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Reconstruction of Criminal Procedure Law in Strengthening Victim Protection Based on Restorative Justice

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Abstract. *This study aims to analyze the urgency of reconstructing criminal procedural law to strengthen the protection of victims of crime through a restorative justice approach. The Criminal Procedure Code (KUHP), in effect since 1981, still relies on a retributive paradigm that positions victims solely as witnesses, often neglecting their recovery needs. The method used is normative legal research with statutory, conceptual, and comparative approaches, supported by qualitative analysis of primary and secondary legal materials. Based on the results of the study, it can be concluded that the provision of restorative justice in the Criminal Procedure Code (KUHP) is currently partial and scattered in regulations at a lower level, such as Perpol No. 8 of 2021 and PERMA No. 1 of 2024. Therefore, a normative reconstruction is needed that positions victims as active subjects with the rights to participation, restitution, and recovery, institutionalized in national criminal procedural law.*

Keywords: *Criminal Procedure Law; Legal Reconstruction; Restitution; Restorative Justice; Victim Protection.*

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1. Introduction

The criminal justice system in Indonesia remains based on a retributive paradigm that prioritizes punishing the perpetrator, while the interests of the victim tend to be subordinated. The Criminal Procedure Code, as stipulated in Law No. 8 of 1981, positions victims only as witnesses providing testimony, not as parties with an independent legal interest in recovering the losses they have suffered.¹ This condition creates a gap between the ideal need for victim protection and the normative reality of applicable criminal procedural law.

The shift in the orientation of punishment from retribution to restoration has given rise to the concept of restorative justice as an alternative paradigm. Restorative justice emphasizes restoring victims, perpetrators, and communities to their original state by involving all parties affected by the crime in a dialogical process.² This idea is in line with Lawrence M. Friedman's legal system theory which emphasizes that the effectiveness of law is not only determined by its substance and structure, but also by the legal culture of the society that supports it.³

At the normative level, Indonesia already has a No. of instruments that accommodate the principle of restorative justice, including Law No. 1 of 2023 concerning the Criminal Code, which introduces the goal of restorative-oriented sentencing, as well as Police Regulation No. 8 of 2021 and Supreme Court Regulation No. 1 of 2024. However, these regulations are scattered partially at different levels of regulation and have not been integrated into fundamental criminal procedural law.⁴

Protection for victims of crime has been established through Law No. 31 of 2014 concerning Amendments to Law No. 13 of 2006 concerning Protection of Witnesses and Victims, which provides the right to restitution and compensation. Unfortunately, the implementation of these rights has not been fully connected to criminal procedure mechanisms, resulting in victims often facing procedural obstacles in obtaining restitution.⁵

Several previous studies have examined the application of restorative justice at the investigative and trial levels, but they generally focused on the diversion of juvenile cases or the discontinuation of prosecution. Studies specifically highlighting the reconstruction of criminal procedural law as a means of strengthening the victim's position are relatively limited.⁶ The novelty of this research lies in the effort to formulate a normative reconstruction model that positions the victim as an active subject in all stages of the criminal process.

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The author believes that identifying this issue is crucial because the lack of integrated regulations has the potential to create disparities in implementation and legal uncertainty for victims. The reform of criminal procedural law through Law No. 1 of 2023, which will replace the old substantive provisions, requires adjustments to procedural law to align with the recovery paradigm.⁷

2. Research Methods

This research employs a normative legal research method (doctrinal research) by placing legal norms as the primary object of study. The approaches employed include the statute approach, the conceptual approach, and the comparative approach. The research specifications are descriptive and analytical. The legal materials used consist of primary legal materials in the form of laws and regulations, secondary legal materials in the form of books, scientific journals, and research results, and tertiary legal materials. The collection of legal materials was conducted through literature study, while the analysis of legal materials was conducted qualitatively using the methods of interpretation and legal construction.⁸

