingnya-pengaturan-judicial-scrutiny-dalam-ruu-kuhp-lt683d250b2b3f6/?page=2>.

<sup>10</sup> Supriyadi Widodo Eddyono and Erasmus Napitupulu, "Prospek Hakim Pemeriksa Pendahuluan Dalam Pengawasan Penahanan Dalam Rancangan KUHP," *Policy Paper*, vol. 3/2014 (Jakarta, 2014). pp. 5-16.

<sup>11</sup> Annemieke Wolthuis et al., "Dutch Developments: Restorative Justice in Legislation and in Practice," *The International Journal of Restorative Justice* 2, no. 1 (2019). pp. 118-119.

pardon for the offender.<sup>12</sup> Although the restorative justice approach in the Netherlands differs from that of Indonesia, as co-members of the civil law system utilizing the inquisitorial model, the judge's role in the restorative justice process in the Netherlands is broader and more central.

Based on the preceding discussion, it is compelling to analyze how the provisions of the Draft Criminal Procedure Code which govern the restorative justice mechanism within the inquisitorial system can provide protection for human rights? This study is aimed at serving as *ius constituendum* concerning the reform of the criminal procedure law related to restorative justice. This study presents novelty since its central focus is the current legislative process concerning the restorative justice mechanism in the Draft Criminal Procedure Code that published in June 2025, and the active role of the judge as judicial scrutiny within the restorative justice process. This study will address the judge's role in supervising authority and ensuring human rights protection throughout the restorative justice process within the criminal justice system.

To achieve the objective of this study, the discourse within this article is divided into several chapters and sub-chapters as follows. The discussion commences with the research methodology. The research findings are subsequently divided into five sub-chapters: First, a literature review addressing the concepts of restorative justice and judicial scrutiny within the inquisitorial system. Second, the issues concerning the current restorative justice regulations in Indonesia. This sub-chapter will discuss and compare the problems inherent in *PerKapolRI No. 8 of 2021*, *Perja No. 15 of 2020*, and *Perma No. 1 of 2024*. Third, the issues surrounding the regulation of restorative justice in the June 2025 Draft Criminal Procedure Code and the Draft Law on Restorative Justice. Fourth, a legal comparison with the Netherlands. This sub-chapter will explicate the restorative justice approach in the Netherlands and contrast it with Indonesia's, subsequently deriving lessons for improving restorative justice provisions in Indonesia. Fifth, improvements to the restorative justice mechanism in the Draft Criminal Procedure Code. The article will conclude with the conclusion and recommendations.

## II. Research Methodology

This study constitutes a document-based study. This study relies on secondary data derived from existing documents available in various forms.<sup>13</sup> The literature utilized in this study is sourced from books, statutory regulations, and other supporting scholarly materials, including relevant journals.

This study employs the statutory approach and the comparative law approach. The statutory approach involves identifying legal norms within the existing hierarchy to comprehend the implications of the relationship between one norm and another, with the aim of interpreting the statutory regulations.<sup>14</sup> The comparative law approach is defined as the systematic study of specific legal traditions and rules in a relative manner, necessitating the comparison of certain aspects, institutions, or branches of two or more legal systems.<sup>15</sup> Comparative law seeks to identify universal concepts and principles to formulate or verify natural law concerning legal phenomena.<sup>16</sup> The Netherlands has been selected as the point of comparison due to its shared status as a civil law system country that has already established and implemented restorative justice.

The materials obtained from the documentary research are then processed and analyzed qualitatively. We endeavor to explain the results of this examination as a legal phenomenon with

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<sup>12</sup> Erasmus A.T. Napitupulu dkk, *Peluang Dan Tantangan Penerapan Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia*, ed. Miko Susanto Ginting, *Al-Adl : Jurnal Hukum*, vol. 10 (Jakarta: Institute for Criminal Justice Reform, 2022). p. 65.

<sup>13</sup> Malcolm Tight, *Documentary Research in the Social Sciences* (London: SAGE Publications Ltd, 2019). p. 58.

<sup>14</sup> P. Ishwara Bhat, *Idea and Methods of Legal Research, Idea and Methods of Legal Research* (New Delhi: Oxford Univeristy Press, 2020), p. 170.

<sup>15</sup> P De Cruz, *Comparative Law in a Changing World* (London: Taylor & Francis Group, 2015). p. 101.

<sup>16</sup> W J Kamba, "Comparative Law: A Theoretical Framework," *The International and Comparative Law Quarterly* 23, no. 3 (1974). p 485.

the utmost depth.<sup>17</sup> The outcomes of the analysis of these materials are subsequently grouped and presented for analysis to address the established research questions. The research findings are intended to be not only descriptive but also prescriptive, offering direction to authorities for formulating and establishing legal guidelines or rules.<sup>18</sup>

### III. Research Findings

#### 1. Restorative Justice and Judicial Scrutiny in the Inquisitorial System

Restorative justice constitutes a response to the perceived failures of the criminal justice system. This concept addresses the need for greater community involvement and attention to the needs of victims, who have historically been marginalized by the mechanisms of the criminal justice system. The concept is also intrinsically linked to the failures of imprisonment; restorative justice programs largely miss their application to offence types that might warrant their use as an alternative to incarceration.<sup>19</sup> The concept of restorative justice is interpreted as both a mechanism for handling criminal cases outside the traditional criminal justice system and as a form of criminal prosecution that generates new types of criminal sanctions for conventional offences.<sup>20</sup>

The United Nations has formulated Basic Principles for the Application of Restorative Justice Programs in Criminal Matters.<sup>21</sup> National law must stipulate that restorative justice programs may be undertaken at every stage of the criminal justice system. The restorative justice process should only be initiated if two conditions are met: there is sufficient evidence to charge the offender, and there is free and voluntary consent from both the victim and the offender. Any agreement reached must be voluntary and contain only obligations that are reasonable and proportional. Disparities that result in power imbalances, as well as cultural differences between the parties, must be taken into consideration when referring to a case and during the execution of restorative justice. If the restorative justice process is deemed infeasible, the case must be referred to the criminal judicial authorities to continue the prosecution. Criminal justice officials must endeavor to encourage the offender to take responsibility towards the victim and the affected community and support the reintegration of both the victim and the offender into the society. Should an agreement be reached, the outcome must be judicially supervised or integrated into the court's judgment, serving as a ground for preventing the prosecution of the case. A failure to reach an agreement must not be used in the criminal justice proceedings against the case. A failure to implement an agreement made in the restorative justice process must be referred to the restorative justice program or to the criminal justice process. A failure to implement the agreement should not be used as a basis for increasing the severity of the sentence.

