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Restorative Justice or Impunity? An Eligibility Threshold for Out-Of-Court Criminal Case Settlement

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Abstract. *This study aims to examine how far the eligibility threshold introduced by Law No. 20 of 2025 on the Criminal Procedure Code, in force since 2 January 2026, forecloses the termination of criminal cases that yields neither victim recovery nor offender accountability, and to formulate the substantive and procedural limits of settling criminal cases outside the courtroom. The research method used was normative legal research with a socio-legal orientation, combining statutory, conceptual, and comparative approaches, drawing on six statutes, five implementing instruments, and eighty Scopus-indexed articles whose metadata and identifiers were double-verified, and reading them through restorative justice theory, victim recovery theory, and Radbruch's theory of the purposes of law. The novelty of this research is that it tests the new statutory threshold against cross-jurisdictional conditions for recovery and accountability, converts scattered warnings about impunity into four failure modes readable from the case file, and compares the threshold with juvenile diversion and Supreme Court Regulation Number 1 of 2024. Based on the research, it is concluded that the statute brought three genuine advances, namely a single cross-institutional definition, an obligation to fulfil the recovery agreement before closure, and judicial oversight of termination. Yet every criterion in Articles 80 and 82 rests on the nature of the offence and the offender's record, so none screens for the victim's circumstances, power asymmetry, or the adequacy of the promised recovery, and failures of recovery, accountability, voluntariness, and supervision can occur in cases satisfying every formal requirement. The article proposes a Restorative Justice Eligibility Threshold of three sequential gates and ten indicator-bearing dimensions verifiable from the case file, to be adopted in the implementing Government Regulation.*

Keywords: *Accountability; Impunity; Restorative; Settlement; Victim.*

1. Introduction

Since 2 January 2026 Indonesia has been operating a criminal procedure code that, for the first time, names restorative justice as a formal mechanism rather than an internal law-enforcement policy. *Undang-Undang Nomor 20 Tahun 2025 tentang Kitab Undang-Undang Hukum Acara Pidana* (Law No. 20 of 2025 on the Criminal Procedure Code) regulates the mechanism in Article 1 point 21, Articles 79 to 88, and Article 204, and repeals *Undang-Undang Nomor 8 Tahun 1981* (Law No. 8 of 1981 on Criminal Procedure), which for four decades contained no such term (Republik Indonesia, 1981, 2025). The change coincided with the entry into force of *Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana* (Law No. 1 of 2023 on the Criminal

Code) (Republik Indonesia, 2023). For the Indonesian criminal justice system, the shift from a retributive to a restorative paradigm is therefore no longer an academic proposition but a procedural obligation binding on every police station, prosecution office, and district court.

The enthusiasm surrounding that shift rests on real empirical ground, although the ground is less firm than it is often made to appear. The most recent meta-analysis reports a small but consistent reduction in recidivism together with better non-recidivism outcomes such as party satisfaction and agreement completion (Fulham et al., 2025), a systematic review in juvenile justice points the same way with effect sizes that vary by implementation quality (Kimbrell et al., 2023), and experimental studies have found lower re-arrest in domestic violence cases (Mills et al., 2019), reduced re-prosecution after restorative conferencing (Shem-Tov et al., 2024), and less reliance on imprisonment in China (Zhang & Xia, 2021). Part of the advantage attributed to victim–offender mediation, however, shrinks once self-selection bias is corrected (Jonas-van Dijk et al., 2020), and effectiveness attaches not to the programme label but to what happens in the meeting room, namely acknowledgement, truth, and moral change on the offender's part (Kirkwood, 2022; Rossner & Taylor, 2024). That insight goes back to the claim that conflicts are the property of the parties (Christie, 1977) and to studies showing that offenders change through how they experience the process and through shame that is acknowledged rather than imposed (Harris et al., 2004; Tyler et al., 2007). Restorative justice is thus a category of practice with highly variable content, and equating the category with its best-performing instances becomes a costly error once it is written into statute.

In Indonesia, practice preceded legislation. The prosecution service issued guidelines on terminating prosecution on restorative grounds in 2020 (*Kejaksaan Republik Indonesia*, 2020), the police followed with a regulation in 2021 (*Kepolisian Negara Republik Indonesia*, 2021), and the Supreme Court issued adjudication guidelines in 2024 (Mahkamah Agung Republik Indonesia, 2024). Because all three arose from practical need rather than from a single design, settlement-based termination spread without equivalent cross-institutional standards (Faried et al., 2022), enforcement outran its normative framework (Garcia, 2020; Sukardi & Purnama, 2022), and the relationship with human rights obligations remained incompletely articulated (Ismail et al., 2024). Local studies add institutional richness: settlement in Salatiga draws on Islamic values and local notions of propriety (Ariefulloh et al., 2023), penal mediation among the Dayak Ngaju operates through customary institutions (Wulandari et al., 2022), indigenous practices are treated as the authentic foundation of Indonesia's restorative system (Rochaeti et al., 2023; Widjajanto et al., 2025), and community participation in handling children in conflict with the law proves substantive (Rochaeti & Muthia, 2021). That richness coexists with unresolved problems, since post-settlement reintegration of offenders often goes unmanaged (Amarini et al., 2024) and compensation and restitution for victims remain hampered by regulatory defects and weak enforcement (Ali et al., 2022).

The gravest concern is that a mechanism of repair may become an exit route for offenders. Transitional justice scholarship has assessed Zimbabwe's reconciliation commission as a potential cloak of impunity (Mazambani & Tapfumaneyi, 2020), found stakeholders sharply divided over whether Colombia's alternative sanctions repair harm or release offenders from responsibility (Mayans-Hermida et al., 2023; Mayans-Hermida & Holá, 2023), and documented contestation over Ghana's programme because the line

between reconciliation and tacit pardon is blurred (Afari, 2024). Restorative practice can also work as selective social control that opens space for moral disengagement (Varona, 2023), and Indonesian authors raise comparable concerns about corruption cases (Andini et al., 2023) and settlement fines for economic offences (Utomo et al., 2026). The position of the victim sharpens the concern. Restorative justice is often an optional extra rather than a right offered systematically (Banwell-Moore, 2023, 2024), victims' rights may serve the system more than victims (Holmberg et al., 2021), protection that looks good on paper can fail at the prosecution stage (Wolf & Werner, 2021), and the result may be secondary victimisation of an epistemic kind (Pemberton & Mulder, 2025). Recovery demands more than a signed agreement (Suzuki, 2023), since apology and forgiveness carry meaning only under specific conditions (Suzuki & Jenkins, 2023), voluntariness of the apology shapes victims' responses (Allan et al., 2022), empowerment is insufficient without moral change in the offender (Fischer et al., 2022), and access to the truth conditions receptiveness to an apology (Quinney et al., 2024).

