

The Implementation of Restorative Justice for Misdemeanor Crimes after Perpol No. 8 of 2021

Ichsan Sjuhudi¹, Abd Razak Musahib²
Universitas Pekalongan, Indonesia¹, Universitas Madako, Indonesia²

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Corresponding Author:

Author Name : Ichsan Sjuhudi

Email : xanshd@gmail.com

Abstract: *This study analyzes the application of restorative justice to minor crimes in the Indonesian criminal justice system, especially after the issuance of Police Regulation No. 8 of 2021. The shift from a retributive approach to a restorative approach is a response to the failure of the conventional criminal system in achieving substantive justice and overcrowding in correctional institutions. The research method used is normative juridical with a statutory and conceptual approach. The results of the study show that restorative justice has strong theoretical legitimacy through the concept of reintegrative shaming and normative support from Law No. 11 of 2012 and Perpol No. 8 of 2021. However, its implementation faces juridical and institutional challenges, especially related to the hierarchy of norms, accountability, and the understanding of law enforcement officials and the public towards the concept of restorative justice. It also found potential irregularities if there is no strict supervision of the peace mechanism outside the formal process. Therefore, there is a need for harmonization of regulations, integrated training for officials, and the participation of civil society in the supervision of implementation. This study recommends the reform of the Criminal Code and the establishment of inter-institutional regulations to ensure that restorative justice becomes a valid, effective, and just approach in national criminal law enforcement.*

Keywords: *Restorative Justice; Misdemeanors; Perpol No. 8 Of 2021*

INTRODUCTION

The paradigm shift in criminal law enforcement from a retributive approach to *restorative justice* is a response to the failure of the conventional criminal justice system in achieving substantive justice, especially in cases of misdemeanors. The retributive system that focuses on retribution does not always pay attention to the recovery of the victim's losses or the rehabilitative needs of the perpetrator. In the context of minor crimes, punitive punishments often worsen the social conditions of perpetrators who generally come from vulnerable groups or do not have a serious criminal record. This is in line with John Braithwaite's view in the theory of *reintegrative shaming*, which emphasizes that restorative conflict resolution is more likely to guarantee the social reintegration of the perpetrator into society than stigmatization through criminalization.

The *restorative justice* approach provides space for the active participation of all parties affected by crime, including perpetrators, victims, and communities, to reach a common agreement that is fair and humane. This concept has been adopted in various international jurisdictions as a form of embodiment of restorative justice values that are inclusive and responsive to the needs of the parties. In Indonesia, the discourse on



restorative justice is getting stronger along with the recognition in legal documents such as the Prosecutor's Guidelines No. 15 of 2020 and culminating through Perpol No. 8 of 2021. The presence of this Perpol shows the institutional recognition of the importance of alternative approaches in handling misdemeanor criminal cases, which not only recovers losses, but also prevents repeated cycles of criminalization.¹

The birth of the National Police Regulation of the Republic of Indonesia Number 8 of 2021 is a concrete response to the urgent need for criminal law reform, especially in the aspect of resolving minor criminal cases. This Perpol is the first normative basis that explicitly gives authority to police investigators to resolve criminal cases with a restorative justice approach. In Article 5 of Perpol No. 8 of 2021, it is stated that a restorative settlement of criminal cases is possible if the criminal act committed is not a serious crime, there is a peaceful agreement between the perpetrator and the victim, and the community accepts the settlement. This provision not only marks a shift in institutional authority in law enforcement, but also opens up opportunities for a more inclusive, efficient, and restorative-oriented decentralization of the justice process, as advocated by the restorative justice theory developed by Howard Zehr.