For civil law countries, the fundamental tenet of the inquisitorial system is the judge's active role in investigating a charge, encompassing the collection and presentation of evidence, control over the judicial process, and the rendering of a decision.<sup>22</sup> The judge plays a highly proactive role, while the court dominates the trial proceedings and actively seeks the truth. In the inquisitorial system, the state bears a substantial responsibility for ascertaining the facts of the transgression, conducting a comprehensive investigation, and uncovering the truth, while the parties are not responsible for developing their own cases. The state executes this responsibility through the judicial institution; the judge acts as both a magistrate judge and the presiding trial judge. However, in various inquisitorial models, the public prosecutor shares responsibility with

<sup>17</sup> William Lawrence Neuman, *Social Research: Qualitative and Quantitative Approaches*, Seventh Ed (Edinburgh: Pearson Education Limited, 2020). p. 19-20.

<sup>18</sup> Adriana Placani, "Prescriptive Rules in Legal Theory," *Public Governance, Administration and Finances Law Review* 8, no. 2 (2023). p. 2.

<sup>19</sup> Kelly Richards, "A Promise and a Possibility: The Limitations of the Traditional Criminal Justice System as an Explanation for the Emergence of Restorative Justice," *Restorative Justice* 2, no. 2 (2014). Hlm. 133.

<sup>20</sup> Zulfa, "Restorative Justice in Indonesia: Traditional Value." Hlm. 34.

<sup>21</sup> The United Nations of Economic and Social Council, "The United Nation Economic and Social Council Resolution 2016/17 Concerning Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters," (*UNODC, United Nations Office on Drugs and Crime* (Vienna, 2017).

<sup>22</sup> Anand K Deshmukh, "Adversarial and Inquisitorial Models of Criminal Justice System: A Comparative Analysis," *International Journal of Legal Science and Innovation* 2, no. 7 (2020). pp. 72-73.

the judge during the investigation and prosecution phases, though the judge's role remains active during the trial by pursuing the truth utilizing the case file prepared during the investigation, either by the public prosecutor or by the examining judge.<sup>23</sup>

Civil law countries also implement judicial scrutiny for the court's oversight of the deprivation of individuals' civil liberties. The court exercises supervision over coercive measures that infringe upon individual civil rights. The existence of a magistrate judge is key to judicial scrutiny. The magistrate judge's role is to supervise coercive actions, including arrests, detentions, searches, inspection, and the seizure of evidence, as executed by the investigators and the public prosecutors. The court is the principal and central actor for the enforcement of criminal law and legal norms, and it is not expected to be subservient to the wishes of the police, the prosecutor, the legal counsel, or the defendant.<sup>24</sup> Several civil law countries utilize various terminologies for the magistrate judge. France employs the term *Judge d'Instruction*, where the judge has the authority to supervise investigation and inquiry orders carried out by the police under the direction of the public prosecutor.<sup>25</sup> The Netherlands uses the term *Rechter-Commissaris*, who conducts a preliminary examination in the criminal justice process. In Germany, the presiding judge of both the first instance and second-instance courts is responsible for conducting pre-trial proceedings to review evidence and irregularities that have occurred during the investigation and inquiry. In this process, the judge may direct investigators or even conduct investigations independently.<sup>26</sup>

The judge plays a crucial role in the potential success of the restorative justice process.<sup>27</sup> The judge can facilitate the integration of restorative justice into the criminal justice system. In a civil law system, the judge plays a key role in referring cases to restorative justice programs, participating in the restorative justice process, and monitoring compliance with the agreements that have been reached. When the restorative justice process is conducted at the post-indictment stage, the judge possesses the discretion to initiate the restorative justice process. In a situation where an offender has pleaded guilty or been found guilty of an offense, the judge may suspend the imposition of the sentence pending the outcome of the restorative justice process. In a model that situates the restorative justice process as part of the penal mediation, the judge may also serve as a mediator between the victim and the offender.

## 2. Issues Concerning Restorative Justice Regulations in Indonesia

*PerKapolRI No. 8 of 2021* and *Perja No. 15 of 2020* share a commonality in that they position the criminal case resolution process outside of the court by considering the circumstances of the victim, the offender, and the community, with the ultimate outcome being the termination of the case—whether the termination of the preliminary investigation, the full investigation, or the prosecution. *Perja No. 15 of 2020* explicitly states that restorative justice constitutes *afdoening buiten process*. Both regulations restrict the applicability of restorative justice to certain characteristics and categories of offences, specifically light and moderate crimes, and exclude repeat offences. The categorization of light and moderate crimes is determined by the maximum penal threat. *PerKapolRI No. 8 of 2021* stipulates that the restorative justice mechanism cannot be applied to terrorism, crimes against the state security, corruption, and crimes against life. A notable point in *PerKapolRI No. 8 of 2021* is that the restorative justice process can commence as early as the preliminary investigation stage, since at this stage, an act is still being examined to determine if it constitutes a criminal offence and the perpetrator has not yet been identified. Meanwhile, *Perja No. 15 of 2020* applies restorative justice only to offences punishable by a fine or imprisonment

<sup>23</sup> Dr. Muhammad Ramzan Kasuri, Dr. Sheer Abbas, and Tahir Mahmood, "Adversarial and Inquisitorial; Two Rival Models of Criminal Procedure and Theory of Convergence: An Appraisal," *Journal of Law & Social Studies* 6, no. 1 (2024). p. 77.

<sup>24</sup> *Ibid.* p. 78.

<sup>25</sup> Lovina and Sutira Dirga, "Judicial Scrutiny Melalui Hakim Pemeriksa Pendahuluan Dalam RKUHAP" (Jakarta, 2022). p. 11.

<sup>26</sup> Thomas Scheffer, Kati Hannken-Illjes, and Alexander Kozin, *Criminal Defence and Procedure Comparative Ethnographies in the United Kingdom, Germany, and the United States* (New York: Palgrave Macmillan, 2010). pp. 106-107.

<sup>27</sup> Yvon Dandurand, *Handbook on Restorative Justice Programmes, Criminal Justice Handbook Series* (Vienna: United Nation Office on Drugs and Crime, 2020). p. 47.

not exceeding five years. Restorative justice cannot be applied to crimes against the state security, public order, and morality; crimes subject to a special minimum penal threat; narcotics crimes; environmental crimes; and crimes committed by corporations. The severity level of these offences is assessed based on the value of the loss and the resultant impact. *PerKapolRI No. 8 of 2021* stipulates that the resulting losses must be limited. It means that the losses from the criminal act must be limited, so the restorative justice process does not lead to public rejection, social conflict, or communal fragmentation. Meanwhile, *Perja No. 15 of 2020* limits the application to criminal offences where the value of the evidence or the damage resulting from the crime does not exceed two million five hundred thousand Rupiah.