Matters are complicated further because officials, not victims, decide which cases enter the restorative track. Officers' moral judgements about "messy victims" and "sympathetic offenders" shape police referrals (Hoekstra, 2022), institutionalisation within police organisations raises cultural challenges that training does not resolve (Marder, 2020), and street-level discretion steers cases decisively (Zhang, 2021). At the prosecution stage, decisions not to proceed carry real consequences (Amaral et al., 2024), are taken largely with low visibility (Hartley et al., 2025), do not always match prosecutors' stated attitudes (Arndt, 2022), and are shaped by managerial pressure over caseloads (Soubise, 2023), while unchecked discretion raises normative problems of domination (Crummett, 2020). Prosecutor-led diversion takes widely varying institutional forms (Wright & Levine, 2021), use of the restorative track in Canada runs far below its potential (Weinrath & Broschuk, 2022), and gatekeeping barriers are documented even for older victims (Avieli et al., 2021). Where judicial control over prosecutorial discretion exists, it is generally thin and confined to formal legality (Mariniello, 2019), and oversight systems vary widely in whether courts examine the merits of a decision not to proceed at all (Jabban, 2024).

Here lies the gap. International scholarship explains the conditions for successful restorative processes but works within legal systems whose eligibility thresholds were settled long ago, whereas Indonesian scholarship concentrates on cross-institutional fragmentation, a problem that Articles 79 to 88 of Law No. 20 of 2025 have partly answered through an eligibility threshold, a list of exclusions, and judicial determination. No study has yet tested the new statutory threshold against substantive conditions verified across jurisdictions, nor drawn an operational line between genuinely restorative settlement and case termination that amounts to impunity, a line that cannot be derived from a list of exclusions alone because impunity can also occur in cases satisfying every formal requirement. The novelty of this article lies in combining three moves that the existing literature has kept apart: testing the threshold in Articles 80 and 82 against cross-jurisdictional conditions for recovery and accountability; converting diffuse warnings about impunity from transitional justice, victimology, and prosecutorial discretion scholarship into four discrete failure modes with indicators readable from the case file; and comparing the new threshold with the two eligibility tests Indonesia already operates, namely juvenile diversion under Law No. 11 of 2012 and Article 6 of Supreme Court Regulation No. 1 of 2024. The product is an eligibility framework that a Chief Judge of a District Court can apply when asked to determine an order terminating investigation or prosecution.

This study aimed to examine how far the normative architecture of Indonesian restorative justice after Law No. 20 of 2025 closed off case termination that produced neither victim recovery nor offender accountability, to identify the conditions under which, according to cross-jurisdictional evidence, out-of-court settlement turned into impunity, and to formulate those conditions into a Restorative Justice Eligibility Threshold that officials could apply and courts could test, one that treated victim recovery and offender accountability as conditions for the validity of case termination rather than as hopes accompanying it.

2. Research Methods

This study is normative legal research with a socio-legal orientation. The choice follows from the nature of the problem. The question of where the eligibility limit for case termination lies is doctrinal, because its answer must be derivable from binding norms and testable before a court. The question of when case termination turns into impunity, however, cannot be answered from the text of the norm alone, since it concerns what actually happens to victims and offenders after the file is closed. The socio-legal orientation is used to connect the two, with the awareness that the researcher's position in relation to the object of study shapes both what becomes visible and what escapes notice (Massoud, 2022).

Three approaches are applied in layers. The statutory approach is used to read Law No. 20 of 2025, Law No. 1 of 2023, Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak (Law No. 11 of 2012 on the Juvenile Criminal Justice System), *Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual* (Law No. 12 of 2022 on Sexual Violence Offences), *Undang-Undang Nomor 31 Tahun 2014 tentang Perlindungan Saksi dan Korban* (Law No. 31 of 2014 on Witness and Victim Protection), together with three sectoral implementing regulations issued by the prosecution service, the police, and the Supreme Court. The conceptual approach is used to derive operational meaning from the three theoretical constructs that carry the analysis: victim recovery, offender accountability, and substantive justice. The comparative approach is used in a limited way, not to compare legal systems as wholes but to draw lessons from jurisdictions that have confronted the eligibility question earlier, principally England and Wales, Australia, Canada, the Netherlands, Germany, Denmark, China, Colombia, Zimbabwe, and Ghana.

The analysis rests on three legal theories, each matched to one of the approaches. Restorative justice theory supplies the yardstick for the conceptual approach: conflicts are treated as the property of the parties rather than of the state (Christie, 1977; Wood & Suzuki, 2020), and the legitimacy of a restorative outcome depends on whether the process engages the offender's acknowledgement and repairs harm, not on the mere signing of an agreement (Tyler et al., 2007; Kirkwood, 2022). Victim recovery theory supplies the substantive criterion by distinguishing material, emotional, safety, and social-standing dimensions of recovery that a settlement may or may not reach (Suzuki, 2023). Radbruch's theory of the purposes of law, which holds legal certainty, justice, and utility in tension, supplies the doctrinal test for the statutory approach, while Friedman's legal system theory, which separates legal substance, structure, and culture, frames the comparison of institutional arrangements (Arifin et al., 2023; Díaz Gude & Navarro Papic, 2020). Read together, these theories allow the study to ask not only whether a termination is lawful under Articles 80 and 82, but also whether it is just in

substance and workable in the hands of the institutions applying it, which is precisely the distance between das sollen and das sein that the eligibility question occupies.

The primary legal materials consist of the legislation listed above. The secondary materials consist of Scopus-indexed journal articles gathered through systematic searching, using the following protocol. Searches were run on the Scopus database using keyword combinations directed at eight claim clusters: restorative justice theory and effectiveness; its application in Indonesia; victim participation and recovery; recidivism; gender-based violence; eligibility criteria and case screening; prosecutorial discretion; and power relations and voluntariness. Every candidate was re-verified against the Scopus database to confirm indexing status and metadata authenticity, after which the resolvability of its digital object identifier was confirmed against the Crossref catalogue. Candidates whose identifiers failed to resolve or pointed to a different work were removed from the corpus. From 496 candidates retrieved, the screening left 80 Scopus-indexed articles drawn from 63 journals.