However, from a juridical-critical perspective, this Perpol also raises a number of fundamental questions related to the hierarchy of norms and the legitimacy of its implementation. Theoretically, Perpol as an internal regulation of law enforcement agencies is under the Law in the order of laws and regulations according to Article 8 paragraph (2) of Law No. 12 of 2011 concerning the Establishment of Laws and Regulations. This creates potential legal tension when the norms contained in Perpol 8/2021, such as the termination of investigations on the basis of agreement between the parties, clash with the principles of legality and the principle of *dominus litis* which are expressly regulated in the Criminal Procedure Code and the Prosecutor's Law. Therefore, although Perpol No. 8 of 2021 is a progressive breakthrough in the context of police practice, it still needs harmonization with higher laws and regulations and critical evaluation of its accountability mechanisms so as not to obscure the principles of procedural justice in the Indonesian criminal law system.²

The high number of petty crime cases resolved through formal litigation has had serious consequences for the effectiveness and efficiency of the criminal justice system in Indonesia. One of the most obvious impacts is the occurrence of overcrowding or overcapacity in correctional institutions, which not only interferes with the rehabilitative function of punishment, but also violates the principle of humane treatment of prisoners as stipulated in Articles 10 and 14 of Law No. 22 of 2022 concerning Corrections.³ Most of the inmates of the penitentiary are perpetrators of minor crimes, which actually do not pose a serious threat to public order or public safety. This situation shows an imbalance between the value of substantive justice and the procedural implementation of criminal law. Therefore, *restorative justice* offers a more

¹ Ramadhani, F. W. (2024). Penerapan Restorative Justice dalam Kecelakaan Lalu Lintas Berdasarkan Peraturan Kepolisian Negara Republik Indonesia Nomor 8 Tahun 2021 tentang Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif. *Indonesian Journal of Law and Justice*, 1(4), 9-9.

² Rahmathoni, L. Y. (2024). Perbedaan Makna Restorative Justice Pasca Perma No. 1 Tahun 2024 pada Sistem Hukum Pidana di Indonesia. *Jurnal Hukum Lex Generalis*, 5(10).

³ Adrianto, I. (2023). Konsep Penerapan Restoratif Justice Oleh Penyidik Kepolisian Dalam Pasal Pasal KUHP Baru. *Janaloka*, 2(2), 256-266.

proportionate approach while maintaining a sense of justice, both for victims and perpetrators, without having to burden the penitentiary.

From the perspective of progressive law, as theorized by Satjipto Rahardjo, the law should not be solely a rigid repressive instrument, but must be able to adapt to social reality. In this context, *restorative justice* is not only an alternative to resolving cases, but also a form of correction for the failure of the legal system that is too formalistic in handling minor offenses. The application of *restorative justice* to minor crimes through Perpol No. 8 of 2021 is expected to be able to reduce disparities in case handling, prevent excessive criminalization, and create a fairer dialogue space. However, the success of this approach is highly dependent on law enforcement officials' understanding of the philosophy of restorative justice and the readiness of the community to accept non-litigation settlements as a form of legitimate justice. Without it, *restorative justice* risks becoming just an administrative procedure without transformative power in the national criminal justice system.

The implementation of *restorative justice* based on Perpol No. 8 of 2021 in the field still faces serious challenges, especially related to the human resource capacity of law enforcement officials. Many investigators at the police level do not fully understand the principles and mechanisms of restorative justice, so the implementation of this regulation tends to be purely formal and administrative, rather than as an instrument of transformation of the criminal law paradigm. Supposedly, restorative approaches require sensitivity to social contexts, empathy for victims, and conflict resolution facilitation skills, which have so far not been an integral part of law enforcement officer training. This is in line with criticism that the application of criminal law based on restorative justice requires a change in the legal culture, not just a change in the rules. Without reform of understanding and in-depth training, restorative justice risks being reduced to a fast-track tool that ignores the essence of justice itself.⁴

On the other hand, implementation challenges also come from people who do not have legal awareness and adequate understanding of the concept of restorative justice. People often consider that out-of-court settlements are synonymous with impunity or compromise on justice. In this context, the legitimacy of *restorative justice* is vulnerable to questioning, especially when there is no transparent and accountable monitoring mechanism for the agreement between the victim and the perpetrator. In addition, the potential for abuse of authority by the authorities, for example in the form of peaceful coercion or transactions outside of the formal legal process, is a real concern. For this reason, it is necessary to have an active role of external supervisory institutions, such as the National Police Commission or Ombudsman, as well as strengthening the participation of civil society in supervising the implementation of Perpol No. 8 of 2021. The success of *restorative justice* lies not only in the normative framework, but also in the moral integrity of the implementers and the collective consciousness of the community in upholding substantive justice.⁵

⁴ Nia, T., Haryadi, H., & Najemi, A. (2022). Keadilan Restoratif sebagai Alternatif Penyelesaian Tindak Pidana Penganiayaan Ringan. *PAMPAS: Journal of Criminal Law*, 3(2), 223-239.