A core problem with *PerKapolRI No. 8 of 2021* and *Perja No. 15 of 2020* is the absence of the judge's role in supervising the authority of the investigators and prosecutors during the execution of restorative justice. Judges ought to be involved in evaluating the resulting agreement, as restorative justice is intrinsically linked to the objectives of sentencing. The judge's role is central to assessing whether the agreement fulfills the objectives of restorative justice and does not violate the civil rights of either the offender or the victim. This lack of judicial oversight leads to disparity and inconsistency in the restorative justice process across the various institutional levels. Another issue arises when a case has been terminated, and it turns out that the agreed-upon settlement is subsequently not fulfilled. Neither of the regulations provides for this contingency. The case termination is supposed to be nullified, and the legal proceedings can be resumed.

*Perma No. 1 of 2024* does not position restorative justice as a resolution outside of court proceedings or as a ground for case termination, except in the context of complaint offences. During the trial stage, it is possible that the restorative justice process initiated at an earlier phase has already been conducted and has yielded results. In such instances, the judge may review and re-evaluate the agreement. The judge may also facilitate the creation of a new agreement if the outcome of the previous agreement is not implementable by the offender or if no agreement was previously reached. The result of the agreement will serve as a consideration for the judge in making a judgment, which may include a mitigated sentence or the imposition of a supervisory sentence as an alternative form of punishment.

The issue with *Perma No. 1 of 2024* lies in the minimal oversight that can be exercised over the restorative justice authority applied by the investigators and the public prosecutors. It is true that a judge may evaluate the outcome of a restorative justice agreement – assessing whether it has restored the victim, rehabilitated the relationship among the victim, the offender, and the community, and whether the offender can fulfill their responsibilities –, this oversight is only possible for cases that advance to the trial stage. Another problem arises when the court hands down a reduced sentence based on an agreement, but the offender subsequently fails to implement the terms of that agreement. This regulation also lacks provisions for the supervision of the execution of the agreement's results after the court judgment.

**Table 2.** Comparison of Restorative Justice Regulations among Institutions

Aspect	PerKapolRI No. 8 of 2021	Perja No. 15 of 2020	Perma No. 1 of 2024
<b>Institution</b>	The Police	Prosecutor's Office	The Supreme Court
<b>Case Stage</b>	Preliminary Investigation and Investigation	Prosecution	Trial
<b>Form</b>	Out-of-court resolution	Out-of-court resolution	Complaint offence leading to lapse of prosecution; Judicial consideration for sentence mitigation or alternative sentencing

Aspect	PerKapolRI No. 8 of 2021	Perja No. 15 of 2020	Perma No. 1 of 2024
<b>Outcome</b>	Termination of Preliminary Investigation and Investigation	Termination of Prosecution in the interest of law	Complaint offense leading to lapse of prosecution; Judicial decision as basis for mitigation and alternative sentencing;
<b>Subjective Requirements</b>	The Offender is not a recidivist; The Victim and the Offender agree to reconciliation	The Offender is not a recidivist; The Victim and the Offender agree to reconciliation	The Offender is not a recidivist; The Victim and the Offender agree to reconciliation; No power imbalance
<b>Objective Requirements</b>	Offences that do not cause unrest, social conflict, fragmentation, or are separatist/radical; Illegal content dissemination offences, narcotics abuse offences; minor traffic offenses; Not specified serious offenses;	Offense punishable by fine or imprisonment ≤5 years; Loss value ≤2.5 million rupiahs; Not specified serious offenses;	Minor offenses or those punishable by fine ≤2.5 million rupiahs; Complaint offences; Offense punishable by fine or imprisonment ≤5 years; ; Offences involving child perpetrators; Criminal traffic offences.
<b>Issues</b>	Not feasible at the preliminary investigation stage; No judicial supervision in the restorative justice process; Lack of legal remedy when the agreement is unfulfilled	No judicial supervision in the restorative justice process; Lack of legal remedy when the agreement is unfulfilled	Judicial supervision is limited to the application of restorative justice at the court level; No supervision of the execution of the restorative justice agreement

**Source:** Processed from PerKapolRI No. 8 of 2021, Perja No. 15 of 2020 and Perma No. 1 of 2024

The issues across these three internal regulations by the law enforcement agencies in regard to restorative justice reveal fundamental weaknesses that may impede the achievement of restorative justice objectives. This is particularly true concerning the protection of human rights for victims. *PerKapolRI No. 8 of 2021* and *Perja No. 15 of 2020* do not explicitly contain adequate standards for the victim's restoration and protection, especially for vulnerable groups such as women and children. Meanwhile, *Perma No. 1 of 2024* only allocates a minimal focus to disabled victim groups. In practice, the resolution of a case often emphasizes the aspect of formal reconciliation without ensuring psychological protection, legal assistance, or guarantees for trauma recovery for the victims. This results in the restorative justice paradigm in Indonesia tending to prioritize the interest of a rapid case closure over the interest of a comprehensive

victim restoration.<sup>28</sup> Court supervision of restorative justice authority should therefore encompass the points of protection and restoration of victims' rights.

The existence of separate regulations for each institution, without integration into a single law, undermines the principles of accountability and legal certainty.<sup>29</sup> There are no public accountability mechanisms in the implementation of restorative justice due to the lack of reporting and oversight of the restorative agreements executed by each institution. This minimal transparency creates vulnerability to manipulative practices, the potential for "trading" of cases, and the loss of a guarantee of substantive justice for the victim.<sup>30</sup> The approach which employs different criteria across those institutions shall generate legal uncertainty for the victims, the offenders, and the public alike, since there are no uniform national standards in regards to the requirements, procedures, and consequences of restorative justice.