Analysis proceeded in three stages. The first was qualitative document analysis of the primary legal materials, following the repeated-reading, open-coding, and thematic-grouping procedures standard in document analysis (Morgan, 2022). The unit of analysis was the statutory provision, and the codes covered the authorised actor, eligibility criteria, procedural conditions, recovery obligations, oversight mechanisms, and legal consequences. The second stage was reflexive thematic analysis of the literature corpus, with themes built from the data rather than imposed from a prior framework, and with explicit acknowledgement that the researcher's interpretation forms part of theme construction (Braun & Clarke, 2021). The third stage was synthesis: empirical themes were brought together with the reading of the norms to produce the eligibility framework and its indicators.

Validity was safeguarded in three ways. Source triangulation required every proposition about the failure of restorative mechanisms to rest on at least two studies from different jurisdictions, so that findings would not merely reflect the peculiarities of a single legal system. An audit trail was maintained by preserving the full search history, metadata verification results, and the mapping of claims onto sources. The fit between claim and evidence was rechecked at the final stage by flagging every statement that could not be anchored in verified material, and then weakening or deleting it.

The methodological reach of this study must be stated plainly. It collects no primary data from victims, offenders, investigators, prosecutors, or victim advocates. It therefore makes no claim to know how eligibility decisions are actually taken in the Indonesian field after Law No. 20 of 2025 took effect, and it presents no empirical themes drawn from those actors' experience. The resulting framework is normative and conceptual: it is designed to be tested, not to be treated as already tested. Its empirical testing design is set out at the end of the discussion, following a multi-stakeholder qualitative case study using in-depth interviews, documentary study of case-termination files, and non-participant observation of facilitation processes.

3. Results and Discussion

3.1. From Institutional Discretion to Statutory Norm

For the past five years restorative justice in Indonesia lived under three parallel regimes that were never unified. The prosecution service's guidelines governed termination of

prosecution using criteria centred on the statutory penalty, the loss suffered, and settlement between the parties (Kejaksaan Republik Indonesia, 2020). The police regulation governed the handling of offences at an earlier stage, emphasising recovery and the fulfilment of victims' rights (Kepolisian Negara Republik Indonesia, 2021). The Supreme Court guidelines arrived last and operate on different terrain again, namely adjudicating rather than terminating cases on a restorative basis, under six principles covering restoration of the position, strengthening of victims' rights, defendant responsibility, punishment as a last resort, consensuality, and transparency and accountability (Mahkamah Agung Republik Indonesia, 2024). A comparison of all four instruments, including the statute now in force, is presented in Table 1.

Table 1. Comparison of Indonesian legal instruments on restorative justice

Instrument	Stage regulated	Principal eligibility criteria	Oversight mechanism
Prosecution Service Regulation No. 15 of 2020	Prosecution	Statutory penalty, magnitude of loss, settlement between the parties	Hierarchical, internal
Police Regulation No. 8 of 2021	Preliminary investigation and investigation	Recovery and fulfilment of victims' rights; settlement reached	Hierarchical, internal
Supreme Court Regulation No. 1 of 2024	Trial	Minor offence or limited loss; complaint offence; maximum penalty of five years; child offender whose diversion failed; traffic offences constituting crimes	Panel of judges through the judgment
Law No. 11 of 2012 (juvenile diversion)	All stages, children only	Penalty threshold and non-repetition, coupled with social worker involvement and a community research report	Court determination
Law No. 20 of 2025, Articles 79 to 88	All stages	Fine of at most category III or imprisonment of at most five years; first offence; not a repeat offence; nine groups of exclusions	Determination by the Chief Judge of the District Court within three days

Source: compiled by the authors from the instruments cited.

The differences between these instruments are not merely matters of drafting. They produced three different eligibility thresholds for materially identical cases, depending on the stage a case had reached and the institution handling it. Findings on the mainstreaming of termination of prosecution in Indonesia confirm that this generated disparities in handling that are difficult to explain to the parties (Faried et al., 2022), while studies of restorative principle enforcement show officials working from unequal normative references (Garcia, 2020; Sukardi & Purnama, 2022).

The problem is not uniquely Indonesian. Mapping of restorative policy across Europe shows that how a state frames restorative justice, whether as a victim service, an efficiency device, or a sentencing reform, determines who is empowered to screen cases

and on what basis (Romero-Seseña, 2025). Divergent framing across institutions within a single state produces the same effect as divergent framing across states.

Law No. 20 of 2025 changes this fundamentally. The restorative mechanism now has a single definition in Article 1 point 21, a single eligibility criterion in Article 80, a voluntariness guarantee in Article 81 paragraph (2), a single list of exclusions in Article 82, and procedural routes differentiated by stage in Articles 83 to 88 (Republik Indonesia, 2025). Article 80 provides that the mechanism may be pursued where the offence carries a fine of at most category III or imprisonment of at most five years, is a first offence, and/or is not a repeat offence, with an exception for offences whose judgment took the form of a fine or which were committed through negligence.

Article 82 removes nine groups of offences from the mechanism's reach: offences against state security, against friendly states, against public order, against decency, terrorism, corruption, sexual violence, offences carrying five years' imprisonment or more except where committed through negligence, offences against life, offences carrying a special minimum penalty, certain offences that are highly dangerous or harmful to society, and narcotics offences except where the person is a user or misuser.

Three advances deserve recording. First, the statute treats recovery as a condition rather than an aspiration: a case may be terminated only after the offender has fulfilled the entire recovery agreement, within a maximum of seven days, and failure to fulfil the agreement obliges the investigator to record this in an official report that becomes the basis for continuing the proceedings. This closes the most hazardous of the old patterns, in which the case was closed when the settlement letter was signed rather than when the obligation was discharged.

Second, the statute ends the era of case termination without judicial oversight: both the order terminating investigation and the decision terminating prosecution must be submitted for determination by the Chief Judge of the District Court within three days. Third, refusal of the mechanism at one stage does not preclude its application at the next, up to the trial stage through the court's judgment and the execution of that judgment.

These advances are real, but they do not resolve the problem this article addresses. The threshold in Article 80 and the exclusions in Article 82 are entirely offence-based: both screen cases according to the nature of the act and the offender's record. Not one criterion screens according to the victim's circumstances, the power asymmetry between the parties, or the quality of the recovery promised. Yet it is precisely on those dimensions that cross-jurisdictional evidence locates the difference between restorative justice and impunity. Figure 1 maps the mechanism under Articles 79 to 88 together with the points that remain exposed to that risk.