⁵ Adinata, R., Nugraha, A. F., Permadi, Y. T., Arsandho, H., & Alam, S. B. (2025). Optimalisasi Peran Kepolisian dalam Meningkatkan Penegakan Hukum Berbasis HAM Melalui Pendekatan Restorative Justice. *Proceedings of Police Academy*, 1(1), 150-165.

METHOD

This research uses a normative juridical method, which is legal research conducted by examining primary and secondary legal materials to examine the applicable positive legal norms. This method focuses on the analysis of laws and regulations and legal principles relevant to the application of restorative justice to minor crimes after the enactment of the Indonesian National Police Regulation Number 8 of 2021. Normative research aims to examine and understand how the law should apply (*das sollen*), not how the law is practiced in empirical reality (*das sein*), so that the entire analysis process relies on primary and secondary legal materials that are textual and conceptual.⁶

As explained by Peter Mahmud Marzuki, normative legal research is a method that focuses on the study of legal materials as the main object of study, by interpreting and constructing applicable laws to answer certain legal issues.⁷ According to Marzuki, this approach is prescriptive because it aims not only to describe the law, but also to provide normative arguments for the validity of a legal action or act in the legal system adopted.⁸ Meanwhile, Soerjono Soekanto and Sri Mamudji stated that normative legal research includes research on legal principles, legal systematics, legal synchronization, legal history, and comparative law.⁹

The primary legal materials used in this study include Perpol No. 8 of 2021, the Criminal Procedure Code (KUHP), and specifically Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Law No. 11 of 2012 is used as a reference because it is one of the first regulations in Indonesia that recognizes and regulates the explicit application of *restorative justice* in the criminal justice system, especially for children. The law emphasizes an approach that prioritizes rehabilitation, victim and perpetrator participation, and protection of the best interests of children, which is in line with the principles of *restorative justice* that are now also beginning to be applied in minor criminal cases against adults.

The analysis was carried out using a statutory approach (statutory approach) and a conceptual approach (conceptual approach), in order to understand the conformity of norms between various existing regulations and assess their consistency and effectiveness in practice. In addition, qualitative analysis will be used to examine the relationship between the rule of law and its implementation in the field, including highlighting the potential disharmony between norms and the effectiveness of supervision of the implementation of restorative justice by law enforcement officials.

⁶ Novea Elysa Wardhani, Sepriano, and Reni Sinta Yani, *Metodologi Penelitian Bidang Hukum* (Jambi: PT. Sonpedia Publishing Indonesia., 2025).

⁷ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2011).

⁸ Mahlil Adriaman et al., *Pengantar Metode Penelitian Ilmu Hukum* (Padang: Yayasan Tri Edukasi Ilmiah, 2024).

⁹ Rangga Suganda, "Metode Pendekatan Yuridis Dalam Memahami Sistem Penyelesaian Sengketa Ekonomi Syariah," *Jurnal Ilmiah Ekonomi Islam* 8, no. 3 (2022): 2859, <https://doi.org/10.29040/jiei.v8i3.6485>.

DISCUSSION

1. Juridical Analysis of the Concept and Principles of Restorative Justice in the Indonesian Criminal Law System

Restorative justice is an approach in the criminal justice system that focuses on recovering losses caused by criminal acts, through direct involvement between perpetrators, victims, and communities. This theory comes from the thought of John Braithwaite, who introduced the concept of reintegrative shaming that perpetrators can be restored to society if they admit their mistakes and have the opportunity to correct them. In the view of Howard Zehr, known as the "father of restorative justice," this approach emphasizes that true justice does not just punish the perpetrator, but rather heals the social wounds inflicted by crime.