### 3. Issues with the Draft Criminal Procedure Code and the Draft Law on Restorative Justice

The provisions for the restorative justice mechanism in the Draft Criminal Procedure Code are like those of *PerKapolRI No. 8 of 2021* and *Perja No. 15 of 2020*. The June 2025 Draft Criminal Procedure Code stipulates that the successful resolution through restorative justice constitutes a basis for the termination of the preliminary investigation, full investigation, or prosecution. It is true that the Draft Criminal Procedure Code addresses the criticism leveled against *PerKapolRI No. 8 of 2021* and *Perja No. 15 of 2020*—which omitted the judge's role—by mandating investigators and public prosecutors to submit the case termination order to a judge for a decree. However, this provision has to be criticized because the judge's role should be extended beyond merely providing a 'stamp' of approval on the restorative justice outcome. The judge ought to be more proactive, including re-evaluating whether the restorative justice agreement has genuinely been fulfilled or whether the agreement is merely a 'sale-and-purchase' or 'transaction' to terminate a case. In this context, the judge acts to protect the victim's right to restoration, the offender's right not to be coerced into a detrimental agreement, and the community's right to justice. Judicial scrutiny plays a crucial role in ensuring that the restorative agreement does not violate these principles. Without an effective judicial oversight, restorative justice risks becoming a compromise mechanism that paradoxically weakens the protection of human rights.

The June 2025 Draft Criminal Procedure Code retains the pre-trial institution but does not accommodate the concept of the Preliminary Examination Judge. It means that judicial scrutiny remains *post factum*, making the judge relatively passive and limited to examining the formality of the coercive measures employed by the investigators and the public prosecutors. The decree concerning a case termination merely serves as a checklist for the formal requirements necessary for a case termination based on the achievement of restorative justice, without the judge being able to assess whether restorative justice has truly been achieved. The judge should serve as the controller of the judicial process, ensuring that restorative justice is conducted voluntarily, proportionally, and with a focus on the victim's restoration.<sup>31</sup>

Like *Perma No. 1 of 2024*, the June 2025 Draft Criminal Procedure Code also provides scope for the restorative justice process during the trial stage. However, the regulation in the June 2025 Draft Criminal Procedure Code is narrower; the judge only grants space for a reconciliation settlement between the offender and the victim, without clarifying whether the judge can act as a mediator. This reconciliation agreement then serves as a consideration for the judge to issue a mitigated sentence or to impose an alternative sentence such as a supervisory sentence. The June 2025 Draft Criminal Procedure Code has not yet accommodated the development in the Indonesian Penal Code regarding judicial pardon (*rechterlijk pardon*). The outcome of the

<sup>28</sup> Frieder Dunkel, Joanna Grzywa-Holten, and Philip Horsfield (eds), *Restorative Justice and Mediation in Penal Matters in Europe*, Forum Verlag, 2015.

<sup>29</sup> Ayu Dian Ningtias and Ahmad Faris Shofa, "Sinkronasi Konsep Pemaafan Hakim Sebagai Wujud Asas Restorative Justice Dalam Hukum Acara Pidana," *Risalah Hukum* 20, no. 1 (2024). p. 37.

<sup>30</sup> Daniel W. Van Ness et al., *Restorative Justice: Theoretical Foundations*, ed. E.G.M. Weitekamp and H.-J. Kerner (London: Routledge, 2012). p. 98.

<sup>31</sup> Lilik Mulyadi, *Hukum Acara Pidana: Normatif, Teoretis, Praktik, Dan Permasalahannya* (Jakarta: Alumn, 2020). p. 372.

restorative justice agreement should serve as a basis for the judge's consideration in granting a judicial pardon (*rechterlijk pardon*). The issue with the current formulation in the June 2025 Draft Criminal Procedure Code (RKUHAP) is that this provision makes the judge passive, since the judge cannot provide an assessment or input regarding the content of the agreement to ensure that it aligns with the objectives of restorative justice.

In the June 2025 Draft Criminal Procedure Code, restorative justice is conceptualized as a basis for a case termination and a basis for a sentence mitigation. Its orientation is to expedite a case resolution. A problem with this concept is how to monitor compliance with the agreement that has been reached. The June 2025 Draft Criminal Procedure Code (RKUHAP) fails to regulate the consequence of a failure to fulfill the agreement. While the June 2025 Draft Criminal Procedure Code provides room for pre-trial applications against the termination of the investigation or prosecution—including when the offender fails to implement the agreement—the issue remains that the victim must actively file the pre-trial lawsuit. This requires criticism. Furthermore, when the agreement is used as a basis for sentence mitigation, the June 2025 Draft Criminal Procedure Code does not provide an avenue for the victim to demand the implementation of this agreement. Although there is an appeal mechanism, the authority to file an appeal rest with the public prosecutor, who is not the party responsible for supervising the execution of the agreement. On the other hand, currently, there are no provisions that establish the non-fulfillment of a restorative agreement as a ground for an appeal.

The June 2025 Draft Criminal Procedure Code still maintains the existence of the Supervising and Observing Judge. The functions of this Supervising and Observing Judge are to supervise the execution of the court decision and to observe the behavior of convicts while serving their sentences. Under Law No. 1 of 1981 concerning the Criminal Procedure Code, the Supervising and Observing Judge is a non-judicial judge appointed by Head of the State Court to supervise and observe a court decision related to the deprivation of liberty.<sup>32</sup> With the evolution of sanctions beyond imprisonment and the accommodation of restorative justice, the role of the Supervising and Observing Judge should also be extended to overseeing the restorative agreement. While the June 2025 Draft Criminal Procedure Code broadens the concept of supervision and observation from the Criminal Procedure Code—where previously the judge's duties were limited to monitoring the correctional facilities—, it does not explicitly detail the role of the Supervising and Observing Judge in restorative justice. Nevertheless, the concept of restorative justice in the June 2025 Draft Criminal Procedure Code is reflected in the judge's activities in conducting supervision and observation by involving the victim of a criminal act.

The Draft Law on Restorative Justice presents a more comprehensive regulation. The implementation of restorative justice is structured into three stages. First, the penal mediation at the investigation, prosecution, and court levels. Restorative justice is integrated as part of the penal mediation—a negotiation process involving the offender, the victim, or other affected parties, facilitated by a mediator, to reach a peace agreement. The mediators are not restricted to investigators, public prosecutors, and judges who are not handling the case, but also include correctional officers and other specialized mediators, all of whom must hold specific certification as regulated by the law. At this stage, the occurrence of a peace agreement during the investigation and prosecution phases does not automatically constitute a ground for the case termination. The mediator must report the results to the investigator or the prosecutor handling the case. The peace agreement must be followed by the supervision of execution. The offender must report the implementation of the peace agreement to the investigator, who then submits it to Head of the State Court via the public prosecutor. The Head of the State Court will evaluate the peace agreement. If the Head of the State Court deems that the peace agreement meets the requirements, a decree will be issued, which then allows the investigator or prosecutor to issue the case termination order. Conversely, if the Head of the State Court deems the peace agreement to be non-compliant or if the agreement is not implemented, the case proceeds to the next stage. Similarly, if the offender fails to execute the peace agreement, the case will be advanced to the subsequent process. At the prosecution and trial levels, the public prosecutor or the judge may

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<sup>32</sup> Oemar Seno Adji, *Hukum Hakim Pidana* (Jakarta: Erlangga, 1989). p. 101.

offer the parties the option of implementing an unfulfilled peace agreement or undertaking a new penal mediation process. When a peace agreement is reached at the trial stage, the judge utilizes the outcome of this restorative justice process as a consideration in the court's judgment.

