

# Reconstruction of Court Decisions in the Implementation of a Fair Restorative Justice Mechanism for Defendants Under the National Criminal Procedure Code

Ryzza Dharma\*, Zudan Arief Fakrulloh

Borobudur University, Jakarta, Indonesia, Dharmawangsa89@gmail.com

Borobudur University, Jakarta, Indonesia, cclsis@yahoo.com

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\*Correspondence: Ryzza Dharma

Email: Dharmawangsa89@gmail.com

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**Abstract:** *The enactment of Law Number 20 of 2025 concerning the Indonesian Criminal Procedure Code (KUHAP Nasional) marks a paradigmatic shift from retributive justice toward restorative justice within the criminal justice system. However, this transformation reveals a significant normative inconsistency, particularly in the limitation of judicial authority under Article 203, which restricts judges from terminating cases based on restorative outcomes and instead positions such outcomes merely as mitigating factors in sentencing. This study employs a normative juridical method with statutory and conceptual approaches to examine the disparity in the application of restorative justice across the stages of investigation, prosecution, and adjudication. The findings demonstrate that while law enforcement officials at the pre-adjudication stage are authorized to terminate cases without a declaration of guilt, judges remain bound to issue guilty verdicts even when full reconciliation between the offender and victim has been achieved. This disparity results in systemic injustice and produces an “invisible punishment” in the form of criminal records that hinder the offender’s social reintegration. To address this issue, the study proposes a reconstruction of judicial decisions through the introduction of a “Restorative-Based Case Termination Order,” enabling judges to terminate proceedings without imposing criminal labels. This model aims to harmonize the criminal justice system and promote substantive justice by aligning*

*legal outcomes with the core principles of restorative justice.*

**Keywords:** *restorative justice; criminal procedure; judicial authority; substantive justice.*

## Introduction

Modern criminal justice is shifting from retributive to restorative justice, emphasizing restoration, dialogue, and social harmony (Hakeem 2026). In the retributive paradigm, the state is positioned as the primary injured party, so the focus of law enforcement is on proving guilt and imposing sanctions. In contrast, restorative justice views crime as an interpersonal conflict that demands resolution through the active involvement of the perpetrator, victim, and community. This approach emphasizes reparation, reconciliation, and social reintegration of the perpetrator as part of a more humanistic legal objective (Somantri 2026). Globally, this approach has been adopted in various modern legal systems in response to the failure of conventional criminal justice systems to reduce recidivism and

restore victims (Harsono 2025). Indonesia, through the enactment of Law Number 20 of 2025 concerning the Criminal Procedure Code (KUHAP Nasional), explicitly affirmed this shift, signaling that restorative justice is no longer merely an alternative but an integral part of the national criminal justice system (Pulungan 2026).

The normative recognition of restorative justice in the 2025 KUHAP is reflected in various provisions that provide scope for implementation at all stages of the judicial process. Article 79, paragraph (8) of the 2025 KUHAP explicitly opens the possibility of implementing restorative justice from the investigation, inquiry, prosecution, and trial stages. Article 80 stipulates the material requirements for implementation: the crime must be punishable by a maximum of 5 (five) years' imprisonment or a specific fine, committed by a non-recidivist, and must have a peace agreement between the victim and the perpetrator aimed at restoring the original situation (Rio Saputra 2025). This provision is reinforced by Articles 81 and 88, which provide room for judges to facilitate peace in court. Systematically, this normative construction shows that lawmakers have sought to integrate restorative justice comprehensively into the positive legal framework, ensuring that, in theory, no legal vacuum exists in its application (Muttaqi 2025).