In Indonesia's positive law, the principle of restorative justice has found a place in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, which explicitly emphasizes diversion as a form of implementation of restorative justice in the settlement of children's cases. The emphasis on avoiding formal justice for children is based on criminological evidence showing that criminalization of children actually increases the risk of recidivism.¹⁰ Therefore, the SPPA Law is an important milestone in mainstreaming the restorative approach in Indonesia.

Furthermore, Perpol No. 8 of 2021 expands the scope of the application of restorative justice to certain criminal acts committed by adults. In this regulation, objective and subjective requirements for the implementation of restorative justice are strictly regulated, such as the willingness of the victim, the level of the perpetrator's fault, and the type of criminal act that is not a serious crime. The importance of principled discretion in the criminal justice system, so that justice does not become arbitrary, but remains based on clear legal principles and boundaries.¹¹

From the point of view of the principles of criminal law, restorative justice corresponds directly to the principle of *ultimum remedium*, which places the criminal justice as the last step after other unsuccessful settlement attempts. This approach emphasizes the importance of criminal law as an *instrumentum remedium*, not as the only means of repression. Another suitability is seen in the principle of proportionality, because in the restorative justice mechanism, the legal reaction to the perpetrator considers real losses and not just a formal categorization of criminal acts.

The principle of legality is maintained through the establishment of regulations that are the legal basis for the implementation of restorative justice, both in the form of the SPPA Law, Perpol, and other provisions at the prosecutor and court levels. The application of restorative justice must not violate the principle of legality and must always be subject to the principles of the rule of law and due process of law.¹²

¹⁰ Le Giang, V. (2025). Child Punishment Versus the Principle of Non-Discrimination in the Perspective of Human Rights: A Legal Comparison Between Indonesia and Vietnam. *Jurnal Suara Hukum*, 7(1).

¹¹ Hestaria, H., Hartono, M. S., & Setianto, M. J. (2022). Tinjauan Yuridis Penerapan Prinsip Restorative Justice Terhadap Tindak Pidana Korupsi Dalam Rangka Penyelamatan Keuangan Negara. *Jurnal Komunitas Yustisia*, 5(3), 112-128.

¹² Harsya, R. M. K., & Triyantoro, A. (2025). Analisis Yuridis Penerapan Restorative Justice dalam Tindak Pidana Ringan di Indonesia. *Sanskara Hukum dan HAM*, 3(03), 132-140.

Thus, theoretically and normatively, restorative justice is not only compatible with the Indonesian criminal law system, but also offers alternative solutions that are more effective, responsive, and humane in law enforcement. The emphasis on social recovery and reconciliation is highly relevant to Indonesia's socio-cultural context that prioritizes the value of community-based deliberation and conflict resolution. Going forward, strengthening a more comprehensive legal umbrella, such as explicit provisions in the new Criminal Code, will be key in institutionalizing this approach in the national criminal justice system.

2. The Urgency and Effectiveness of the Implementation of Restorative Justice for Misdemeanor Crimes After Perpol No. 8 of 2021

The application of restorative justice in cases of misdemeanor crimes is very important in the context of reforming the criminal justice system in Indonesia. One of the main arguments underlying its urgency is the increasing number of petty criminal cases that accumulate in courts and correctional institutions, resulting in overloading the justice system and overcrowding in prisons. This was confirmed in a study by the Ministry of Law and Human Rights Research and Development Agency (2022) which noted that more than 60% of prison inmates are perpetrators of crimes with low threats, showing the urgency of changing the legal approach. Police Regulation (Perpol) No. 8 of 2021 is present as a normative response to overcome this problem by placing a restorative justice approach as an alternative to resolving cases at the investigation and investigation level.¹³

In terms of effectiveness, Perpol No. 8 of 2021 has opened up a wider space for investigators to resolve cases in a non-litigation manner, especially in cases of minor crimes that do not cause social unrest or serious threats to public safety. However, the implementation did not go completely smoothly. The success of implementation is highly dependent on the communication skills, neutrality, and legal understanding of the investigators in facilitating penal mediation. In some areas, inconsistencies are still found in implementation due to the lack of uniformity of understanding and adequate institutional support.