The Draft Law on Restorative Justice provides an avenue for the victim to request the cancellation of the court's judgment regarding the peace agreement. This request for cancellation is permissible if new circumstances arise that give strong suspicion that, had those circumstances been known at the time the penal mediation occurred, the penal mediation would not have been possible or would not have reached an agreement. Should the judge determine that the peace agreement must be canceled; the judge shall issue an order to the investigator or the public prosecutor to proceed with the case.

Second, the application of restorative justice through a court's judgment. Restorative justice in a court judgment is implemented through the imposition of conditional sentences, supervisory sentences, or social work sentences; a combination of compensation penalties to the victim; the imposition of a lighter principal sentence; the imposition of an additional penalty of compensation payment; and the imposition of restitution.

Third, the application of restorative justice through the execution of the court judgment. The convict may request the correctional counselor to undertake a penal mediation with the victim or the victim's family. The request shall be granted if the victim and the convict agree to the penal mediation, and the assessment of the convict's rehabilitation indicates good behavior and the capacity to undertake the penal mediation process. The mediator will draw up a peace agreement if the penal mediation is successful. The offender is obligated to report the execution of the peace agreement to the correctional counselor, who will then submit a report to the Chief of Corrections. This report will be used as a consideration for granting a remission, assimilation, or parole. The report on the execution results may also be submitted to the Supreme Court to provide consideration to the President for granting clemency, either in the form of a reduction of the prison sentence or the commutation of the death penalty to a life sentence.

The Draft Law on Restorative Justice does not position restorative justice as merely a means of resolving a criminal case. The Draft Law on Restorative Justice emphasizes the execution of the peace agreement, a crucial aspect not regulated in the Draft Criminal Procedure Code. Consequently, at the investigation and prosecution levels, restorative justice serves as a form of suspension of investigation or prosecution. If a peace agreement is reached but not executed, the investigation or prosecution will be resumed. The Draft Law on Restorative Justice also does not limit the implementation of restorative justice to the investigation, prosecution, and trial stages but extends it until the execution of the court's judgment.

The provisions within the Draft Law on Restorative Justice involve a central and active role for the judge at the investigation, prosecution, and court levels. The judge does not merely act as a rubber stamp for the results of the peace agreement that has been reached. The judge can provide an assessment regarding the execution of the restorative justice process and evaluate whether the execution fulfills the objectives of restorative justice namely restoring the victim's loss; repairing the relationship between the offender and the victim; and encouraging the offender's accountability. This provision constitutes a form of judicial scrutiny over the exercise of authority by the investigators and the public prosecutors concerning any potential deprivation of the civil rights of both the offender and the victim. The active role of the judge is also evident in the application of restorative justice through the court judgment. Although the judge handling the case does not act as the mediator, within the inquisitorial system, the judge remains actively involved in ascertaining the truth of the penal mediation outcome through the mediator's report and the agreement, subsequently incorporating it as a part of the mitigating legal considerations in the court's judgment.

The coexistence of the Draft Criminal Procedure Code and the Draft Law on Restorative Justice creates a problem due to their inconsistency. Both draft laws are currently under deliberation at the executive and legislative levels. Harmonization will be necessary should both draft laws eventually be enacted.

#### 4. Lessons from the Regulation of Restorative Justice Mechanisms in the Netherlands

The Netherlands has practiced restorative justice since the 1990s. However, this practice was not sustained due to the absence of a clear legal basis and policy. During the 1980-2010 period, the Netherlands inventoried restorative justice initiatives and projects to develop policy recommendations on the matter. This inventory led to the realization that the Dutch Ministry of Justice had to develop a clear policy on restorative justice.<sup>33</sup>

In 2012, the Netherlands formally incorporated the restorative justice approach into Article 51h of the Criminal Procedure Code. This article stipulates that the public prosecutor, through the police, must inform the victim and the offender as early as possible about the possibility of a penal mediation. The public prosecutor will encourage a mediation following the victim's consent. If the mediation results in an agreement, the court is obligated to consider this in imposing a sentence or measure. Based on this provision, the mediation for restorative justice will still proceed even if in this situation, the public prosecutor will endeavor to ensure that the mediation proceeds and a peace agreement is reached. Similarly, at the court level, mediation will still be pursued. Regardless of the mediation outcome, it will be a consideration in the court's judgment.<sup>34</sup> The judge will consider this as a relevant factor and decide the extent of its influence on the criminal proceedings. However, the provision does not mandate the judge to consider the outcome of the agreement.<sup>35</sup> From this provision, the Netherlands positions the restorative approach as a basis for consideration in the criminal judgment, including in the imposition of the sentence.

The restorative justice approach can be applied to all criminal offences,<sup>36</sup> particularly those involving victims who can be tangibly identified. This approach is applicable to both juvenile and adult offenders. The prerequisites are that the offender admits culpability or, at the very least, acknowledges the 'basic facts' and expresses a willingness to take responsibility for their actions; and that there is a voluntary participation of all involved parties. This approach can be implemented at all stages within the criminal justice system, from the investigation level through to execution.

In 2017, the victims and the defendants could be referred to Victim-Offender Mediation (*Mediation in Strafbzaken*) during the criminal judicial process.<sup>37</sup> This mechanism is a formal component of the Dutch criminal justice system where the victim and the defendant discuss the criminal offence and its resulting harm, guided by two professional or certified mediators. The objective is to provide the victim an opportunity to ask questions and the offender a chance to demonstrate remorse, thereby assisting both parties in confronting the consequences of the crime and supporting the victim's recovery. Victim-Offender Mediation is not a settlement outside of proceedings, as the results of this mediation are conveyed to the public prosecutor, who then submits them to the judge during the trial as a consideration for rendering a judgment on the case.

