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Regulatory Problematics of Restorative Justice in Addressing Sexual Violence

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Regulatory Problematics of Restorative Justice in Addressing Sexual Violence Offenses within Indonesia's Criminal Justice System

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Abstract

Regulatory inconsistencies pose a barrier to the implementation of restorative justice in Indonesia, particularly in the handling of sexual violence cases. This issue arises because Article 5 of Police Regulation No. 8/2021 does not exclude sexual violence crimes from the restorative justice mechanism, while Article 21 of Law No. 12/2022 explicitly prohibits the resolution of cases outside the judicial process. This study aims to analyze the normative limitations of applying restorative justice in sexual violence cases and to identify the implications of regulatory disharmony on legal certainty. This study employs a normative legal methodology, drawing on legislative, conceptual, and case-based approaches. The analysis of legal materials is conducted through two principal techniques, namely descriptive and analytical analysis of primary, secondary, and tertiary legal materials. The results of the study indicate that this regulatory disharmony leads to multiple interpretations, weakens legal certainty, and disrupts the coherence of restorative justice implementation within the criminal justice system; therefore, regulatory harmonization is necessary through the establishment of an integrated legal framework oriented toward victim protection. The novelty of this study lies in its critical analysis of the inconsistencies in restorative justice regulations regarding the handling of sexual violence crimes by examining the interrelationships among various laws and law enforcement policies in effect in Indonesia. The contribution of this study is to propose a direction for regulatory reform that prioritizes the principles of victim protection, substantive justice, and legal certainty as the foundation for harmonizing restorative justice policies, thereby serving as a reference for lawmakers and law enforcement officials in formulating mechanisms for resolving sexual violence cases.

Keywords: Regional Representative Council; Spanish Senate; Political Parties; Justice; Constitutional System

INTRODUCTION

The retributive orientation of the conventional criminal justice system has been widely criticized for its lack of accountability and human rights protections,¹ a normative concern that resonates with the constitutional guarantee under Article 28G of the 1945 Constitution, which safeguards the protection of the person, family, honor, dignity, property, and sense of security, including protection from threats and degrading treatment. According to John Braithwaite in *Restorative Justice and Responsive Regulation*, restorative processes are meaningful only when the needs, voices, and definitions of restoration provided by the victims themselves serve as the primary focus; thus, restorative justice not only provides offenders with an opportunity to take responsibility but also ensures that victims receive substantial restoration. However, although restorative justice offers a restorative framework that places the victim at the centre, it cannot be applied universally to all forms of criminal acts, as affirmed by CEDAW through General Recommendation Number 35 on Gender-

Based Violence against Women, section on Prosecution and Punishment (para. 32(b)), which states that no form of violence against women may be mandatorily referred to alternative dispute resolution procedures, including mediation and conciliation.

Previous studies related to this research have primarily examined the application of restorative justice within the criminal justice system in general. The study by Mochamad Sukedi et.al., affirms that restorative justice is rooted in the values of deliberation and Indonesian customary legal traditions,² while the research conducted by Zahratul'ain Taufik, et.al., demonstrates the effectiveness of implementing restorative justice in minor criminal cases at the East Lombok District Prosecutor's Office, in which the restoration of relations between the perpetrator and the victim remains possible.³ Conversely, the findings of Azis Saputra et.al., reveal a high level of understanding among police officers regarding Police Regulation Number 8 of 2021, indicating that the regulation is closely

¹ Abdurrahman Alhakim, Teguh Prasetyo, and Henry Soelistyo Budi, "Revitalizing Justice: Empowering Juvenile Sexual Offenders through a Restorative Approach in Indonesia," *Journal of Judicial Review* 25, no. 1 (June 2023): 18, <https://doi.org/10.37253/jjr.v25i1.7537>.

² Mochamad Sukedi and I. Nengah Nuarta, "Keadilan Restoratif Sebagai Upaya Penyelesaian Tindak Pidana Dalam Sistem Hukum Di Indonesia," *Jurnal Preferensi Hukum* 5, no. 2 (September 2024): 222–30, <https://www.ejournal.warmadewa.ac.id/index.php/juprehum/article/view/10415>.

³ Zahratul'ain Taufik and Atika Zahra Nirmala, "Restorative Justice Sebagai Metode Penyelesaian Perkara Pidana Pelaku Dewasa Di Kejaksaan Negeri Lombok Timur," *Journal Kompilasi Hukum* 9, no. 2 (December 2024): 203–13, <https://jkh.unram.ac.id/index.php/jkh/article/view/187>.

aligned with police enforcement practice. Nevertheless, these three studies have not examined the juridical boundaries and the problems surrounding the application of restorative justice in cases of sexual violence a category of criminal offense that is normatively excluded from non-litigation settlement under Law Number 12 of 2022 nor have they analysed its implications for substantive justice for victims. Accordingly, this study seeks to fill that gap by providing an analysis of the regulatory disharmony between Article 5 of Police Regulation Number 8 of 2021 and Article 23 of Law Number 12 of 2022 and its consequences for the protection of victims' right to reparation, thereby offering a novel contribution that has not been addressed by previous research.

The urgency of this study is heightened in light of findings from prior empirical research conducted within the jurisdiction of the Ngoro Sectoral Police, Jombang Regency, during the period of 2023–2024, which recorded a number of cases of domestic violence and sexual violence resolved through restorative justice mechanisms. Referring to these empirical findings, in 2023 there were 41 cases of domestic violence and in 2024 there were 25 cases of domestic violence.⁴ These facts

demonstrate the existence of a misinterpretation or expansion of the application of restorative justice to encompass serious criminal offenses such as sexual violence, which fundamentally carries the risk of disregarding victims' suffering and generating the potential for revictimization.⁵

This study focuses on the analysis of regulatory disharmonization concerning the application of restorative justice in the handling of sexual violence offenses between Police Regulation Number 8 of 2021 and Law Number 12 of 2022. The central issue examined is the absence of an explicit exclusion of sexual violence offenses in Article 5 of Police Regulation Number 8 of 2021, which creates interpretative ambiguity and potentially conflicts with the prohibition of case settlement outside the judicial process as stipulated in Article 23 of Law Number 12 of 2022. The study further examines the implications of such disharmonization for the guarantee of substantive justice for victims, particularly in ensuring comprehensive reparation, assistance, and the fulfilment of victims' rights as mandated by Law Number 12 of 2022. Accordingly, this research normatively evaluates the limits of the application of restorative justice in cases of

⁴ Nurul Aslamiah, "Penerapan Restorative Justice Terhadap Kasus Kekerasan Seksual Di Desa," *El-Dusturie* 4, no. 1 (July 2025): 92, <https://doi.org/10.21154/eldusturie.v4i1.11038>.

⁵ Yuni Putri Dewantara and Ika Fransisca, "Restorative Justice Dalam Penyelesaian Sengketa Pelecehan Seksual Cyber," *Jurnal Hukum Mimbar Justitia* 10, no. 2 (December 2024): 226, <https://jurnal.unsur.ac.id/index.php/jhmj/article/view/4679>.

sexual violence and assesses whether the non-penal restorative justice-based policy regulated under Police Regulation Number 8 of 2021 is consistent with, or instead contradicts, the imperative mandate of victim protection under Law Number 12 of 2022.

This study constitutes normative juridical research employing several approaches, including a statutory approach to examine the regulatory disharmonization between Police Regulation Number 8 of 2021 and Law Number 12 of 2022, a conceptual approach to deepen the understanding underlying the limitation of the application of restorative justice to sexual violence offenses, and a case-based approach to examine the practical implementation of restorative justice within society. The analysis of legal materials is conducted through two principal techniques, namely descriptive and analytical analysis of primary, secondary, and tertiary legal materials. The primary legal materials consist of Police Regulation Number 8 of 2021, Law Number 12 of 2022, Supreme Court Regulation Number 1 of 2024, and Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020. The secondary legal materials include scholarly articles published in accredited law journals and literature addressing restorative justice and the protection of victims of sexual violence. Meanwhile, the tertiary legal materials encompass international

conventions that frequently serve as normative foundations for the formulation of legislation in Indonesia.

This study aims to identify the existence of regulatory disharmonization that has the potential to result in an expansion of the application of restorative justice to sexual violence offenses and to analyse the normative limitations governing the application of restorative justice mechanisms in the handling of sexual violence offenses within the Indonesian criminal justice system by examining the conformity and consistency of the regulatory framework between Police Regulation Number 8 of 2021 and Law No. 12 of 2022. This study further aims to specifically assess whether the application of restorative justice in cases of sexual violence is aligned with the principle of substantive justice for victims, particularly in the fulfilment of the rights to protection, reparation, and guarantees of freedom from revictimization.

RESULT AND DISCUSSION

Regulatory Disharmonization of Restorative Justice under Police Regulation Number 8 of 2021 and Law Number 12 of 2022

The restoration of harm and social relationships damaged by crime constitutes the essence of restorative justice, rather than merely the imposition of punishment upon the offender. Restorative justice operates as a complementary mechanism to the formal

legal system, as it seeks to generate a more effective, participatory, and humane form of justice through the active involvement of both the community and law enforcement authorities.⁶

The United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters likewise define restorative justice as a complementary mechanism, rather than as a substitute for the existing criminal justice system. The principles further recognize that restorative justice may be implemented at any stage of the criminal justice process within national legal systems. Accordingly, its application is not confined to the pre-prosecution (pre-charge) stage, such as diversion, but may extend to the prosecution (post-charge) stage, adjudication, and the execution of sentences, including as an alternative to imprisonment. Nevertheless, within the Indonesian criminal justice system, the most decisive locus of restorative justice practice lies at the pre-prosecution stage, namely the investigation phase, where the discretionary authority of law enforcement officials significantly

determines the trajectory of case handling. This discretionary authority, as regulated under Police Regulation Number 8 of 2021, positions the investigation stage as the principal locus for the application of restorative justice, including in cases of sexual violence offenses.

The principal principles underlying restorative justice include: (1) the full participation of all relevant stakeholders, including the victim, the offender, and their respective families and communities;⁷ (2) a contextualized understanding of the offense within its broader social framework;⁸ (3) a forward-oriented approach emphasizing preventive and solution-based outcomes; and (4) procedural flexibility that prioritizes creativity in the resolution process. Historically, the creative orientation of restorative justice can be traced to Albert Eglash, who in the 1950s conceptualized restorative justice as an alternative model of creative sentencing.⁹

The restorative paradigm was progressively adopted into the Indonesian

⁶ Nur Rochaeti et al., "A Restorative Justice System in Indonesia: A Close View from the Indigenous Peoples' Practices," *Sriwijaya Law Review* 1, no. 1 (January 2023): 89–90, <https://doi.org/10.28946/slrev.Vol7.Iss1.1919.pp87-104>.

⁷ Angki Sukma, "Penerapan Keadilan Restoratif Pada Tindak Pidana yang Tidak Memenuhi Syarat Diversi di Indonesia," *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial* 1, no. 8 (March 2024): 66, <https://ojs.daarulhuda.or.id/index.php/Socius/article/view/236>.

⁸ Ni Kadek Putri Sita Rahayu and Gunardi Lie, "Tinjauan Filosofis Dan Yuridis Terhadap Keadilan Restoratif Dalam Sistem Peradilan Pidana Anak," *Jurnal Yustitia* 21, no. 2 (December 2025): 32, <https://doi.org/10.62279/yustitia.v21i2.1675>.

⁹ Albert Eglash, "Creative Restitution. A Broader Meaning for an Old Term," *The Journal of Criminal Law, Criminology, and Police Science* 48, no. 6 (1958): 620, <https://doi.org/10.2307/1140258>.

criminal justice system¹⁰ and has since developed in a structurally significant manner. Within the national legal framework, normative recognition of restorative justice is explicitly articulated in Article 1 point 6 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which constitutes the earliest formal statutory basis for its application.¹¹ Article 1 point (6) of Law Number 11 of 2012 defines restorative justice as a mechanism for resolving criminal cases through the involvement of the perpetrator, the victim, their respective families, and other relevant stakeholders in order to collectively reach a fair resolution, with an emphasis on restoring the original condition rather than pursuing retributive punishment. This statute represents a progressive shift in Indonesia's juvenile penal policy, shifting from a retributive framework toward a restorative model grounded in human dignity, participatory resolution, and the primacy of recovery.¹²

In the same year, a Joint Decree of Understanding was formalized between the Chief Justice of the Supreme Court, the Minister of Law and Human Rights, the

Attorney General, and the Chief of the Indonesian National Police concerning the Adjustment of the Threshold for Minor Offenses and Fines, the Expedited Examination Procedure, and the Implementation of Restorative Justice, signed on 17 October 2012. This inter-institutional instrument expressly incorporates restorative justice within the procedural handling of minor criminal offenses, as reflected in Article 1 point 2 of Joint Decree Number 131/KMA/SKB/X/2012, which normatively defines restorative justice as a case-resolution mechanism conducted at the investigative stage or at the initial phase of trial proceedings, involving the offender, the victim, their respective families, and relevant community representatives, with the objective of achieving a fair settlement predicated upon restoration to the status quo ante.

The institutionalization of this Joint Decree constitutes a significant structural development in the construction of a coordinated enforcement framework among the police, the prosecution service, and the judiciary. It represents the earliest formal

¹⁰ Cecilia Rudolf Valentino, "Restorative Justice as an Alternative in the Indonesian Criminal Justice System," *Journal of Progressive Law and Legal Studies* 3, no. 03 (September 2025): 350, <https://doi.org/10.59653/jplls.v3i03.1864>.

¹¹ Geney Srikusuma Dewi, "Penetapan Pengadilan Sebagai Muara Dalam Penyelesaian Perkara Pidana Di Luar Pengadilan Yang Menggunakan Pendekatan Restorative Justice," *Jurnal Yustitia* 17, no. 01 (July 2023): 57–58, <https://doi.org/10.62279/yustitia.v17i01.1047>.

¹² Safira Gustika Maharian, "Restorative Justice in the Reform of the Indonesian Criminal System (Case Study of Violence Against Children in the Selebar Police Sector Area, Bengkulu City)," *Journal of Law, Politic and Humanities* 4, no. 5 (September 2024): 1870, <https://doi.org/10.38035/jlph.v4i5.504>.

articulation of inter-agency harmonization for the implementation of restorative justice beyond the juvenile justice regime. Through this coordinated regulatory architecture, restorative justice acquired strengthened institutional legitimacy, thereby consolidating its position within the broader trajectory of Indonesian criminal justice reform.

Building upon the Joint Decree, the Indonesian National Police strengthened the normative foundation for the implementation of restorative justice through Chief of Police Circular Letter Number SE/8/VII/2018 concerning the Implementation of Restorative Justice in the Settlement of Criminal Cases, issued on 27 July 2018. The circular provides clarification regarding the scope and application of restorative justice within investigative practice. The circular expressly states that restorative justice must not be construed merely as a mechanism for amicable case termination. Instead, it is framed as a process aimed at ensuring justice for all parties involved in a criminal case through the active participation of the victim, the offender, the local community, and investigators acting as facilitators in the resolution process.

Furthermore, the development of restorative justice was marked by the issuance of Chief of Police Regulation Number 6 of 2019 concerning Criminal Investigation,

issued on 4 October 2019. Restorative justice is expressly defined in Article 1 point 27 of the Regulation as the settlement of criminal cases involving the offender, the victim and/or their families, as well as other relevant parties, with the objective of achieving justice for all parties concerned.

The issuance of this regulation marked an important phase in the integration of restorative justice principles at the investigative stage. Through this Chief of Police Regulation, the Indonesian National Police not only formally acknowledged the existence of case-resolution mechanisms oriented toward restoration but also provided a clear normative basis for their implementation within law enforcement practice. With such legal grounding, investigators are vested with the authority and legitimacy to resolve cases through restorative justice mechanisms. This integration further reinforces substantive justice by promoting settlements that are equitable, proportionate, and oriented toward the restoration of social relationships among the parties involved.

Subsequent to Article 12 of Chief of Police Regulation Number 6 of 2019, which expanded the application of restorative justice at the investigative stage, the Indonesian National Police further updated its legal framework through Chief of Police Regulation Number 8 of 2021 concerning the Handling of Criminal Offenses Based on

Restorative Justice (Police Regulation Number 8 of 2021), issued on 19 August 2021. This regulation defines restorative justice in Article 1 point 3, stating that it constitutes the settlement of criminal offenses through the involvement of the offender, the victim, their respective families, community leaders, religious leaders, customary authorities, or other relevant stakeholders, jointly seeking a fair resolution through reconciliation, with an emphasis on restoring the situation to the status quo ante.¹³

This regulation essentially affirms the recognition of alternative case-resolution procedures outside the criminal justice process through restorative justice mechanisms at the investigative stage. However, conceptual inconsistencies exist, particularly in the substantive differences between Chief of Police Regulation Number 8 of 2021 and Chief of Police Circular Letter Number SE/8/VII/2018. While Police Regulation Number 8 of 2021, as a refinement of Circular Letter SE/8/VII/2018, tends to prioritize reconciliation as the primary outcome of restorative justice implementation, the Circular Letter explicitly asserts that restorative justice should not be interpreted merely as a mechanism for amicable case closure. These

regulatory inconsistencies indicate that the application of restorative justice in Indonesia continues to face conceptual challenges, particularly in balancing “case resolution” with “restoration of social relationships”.