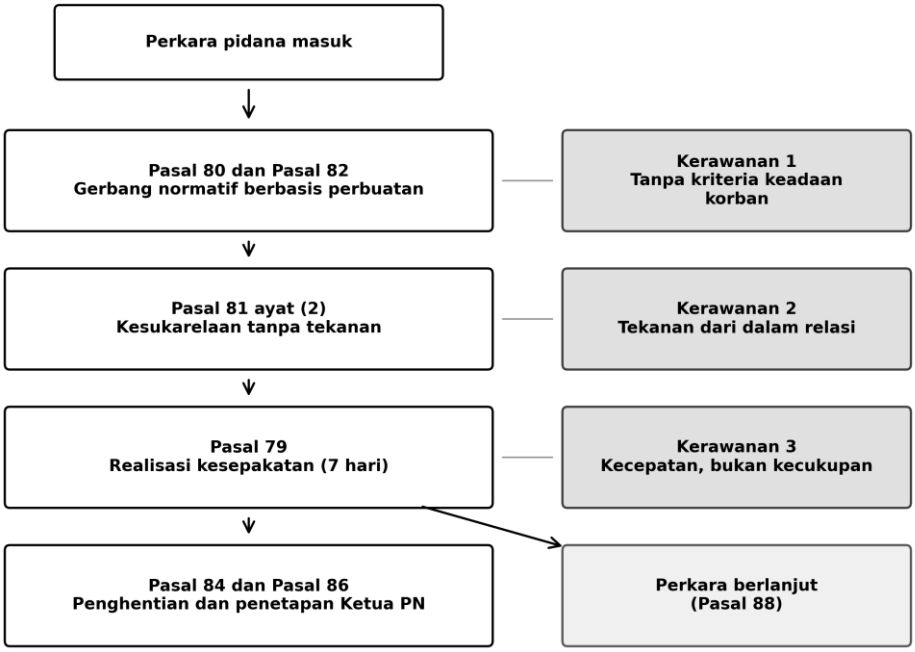

Figure 1. The restorative justice mechanism under Articles 79 to 88 of Law No. 20 of 2025 and the three points of exposure that remain. Source: authors' own elaboration (2026) from Law No. 20 of 2025 (Republik Indonesia, 2025)

3.2. The Volume Problem: Restorative Justice as Caseload Management

Before the new statute, restorative justice in Indonesia already operated at scale, and it did so on the authority of circulars and institutional regulations rather than legislation. The chain began with a joint memorandum among the Supreme Court, the Ministry of Law and Human Rights, the Attorney General, and the National Police in 2012, was carried forward by a police circular on applying restorative justice in criminal case settlement (Kepolisian Negara Republik Indonesia, 2018), and was operationalised through the prosecution guidelines of 2020 and a further circular from the Deputy Attorney General for General Crimes setting out how termination of prosecution should be implemented in practice (Kejaksaan Republik Indonesia, 2020, 2022).

The volume matters for the argument of this article. Figures attributed to the Attorney General's Office record 1,985 cases handled through restorative justice between January and December 2024, against a first-instance caseload across the four judicial environments of 2,927,815 cases in the same year, with 30,217 at appellate level and 30,991 at the Supreme Court (Mahkamah Agung Republik Indonesia, 2025). Two readings of those numbers are possible, and both are instructive. On one reading, restorative settlement remains marginal relative to total caseload, so its contribution to decongestion is modest and cannot by itself justify a lower standard of scrutiny. On the other, nearly two thousand cases closed in a single year without any judicial determination, under the pre-2026 arrangement, is a substantial body of decisions that never came before a court and left no record capable of being examined afterwards.

The same source records an observation from a Supreme Court justice official that under the old Criminal Procedure Code judges had no authority to halt proceedings once a case

file reached the court, the sole exception being diversion in children's cases (Mahkamah Agung Republik Indonesia, 2025). That observation locates precisely what Articles 84, 86, and 88 of Law No. 20 of 2025 change. The question this article pursues is whether the change is one of form or of substance, that is, whether a determination made on the file can test anything beyond the formal presence of a settlement document.

3.3. Settlement Is Not Recovery

The article's central claim is simple: reaching a settlement does not by itself prove that recovery has been achieved. The theoretical framework of victim recovery distinguishes at least four components, namely material recovery, emotional recovery, restoration of a sense of safety, and restoration of social standing, which do not move together and cannot substitute for one another (Suzuki, 2023). An agreement covering material compensation may fail entirely on the other three. Research in South Africa found that the benefit of restorative process for victims depends heavily on the quality of facilitation and the offender's readiness, not on the existence of an agreement as such (Murhula & Tolla, 2020).

The psychological mechanisms behind recovery have been mapped in some detail. Victims' willingness to reconcile is independently predicted by two things, victim empowerment and moral change in the offender, and either alone is insufficient (Fischer et al., 2022). The apology–forgiveness cycle produces restorative effects only where the apology is perceived as sincere and accompanied by acknowledgement of wrongdoing (Suzuki & Jenkins, 2023). The voluntariness of an apology measurably affects victims' responses, so that an apology experienced as procedural formality can make matters worse (Allan et al., 2022). Victims' access to the truth about what happened and why also conditions their willingness to accept an apology (Quinney et al., 2024). Recovery, in short, requires conditions that are not legible from a settlement document.

The opposite condition is documented just as well. Where a process runs without those requirements, victims may experience secondary victimisation, that is, additional harm arising from the handling of their own case. That harm is often epistemic in form: victims are not treated as the persons who best know their own experience, and their account is filtered through categories they did not choose (Pemberton & Mulder, 2025). The practice of using surrogate victims in restorative conferences, which raises completion of reparation obligations while eliminating the presence of the actual victim, shows how easily success indicators drift from the victim's interest towards programme throughput (Hobbs et al., 2022). The same problem arises when restorative justice is treated as an optional extra in a victim services package rather than as a right offered systematically and refusable without consequence (Banwell-Moore, 2023).

For Indonesia the consequence bears directly on a long-recognised problem: compensation and restitution for victims face regulatory defects and weak enforcement, so that a right recognised on paper does not always issue in payment (Ali et al., 2022). Law No. 31 of 2014 provides a foundation for assistance and restitution (Republik Indonesia, 2014), but its connection to restorative case termination remains unarticulated. Post-settlement social reintegration is likewise managed by no one (Amarini et al., 2024). The seven-day deadline in Article 79 does force realisation of the agreement before a case is closed, but that deadline measures speed rather than sufficiency. An agreement realised within seven days may well be inadequate for a recovery that requires months, such as medical treatment, psychological support, or restoration of livelihood.