The Government Decree on Victims (*Besluit slachtoffers van strafbare feiten*) establishes further rules concerning victims of criminal offences, including provisions for Victim-Offender Mediation. This Decree underscores the importance of preventing secondary victimization and, in doing so, summarizes certain rules found in Article 51h of the Criminal Procedure Code. Based on safety considerations, a victim may withdraw from the mediation process at any time; based on the voluntary agreement of the parties, the mediation process may proceed in a closed session and remain confidential, including the agreement that has been reached.<sup>38</sup>

<sup>33</sup> Wolthuis et al., "Dutch Developments: Restorative Justice in Legislation and in Practice." p. 118.

<sup>34</sup> Ibid. p. 129.

<sup>35</sup> Ido Weijers . Diane van Drie, Sanneke van Groningen, "The Netherlands," in *Restorative Justice and Mediation in Penal Matters*, ed. Herausgegeben Von et al., vol. 1 (Norderstedt: Foeum Verlag Godesberg, 2015). p. 559.

<sup>36</sup> Annemieke Wolthuis's presentation titled "Restorative Justice Experiences from the Netherlands" disampaikan pada acara Indonesia Netherland Legal Update (INLU) in Jakarta on 19 September, 2022.

<sup>37</sup> M S Hoekstra, Riezen-Den Bak, and G Teeuwen, "Plan-En Procesevaluatie Mediation in Strafbzaken (Plan and Process Evaluation of Mediation in CriminalCases)," 2024. p. 4.

<sup>38</sup> Jolien Stoffels, "Victim-Offender Mediation in the Netherlands" (Tilburg University, 2020). p. 16.

The victim's perspective plays a crucial role for the judge in deciding rooted in restorative justice. When imposing a decree that includes a judicial pardon (*rechterlijk pardon*), the judge must first hear the victim's views regarding what constitutes a just decision for them, including consideration of the results of any mediation that has taken place. However, the judge is not bound to follow the victim's opinion, since the judge is positioned as the determinant of justice for all the related parties.<sup>39</sup>

The Netherlands also features restorative mediation (*Herstelbemiddeling*) outside of the proceedings. This mediation can occur at any time, including before, during, or after the trial. The focus of this mediation is emotional recovery, and it does not influence the criminal case.<sup>40</sup> This mediation provides an opportunity for the victim and the offender to voluntarily discuss the criminal act and its consequences, guided by a professional mediator, with the aim of resolving the consequences of the criminal act and fostering an understanding.

Beyond Article 51h of the Criminal Procedure Code, the Dutch Ministry of Justice supports various initiatives to conduct mediation at the regional level, encompassing mediations within and outside the criminal justice process. From 2016-2017, a mediation project was conducted within the criminal justice process, involving 716 cases across six courts. This was collaboration between the Public Prosecutor's Office, the Courts, the court mediators (*Mediatorsfederatie Nederland*), and the Victim Focus institution (*Slachtoffer in Beeld*). The prerequisites for undertaking the mediation were that the suspect admitted to all or part of the criminal offense and agreed to participate in the mediation, and the victim also had to agree. The Public Prosecutor and the judge could suspend the proceedings for the mediated cases until before the final judgment. After the mediation, both victims and the offenders reported that they frequently no longer felt it necessary to continue with the criminal process. Regardless of the agreement that had been reached, the ultimate decision to approve or terminate a case after successful mediation remained with the public prosecutor and the judge.<sup>41</sup>

Evidently, Article 51h of the Criminal Procedure Code had not been extensively utilized since the provision was perceived as unclear. From 2016 to 2018, a proposal was put forward to include the Victim-Offender Mediation as a component of restorative justice in the revised Criminal Procedure Code. This proposal was submitted to the Ministry and the Parliament. The objective was to ensure the legal certainty. This necessity arose because several existing mediation and restorative justice initiative programs throughout the Netherlands had become an established practice, thereby requiring a written legal basis. The proposal intended to incorporate a section titled 'Restorative Justice Services' into the new Criminal Procedure Code.<sup>42</sup>

While the Netherlands does not possess a comprehensive written regulation on the restorative justice mechanism, the success rate of the restorative justice approach is relatively high. This is attributable to the active role of the government in supporting various restorative justice initiatives at the regional level for subsequent institutionalization through various existing legal instruments. The Netherlands also has various established restorative justice implementation agencies that support the execution of restorative justice.<sup>43</sup> These implementing agencies are not centralized within law enforcement institutions such as the police, the prosecutors, and the judges.

This contrasts with Indonesia, where the centre of the restorative justice implementing agencies lie within the law enforcement institutions namely the police, the prosecutor's office, and the courts. This centralization is due to the restorative justice mechanism in Indonesia still being viewed narrowly as a legal instrument for the swift resolution of a criminal case. This situation will reduce the primary objectives of restorative justice namely restoring victim harm;

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<sup>39</sup> Erasmus A.T. Napitupulu dkk, *Peluang Dan Tantangan Penerapan Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia*. p. 31.

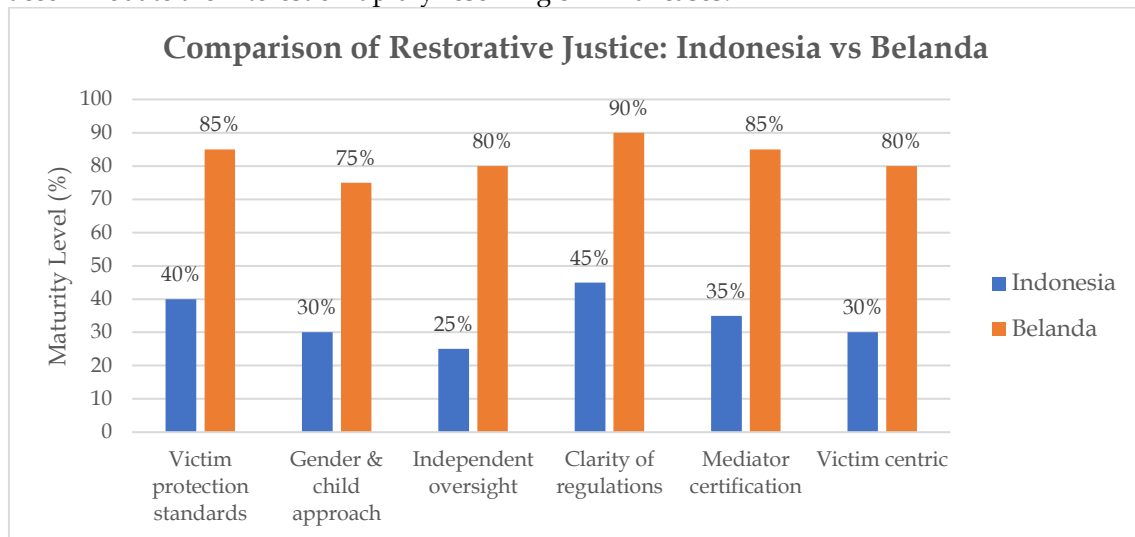
<sup>40</sup> Hoekstra, Bak, and Teeuwen, "Plan-En Procesevaluatie Mediation in Strafzaken (Plan and Process Evaluation of Mediation in Criminal Cases)." p. 5.