In pre-trial practice, the implementation of restorative justice has demonstrated relatively more progressive effectiveness. The Indonesian National Police, through Regulation No. 8 of 2021 on the Handling of Criminal Acts Based on Restorative Justice, authorize investigators to terminate an investigation by issuing a Letter of Order to Terminate Investigation (SP3) when a restorative agreement has been reached (Hakiki 2022). Similarly, the Prosecutor's Office, through Regulation of the Republic of Indonesia Prosecutor's Office Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, allows prosecutors, acting as *dominus litis*, to issue a Letter of Order to Terminate Prosecution (SKP2) (Haris 2025). The main characteristic of these two mechanisms is the absence of a guilty verdict against the perpetrator, so the case is considered final and does not result in further legal consequences in the form of a criminal record. It indicates that at the initial level of the criminal justice system, restorative justice has functioned substantively as a comprehensive conflict resolution mechanism.

However, fundamental problems arise at the adjudication stage due to the limited authority of judges, as stipulated in Article 203 of the 2025 Criminal Procedure Code. This norm implicitly limits judges' latitude by only allowing the success of restorative justice to be used as a mitigating factor or as a basis for imposing alternative sanctions, such as supervision, without granting the authority to dismiss the case altogether (Akadol 2025). Thus, even if a comprehensive reconciliation has been achieved between the victim and the defendant at trial, the judge remains bound to declare the defendant guilty. This normative construction creates an internal contradiction within the criminal justice system, where restorative justice is widely recognized but lacks consistent legal consequences in the final stages of the judicial process.

This contradiction has implications for the emergence of disparities in legal treatment between stages of the trial, which clearly violates the principles of justice and equality before the law. In cases with identical characteristics, a perpetrator who successfully reaches a restorative agreement during the investigation stage can obtain a termination of the case without a guilty status through SP3, while another perpetrator who reaches a settlement

during the trial stage must still accept a guilty verdict and all its legal consequences (Suparno 2026). This difference in treatment is not based on the substance of the act or the level of culpability, but solely on the time of reaching the settlement, so that criminal law is reduced to an administrative mechanism that no longer reflects substantive justice. This guilty verdict gives rise to what is known as invisible punishment, namely the long-term impact of a criminal record that limits an individual's access to employment, public services, and social acceptance, which ultimately contradicts the main goal of restorative justice to restore the original state (Pamungkas 2025).

Based on these issues, a fundamental weakness can be identified in the formulation of restorative justice in the 2025 Criminal Procedure Code, which still positions it as a supplementary instrument within the criminal justice framework, rather than as an autonomous and final case resolution mechanism. Most previous research tends to focus on optimizing the application of restorative justice at the police and prosecutorial levels or on its general implementation aspects, without in-depth examination of the limited judicial authority to accommodate settlement outcomes in court. Therefore, there is a significant research gap in reconstructing judicial decisions to align them with the principles of restorative justice. This study proposes a "Restorative-Based Case Termination Determination," allowing judges to end cases without a guilty finding, unlike a judicial pardon, which preserves criminal status. This reconstruction is expected to fully integrate restorative justice into all stages of the criminal justice system and eliminate disparities in legal treatment that have structurally disadvantaged defendants.

## **Methodology**

This research employs a normative juridical legal research method that focuses on the study of positive legal norms as a coherent and structured system, with an emphasis on analyzing the laws and regulations governing restorative justice mechanisms in the Indonesian criminal justice system. The approaches used include a statutory approach and a conceptual approach. The legislative approach is carried out by systematically examining various relevant legal instruments, including Law Number 20 of 2025 concerning the Criminal Procedure Code, specifically the provisions of Articles 79, 80, 81, 88, and 203, which are the main focus of this research, accompanied by sectoral regulations such as Police Regulation Number 8 of 2021 and Prosecutor's Regulation Number 15 of 2020. Meanwhile, a conceptual approach is used to analyze legal doctrines related to restorative justice, substantive justice, and progressive legal theory, in order to build arguments that are not only based on legal texts but also on philosophical values and principles of justice that exist in society. Through a combination of these two approaches, this research aims to identify normative inconsistencies in restorative justice regulations and formulate a reconstruction of judges' decisions that are fairer and more recovery-oriented, thereby being able to comprehensively address the problem of disparity in legal treatment in the criminal justice system.