3.4. Accountability Without Punishment

The second problem concerns what offenders actually bear. Recent conceptual work offers a useful distinction: accountability is understood not as a synonym for punishment but as a set of actions comprising acknowledgement of the act, understanding of its impact, tangible repair, and observable behavioural change (Rasmussen, 2025). Follow-up work on the experience of violent offenders shows that accountability of this kind has specific supports and barriers and does not arise automatically from participation in a process (Rasmussen, 2026). The Supreme Court guidelines align with this distinction in affirming that applying restorative principles is not intended to abolish criminal responsibility (Mahkamah Agung Republik Indonesia, 2024).

It is exactly here that restorative mechanisms slip most easily. Criticism of restorative practice with certain categories of convicted offender shows that the process can supply room for selective moral disengagement: the offender acquires a mitigating narrative frame without ever confronting the impact of the act (Varona, 2023). The classic debate over the ownership of conflict issues a related warning: once a conflict is taken over by a programme, the programme's agenda can displace the agenda of those in conflict (Wood & Suzuki, 2020). In transitional justice settings, alternative sanctions designed to enable reconciliation are perceived by some stakeholders as bordering on impunity, particularly where the burden borne by the offender is judged disproportionate to the gravity of the act (Mayans-Hermida et al., 2023; Mayans-Hermida & Holá, 2023). Reconciliation commissions that demand neither acknowledgement nor repair risk functioning as a cloak of impunity (Mazambani & Tapfumaneyi, 2020), and restorative programmes that are opaque about offenders' obligations provoke comparable public controversy (Afari, 2024).

In Indonesian legal discourse this tension is sharpest for offences that harm the public interest. Applying a restorative approach to corruption cases is judged normatively hard to sustain because the direct victim is not present as a subject capable of forgiving (Andini et al., 2023). Proposals to extend settlement fines to economic offences meet similar objections, even where some authors attempt to anchor them in Islamic legal ethics (Utomo et al., 2026). Article 82 of Law No. 20 of 2025 answers part of that objection by excluding corruption from the mechanism's reach. Yet the category of "certain offences that are highly dangerous or harmful to society" in subparagraph (h) is left open without criteria, so that determining its scope returns to the domain of official interpretation, precisely the kind of latitude criticised normatively as a form of uncontrolled domination (Crummett, 2020).

A further question about repetition remains unanswered. Article 80 does close the route for repeat offences, but its exception for cases ending in a fine leaves an important issue open: a case terminated through the restorative mechanism produces no court judgment and is therefore not recorded as a sentencing history. Without a register of terminated cases accessible across regions and institutions, the requirement that the act be "committed for the first time" risks becoming an unverifiable assertion. Comparative experience shows that decisions not to proceed are precisely the high-volume, low-visibility decisions that are rarely documented systematically (Hartley et al., 2025).

3.5. The Authenticity of Victim Consent and Power Asymmetry

Article 81 paragraph (2) of Law No. 20 of 2025 prohibits pressure, coercion, intimidation, deception, threats of violence, violence, torture, and treatment degrading to human

dignity directed at the suspect, defendant, victim, or their families. The formulation is strong, but it targets pressure originating outside the relationship between the parties. Empirical evidence indicates that the gravest threat to the authenticity of consent comes from within that relationship.

The literature on gender-based violence is richest on this point and also the most divided. A review of restorative interventions for intimate partner violence finds promising results for particular programmes while stressing that victim safety and readiness are non-negotiable preconditions (Barocas et al., 2020). A scoping review of programmes for adult survivors of sexual violence reaches a compatible conclusion, adding a note on the scarcity of adequate evaluations (Burns & Sinko, 2023). Research with survivors of intimate partner violence shows that the justice goals they seek are plural and not uniformly restorative; some survivors specifically want formal acknowledgement of the offender's wrongdoing through the courts (Decker et al., 2022). A transformative justice perspective adds a structural critique: handing gender-based violence to settlement mechanisms without changing the conditions that generate the violence risks shifting the burden of resolution onto victims (Kim, 2021).

Practitioner views reinforce that caution. Interviews with practitioners in Queensland reveal conditional support: restorative justice is considered useful for some gendered violence cases, but only where risk assessment, ongoing support, and the possibility of halting the process at any point are available (Jeffries et al., 2021). Practitioners in other jurisdictions voice similar concerns about the risk of manipulation by skilled offenders (Miller et al., 2020). The English experience shows that development in sexual violence cases has been slow precisely because of the stringent procedural safeguards required (Gavin et al., 2023). Yet evidence from the other side exists too: restorative conferencing for adult survivors of intrafamilial sexual offences has been reported to improve trauma recovery where it is run with lengthy preparation and on the victim's own initiative (Klar-Chalamish & Peleg-Koriat, 2021). Debate about consent and autonomy in the context of the #MeToo movement underlines that consent to enter a restorative process itself requires examination as careful as consent in any other context (Sikka, 2021).

The Indonesian context adds a layer that cannot be ignored. Mediation for victims of domestic violence in Central Java shows that women's access to justice is shaped by family pressure, economic dependence, and social norms about keeping households intact (Sukendar et al., 2023). Studies of restorative approaches in domestic violence cases find that settlements are frequently reached in the shadow of unequal bargaining positions (Widiartana et al., 2025). In cases of sexual violence against children, the way the problem is framed in policy and law determines who counts as a victim and what protection is available (Wismayanti et al., 2021). Law No. 12 of 2022 provides a far stronger protective framework (Republik Indonesia, 2022), and Article 82 of Law No. 20 of 2025 already excludes sexual violence offences from the restorative mechanism. Many domestic violence cases, however, are not classified as sexual violence, and their statutory penalties fall below five years. Those cases formally satisfy the Article 80 threshold.

For cases involving children, a protective framework has been available since Law No. 11 of 2012 (Republik Indonesia, 2012), and international standards on children's participation in restorative processes demand adjustments that go beyond the procedural (Gal, 2021). Research on community participation in handling children in conflict with the law in Indonesia shows that such involvement can be meaningful when

given structure (Rochaeti & Muthia, 2021). The remaining gap concerns adult victims who are vulnerable for other reasons: economic dependence, disability, advanced age, or a subordinate position in an employment relationship. Institutional gatekeeping barriers for older victims are documented and show that vulnerability often goes unread by a system not designed to read it (Avieli et al., 2021).

3.6. Gatekeeping Discretion: Who Actually Screens the Cases

The statute sets the threshold, but human beings apply it. Article 81 paragraph (1) empowers investigators at both stages, prosecutors, and judges to offer the mechanism proactively. The power to offer is the power to screen, and the evidence on how that screening works is not reassuring. Analysis of police referrals finds that officers' moral assessments of victims deemed troublesome and offenders deemed sympathetic help determine which cases are routed towards restorative handling (Hoekstra, 2022). Research on street-level police in China shows an equivalent pattern, with discretion exercised on practical considerations of workload and complaint risk (Zhang, 2021). Institutionalising restorative justice within police organisations turns out to depend on slow and uneven cultural change across units (Marder, 2020).

At the prosecution stage the pattern repeats with higher stakes. Decisions not to proceed have real effects on justice outcomes (Amaral et al., 2024) and are taken in large volume with low visibility (Hartley et al., 2025). Prosecutors' stated attitudes are not always reflected in the decisions they make, because case elimination mechanisms operate on workload priorities (Arndt, 2022). Managerial pressure over case disposal rates shapes prosecutorial professional identity in ways not always aligned with the ends of justice (Soubise, 2023). Canadian research finds police and prosecutorial use of the restorative track running far below its potential, with wide regional variation (Weinrath & Broschuk, 2022). Comparison of prosecutor-led diversion models shows that institutional design determines whether discretion yields justice or merely efficiency (Wright & Levine, 2021).

Two classic risks accompany screening of this kind. The first is net-widening: cases that would previously not have been processed at all are drawn into the system because a "light" route is available, so that the number of people touched by law enforcement grows rather than shrinks. The second is the reverse, a narrowing in which cases that ought to be processed are terminated because settlement is quicker. Both risks share a single source, namely the absence of binding criteria on the quality of the settlement. Local legal culture determines which of the two predominates; research in Chile shows that successful institutionalisation of restorative justice depends heavily on its fit with existing legal culture (Díaz Gude & Navarro Papic, 2020).

The Indonesian context has features that complicate and promise in equal measure. Customary institutions and religious values supply a socially tested repertoire of settlement. Settlement grounded in Islamic values in Salatiga shows that social legitimacy can drive compliance with agreements (Ariefulloh et al., 2023), penal mediation among the Dayak Ngaju displays recovery mechanisms that involve the community directly (Wulandari et al., 2022), and decolonial readings of customary practice position those traditions as an authentic source of Indonesia's restorative system rather than a supplement to it (Rochaeti et al., 2023; Widjajanto et al., 2025). Efforts to link the principle of islah with contemporary restorative frameworks move in the same direction (Darmawan et al., 2025). Social legitimacy, however, can work in both directions. Community pressure that encourages settlement can also press victims into

accepting outcomes they do not want, particularly where the victim occupies a subordinate position in the local social structure.

3.7. Four Failure Modes That Turn Restorative Justice into Impunity

Synthesis of all the evidence above yields four failure modes that can be distinguished from one another, each with observable indicators. All four, with what occurs and the indicators legible from the case file, are presented in Table 2.

Table 2. Four failure modes that turn restorative justice into impunity

Failure mode	What occurs	Indicators legible from the case file
Failure of recovery	The agreement is formally performed but does not touch the victim's actual recovery needs	Wholly monetary agreement; no victim needs assessment; deadlines disproportionate to the harm
Failure of accountability	Material obligations are met without acknowledgement, understanding of impact, or behavioural change	No acknowledgement in the record; procedural apology; no obligation beyond payment
Failure of voluntariness	Consent is obtained under pressure arising from within the relationship between the parties	No independent support; very short interval between reporting and settlement; presence of a party holding power over the victim
Failure of oversight	The case is closed without assurance that long-term obligations will be performed	No supervision period; no consequence for breach; no register permitting a repeat-offence check

Source: authors' own elaboration from the literature cited.

The first is failure of recovery. An agreement is reached and formally performed, yet does not touch the victim's actual recovery needs, particularly emotional recovery, safety, and social standing (Suzuki, 2023); its indicators are wholly monetary agreements, the absence of any victim needs assessment, and performance deadlines disproportionate to the nature of the harm. The second is failure of accountability. The offender discharges material obligations without acknowledgement of the act, understanding of its impact, or observable change (Rasmussen, 2025, 2026), which shows in the absence of acknowledgement in the official record, in apologies that are procedural in character (Allan et al., 2022), and in the absence of any obligation beyond payment.

The third is failure of voluntariness. The victim's consent is obtained under pressure invisible to the formal prohibition in Article 81 paragraph (2), namely pressure arising from economic dependence, power relations, or social norms (Sukendar et al., 2023; Widiartana et al., 2025), which shows in the absence of independent support for the victim, a very short interval between reporting and settlement, and the presence of a party holding power over the victim during facilitation. The fourth is failure of oversight. The case is terminated without any mechanism ensuring that the agreement is performed afterwards, without records permitting verification of repeat-offence status, and without a route to redress for the victim when the agreement is breached. Articles 79 and 84 of Law No. 20 of 2025 close most of this gap for obligations dischargeable within seven days, but not for long-term obligations.

The four modes are not mutually exclusive and frequently occur together. What matters is this: none of them is caught by the offence-based threshold in Article 80 or the exclusion list in Article 82. A first-time petty theft satisfies every formal requirement and can still end in impunity if all four modes occur together.

3.8. The Restorative Justice Eligibility Threshold

From the analysis above a Restorative Justice Eligibility Threshold is constructed, operating through three sequential gates. The first gate is normative and already exists in positive law: it screens according to the nature of the act, the statutory penalty, and the offender's record, as regulated in Articles 80 and 82 of Law No. 20 of 2025. The second gate is procedural and partly available: it screens according to the quality of the process, namely tested voluntariness, equality of bargaining position, disclosure of information, and support for the parties. The third gate is substantive and not yet available: it screens according to the quality of the outcome, namely the sufficiency of victim recovery, the reality of offender accountability, and the existence of post-settlement oversight. The structure of the framework is presented in Figure 2.

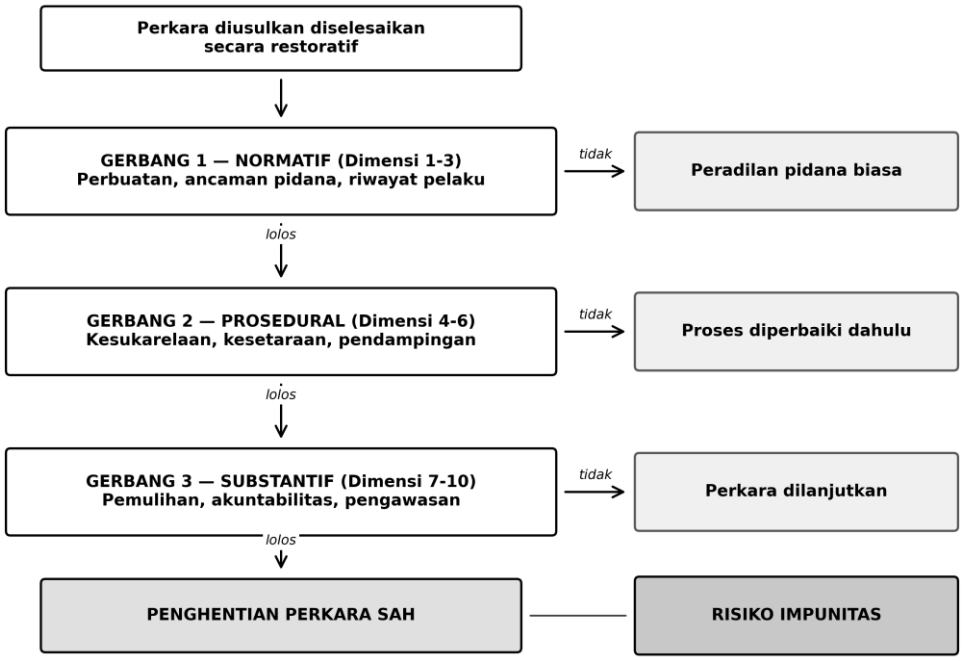

Figure 2. The Restorative Justice Eligibility Threshold: three sequential gates and their normative outputs. Source: authors' own elaboration (2026)

The sequential logic matters. Failure at the first gate closes the restorative route entirely. Failure at the second gate does not automatically close it but obliges the process to be repaired, through added support, postponement, or separation of rooms, before it may continue. Failure at the third gate obliges the case to proceed to adjudication, as already provided through the official record under Article 79 and the possibility of application at trial under Article 88. What distinguishes this framework from the existing arrangement is that the second and third gates are formulated as testable validity conditions rather than as considerations left wholly to official judgement.

Ten dimensions populate the three gates, each with indicators verifiable from the case file. Table 3 sets out the dimensions, their indicators, the gate at which each operates, and its normative or empirical anchor.

Table 3. Ten dimensions of the Restorative Justice Eligibility Threshold

Dimension	Gate	Indicators verifiable from the case file
Gravity of the offence	Normative	Statutory penalty and fine category; conformity with the exclusion list
Offender record	Normative	Statement that the act was a first offence; search of the case-termination register
Public interest affected	Normative	Identification of an individual victim; assessment of collective impact
Victim vulnerability	Procedural	Assessment by age, disability, economic dependence, or subordinate position
Equality of bargaining position	Procedural	Mapping of the parties' relationship; statement taken separately; risk assessment in violence cases
Authenticity of consent	Procedural	Independent support; minimum waiting interval; right to withdraw without consequence
Sufficiency of victim recovery	Substantive	Recovery needs assessment; fit between agreement and assessment; non-monetary components
Reality of offender accountability	Substantive	Written acknowledgement; statement showing understanding of impact; obligations beyond payment
Quality of the restorative process	Substantive	Facilitator qualifications; disclosure to the parties; opportunity for the victim to convey impact
Post-settlement oversight	Substantive	Supervision period for long-term obligations; reporting mechanism; consequences for breach

Source: authors' own elaboration.

Several notes on indicator design should be recorded. Indicators are formulated to be legible from documents, because the determination by the Chief Judge of the District Court under Articles 84 and 86 is made on the file rather than through examination of the parties. A condition that cannot be verified from the file becomes a condition that is never tested. Dimensions such as authenticity of consent are therefore translated into procedural and documented indicators, namely the presence of independent support, a minimum waiting interval, and a statement taken separately from the victim, rather than into psychological assessments a judge cannot perform at the desk.

It should also be stressed that this framework does not raise the threshold uniformly. For most minor cases, long settled through customary institutions and social agreement, the second and third gates will be satisfied almost automatically, and applying the

framework in fact accelerates certainty by supplying a clear checklist (Rochaeti et al., 2023; Wulandari et al., 2022). The additional burden concentrates on the cases that genuinely warrant it: those involving power asymmetry, vulnerable victims, or harm that money cannot repair. This accords with a whole-system approach that treats the provision of safeguards as part of the design rather than as an obstacle to it (Banwell-Moore, 2024).

3.9. Two Eligibility Tests Indonesia Already Operates

The threshold in Article 80 is not Indonesia's first attempt to define which cases may leave the ordinary criminal process. Two earlier tests are already in force, and comparing them exposes what the new statute borrowed and what it left behind.

The first is juvenile diversion under Law No. 11 of 2012, which conditions diversion on a penalty threshold and on the offence not being a repetition, but couples those conditions with mandatory involvement of a social worker, a community research report, and a determination by the court. Research on its operation finds that diversion works where those supporting structures exist and stalls where they do not, and that the statutory threshold alone predicts very little about outcomes (Nashriana et al., 2023; Rasdi et al., 2022). An assessment of its legal effectiveness reaches the same conclusion, locating the decisive variable in the quality of implementation rather than in the eligibility rule (Rismana et al., 2025). Juvenile diversion, in other words, already pairs an offence-based gate with a process-based one, which is exactly the pairing Article 80 lacks.

The second is Article 6 paragraph (1) of Supreme Court Regulation No. 1 of 2024, which permits a court to adjudicate on a restorative basis where the offence is a minor one or the victim's loss does not exceed a modest monetary ceiling, where the offence is a complaint offence, where the maximum penalty in one of the charges is five years, where diversion for a child offender has failed, or where the case concerns a traffic offence amounting to a crime (Mahkamah Agung Republik Indonesia, 2024). Two features of that test are absent from Article 80. It calibrates by the magnitude of the victim's loss rather than by the statutory penalty alone, and it names the categories of offence in which restorative handling is expected to work, rather than listing only what is excluded. The Supreme Court test therefore already reaches, if only partially, toward the victim's circumstances.

Placing the three tests side by side yields a plain finding. Indonesian law had been moving toward eligibility rules that combine offence characteristics with process guarantees, and Law No. 20 of 2025 has moved in the opposite direction by consolidating everything into an offence-based threshold with a list of exclusions. The consolidation gained uniformity, which was the acknowledged defect of the previous arrangement, but it did so by discarding the process dimension that the two earlier tests had built in. The framework proposed below is best understood as restoring that dimension at the level of the statute rather than inventing it.