Consistent with the principle of protection, Law Number 12 of 2022 establishes the victim as the primary subject, with rights to case management, protection, and restoration that must be strictly guaranteed and fulfilled by the State. Accordingly, any mechanism for case resolution must not compromise these standards of management, protection, and restoration. In this regard, the orientation of Police Regulation Number 8 of 2021, which appears to prioritize the reconciliation process as a measure of restorative justice effectiveness, raises critical questions concerning the conformity of such an approach with the more stringent protection mandate codified in Law Number 12 of 2022. This regulatory discrepancy highlights the significance of a thorough analysis of the disharmony between these instruments, particularly in defining the normative boundaries for the application of restorative justice to sexual violence cases. Moreover, it provides a substantial analytical framework to assess whether the expanded interpretation of restorative justice within

¹³ Dewa Putu Hendra Widiatmika, “Penerapan Perpol Nomor 8 Tahun 2021 Tentang Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif Di Direktorat Reserse Kriminal Umum Polda Bali,” *IJOLARES: Indonesian Journal of Law Research* 1, no. 1 (March 2023): 2, <https://doi.org/10.60153/ijolares.v1i1.1>.

Police Regulation Number 8 of 2021 coheres with the imperative of victim protection codified in Law Number 12 of 2022.

Normative Boundaries of Restorative Justice under Law Number 22 of 2022 on Sexual Violence Offenses

The application of restorative justice within the Indonesian criminal justice system is normatively conceived as a mechanism to recalibrate the relationship between victims, offenders, and society, as reflected in various sectoral regulatory instruments, including the Prosecutor's Regulation of the Republic of Indonesia, the Decree of the Director General of the General Courts of the Supreme Court of the Republic of Indonesia, and the Regulation of the Indonesian National Police. Nevertheless, stringent limitations are imposed on the scope of restorative justice, particularly under the Decree of the Director General of the General Courts of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020. The Decree expressly provides that criminal cases eligible for resolution through restorative justice are confined to minor offenses as stipulated under Articles 364, 373, 379, 384, 407, and 482 of the Criminal Code, provided that the material loss does not exceed IDR 2,500,000. Accordingly, the scope of criminal cases eligible for resolution through restorative justice is explicitly restricted to minor offenses.

A similar limitation is articulated in the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice, particularly Article 6 Section (1) point a, which provides that restorative justice may only be applied where the offense constitutes a minor crime or where the victim's loss does not exceed IDR 2,500,000 (two million five hundred thousand rupiah) or the applicable provincial minimum wage. This provision further reinforces the normative position that restorative justice is designed for criminal offenses of limited severity and relatively low social impact. In this regulatory context, the application of restorative justice to sexual violence offenses classified as extraordinary crimes under Law Number 12 of 2022 would extend beyond the restrictive parameters consistently established by the Supreme Court through these regulatory instruments.

The consistency of these limitations is further reflected in Article 5 Section (3) of the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 (hereinafter referred to as Prosecutor's Regulation Number 15 of 2020) on the Termination of Prosecution Based on Restorative Justice, which provides that, for criminal offenses committed against a person, bodily integrity, life, or personal liberty, the requirement set

forth in Section (1) point c may be exempted. This provision indicates that cases involving violations of fundamental rights, particularly those affecting physical integrity or individual freedom, fall outside the ordinary parameters of restorative justice. Accordingly, both prosecutorial regulations and Supreme Court policies consistently affirm that the application of restorative justice is subject to substantive limitations and cannot be extended universally to all categories of criminal offenses.

The limitations on the application of restorative justice under Prosecutor's Regulation Number 15 of 2020 reflect the legislative necessity of establishing a statutory framework that explicitly regulates the boundaries of restorative justice in relation to sexual violence offenses. In this context, Law Number 12 of 2022 represents a more definitive orientation in criminal policy. Article 23 of Law Number 12 of 2022 expressly prohibits the resolution of sexual violence offenses through mechanisms of settlement outside the formal criminal justice process.

The norm expressly establishes that all forms of resolution outside the formal judicial process, including restorative justice

mechanisms, are excluded as a matter of law from the adjudication of sexual violence offenses, irrespective of any agreement between the perpetrator and the victim. This restriction is predicated upon juridical considerations as well as victimological analysis, which acknowledge that the application of restorative justice in cases of sexual violence entails a substantial risk of retraumatization and secondary victimization. Within this framework, the prohibition serves as a structural safeguard that preserves the integrity of the recovery-oriented principle and upholds the victim's dignity, security, and fundamental rights, particularly in contexts marked by asymmetrical power relations.¹⁴

The Normative Construction of the Investigator's Authority within Restorative Justice Mechanisms

Law Number 12 of 2022 signifies a normative reorientation within Indonesian criminal law policy through the institutionalization of a victim-centred paradigm. This approach is premised upon the recognition that sexual violence generates profound physical, psychological, and social harm, such that its resolution cannot be reduced to the restoration of relations between perpetrator and victim,¹⁵

¹⁴ Widya Ari Dewi, Satya Arinanto, and Muhammad Ilham Hermawan, "Legal Protection for Victims in The Resolution of Criminal Cases Through Restorative Justice Mechanisms," *Jurnal Daulat Hukum* 8, no. 4 (January 2026): 1071, <https://jurnal.unissula.ac.id/index.php/RH/article/view/50835/15321>.

¹⁵ Nabila Maulidiya, Indi Ulya Kamalin, and Jelita Yupitasari, "Eksplorasi Pendekatan Restorative Justice sebagai Mekanisme Pengurangan Angka Residivisme: Analisis Kritis terhadap Efektivitas Teori Relatif dalam Sistem Peradilan Pidana Indonesia," *Progressive Law Review* 7, no. 1 (2025): 28, <https://progresiflawreview.ubl.ac.id/index.php/plr/article/view/255>.

but instead requires strong institutional capacity and community support to ensure its effective implementation.

In this context, the explicit prohibition articulated in Article 23 of Law Number 12 of 2022 gives rise to regulatory disharmony with Police Regulation Number 8 of 2021, particularly Article 5-point f, which specifies several categories of offenses excluded from the scope of restorative justice, including terrorism, offenses against state security, corruption, and offenses against life. Article 5-point f does not expressly incorporate sexual violence offenses as regulated under Law Number 12 of 2022.