## **Result and Discussion**

### **Dynamics of Restorative Justice Regulations in the 2025 Criminal Procedure Code (KUHP)**

The provisions on restorative justice in Law Number 20 of 2025 concerning the Criminal Procedure Code (National Criminal Procedure Code) represent a concrete manifestation of the paradigm shift in Indonesian criminal procedure law toward a more humanistic and recovery-oriented approach. Normatively, restorative justice is no longer positioned as an alternative mechanism outside the system, but has been explicitly integrated into the structure of positive law. This is reflected in Article 79 paragraph (8) of the 2025 Criminal Procedure Code, which states that case resolution through a restorative justice approach can be implemented at every stage of the criminal justice process, from investigation, prosecution, to trial. This provision demonstrates that lawmakers have strived to build a criminal justice system that is flexible and adaptive to the needs of more substantive conflict resolution, in line with the legal objectives of achieving justice, expediency, and legal certainty as stated in classical legal doctrine (Dewi 2026).

The provisions in Article 80 of the 2025 Criminal Procedure Code provide clear normative limits on the application of restorative justice to maintain a balance between the interests of restoration and the protection of public order. This article stipulates that restorative justice can only be applied to crimes punishable by a maximum of five years' imprisonment or a fine in certain categories, committed by a non-recidivist, and must be based on a peace agreement between the victim and the perpetrator that emphasizes restoration of the original situation. This provision systematically aligns with the principle of limitations in modern criminal law, which places proportionality as the basis for determining the state's response to a criminal act. Moreover, this regulation demonstrates the legislator's prudence in safeguarding against the misuse of restorative justice mechanisms, especially in relation to serious offenses that affect the wider community (Rapali 2026).

At the adjudication stage, the 2025 Criminal Procedure Code, through Articles 81 and 88, provides room for judges to play an active role in facilitating the achievement of peace between victims and defendants. Judges are no longer positioned solely as passive parties in examining and deciding cases, but also as mediators who encourage peaceful conflict resolution. This provision reinforces the shift in the judicial function from merely an adjudicative body to a problem-solving institution. However, this facilitative role remains within certain normative boundaries, where the outcome of the peace process does not automatically remove the judge's obligation to issue a verdict as stipulated in other provisions, particularly Article 203 of the 2025 Criminal Procedure Code (RABBANI 2026). Thus, although judges are procedurally authorized to accommodate restorative justice, this authority has not yet substantially resulted in final legal consequences for case resolution.

On the other hand, the implementation of restorative justice in practice demonstrates dynamics influenced by sectoral regulations in each law enforcement agency. The Indonesian National Police, through National Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, authorizes investigators to terminate investigations if certain material and formal requirements are met, including the existence of a peace agreement between the parties. Meanwhile, the Indonesian Attorney General's Office, through Prosecutor's Regulation Number 15 of 2020 concerning

Termination of Prosecution Based on Restorative Justice, authorizes prosecutors to terminate prosecutions by considering the interests of the victim, the perpetrator, and the community (Akbar 2022). Empirically, the implementation of these two regulations has significantly reduced court caseloads. However, the data indicate that this success is largely limited to minor cases and remains highly dependent on the discretion of law enforcement officers.

Nevertheless, variations in the parameters of these sectoral regulations have created fragmentation within the criminal procedure system. Divergences in criteria, procedures, and evaluation standards between Police Regulation No. 8 of 2021 and Work Regulation No. 15 of 2020 risk producing inconsistent treatment of comparable cases. From the perspective of an integrated criminal justice system, this situation demonstrates the suboptimal harmonization between law enforcement agencies in implementing restorative justice. Furthermore, although the 2025 Criminal Procedure Code (KUHAP) seeks to serve as a national legal umbrella unifying these various mechanisms, in practice, there is still wide room for interpretation, which can lead to inconsistencies in application, particularly in determining the suitability of a case for resolution through a restorative approach (Utami 2026).

The dynamics of restorative justice regulations in the 2025 Criminal Procedure Code demonstrate a duality between normative progress and implementation challenges. On the one hand, the explicit recognition of restorative justice in various articles demonstrates the state's commitment to adopting a more equitable and recovery-oriented legal approach. However, on the other hand, limitations in regulatory synchronization and differences in practices between law enforcement agencies indicate that this system is still in a transitional stage (Ginting 2025). Therefore, more comprehensive harmonization efforts are needed, both through the creation of more operational derivative regulations and through strengthening coordination between institutions, so that restorative justice can be implemented consistently and provide legal certainty and justice for all parties in the criminal justice system.

### **Disparity in Authority Between Stages of the Trial Process and Its Implications for the Rights of the Defendant**

The disparity of authority in the application of restorative justice between the pre-trial and adjudication stages is one of the most crucial structural problems in the construction of the 2025 Criminal Procedure Code. At the investigation and prosecution stages, law enforcement officers are given relatively broad discretionary authority to terminate cases through the Investigation Termination Order (SP3) mechanism as known in police practice, as well as the Prosecution Termination Order (SKP2) by the prosecutor's office, especially after being accommodated in Police Regulation Number 8 of 2021 and Prosecutor's Regulation Number 15 of 2020. This authority is strengthened systematically within the framework of the 2025 Criminal Procedure Code through Article 79 paragraph (8) and Article 80, which recognizes restorative justice as the basis for terminating cases as long as the material and formal requirements are met. In practice, this termination is final and is not followed by a statement of guilt, so that the perpetrator does not suffer the legal

consequences of criminal status. This demonstrates that in the early stages of the criminal justice system, restorative justice functioned as a comprehensive case resolution mechanism and provided maximum protection for the defendant's rights.

However, this configuration of authority changes significantly when a case enters the adjudication stage. Article 203 of the 2025 Criminal Procedure Code implicitly limits judges' latitude by requiring that every case examined at trial must result in a verdict declaring the defendant guilty, acquitted, or released from all charges. In this context, the success of restorative justice is not recognized as a basis for dismissal, but rather as a mitigating factor or a basis for imposing alternative sanctions such as supervision. It means that even if a substantial peace agreement has been reached between the victim and the defendant, as facilitated by Articles 81 and 88 of the 2025 Criminal Procedure Code, the judge still lacks the authority to remove the status of criminal guilt. This normative construction firmly establishes a rigid boundary between the conflict resolution and punishment functions in the criminal justice system.

This difference in authority creates a disparity in legal treatment that cannot be justified in principle. In cases with identical characteristics, such as minor offenses with minimal harm and full resolution, the outcome for the defendant may vary substantially depending on the stage of case disposition. A defendant whose case is resolved at the investigation stage may obtain a dismissal without stigma, whereas a defendant whose case has proceeded to court must still accept a guilty verdict, even when the underlying conflict has been fully resolved. This disparity indicates that the criminal justice system no longer operates strictly on the principle of equality before the law, but is instead influenced by administrative factors such as the timing of the legal process. As a result, the law loses its substantive orientation and becomes confined to procedural formalities that may, in fact, produce injustice.

The most serious implication of this disparity is the emergence of the phenomenon of invisible punishment, a form of indirect punishment arising from the label "guilty" in a judge's decision. Although the sanction imposed may be light or even no imprisonment, the status of a convicted person remains attached and is reflected in a criminal record. Within Indonesia's social and administrative framework, a criminal record carries significant consequences, such as barriers to formal employment, restricted access to certain public services, and social stigma that impedes reintegration. Accordingly, the imposition of a guilty verdict within a restorative justice framework is inconsistent with its core objective, namely, to restore social harmony and reintegrate the offender without stigma.

From a human rights perspective, this disparity in authority has the potential to violate the principle of protecting the rights of defendants, particularly the right to be treated fairly and proportionally. The principles of due process of law and a fair trial require that every individual be treated equally under the same conditions, without discrimination based on substantively irrelevant factors. In this case, differences in legal outcomes based solely on the stages of the judicial process clearly lack adequate rational justification and can even be viewed as a form of structural injustice resulting from the very design of the legal norms themselves. Consequently, the restriction on the power of judges in Article 203 of the 2025

Criminal Procedure Code not only presents technical challenges in judicial practice but also addresses constitutional aspects concerning the protection of citizens' rights under the law.

This disparity in authority between stages of the trial in the application of restorative justice demonstrates a fundamental inconsistency in the Indonesian criminal procedural law system. On the one hand, the state provides ample room for restorative case resolution during the pre-trial stage, but on the other hand, it strictly limits the application of the same principles during the adjudication stage. This inconsistency not only undermines the effectiveness of restorative justice as a new paradigm in criminal law but also has the potential to undermine public trust in the justice system. Therefore, a normative reconstruction is needed that grants judges equal authority to dismiss restorative justice-based cases, thereby creating harmony between stages of the trial and realizing substantive justice that is not merely formalistic but truly reflects the values of humanity and restoration that are the core spirit of restorative justice.

### **Reconstruction of Judges' Decisions Based on Restorative Justice as an Effort to Realize Substantive Justice**

An urgent reconstruction of judicial decision-making grounded in restorative justice is required to remedy the normative imbalance created by the limitations of Article 203 of Law No. 20 of 2025 concerning the National Criminal Procedure Code. Under the current legal framework, judges remain bound by conventional decision options: sentencing, acquittal, or release from all charges, with no room for restorative resolution of cases without the label of guilt. Therefore, the proposed reconstruction involves introducing a new decision form, a "Restorative-Based Case Termination Order," which is legally positioned as a legitimate and final product of judicial power. This order must have the same legal force as case terminations at the investigation (SP3) and prosecution (SKP2) stages, thereby effectively removing the defendant's status as a criminal and restoring their legal standing to their original state (*restitutio in integrum*).

Normatively, the basis for this decision model can be established through a progressive reinterpretation of Article 79 paragraph (8), Article 81, and Article 88 of the 2025 Criminal Procedure Code, which legitimizes the application of restorative justice at all stages of the trial, including trials. Judges can interpret this as the authority to facilitate reconciliation, extending beyond procedural aspects to encompass the legal consequences of achieving reconciliation. This approach aligns with the principles of simple, expeditious, and low-cost justice, as well as the principle of substantive justice, which requires the law not to be bound solely by normative formalities but to provide a just and beneficial resolution for the parties. Therefore, the reconstruction of this decision does not require direct legislative amendments but can instead begin through progressive legal interpretation by judges as living interpreters of the law.

In its implementation, clear and measurable parameters are needed to prevent abuse of restorative-based case termination decisions. These parameters can be referred to in Article 80 of the 2025 Criminal Procedure Code, which is limited to crimes with a maximum sentence of 5 (five) years, not a repeat offense (non-recidivism), and a valid peace agreement between the victim and the defendant. Furthermore, the judge must ensure that the

agreement is free from coercion, is not exploitative, and truly reflects the victim's restitution of both material and immaterial losses. To strengthen the validity of the decision, the judge can also order the preparation of a social inquiry report assessing the level of recidivism risk and the defendant's social condition, so that the decision is not based solely on the formality of the agreement but also considers broader community protection.

A further concrete step requires institutional intervention from the Supreme Court, as the apex judicial authority, to issue implementing regulations in the form of a Supreme Court Regulation (Perma) or a Supreme Court Circular (SEMA). These regulations must explicitly provide technical guidelines for judges in issuing "Restorative-Based Case Termination Orders," including the format of the decision, the procedure for verifying the agreement, and internal oversight mechanisms. For example, a decision can be formulated with the following structure: (1) declaring a valid restorative agreement has been reached, (2) stipulating the termination of the case examination, and (3) restoring the defendant's legal status without recording him as a convict. With these guidelines, judges no longer find themselves in a dilemma between the formal demands of the law and the need for substantive justice in society.

This reconstruction also requires harmonization across law enforcement agencies to ensure the consistent application of restorative justice within the integrated criminal justice system. The police, prosecutors, and courts must have uniform parameters regarding the criteria for cases that can be resolved restoratively, to prevent disparities in legal treatment based on the stages of the process. The 2025 KUHAP should act as a *lex superior*, integrating sectoral regulations like Police Regulation No. 8 of 2021 and Work Regulation No. 15 of 2020. Coordination between institutions also needs to be strengthened through data exchange mechanisms and joint supervision to ensure that every restorative-based case termination meets standards of justice and accountability.

The proposed Restorative-Based Case Termination Order incorporates safeguards to protect victims' rights by requiring voluntary and informed consent, judicial verification of the settlement process, and assessment of the fairness and proportionality of the agreement. Judges must ensure that victims are free from coercion, intimidation, or unequal bargaining pressures before approving restorative settlements. These safeguards aim to balance the interests of defendants and victims while preserving the restorative justice principles of fairness, accountability, and meaningful victim participation.

Reconstructing judicial decisions based on restorative justice is a strategic step to transform the function of the judiciary from a mere punitive institution to a recovery-oriented conflict resolution institution. By empowering judges to dismiss cases without labeling them guilty, the criminal justice system not only eliminates disparities between stages of the trial but also eliminates the impact of invisible punishment that has burdened defendants socially and economically. Furthermore, this step aligns with the values of Pancasila, particularly the principle of just and civilized humanity, and strengthens the legitimacy of law as an instrument that truly delivers substantive justice. Without this reconstruction, restorative justice will remain trapped as a normative concept that loses its transformative power in judicial practice.

## Conclusion

The adoption of restorative justice within Law Number 20 of 2025 regarding the National Criminal Procedure Code (KUHAP) marks a significant normative advancement in transforming the criminal justice system from a retributive model to one that is more human-centered and focused on recovery. This shift is evident in Article 79 paragraph (8), Article 80, Article 81, and Article 88, which facilitate the integration of restorative justice at all phases of the judicial process. However, this analysis reveals essential inconsistencies within this legal framework, especially concerning the constraints on judges' powers in Article 203 of the 2025 KUHAP, which restricts the success of restorative justice to a mitigating aspect rather than a ground for case dismissal. This situation creates imbalances in legal treatment between the pre-trial and adjudication phases, leading to the emergence of invisible penalties in the form of a criminal record for defendants, despite the peaceful resolution of the conflict. Therefore, the Indonesian criminal justice system continues to encounter obstacles in achieving consistent substantive justice, as it remains ensnared in legal formalism that does not fully align with the philosophical aims of restorative justice.

In light of these discoveries, strategic measures are necessary, including the reconstruction of judicial authority by acknowledging the "Restorative-Based Case Termination Determination" model as a legitimate and conclusive decision without declaring the defendant guilty. The Supreme Court, being the ultimate authority in judicial power, must promptly issue derivative regulations, either in the form of Supreme Court Regulations or Circular Letters, to provide judges with clear and specific guidelines for implementing this approach. Additionally, there is a need to harmonize regulations among law enforcement agencies to ensure uniform standards for the application of restorative justice, eliminating any resulting disparities in legal treatment. Enhancing oversight mechanisms and evaluating social feasibility is also vital to deter the potential exploitation of restorative justice for the commercialization of the law. With these initiatives, it is anticipated that the Indonesian criminal justice system can achieve justice that is not only formal but substantive, prioritizing restoration, humanity, and social equilibrium as the fundamental objectives of law enforcement.

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