3.10. Testing the Framework Against Three Case Types

Applying the framework to three case types shows its discriminating power. In domestic violence cases carrying a penalty below five years, the first gate is passed because the case does not fall within the Article 82 exclusions. The second gate becomes decisive: without risk assessment, independent support, and the ability to withdraw consent without consequence, the process must not proceed (Barocas et al., 2020; Jeffries et al.,

2021). The third gate demands more still, namely evidence that the victim's safety holds after the settlement rather than merely at the moment of signature (Miller et al., 2020). Without all three layers, terminating a domestic violence case is the form of impunity most often overlooked, because it presents itself as successful family reconciliation.

In narcotics cases where the person is a user, Article 82 subparagraph (i) opens the restorative route explicitly. Such cases, however, have no individual victim able to grant forgiveness or sign a recovery agreement. The second and third gates must therefore be retranslated: voluntariness is measured by the person's willingness to undergo a recovery programme, and recovery is measured by compliance with that programme rather than by payment to anyone. Without that retranslation, the mechanism loses its philosophical footing and becomes unconditional case termination. Criticism of restorative approaches where the victim is abstract applies here in full (Andini et al., 2023; Varona, 2023).

In cases of petty theft or minor assault between neighbours, all three gates are readily satisfied and the framework functions as a simplifier rather than an obstacle. It is with this type that the added value of local social institutions is greatest, since the community can serve as the monitor of compliance that the formal system lacks (Ariefulloh et al., 2023; Rochaeti & Muthia, 2021). The differential treatment of these three case types is not discrimination but proportionality: the intensity of safeguards is matched to the magnitude of the risk of failure.

3.11. Implications for the Implementing Regulation

Law No. 20 of 2025 delegates further regulation of the restorative mechanism to a Government Regulation, and that delegation is a narrow but important opportunity to give the second and third gates binding force. The regulation should begin with a mandatory assessment of the victim's recovery needs before the agreement is drafted, using a standard format covering material loss, psychological impact, safety needs, and effects on livelihood, so that the assessment becomes the basis for judging the sufficiency of the agreement and its absence becomes a ground for refusing determination. It should also regulate long-term agreements, because the seven-day deadline in Article 79 suits obligations dischargeable at once but not those requiring time, such as medical treatment or restoration of livelihood; conditional termination with a supervision period, together with clear consequences where obligations go unmet, would close that gap.

Independent support for victims should be made a condition of valid consent in cases involving family relationships, employment relationships, or economic dependence, since cross-jurisdictional experience shows that victims' rights unaccompanied by support tend to remain rights on paper (Holmberg et al., 2021; Wolf & Werner, 2021). A national register of restorative case terminations, accessible across regions to investigators, prosecutors, and courts, is needed as well; without it, the "first offence" requirement and the bar on repeat offences in Article 80 cannot be verified, and repeated use by the same offender becomes a real risk.

The regulation should, finally, set limiting criteria for the open category in Article 82 subparagraph (h), namely certain offences that are highly dangerous or harmful to society. A category without criteria returns interpretive latitude to officials at precisely the most politically sensitive point, and raises the same problem of domination as unchecked discretion (Crummett, 2020). Indonesian scholarship has framed the

underlying tension as one between legal certainty and substantive justice, and has shown that where the two are left unreconciled in the text of a rule, the reconciliation is performed instead by officials at the point of application, with predictably uneven results (Arifin et al., 2023).

3.12. Limitations and an Agenda for Empirical Validation

Three limitations should be stated openly. First, this study collects no primary data and therefore cannot state how Articles 79 to 88 are actually applied since they took effect in January 2026. The claims made are normative and analytical, not descriptive of practice. Second, the cross-jurisdictional evidence carrying the analysis comes from legal systems with different legal cultures, and transposing it to the Indonesian context requires the caution long urged in comparative scholarship (Díaz Gude & Navarro Papic, 2020). Third, because the statute is new, no case law yet exists on determinations by Chief Judges of District Courts regarding restorative case termination, so the analysis of how judicial oversight will operate remains anticipatory. All three limitations point to the same research agenda, namely the need for empirical work tracking the application of this statute during its first years.

The framework is normative and conceptual and requires testing. The appropriate design is a multi-stakeholder qualitative case study within the jurisdiction of a single district police force and district prosecution office, with purposive sampling and collection halted at thematic saturation. Informants would include investigators, prosecutors, judges who have issued determinations, victims and their families, offenders or their counsel, victim advocates, and criminal law academics. Three data types are needed together: semi-structured interviews on the grounds of eligibility assessment and the sufficiency of recovery; documentary study of termination files, settlement records, and court determinations, using established procedures (Morgan, 2022); and non-participant observation of facilitation, because power dynamics are visible in the meeting room and almost never in the file. Reflexive thematic analysis would build themes across the three sources, with comparison between perspectives as the principal source of findings (Braun & Clarke, 2021).

Four propositions follow directly from the framework and are testable. The existence of a settlement does not correlate with perceived victim recovery where sufficiency is not separately assessed. Victim consent in cases marked by power asymmetry is more often shaped by economic and social pressure than in cases without it. Officials at different stages apply different eligibility considerations even under a single statute. And the absence of post-settlement supervision is associated with lower fulfilment of long-term obligations.

4. Conclusion

This study concluded that Law No. 20 of 2025 resolved most of what Indonesian scholarship had criticised about restorative justice, replacing the fragmented prosecution, police, and Supreme Court guidelines with a single definition, eligibility threshold, list of exclusions, and procedural route, and permitting termination only after the recovery agreement has been realised and determined by the Chief Judge of the District Court. The threshold, however, rests entirely on the nature of the offence and the offender's record, so it does not screen for the victim's circumstances, power asymmetry, or the sufficiency of the promised recovery, and failures of recovery, accountability, voluntariness, and oversight can still turn settlement into impunity in

cases that satisfy every formal requirement of Article 80 and fall outside the exclusions in Article 82. An out-of-court settlement deserves the name restorative justice only where it produces victim recovery and offender accountability through a process that is free, equal, transparent, and supervised, and the proposed Restorative Justice Eligibility Threshold, with its normative, procedural, and substantive gates and ten dimensions verifiable from the case file, makes that requirement testable. It is therefore recommended that the Government Regulation delegated by the statute require an assessment of victims' recovery needs, regulate long-term agreements with a supervision period, guarantee independent support where power is unequal, establish a national register of terminated cases, and set limiting criteria for the open category in Article 82 subparagraph (h). Future research should test the framework through a multi-stakeholder qualitative case study comparing the perspectives of victims, offenders, investigators, prosecutors, judges, and advocates, because until that testing is done the framework is best read as a set of questions that must be answered before a file is closed.

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