<sup>41</sup> Wolthuis et al., "Dutch Developments: Restorative Justice in Legislation and in Practice." Hlm. 123.

<sup>42</sup> Ibid. Hlm. 128.

<sup>43</sup> Erasmus A.T. Napitupulu dkk, *Peluang Dan Tantangan Penerapan Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia*. Hlm. 72.

repairing the relationship between the offender and the victim; and encouraging the offender's accountability. The restorative justice approach in the Netherlands seeks to build communication between the victim and the offender, thereby facilitating the victim's recovery and the restoration of a victim-offender relationship. This is evident in the central role of professional mediators who possess the capacity and certification to resolve the issues at hand. The restorative justice approach is not always placed as a component of the criminal judicial process. Furthermore, the restorative justice approach in the Netherlands originated from regional initiative such as the local police, prosecutors, and courts which were subsequently brought to the central government to formulate the written regulations. This is contrary to the situation in Indonesia, where the existence of *PerKapolRI No. 8 of 2021*, *Perja No. 15 of 2020*, and *Perma No. 1 of 2024* indicates that the initiative to implement restorative justice came from senior institutional officials to accommodate the interest of rapidly resolving criminal cases.



**Diagram 1.** Comparison of Restorative Justice in Indonesia and the Netherlands  
**Source:** Processed from various secondary sources (processed in 2025)<sup>44</sup>

A significant lesson derived from the Netherlands is that the judge plays a crucial role in the restorative justice process. The restorative justice mechanisms resulting from the investigation or prosecution stage generally still require judicial approval before attaining the final legal force.<sup>45</sup> This procedure is intended to ensure that the restorative justice agreement is not contrary to the law, is not made under duress, and truly reflects the interests of the victim and the community. This constitutes a form of judicial scrutiny. The judge considers the restorative agreement within the court's judgment. This form of court judgment is the judicial approval. Restorative justice is positioned as a legal consideration for imposing a mitigated sentence, granting a judicial pardon (*rechterlijk pardon*), or awarding an alternative sanction such as social work. Nevertheless, the judge maintains independence and autonomy as they are not entirely bound by the outcome of the restorative agreement when making a decision. Within the inquisitorial system, the judge plays an active role in seeking the truth for the case under trial. Even in cases that already possess a restorative agreement, the judge may still summon and request information from the victim to uncover the truth and justice regarding the agreement, which the judge subsequently incorporates into the court's judgment.

##### 5. Proposed Improvements to the Restorative Justice Mechanism Provisions

Based on the preceding sub-chapter discussions, it is evident that the provisions regarding the restorative justice mechanism in the June 2025 Draft Criminal Procedure Code present several problems. First, the mechanism only perpetuates the problematic provisions of

<sup>44</sup> Our analysis from laws and regulations on restorative justice in Indonesia and in the Netherlands.

<sup>45</sup> Satjipto Rahardjo, *Hukum Progresif: Hukum yang Membebaskan*, Kompas 2009, p. 124.

*PerKapolRI No. 8 of 2021* and *Perja No. 15 of 2020*. These provisions frame the restorative justice mechanism as a measure to terminate an investigation and a prosecution, which diminishes the judge's central role, reducing it merely to issuing a 'stamp' of approval. Second, the June 2025 Draft Criminal Procedure Code emphasizes the pre-trial institution as the legal remedy for revoking the decree terminating the preliminary investigation, full investigation or prosecution. This *post factum* approach makes the judge passive in supervising the authority of the investigators and the prosecutors. The pre-trial process is inadequate because it only assesses the formality of the authority exercised by the investigator and the prosecutor in issuing the case termination order, yet the assessment of the restorative justice agreement or its execution cannot be evaluated solely from a formal standpoint. Third, the June 2025 Draft Criminal Procedure Code merely continues the problematic provision of *Perma No. 1 of 2024*, where judicial supervision is limited to a restorative agreement achieved at the court level. The judge is unable to assess restorative agreements at the investigation and prosecution levels. The June 2025 Draft Criminal Procedure Code only allows the judge to consider the restorative justice outcome as a basis for sentence mitigation and the granting of alternative supervisory sentences, but it has not accommodated the judicial pardon (*rechterlijk pardon*) yet although the 2023 Indonesian Penal Code has opened the door for judges to play an active role through judicial pardon (*rechterlijk pardon*) and the restorative aim of sentencing.<sup>46</sup> Fourth, the June 2025 Draft Criminal Procedure Code fails to address the execution of the restorative justice agreement, particularly when there is a partial or total failure to comply. There is no discussion regarding the legal remedies available to the victim, nor is there legal responsibility of the offender whose case has been sentenced. Fifth, while the *Draft Law on Restorative Justice* has more comprehensive provisions, these provisions are inconsistent with those of the June 2025 Draft Criminal Procedure Code. Should both draft laws be enacted, a duality will arise. Sixth, Indonesia currently lacks the necessary support and infrastructure to build a system supporting the restorative justice approach, such as the presence of professional mediators. The existence of professional mediators is stipulated in the *Draft Law on Restorative Justice* but not in the June 2025 Draft Criminal Procedure Code.

The regulation of the restorative justice mechanism must be clearly and comprehensively addressed within a single law, specifically within the criminal procedure law. The Criminal Procedure Law can retain the restorative justice approach as a means of resolving criminal cases throughout the criminal judicial process. It means that restorative justice is conducted during the full investigation, prosecution, trial, and sentence execution stages, where the outcome can influence the offender's sentencing objectives. The restorative justice approach must not be positioned as an out-of-court settlement at the preliminary investigation stage, since at this point, an event has not yet been determined to be a criminal offence, and the offender has not yet been identified. Consequently, the restorative justice process cannot yet be executed.