This condition generates regulatory inconsistency, particularly when examined through the principle of *lex posterior derogat legi priori*, which mandates the application of the more recent legal norm insofar as it regulates the same material.¹⁶ Accordingly, the provision of Police Regulation Number 8 of 2021 that permits the application of restorative justice cannot be sustained to the extent that it contradicts the explicit prohibition contained in Article

23 of Law Number 12 of 2022 as the later-enacted regulation.

Within law enforcement practice, Police Regulation Number 8 of 2021 functions as the primary operational reference for investigators, while institutionally positioning police officers to participate in restorative processes as community representatives.¹⁷ This institutional centrality is evidenced by monitoring findings published by the National Commission on Violence against Women (Komnas Perempuan) across nine police jurisdictions, which reveal that 97% of respondents (126 out of 130) had previously handled cases employing a restorative justice approach. This extensive application is accompanied by a correspondingly high degree of normative awareness, as 94% of respondents (122 out of 130) acknowledged familiarity with internal regulatory frameworks governing restorative justice, including Police Chief Circular Letter Number 8 of 2018 and Police Regulation Number 8 of 2021.¹⁸

These findings indicate that the internal regulatory framework has undergone substantive institutionalization

¹⁶ Mesa Indra Naiborhu and Wagiman Wagiman, "The Fundamental Position Of Lex Posterior Derogat Legi Priori in the Conflict of Norms Against the Rights of Holders of The Right to Justice," *Jurnal Indonesia Sosial Teknologi* 5, no. 2 (February 2024): 663, <https://doi.org/10.59141/jist.v5i2.906>.

¹⁷ Yu-Wei Liu, "Assessing the Feasibility of Police Participation in Restorative Justice in Taiwan: A Restorative Policing Perspective," *International Journal of Law and Society* 9, no. 1 (February 2026): 96, <https://doi.org/10.11648/j.ijls.20260901.18>.

¹⁸ Komisi Nasional Anti Kekerasan Terhadap Perempuan, "Transformasi yang tertunda: Temuan Pemantauan Berperspektif Keadilan Gender pada Praktik Keadilan Restoratif di 9 Provinsi 23 Kota/Kabupaten," accessed March 17, 2026, <https://komnasperempuan.go.id/pengembangan-pengetahuan-detail/transformasi-yang-tertunda-temuan-pemantauan-berperspektif-keadilan-gender-pada-praktik-keadilan-restoratif-di-9-provinsi-23-kota-kabupaten>.

within routine policing practices, accompanied by a relatively uniform distribution of understanding across western, central, and eastern regions of Indonesia. This pattern is further substantiated by empirical research conducted by Azis Saputra, Dadang Sutrasno, and Widi Setiawan, which demonstrates that the level of institutional comprehension of Police Regulation Number 8 of 2021 approached 100% across six Regional Police Offices examined in the study.¹⁹

However, empirical findings derived from interviews conducted by Komnas Perempuan reveal that institutional dissemination within the police apparatus has been predominantly confined to internal socialization sessions emphasizing the procedural application of Chief of Police Circular Letter Number 8/VII/2018 and Police Regulation Number 8 of 2021 as primary normative instruments. Such initiatives have not been accompanied by comprehensive and specialized training addressing the substantive foundations of restorative justice itself. Subsequent monitoring undertaken by Komnas Perempuan further demonstrates that 46% of the 130 respondents reported acquiring knowledge of restorative justice

through socialization activities, 27% through formalized training programs, and the remainder through circular instruments or autonomous learning.²⁰

This empirical reality reflects that educational and dissemination processes within the police institution remain predominantly procedural and structurally oriented. In principle, the effective implementation of restorative justice requires adequate institutional resources, specialized training, and sustained institutional support, as the approach is intended to promote a more holistic form of justice that prioritizes recovery, reconciliation, and the meaningful participation of all parties involved.²¹ Consequently, the institutionalization of restorative justice within the police environment appears to operate at an informational and administrative level, without yet attaining a sufficiently developed conceptual internalization consistent with its transformative normative aspirations.

The limited conceptual understanding among police officers regarding the substantive foundations of restorative justice frequently results in misinterpretations in its practical application. As revealed in interviews conducted by Komnas

¹⁹ Azis Saputra, 'Penerapan Keadilan Restoratif Dalam Penanganan Tindak Pidana Guna Mewujudkan Kemanfaatan dan Keadilan Masyarakat', *Jurnal Litbang Polri* 26, no. 3 (2023): 162, <https://doi.org/10.46976/litbangpolri.v26i3.225>.

²⁰ Komisi Nasional Anti Kekerasan Terhadap Perempuan, "Transformasi yang tertunda."

²¹ Suud Sarim Karimullah, "From Punishment to Healing: The Transformative Power of Restorative Justice," *ResearchGate* 29, no. 4 (January 2026): 681, <https://doi.org/10.47268/sasi.v29i4.1688>.

Perempuan and documented in its monitoring report, several police officers continue to equate restorative justice with Alternative Dispute Resolution (ADR) or diversion in juvenile cases, without adequately comprehending the fundamental distinctions in principles, objectives, and legal foundations that differentiate these mechanisms.²² This constrained understanding indicates that the regulatory framework governing restorative justice under Police Regulation Number 8 of 2021 has yet to articulate clear conceptual boundaries distinguishing restorative justice from ADR and diversion in juvenile proceedings.

Furthermore, this condition is compounded by Article 5 of Police Regulation Number 8 of 2021, which regulates the material requirements for the implementation of restorative justice. The provision is formulated in an open-ended and inherently subjective manner, as it fails to prescribe objective indicators or ascertainable normative parameters. Consequently, the determination of the applicability of restorative justice is, in practice, largely vested in the professional discretion of investigators, grounded in the concrete circumstances of each case, without explicit normative restrictions concerning categories

of criminal offenses that are substantively incompatible with resolution through restorative justice mechanisms.

The absence of determinate normative standards thus creates the potential for the extension of restorative justice to cases that, from a juridical and doctrinal standpoint, ought to be expressly excluded, including offenses of sexual violence. This empirical reality indicates that the principal problem lies not merely at the level of implementation, but within the normative configuration of the policy itself, which has yet to provide a coherent, systematically articulated, and conceptually standardized framework for the operationalization of restorative justice.

Hierarchically construed, the resolution of sexual violence cases through restorative justice manifests a form of vertical normative disharmony between Police Regulation Number 8 of 2021 as a subordinate implementing regulation and Law Number 12 of 2022 as a superior statutory instrument that limits and defines the permissible scope of such implementation. This situation may be regarded as inconsistent with the principle of *lex superior derogat legi inferiori*, the principle that higher legal norms prevail over lower-level regulations.²³ Consequently, this condition creates a doctrinal and institutional obligation for police authorities to

²² Komisi Nasional Anti Kekerasan Terhadap Perempuan, "Transformasi yang tertunda."

²³ Sri Warjiyati et al., "Benturan Norma dalam Implementasi Asas Lex Superior Derogate Legi Inferiori pada Surat Edaran dan Undang-Undang," *Reformasi Hukum* 28, no. 3 (December 2024): 239, <https://ojs.uid.ac.id/index.php/jrh/article/view/732>.

consistently align their interpretative and operational practices with Law Number 12 of 2022 as the higher normative authority.

Within this normative context, Police Regulation Number 8 of 2021 operates not merely as a procedural directive, but as a normative and epistemic construct that shapes the institutional rationality of police officers in the administration of criminal justice. The regulation embodies a particular paradigm of dispute resolution that, if not critically contextualized within the broader statutory hierarchy, risks displacing the restrictive parameters expressly articulated in superior statutes. In the absence of a comprehensive and hierarchically grounded understanding of the explicit limitations governing the application of restorative justice, cases of sexual violence may continue to be resolved through restorative mechanisms even after the enactment of Law Number 12 of 2022.

Furthermore, this phenomenon indicates structural weaknesses in inter-institutional supervision and coordination mechanisms designed to ensure the consistent application of restorative justice principles. When institutional practice prioritizes Police Regulation Number 8 of 2021 without sufficient attention to the exclusions expressly stipulated in Law Number 12 of 2022, the substance of justice particularly its victim-oriented character risks being reduced to considerations of administrative efficiency.

The juridical implications extend beyond a mere contravention of the principle governing the hierarchy of laws and regulations; they also implicate a deterioration in the substantive conception of justice within the criminal law system. In other words, the divergence in orientation between Police Regulation Number 8 of 2021 and Law Number 12 of 2022 reveals the existence of an underlying ideological disjunction within the law enforcement system itself.

Upon careful consideration of the various instances of erroneous legal application, it may be inferred that the disharmony between Police Regulation Number 8 of 2021 and Law Number 12 of 2022 does not merely signify a formal defect in the hierarchy or technique of legislative drafting. More profoundly, it reflects a structural deficiency in incorporating a victim-oriented paradigm within the institutional framework of Indonesia's criminal justice system. Although, at the normative level, Indonesia has demonstrated a commitment to the implementation of restorative justice through various institutional regulations, the substantive regulatory framework remains sectoral in character and has yet to be integrated into a comprehensive and coherent conceptual structure.

Based on the preceding normative analysis, the disharmony between procedural and substantive regulations

generates not only normative inconsistencies but also direct implications for the realization of substantive justice for victims of sexual violence. This condition indicates that restorative justice has not yet functioned as a juridical approach genuinely oriented toward victim recovery and the restoration of social relations. Accordingly, restorative justice cannot be indiscriminately applied to all categories of criminal offenses without considering moral dimensions, social contexts, and, most importantly, the rights and interests of victims.

The Implications of Restorative Justice Application to Sexual Violence Offenses within the Framework of Substantive Justice for Victims

The disharmony between Police Regulation Number 8 of 2021 and Law Number 12 of 2022 exemplifies a structural limitation in Indonesia's ongoing transition toward a criminal justice system oriented toward substantive justice. Whereas Police Regulation Number 8 of 2021 emphasizes the extrajudicial resolution of criminal cases as a mechanism of procedural efficiency through restorative justice, Law Number 12 of 2022 prioritizes the protection of victims and the restoration of their rights by explicitly precluding the application of restorative justice mechanisms in sexual violence offenses. This divergence in normative orientation highlights the incomplete policy alignment among law enforcement

institutions, particularly in the integration of newly established legal standards enshrined in Law Number 12 of 2022.

Normatively, the weakness of policy alignment between sectoral police regulations and national criminal policy following the enactment of Law Number 12 of 2022 is evidenced by Police Regulation Number 8 of 2021, which permits the application of restorative justice across various criminal offenses without establishing explicit limitations concerning sexual violence. The absence of definitive normative parameters generates legal uncertainty and allows for interpretive discretion at the level of investigator level, which, in practice, may result in the employment of non-litigation resolution mechanisms in cases that ought to be adjudicated through formal judicial procedures. This situation reflects a deficiency in normative coordination among law enforcement policies, as the practices implemented are in direct contravention of Article 23 of Law Number 12 of 2022, which explicitly prohibits extrajudicial reconciliation in sexual violence cases. The misalignment of implementation guidelines expands institutional discretion among law enforcement officers in the absence of a uniform and binding standard of victim protection, thereby rendering the application of restorative justice susceptible to deviation from the principles of victim-centred justice and increasing the risk of revictimization,

which ultimately reflects a deviation from the fundamental concept of victim protection as a mechanism intended to ensure legal guarantees and compensation for those who have suffered harm as victims of crime.²⁴

Monitoring findings published in 2023 that the resolution of sexual violence cases through restorative justice frequently falls short of upholding the principles of victim-centred justice. Among the 84 victims interviewed across three primary monitoring regions, 48 respondents (approximately 57%) expressed dissatisfaction with the procedures administered by law enforcement authorities.²⁵ This dissatisfaction was primarily attributed to several critical factors: (1) the process did not provide victims with meaningful participatory opportunities, despite the restorative justice principle recognizing victims' right to participate (to be included and to have a voice); (2) victims experienced marginalization and a sense of being cornered; (3) perpetrators often dominated the determination of settlement outcomes, which were deemed insufficient to generate a deterrent effect; and (4) the absence of adequate psychological and legal support, thereby undermining the victims' recovery and rehabilitation.²⁶

From a socio-cultural perspective, in-depth interviews conducted by National Commission on Violence Against Women further revealed that female victims frequently experience structural pressures to accept reconciliation processes in order to preserve family honour or avoid social stigma, thereby limiting meaningful participatory opportunities for the victims. In several cases within rural areas, restorative justice proceedings were conducted without the direct presence of the victims. The process was sometimes delegated solely to community leaders or male family members, effectively excluding victims from decision-making.

Furthermore, National Commission on Women observed that victims subjected to restorative justice mechanisms were exposed to an elevated risk of revictimization relative to those whose cases were processed through formal judicial proceedings. Individuals participating in restorative justice reported sustained psychological distress, manifesting as guilt, anxiety, and social marginalization. In contrast, victims whose cases advanced through the formal court system demonstrated comparatively greater levels of psychological acceptance and recovery, which can be

²⁴ M. Eza Helyatha Begouvic et al., "Penyelesaian Perkara Tindak Pidana Persetubuhan Terhadap Anak Yang Dilakukan Anak Menggunakan Pendekatan Berdasarkan Keadilan Restoratif," *SOL JUSTICIA* 7, no. 2 (December 2024): 8, <https://doi.org/10.54816/sj.v7i2.937>.

²⁵ Komisi Nasional Anti Kekerasan Terhadap Perempuan, "Transformasi yang tertunda."

²⁶ Thomas Procter-Legg, Jonathan Hobson, and Ernest Quimby, "Restorative Justice and Social Justice: An International Perspective," *Contemporary Justice Review* 27, nos. 2–3 (July 2024): 221, <https://doi.org/10.1080/10282580.2024.2414953>.

attributed to the provision of legal representation and formal recognition of their suffering. Collectively, these findings reinforce the proposition that the implementation of restorative justice absent a clearly delineated legal framework grounded in victim-protection principles may amplify social harm and compromise victims' confidence in the criminal justice system.

In practice, National Commission on Women documented that, among 68 cases resolved through restorative justice mechanisms, 45 victims (approximately 66%) reported no meaningful recovery following the process. The recovery offered was often limited to formal or administrative measures, such as written apologies, financial compensation, or the signing of settlement agreements, rather than constituting genuine, substantive recovery.²⁷ Such applications of restorative justice that disregard the comprehensive nature of recovery are inconsistent with Article 70 Section (1) point a of Law Number 12 of 2022, which prescribes five interrelated and progressive forms of victim recovery: medical rehabilitation, mental and social rehabilitation, social empowerment, restitution and/or compensation, and social reintegration. These recovery measures are not merely procedural services but are

explicitly oriented toward the holistic and long-term restoration of the vulnerabilities experienced by sexual violence victims.

This approach aligns with broader victim-protection mandates outlined in Article 5 Section (1) of Law Number 31 of 2014, which guarantees witnesses and victims the right to personal security protection, participation in determining protection measures, and the ability to provide testimony free from coercion. In addition, Article 6 Section (1) of Law Number 31 of 2014 stipulates that sexual violence victims are entitled to medical assistance and psychosocial and psychological rehabilitation as a non-negotiable obligation of the state. Taken together, these regulations demonstrate that recovery for sexual violence victims cannot be reduced to mere "settlement agreements" or administrative assurances, which often constitute the practical implementation of restorative justice.²⁸ Recovery under Law Number 12 of 2022 requires professionally guided procedures involving medical personnel, psychologists, trauma counsellors, social workers, and formal legal mechanisms that guarantee safety, confidentiality, and long-term restoration.

Such recovery standards exceed the capacity of restorative justice mechanisms as

²⁷ Komisi Nasional Anti Kekerasan Terhadap Perempuan, "Transformasi yang tertunda."

²⁸ Kadimuddin Baehaki and Trisno R. Hadis, 'Perlindungan Hukum Terhadap Saksi dan Korban Dalam Sistem Peradilan Pidana Indonesia: Legal Protection of Witnesses and Victims in Indonesia's Criminal Justice System', *Jurnal Media Hukum* 11, no. 1 (March 2023): 57, <https://doi.org/10.59414/jmh.v11i1.451>.

currently practiced, which typically rely on informal negotiations, mediation, or facilitation by law enforcement institutions lacking the mandate or competence to provide recovery as a form of substantive justice for victims under Law Number 12 of 2022.²⁹ Accordingly, from a normative perspective, restorative justice mechanisms do not possess the instruments, institutional structures, or state obligations necessary to fulfil the recovery framework prescribed in Article 70 Section (1) of Law Number 12 of 2022.

Law Number 12 of 2022, which positions victim recovery as the central focus in addressing sexual violence cases, aligns closely with international standards outlined in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. Paragraph 1 of the Declaration defines victims as persons who have suffered physical, psychological, emotional, economic, or fundamental rights violations resulting from a criminal act. The Declaration emphasizes that victims must be treated with compassion and respect for their inherent dignity (Paragraph 4) and are entitled to

prompt and effective access to justice and reparation mechanisms.³⁰ A substantive conception of victim-centred justice requires that case resolution genuinely addresses moral harm, rectifies power imbalances, and restores the dignity of those harmed. Moreover, substantive justice mandates that sexual violence cases be resolved in a manner that fosters a safe environment, thereby mitigating long-term psychological impacts, trauma, and social pressures experienced by victims.³¹

The imperative of victim recovery is inherently multifaceted, given that victims frequently endure severe psychological trauma, compromised personal security, and layered forms of suffering encompassing both physical and mental domains. Individuals subjected to sexual violence often experience prolonged psychological distress, structural power asymmetries, and intense social pressures, thereby necessitating a secure and stable environment entirely segregated from the perpetrator.³² In the absence of such protective conditions, victims are impeded from initiating the essential psychological processes of detachment from traumatic

²⁹ Dian Ekawaty Ismail, Avelia Rahmah Y. Mantali, and Mohamad Rivaldi Moha, "The Concept of Revitalizing Traditional Institutions in the Criminal Law System to Realize Restorative Justice," *Jambura Law Review* 5, no. 2 (June 2023): 227, <https://doi.org/10.33756/jlr.v5i2.11682>.

³⁰ "Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power," OHCHR, accessed March 17, 2026, <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse>.

³¹ Malik Akbar Mulki Rahman, Nafiis Daffa Firdaus, and Mario Sulistiyo Wijatmoko, "How Criminology and Victimology Answer the Problem of Rape Victim Protection?," *Law Research Review Quarterly* 9, no. 2 (May 2023): 162, <https://doi.org/10.15294/lrrq.v9i2.65934>.

³² Rahman, Firdaus, and Wijatmoko, 176–77.

experiences and reconstructing their identity and resilience.

Within this framework, the concept of substantive justice for victims particularly survivors of sexual violence assumes critical significance. Effective case resolution should guarantee victims comprehensive protection from social pressure, access to holistic physical and psychosocial rehabilitation, and the availability of professional support services that uphold their dignity while preventing further harm or secondary victimization during judicial proceedings. This necessity is reflected in the victim's efforts to cope with harassment by seeking support from trusted individuals and engaging in professional therapy.³³

This analysis demonstrates that substantive justice entails standards far beyond simple administrative settlements or conciliatory agreements. Restorative justice mechanisms based on dialogue, voluntary victim participation, perpetrator accountability, and negotiated agreement are inherently unable to fulfil the structured, professional, and sustainable recovery

obligations mandated by Law Number 12 of 2022.³⁴ Consequently, applying restorative justice in cases of sexual violence increases the risk of retraumatization, reinforces existing power imbalances, and shifts the focus of case resolution from victim-centred recovery to the administrative priorities of law enforcement institutions. These limitations indicate that restorative justice, as currently practiced, cannot effectively achieve substantive justice for sexual violence victims within the Indonesian legal framework.

The State must ensure that restorative justice does not function merely as a procedural shortcut but remains anchored in victim recovery and respect for human dignity as the core of substantive justice.³⁵ Accordingly, stronger conceptual integration and clear operational limits are necessary to preserve its normative effectiveness and credibility within Indonesia's criminal justice system.³⁶ The enactment of Law Number 20 of 2025 on 18 November 2025, effective from 2 January 2026, represents an effort to clarify these boundaries. While Article 79 Law Number 20 of 2025 codifies restorative justice

³³ Syed Arshad Ali Rizvi, Izza Mahfooz, and Syeda Sitara Murtaza, "Sexual Harassment and Coping Strategies: Legal Responses and Victim Protection in Known and Unknown Perpetrator Cases," *Annals of Human and Social Sciences* 5, no. 4 (December 2024): 572, <https://ojs.ahss.org.pk/journal/article/view/889>.

³⁴ Lucia Sandoval and Carlos Velasquez, "Restorative Justice in Criminal Law: Assessing Its Role in Reducing Recidivism Rates," *International Journal of Law, Crime and Justice* 1, no. 1 (November 2024): 34, <https://international.appihi.or.id/index.php/IJLCJ/article/view/250>.

³⁵ M. Natsir Asnawi et al., "Keadilan Restoratif Dari Perspektif Filsafat Hukum Progresif: Merekonstruksi Paradigma Penegakan Hukum Pidana Di Indonesia," *Judge : Jurnal Hukum* 6, no. 06 (January 2026): 1867, <https://journal.cattleyadf.org/index.php/Judge/article/view/2049>.

³⁶ Wevy Efticha Sary and Fakhriyah Annisa Afroo, "Problematisasi Perlindungan Hukum Terhadap Anak Korban Incest: Tantangan Dan Harapan," *Jurnal Ilmiah Kutei* 24, no. 1 (July 2025): 84–85, <https://doi.org/10.33369/jik.v24i1.43310>.

as a victim-oriented recovery mechanism, Article 82-point d Law Number 20 of 2025 explicitly excludes its application to certain crimes, including sexual violence. This exclusion reflects the State's commitment to clear normative limits for restorative justice.

Nevertheless, the existence of a comprehensive legal framework under Law Number 20 of 2025 does not automatically prevent deviations in law enforcement practice. The implementation of Article 23 of Law Number 12 of 2022 indicates that explicit statutory prohibitions on restorative justice in sexual violence cases have not entirely prevented non-litigation settlements at the operational level. This suggests that the primary challenge lies not only in normative regulation but also in weak oversight, inconsistent application of legal norms, and the limited internalization of victim-protection principles within Indonesia's criminal justice system. Therefore, the restorative justice provisions in Law Number 20 of 2025 should not be regarded as a definitive solution to criminal procedure reform, but rather as a foundational normative framework requiring continuous oversight, consistent implementation, and stronger internalization of victim-protection values.

CONCLUSION

This study concludes that the application of restorative justice in cases of sexual violence reveals a significant

normative problem, manifested as a disharmony between Article 5-point f of Police Regulation Number 8 of 2021 and Article 23 of Law Number 12 of 2022. An analysis of these regulations indicates that Police Regulation Number 8 of 2021 permits the relatively broad implementation of restorative justice without explicitly excluding sexual violence offenses, in contrast to Law Number 12 of 2022, which unequivocally prohibits case resolution through non-litigation mechanisms. Such normative disharmony directly undermines the realization of substantive justice for sexual violence victims, as the misapplication of restorative justice may compromise their rights to protection, proper handling, and comprehensive recovery under Article 70 Section (1) of Law Number 12 of 2022.

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