The impact of the application of restorative justice can be felt in the form of fulfilling substantive justice that is more humane and contextual. Justice involving the participation of victims and perpetrators results in more effective social recovery than adversarial systems.¹⁴ In many cases, this approach is also able to avoid offenders from being labeled criminals and make room for social rehabilitation. For victims, restorative justice provides an opportunity to voice their feelings and obtain psychological recovery and concrete compensation.

The implementation of Perpol No. 8 of 2021 is also in line with the progressive legal philosophy developed by Satjipto Rahardjo, namely that the law must be on the side of humanity and social justice, not just on normative texts. Law is not an end, but a means to achieve social justice and welfare. Thus, restorative justice becomes a middle ground between legal certainty and substantive justice, which is very relevant in the framework of reform of Indonesia's criminal justice system.

¹³ Pramita, S. A. (2025). Penerapan Restorative Justice Dalam Penologi Modern: Alternatif Pemidanaan Di Era Reformasi Hukum. *Jurnal Kajian Hukum Dan Kebijakan Publik* | E-ISSN: 3031-8882, 2(2), 899-912.

¹⁴ Zakiah, Z. (2025). Hak Korban Dalam Restorative Justice Atas Implementasi Perpol No. 8 Tahun 2021. *Jurnal Tana Mana*, 6(1), 477-484.

However, there is a need for regulatory and structural strengthening to increase the effectiveness of this policy. Cross-sectoral integration, integrated training for law enforcement officials, and accountable supervision are needed to ensure that restorative justice is truly carried out in a fair, transparent manner, and does not override the rights of victims. Periodic evaluation of the implementation of Perpol No. 8 of 2021 is also important to ensure that the main goals of this approach, namely reconciliation and participatory justice, are truly achieved in practice. The importance of the principles of voluntariness, responsibility, and dialogue in building a meaningful justice system for all parties.¹⁵

3. Legal and Institutional Implications for Regulatory Harmonization and Supervision of the Implementation of Restorative Justice

The legal implications for the implementation of restorative justice in the Indonesian criminal justice system require a serious review of the relationship between Police Regulation No. 8 of 2021 and regulations that have a higher level of hierarchy such as the Criminal Procedure Code, the Prosecutor's Law, and Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. Internal regulations such as Perpol cannot stand alone or regulate substantial matters if they are not supported by law. Every legal norm must be placed proportionately in the national legal system based on the principle of *lex superior derogat legi inferiori*¹⁶. Therefore, when Perpol gives the authority to investigators to stop cases for restorative reasons without the participation of prosecutors or judicial authorities, it has the potential to give birth to legal inconsistencies that weaken the principle of due process of law. This not only creates normative tensions, but also clouds procedural clarity in the implementation of restorative justice.

Institutionally, the implementation of restorative justice requires a coordinated work system between law enforcement agencies so as not to cause overlapping authorities and inconsistent legal practices. The restorative justice approach must be based on close collaboration between investigators, prosecutors, judges, and victim protection institutions, because restorative justice concerns the restoration of social relations that cannot be reached by a single institution.¹⁷ However, until now there is no joint regulation between the police, prosecutor's office, and the court that regulates in detail the flow of termination of cases based on restoration. This inequality results in the police often acting as the only actor who determines the settlement of cases, even though the criminal justice system requires the division of functions and control between institutions in order to ensure objectivity and accountability in the legal process.

In addition, the absence of a standard supervision mechanism for the termination of cases through a restorative approach is also a serious problem. A report by the Center for Research and Development of the Supreme Court (2022) stated that in many cases, decisions to terminate investigations are not supported by

¹⁵ Saputri, J. (2024). *Penerapan Penyelesaian Tindak Pidana Ringan Dengan Restorative Justice Di Kepolisian Sektor Senapelan Berdasarkan Peraturan Polri Nomor 8 Tahun 2021 Tentang Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif* (Doctoral dissertation, Universitas Lancang Kuning).

¹⁶ Fikarudin, W., & Widjajanti, E. (2025). Efektivitas Penerapan Restorative justice dalam Penyelesaian Tindak Pidana Ringan Pasca Peraturan Kejaksaan No. 15 Tahun 2020. *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, 3(2), 298-310.

¹⁷ Oktobrian, D., Prayitno, K. P., Ikbaar, O. I., & Ramadhani, S. (2023, December). The Harmonization of Restorative Justice Regulation in Investigation and Prosecution. In *3rd International Conference on Law, Governance, and Social Justice (ICoLGaS 2023)* (pp. 602-614). Atlantis Press.

transparent reporting or systematically documented evaluations. The absence of such an accountability system has the potential to cause irregularities, especially when the restorative approach is used as a means of compromise to protect actors who have political or economic power.¹⁸ Meanwhile, LPSK (2021) also found that many victims of crime were not fully involved in the restorative process, both in giving consent, dialogue, and drafting peace agreements. This is certainly contrary to the main principle of restorative justice which makes victim participation the center of recovery. Therefore, an independent external supervision system is needed, as well as the obligation to report to the public so that the process of terminating cases runs according to the principles of substantive justice.

To address these normative and institutional weaknesses, regulatory reform is needed through criminal procedure law reform that explicitly incorporates a restorative justice approach into the formal legal framework. The Criminal Procedure Code needs to be revised to provide a legal space for the termination of cases based on restorative principles, as well as to establish parameters, conditions, and procedures that are binding on all law enforcement institutions.¹⁹ It is not enough just with Perpol, it is necessary to form a joint regulation or MoU between the National Police, the Prosecutor's Office, the Supreme Court, and other related institutions so that the implementation of restorative justice has strong legal legitimacy and is integrated in one system. Without this update, restorative justice will remain a discretionary policy that is temporary and opens up room for deviation. Therefore, legal harmonization, strengthening institutional coordination, and building a supervisory system based on the principles of justice and transparency are the main foundations for restorative justice to develop as a sustainable and valid legal approach in the national criminal justice system.

CONCLUSIONS

An overall analysis of the application of restorative justice in the Indonesian criminal justice system shows that this approach has strong theoretical and normative legitimacy, as well as practical relevance in addressing the challenges of overcriminalization and overcapacity of correctional institutions. Principles such as reintegrative shaming, victim participation, and dialogical justice and social healing have positioned restorative justice as a rational and humane alternative to the conventional penal system. At the normative level, Law No. 11 of 2012 and Perpol No. 8 of 2021 show the state's commitment to adopting restorative mechanisms, although its implementation is still sectoral and limited. The urgency of the implementation of minor criminal cases after Perpol has become increasingly important in order to reduce the burden on judicial institutions and restore public trust in the legal process. However, weaknesses in regulation and institutional coordination pose a risk of inconsistency in implementation and potential violations of the principle of due process of law. The absence of a common legal framework between law enforcement agencies causes restorative justice to often be practiced discretionarily without adequate supervision. Therefore, legal harmonization between the Criminal Code, the Prosecutor's Law, and technical regulations from the police, prosecutor's office, and courts is an absolute must. This update must be accompanied by strengthening the surveillance system, training of law enforcement officials, and the participation of civil society as independent monitors. Only with these integrated measures can restorative justice become a

¹⁸ Sliva, S., Shaw, M., & Han, T. M. (2020). Policy to practice: an implementation case study in restorative justice. *Contemporary Justice Review*, 23(4), 527-543.

¹⁹ Gunawan, M. M., Suwadi, P., & Rustamaji, M. (2024). Comparison Of Restorative Justice Implementation In Indonesia, Usa, Germany, Poland And Switzerland. *Revista de Gestao Social e Ambiental*, 18(1), 1-15.

permanent instrument in the criminal justice system that upholds substantive justice and the protection of the rights of all parties

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