3. Results and Discussion

3.1. The Position of Victims in Applicable Criminal Procedure Law and the Limitations of the Retributive Paradigm

Law No. 8 of 1981 concerning Criminal Procedure is built on a framework that places the state as the monopoly holder over the resolution of criminal cases. In this construction, the interests of victims are subsumed into the public interest represented by the public prosecutor, thereby depriving victims of the opportunity to independently advocate for their interests. Victims appear only as reporting witnesses or victim witnesses, while substantive rights to redress are denied adequate space in the procedural stages.⁹

The retributive paradigm inherent in the Criminal Procedure Code (KUHP) views criminal acts as violations against the state, rather than as interpersonal conflicts that cause real harm to victims. As a result, the success of the criminal process is measured more by the punishment imposed on the perpetrator than by the rehabilitation of the victim. Howard Zehr has called this approach a fundamental

⁷Muladi, *Selected Chapters on the Criminal Justice System*, Diponegoro University Publishing Agency, Semarang, 2002, p. 127.

⁸Peter Mahmud Marzuki, *Legal Research*, Revised Edition, Kencana, Jakarta, 2014, p. 133.

⁹Romli Atmasasmita, *Contemporary Criminal Justice System*, Kencana, Jakarta, 2011, p. 33.

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weakness of conventional justice, which fails to address victims' real needs for recognition, truth, and reparation.¹⁰

The enactment of Law No. 31 of 2014, amending Law No. 13 of 2006 concerning Witness and Victim Protection, has indeed introduced victims' rights to restitution, compensation, medical assistance, and psychosocial rehabilitation. However, these rights have not been fully integrated into the criminal procedure process, as their implementation relies on an institution outside the Criminal Procedure Code (KUHP), namely the Witness and Victim Protection Agency.¹¹ This institutional separation creates coordination problems that weaken the effectiveness of victim recovery.

Sri Endah Wahyuningsih emphasized that reform of Indonesian criminal law must be directed at balancing the protection of the interests of perpetrators, victims, and society while remaining grounded in the values of justice that exist in society.¹² Thus, the limitations of the retributive paradigm in the Criminal Procedure Code are a fundamental argument for the need for reconstruction that places victims in a proportional manner.

3.2. Reconstruction of Criminal Procedure Law Based on Restorative Justice in Strengthening Victim Protection

Restorative justice-based reconstruction of criminal procedure law demands a shift in orientation from simply identifying the guilty to efforts to redress the harm caused by the crime. Law No. 1 of 2023 concerning the Criminal Code has laid the philosophical foundation for this shift by formulating the objectives of punishment, which include conflict resolution, restoring balance, and fostering a sense of remorse in the perpetrator.¹³

At the institutional level of law enforcement, Police Regulation No. 8 of 2021 concerning Handling Criminal Offenses Based on Restorative Justice authorizes investigators to terminate an investigation if a settlement has been reached between the perpetrator and victim, meeting certain material and formal

¹⁰Howard Zehr, *The Little Book of Restorative Justice*, Good Books, Pennsylvania, 2002, p. 21.

¹¹Siswanto Sunarso, *Victimology in the Criminal Justice System*, Sinar Grafika, Jakarta, 2012, p. 92.

¹²Sri Endah Wahyuningsih, *Reform of Indonesian Criminal Law Based on the Values of Justice*, *Journal of Legal Reform*, Vol. 1, No. 1, 2014, p. 9.

¹³Topo Santoso, *Criminal Law: An Introduction*, Rajawali Pers, Jakarta, 2021, p. 211.