The judge must assume a central role that functions to supervise the criminal justice process. The lawmakers need to revise the Draft Criminal Procedure Code formulation by granting more authority to the judge within the restorative justice mechanism. The investigator and public prosecutor play a crucial role in guiding the victim and the offender to access and voluntarily engage in the restorative justice process which is subject to judicial oversight. To ensure the restorative justice objectives are realized during the mediation process and to prevent the occurrence of the 'selling and buying' of reconciliation, the presence of professional mediators must be introduced into the Draft Criminal Procedure Code. This necessitates the consequence of building the infrastructure to support these professional mediators. The police, the public prosecutor, and the mediator shall submit the restorative justice outcome to the judge for either a decree or to serve as a basis for the judge's consideration in deciding. The judge, in carrying out their role as a judicial approval authority, should not immediately make a decree, but may re-examine the agreement concerning the voluntariness of the victim and the offender, the fulfillment of the victim's rights to restoration, and the offender's ability to execute their

<sup>46</sup> Mardjono Reksodiputro, *Kriminologi Dan Sistem Peradilan Pidana* (Jakarta: Pusat Pelayanan Keadilan dan Pengabdian Hukum Universitas Indonesia, 1994). p. 56

responsibilities. If necessary, the judge may re-summon the parties, and the judge may adjust the outcome of the agreement based on the facts discovered before finally issuing a decree or court judgment. The judge can utilize the restorative agreement as a basis for granting a judicial pardon (*rechterlijk pardon*), imposing a mitigated sentence, a supervisory sentence, or other alternative sanctions such as social work, as regulated in the 2023 Indonesian Penal Code. This active role of the judge in the restorative justice process reflects the judge's central role in the inquisitorial system, exercising the function of judicial scrutiny to supervise the civil rights of both the victim and the offender throughout the criminal judicial process.

The makers of the Draft Criminal Procedure Code must regulate the execution of the restorative agreement and the legal remedies that are available when the agreement fails to materialize. Restorative justice should be positioned as a suspension of the termination of the investigation or prosecution. This can be implemented if the statute of limitations for prosecution has not expired. It means that the agreement must be followed by execution within an agreed-upon timeframe; only when the entire agreement has been fulfilled should the investigator or public prosecutor request the judge to issue a decree for the termination of the investigation or prosecution. A failure to execute the restorative agreement may result in the resumption of the case to the next stage, without precluding the possibility of another restorative justice process at that subsequent stage. At the trial stage, a failure to execute the agreement may cause the supervisory sentence to be nullified and replaced with a custodial sentence.

Specifically for the restorative justice mechanism after the court's judgment, the Supervising and Observing Judge can oversee the execution of restorative justice. Although the June 2025 Draft Criminal Procedure Code does not regulate the post-judgment restorative justice mechanism, it is crucial to regulate this as it remains part of the objectives of sentencing. Restorative justice should still be accessible to the victims and the convicts based on the goal of restoring harmony between the victim and the offender. The Supervising and Observing Judge plays a crucial role in assessing the successful execution of the agreement's outcome, which then serves as input for granting remission, assimilation, or parole, or as a consideration for the President in granting clemency.

**Table 3.** Recommendations for the Restorative Justice Mechanism in the Draft Criminal Procedure Code (RKUHAP)

Stage	Mediation	Execution	Outcome
<b>Preliminary Investigation</b>	No regulation required	No regulation required	No regulation required
<b>Full Investigation</b>	Implementer: Professional Mediator	Supervisor: Investigator	Success: Judicial Decree for an Investigation Termination;
<b>Prosecution</b>	Supervisor: Investigator	Form: Suspension of Investigation Termination	Failure: Case proceeds to the next stage
	Implementer: Professional Mediator	Supervisor: Prosecution	Success: Judicial Decree for Prosecution Termination;
	Supervisor: Public Prosecutor	Form: Suspension of Prosecution Termination	Failure Case proceeds to the next stage
<b>Trial</b>	Implementer: Professional Mediator	Supervisor: Public Prosecutor	Success Basis for judicial pardon, sentence mitigation, granting of supervisory or alternative sentence;
	Supervisor: Judge		Failure: Nullification of supervisory or alternative sentence,

Stage	Mediation	Execution	Outcome
<b>Post-Judgment</b>	Implementer: Professional Mediator Implementer: Correctional Officers and Supervising and Observing Judge	Implementer: Correctional Officers and Supervising and Observing Judge	which is replaced by custodial sentence. Success: Basis for consideration in granting remission, assimilation, parole, and clemency

**Source:** Authors.

#### **IV. Conclusion**

The June 2025 Draft Criminal Procedure Code regulates the restorative justice mechanism, yet its provisions do not fully reflect the active role of the judge in exercising judicial scrutiny within the inquisitorial system. This is evident in the restorative justice mechanism at the investigation and prosecution levels, where restorative justice is framed as an out-of-court settlement. The investigators and the public prosecutors possess extensive authority to utilize restorative justice as a means of a case termination without a sufficient judicial supervision since the judge merely acts to issue a decree. Consequently, the process is susceptible to violations of the rights of both the victims and the offenders during the restorative justice process.

In fact, the judge plays a crucial role in determining the potential success of the restorative justice process. Therefore, the restorative justice mechanism must be positioned as a method for a criminal resolution throughout the criminal judicial process. The resulting agreement must be judicially supervised or integrated into the court's judgment. The involvement of the Police and the Prosecutor is necessary in the initial stage to encourage the initiation of the restorative justice mechanism. On the other hand, the judge's role is central: it is not only to issue a decree on the restorative agreement but also to be actively involved in assessing and evaluating the execution of the restorative agreement and integrating the outcome of the agreement into the court's judgment.

One notable critique concerning the restorative justice provisions in the June 2025 Draft Criminal Procedure Code is the absence of supervision over the execution of the restorative agreement's outcomes. This matter is critical to ensure that the objectives of restorative justice are realized. The concept of *post factum* judicial scrutiny through the pre-trial institution in the 2025 Draft Criminal Procedure Code is inadequate to reopen cases terminated due to a restorative agreement since it only examines the formality of the investigators' and the public prosecutors' exercise of authority.

#### **Author Contributions**

Conceptualization, Vidya Prahassacitta; methodology, Vidya Prahassacitta; formal analysis, Vidya Prahassacitta, Mega Ayu Faraswati; data collection, Vidya Prahassacitta, Mega Ayu Faraswati; writing, Vidya Prahassacitta, Mega Ayu Faraswati.

All authors have read and agreed to the published version of the manuscript.

#### **Data Availability Statement**

The data that support the findings of this study are openly available in figshare at [10.6084/m9.figshare.30570332](https://doi.org/10.6084/m9.figshare.30570332)

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