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requirements. This provision places the victim's agreement as a crucial element in resolving cases in the early stages of the criminal process.¹⁴

At the adjudication stage, Supreme Court Regulation No. 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice emphasizes the principle of restoring the situation and strengthening the rights, needs, and interests of victims as the basis for judges in adjudicating. This regulation positions criminal sanctions as a last resort (*ultimum remedium*) and requires consensus between the parties, thus providing victims with greater opportunity for participation compared to conventional models.¹⁵

However, these instruments still exist as regulations under sectoral and fragmented laws. The absence of a comprehensive criminal procedure legal framework has the potential to create disparities in implementation between law enforcement agencies and uncertainty for victims in obtaining redress. Therefore, reconstruction needs to be directed at integrating restorative justice principles into the national criminal procedure law.¹⁶

Table 1. Comparison of the Victim's Position in the Retributive Model and the Restorative Model

Aspect	Retributive Model (KUHP 1981)	Restorative (Reconstruction) Model
Position of the victim	Witness/object providing information	Active participating subjects
Process objectives	Imposition of criminal penalties on the perpetrator	Victim recovery and social balance
Form of recovery	Depends on institutions outside the event	Integrated restitution in criminal proceedings

Source: Secondary data, processed by the author, 2026.

¹⁴Anthony F. Susanto, *The Face of Our Justice: Social Construction of Deviance*, Refika Aditama, Bandung, 2004, p. 58.

¹⁵Supreme Court of the Republic of Indonesia, Supreme Court Regulation Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice, Article 2, 2024.

¹⁶Mardjono Reksodiputro, *Progress in Economic Development and Crime*, Center for Justice Services and Legal Services, University of Indonesia, Jakarta, 1994, p. 76.

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The reconstruction model, as illustrated in Table 1, demands fundamental changes, namely the recognition of victims as active subjects with the right to participate, the right to information, the right to restitution enforced in a verdict, and the right to psychosocial recovery. Integrating the principle of restorative justice into criminal procedural law will strengthen the substantive dimension of justice, as proposed by Gustav Radbruch, through the teaching of three basic legal values: justice, utility, and legal certainty.¹⁷

From an Islamic legal perspective, strengthening the victim's position is strongly based on the concept of *maqāṣid al-syarī'ah*, which emphasizes the protection of life (*ḥifẓ al-nafs*) and property (*ḥifẓ al-māl*). The concepts of *diyat* and *ṣulḥ* in Islamic jurisprudence demonstrate that Islamic legal tradition has long recognized mechanisms for victim restitution through reconciliation and compensation, which are substantially in line with the spirit of restorative justice.¹⁸ Thus, the reconstruction of criminal procedural law based on restorative justice is not only compatible with the national legal system, but is also rooted in the values of justice that live in Indonesian society.

Based on this description, reconstruction can be achieved through the establishment of provisions in criminal procedural law that explicitly regulate the stages of recovery deliberations, the role of facilitators, the victim's agreement mechanism, and guarantees of restitution through court decisions. This approach positions restorative justice not as an exception, but as an integral part of a recovery-oriented criminal procedural system.¹⁹

4. Conclusion

Current criminal procedural law still places victims in a subordinate position as witnesses due to the dominance of the retributive paradigm, so their recovery interests have not received adequate protection. Restorative justice provisions, scattered throughout Police Regulation No. 8 of 2021 and Supreme Court Regulation No. 1 of 2024, have not been integrated into fundamental criminal procedural law. Therefore, a normative reconstruction is needed that positions victims as active subjects with institutionalized rights to participation, restitution, and recovery, based on the values of justice, expediency, and legal certainty, and in harmony with the values of restorative justice rooted in Indonesian society.

¹⁷Satjipto Rahardjo, *Legal Science*, Citra Aditya Bakti, Bandung, 2012, p. 19.

¹⁸Sri Endah Wahyuningsih and Rismanto, *Criminal Law Enforcement against Criminal Acts from an Islamic Law Perspective*, *Journal of Legal Reform*, Vol. 2, No. 1, 2015, p. 117.

¹⁹Bagir Manan, *Authoritative Justice System: A Search*, FH UII Press, Yogyakarta, 2005, p. 41.



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Regulation:

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Law No. 31 of 2014 concerning Amendments to Law No. 13 of 2006 concerning Protection of Witnesses and Victims;

Law No. 8 of 1981 concerning Criminal Procedure Law;

Police Regulation No. 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice.

Supreme Court Regulation No. 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice;