

## **The Crime of Theft from a Restorative Justice Perspective: A Normative Study of Padang District Court Decision Number 134/Pid.B/2025/Pn Pdg**

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**Abstract.** This research aims to analyze the application of restorative justice in minor theft cases based on the District Court of Padang Decision No. 134/Pid.B/2025/PN PDG, by examining the relevance of this approach to the Indonesian penal system, which is grounded in the values of Pancasila Justice. Restorative justice represents an alternative approach that emphasizes the restoration of relationships between the offender, the victim, and the community, rather than focusing solely on punishment (retribution). This concept places direct responsibility on the offender for his actions and provides the victim with the opportunity to obtain fair recovery and acknowledgment. This study employs a normative juridical method, using both the statute approach and the case approach. The data were analyzed through the examination of statutory regulations, legal principles, scholarly doctrines, and relevant court decisions. The normative approach was chosen because the focus of this research lies in studying the legal norms that govern the implementation of restorative justice in theft cases, both under the 1946 Criminal Code (KUHP) and the newly enacted 2023 National Criminal Code. The findings of this research indicate that the implementation of restorative justice is not an antithesis to the rule of law; rather, it serves as a corrective lens within criminal law that aims to harmonize legal certainty, justice, and utility. Within the framework of national law, restorative justice aligns with the principle of *justicia cum misericordia*—to punish when necessary and to restore when possible—while upholding human dignity as the ethical axis of the penal system. The application of this principle has proven effective in achieving a balance between victim protection and offender accountability, without disregarding the interests of public order.

**Keywords:** Penal System; Restorative Justice; Theft Offense.

## 1. Introduction

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia affirms that "Indonesia is a state based on law." This provision provides a constitutional basis that all aspects of national and state life must be organized based on law, not power alone. As a state based on law (rechtstaat), Indonesia is required to be able to realize a legal system that guarantees substantive justice, not just formal legal certainty. Sri Endah Wahyuningsih, a legal expert from UNISSULA, emphasized that good law enforcement must prioritize the values of humanity, morality, and justice, so that it does not merely enforce legal texts rigidly, but also takes into account the social context of society. In this view, the law must function as a means of protection and redress, not merely as a tool of retribution.<sup>1</sup>

In line with this thinking, criminal law in Indonesia cannot be viewed solely as a repressive instrument, but rather as a means to achieve more holistic justice. According to UNISSULA literature, modern criminal law is required to accommodate the principles of restorative justice, which restore relationships between perpetrators, victims, and the community. This approach aligns with the concept of substantive justice, which prioritizes a balance between legal certainty, expediency, and fairness.<sup>2</sup> Therefore, the development of Indonesian criminal law must be directed towards a model that not only punishes, but also improves social conditions after a crime and provides space for the creation of a peace agreement that benefits all parties.<sup>3</sup>

The social, cultural, and legal diversity of Indonesia, an archipelago of many islands, is remarkably diverse. Indonesian law combines the legacies of Dutch colonial law, Islamic law, and modern Western law. These three legal systems continue to evolve simultaneously and influence the development of national law, including criminal law. In the Indonesian criminal justice system, retributive punishment is still applied to perpetrators of crimes. However, restorative justice is emerging as an alternative in resolving criminal cases.<sup>4</sup>

Social dynamics and the need for a more humane and flexible justice system have influenced the development of Indonesian criminal law. In this situation, the restorative justice approach emerged as a response to the weaknesses of the retributive approach, which focuses solely on punishment and fails to consider restoring relationships between the perpetrator, victim, and community. The goal of the restorative approach is to repair losses and improve post-crime situations through dialogue, accountability, and agreement. This represents a paradigm shift toward restorative and rehabilitative justice, moving away from retributive justice.<sup>5</sup>

## 2. Research Methods

This study employed a normative legal research method, a method based on literature review to examine applicable legal norms, both written and unwritten. Normative legal research aims

<sup>1</sup> Wahyuningsih, S. E. (2020). *Teori dan Praktik Pemidanaan di Indonesia*. Semarang: UNISSULA Press.

<sup>2</sup> Wahyuningsih, S. E., & Mashdurohatun, A. (2021). *Keadilan Substantif dalam Putusan Pidana*. Jurnal Hukum UNISSULA, 12(1), 45–60.

<sup>3</sup> Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

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to examine laws and regulations, legal principles, doctrines, and court decisions relevant to the issues under study. The approaches employed in this study include a statute approach and a case approach. This approach was chosen because the issues raised are directly related to the application of restorative justice in the Indonesian criminal justice system, particularly in theft cases.

### **3. Results and Discussion**

#### **3.1. Norms Governing Theft (Transitional Criminal Code/2023 Criminal Code, Criminal Procedure Code, Joint Decree of 2020, Police Regulation 8/2021, and Regional Regulation 15/2020) and Their Interrelationships**

The state enforces criminal law through three interconnected channels—core criminal laws (the old Criminal Code/WvS and the 2023 Criminal Code), rules on how to handle cases (the Criminal Procedure Code) as a "procedural constitution," and policy regulations that encourage restorative justice (restorative justice/العدالة التصالحية) to prevent over-criminalization of minor cases. In the general justice system, the 2020 guidelines, often referred to as the "SKB," in practice refer to the Decree of the Director General of Criminal Investigation Agency (Badilum) on the implementation of restorative justice. This document links the principle of legality with the rule of reason and the rule of conscience/الضمير, so that the decision is not only formally valid but also restores the dignity of the parties and social order.<sup>6</sup>

Second, the transition phase towards the 2023 Criminal Code demands doctrinal continuity: the "spirit" of the crime of theft, which involves taking (partially/wholly) another person's property for unlawful possession, remains intact, while the restructuring of the sanction system and terminology is carried out to be more policy-coherent. Because Law 1/2023 was enacted after a three-year hiatus since January 2, 2023, case handling during the transition period must apply the principle of *lex mitior*: the choice of norms that are more advantageous to the suspect/defendant is implemented without compromising the protection of victims and the public interest.<sup>7</sup>

Third, the working track is maintained by the Criminal Procedure Code: it regulates the start of investigations, the requirements for terminating cases (SP3/Article 109 paragraph (2) of the Criminal Procedure Code), judicial control through pretrial motions (Article 77), and the prosecution corridor (Article 140 paragraph (2)). This is the due process fence that ensures that every restorative policy, whether upstream (Police Regulation 8/2021), midstream (Perja

<sup>4</sup> Arief, B. N. (2013). *Bunga Rampai Kebijakan Hukum Pidana*. Jakarta: Kencana.

<sup>5</sup> Muladi & Arief, B. N. (1998). *Teori-teori dan Kebijakan Pidana*. Bandung: Alumni.

<sup>6</sup> Direktorat Jenderal Badilum. (2020). *Keputusan Dirjen Badilum Nomor 1691/DJU/SK/PS.00/12/2020 tentang Pedoman Penerapan Restorative Justice* (pedoman penerapan RJ di peradilan umum). JDIH Mahkamah Agung.

<sup>7</sup> Republik Indonesia. (2023). *Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana* (berlaku setelah masa jeda 3 tahun sejak 2 Januari 2023). JDIH Kemenko Marves/JDHI; BPK RI.

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15/2020), or downstream (judicial guidelines), moves within clear, transparent, and auditable legal boundaries, so that the balance between certainty, justice, and utility is maintained.<sup>8</sup>

The 2023 Criminal Code does not change the "spirit" of the crime of theft. The core elements remain the same: the act of taking another person's property for unlawful possession. However, the article structure, language, and sanction scheme have been updated to be more coherent and consistent (policy-coherent). In the old Criminal Code, this core element was found in Article 362; in the 2023 Criminal Code, its substance reappears, among other things, in Article 476, with a more systematic formulation. Thus, the core act (actus reus and mens rea) remains unchanged. What has changed is the way the code organizes, provides terms, and measures the severity of the crime to ensure it is proportional and easily applied by judges.<sup>9</sup>

Regarding the transition period: Law 1/2023 only came into effect three years after it was enacted. Because it was enacted on January 2, 2023, it came into effect on January 2, 2026. This means that theft cases that occurred before that date will still be tried under the old Criminal Code, unless there is a section of the 2023 Criminal Code that is more favorable to the accused. This is where the principle of *lex mitior/lex favor reo* comes into play: law enforcement is obliged to choose a lighter provision for the perpetrator, without sacrificing the protection of victims and public order (المصلحة). This principle has long existed in our system through Article 1 paragraph (2) of the old Criminal Code and is widely recognized in the doctrine.<sup>10</sup>

Regarding the updated sentencing architecture: think of it as a clearer sentencing roadmap, with clearer thresholds, types of punishment (main/alternative), and aggravating/mitigating factors structured to ensure more precise and fair decisions. For example, while the core offense of theft remains unchanged, the 2023 Criminal Code reorganizes the qualifications (ordinary, aggravated, etc.) and provides a sanctioning framework that helps judges maintain proportionality: low-harm cases are more easily directed toward moderate or restorative punishments, while high-risk/high-social-impact cases can still be subject to strict sanctions. This creates doctrinal continuity: the substance of the offense remains the same, but the sentencing architecture is more structured to accommodate the goals of justice, prevention, and social recovery.<sup>11</sup>

The entire process is safeguarded by the Criminal Procedure Code (KUHAP) as the "procedural constitution" of criminal justice. Upstream, investigators have the authority to terminate a case through a Notice of Injunction (SP3) if there is insufficient evidence, the incident is not

<sup>8</sup> Republik Indonesia. (1981). *Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana (KUHAP)* (antara lain Pasal 77, Pasal 109 ayat (2), Pasal 140 ayat (2)). BPK RI.

<sup>9</sup> Hukumonline. (2023, 18 Desember). *Ini bunyi Pasal 362 KUHP tentang Pencurian* (menjelaskan keberlakuan Pasal 362 KUHP lama dan padanannya di Pasal 476 UU 1/2023).

<sup>10</sup> JDIH Kemenko Marves. (2023). *UU No. 1 Tahun 2023 tentang KUHP* (mulai berlaku 3 tahun sejak diundangkan); MariNews MA. (2025, 11 April). *Seri KUHP Nasional III: Asas Retroaktif* (uraian Pasal 1 ayat (2) KUHP lama/lex mitior).

<sup>11</sup> Hukumonline. (2025, 24 September). *Berlaku 2026, KUHP Nasional buka ruang pidana alternatif...* (menegaskan tanggal berlaku 2 Januari 2026 dan arah pemidanaan baru).

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criminal, or due to legal reasons; in the middle, prosecutors can terminate the prosecution within the same corridor; and along the way, pretrial motions serve as a judicial control mechanism to test the legality of coercive measures and case terminations. This due process framework ensures that criminal decision-making is transparent, accountable, and rights-sensitive, including when restorative recovery is considered.<sup>12</sup>

### **3.2. Implementation of Restorative Justice in Padang District Court Decision No. 134/Pid.B/2025/Pn Pdg During the Investigation, Prosecution, and Trial Stages**

To assess the implementation of restorative justice (العدالة التصالحية) in Padang District Court Decision No. 134/Pid.B/2025/PN Pdg, the primary focus is to ensure that the formal investigation, prosecution, and trial proceed within clear legal boundaries and align with the interests of the victim and public order (المصلحة). Since a copy of the decision is not yet available in the online decision repository, the following analysis combines the factual chronology you have outlined (Yamaha Aerox theft at M. Djamil Hospital; 6-month prison sentence) with established normative guidelines and doctrinal perspectives. This approach is commonly used in initial case mapping to see "where" and "why" the RJ path can (or cannot) be activated.<sup>13</sup>

During the investigation phase, the standardized criteria for a criminal prosecution (RJ) as stipulated in Police Regulation 8/2021 act as a gatekeeper: investigators assess the nature of the offense, the extent of the loss, the status of the first offender, the presence of a confession, good faith, voluntary reconciliation, and evidence of concrete restitution to the victim. In your chronology of the Aerox case, crucial indicators include the lack of immediate restitution (the vehicle was kept for about a week), the use of deception against the motorcycle taxi driver, and the method of possessing the goods until they were recovered by authorities, which typically lower the eligibility score. In many cases, this combination of factors leads investigators to choose the full due process approach over a RJ-based SP3; that is, the RJ is deemed "not eligible" upstream, while still documenting mediation efforts if any were initiated. This approach is consistent with the precautionary principle, ensuring that the RJ does not deviate from the principles of legality and victim protection.<sup>14</sup>

Moving on to prosecution, Attorney General Regulation 15/2020 formalizes the principle of limited opportunity: The prosecutor, acting as dominus litis, can discontinue prosecution if the material-formal requirements are met (the loss is relatively small or has been recovered, the perpetrator is not a recidivist, there is an informed voluntary settlement, and the case does not cause unrest). If one of the requirements does not meet the threshold, for example, a valid settlement agreement has not been reached, or restoration has not occurred, then the case must proceed to adjudication. The fact that the Aerox case resulted in a six-month prison

<sup>12</sup> Undang-Undang Republik Indonesia Nomor 8 Tahun 1981 tentang Hukum Acara Pidana (KUHAP). (1981). <https://peraturan.bpk.go.id/>

<sup>13</sup> Lihat umum: KUHP/KUHAP & kebijakan RJ sebagai kerangka analisis; konfirmasi ketersediaan salinan putusan 2025 di direktori putusan masih bertahap.

<sup>14</sup> Kepolisian Negara RI. (2021). *Peraturan Kepolisian Negara Republik Indonesia Nomor 8 Tahun 2021 tentang Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif*.

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sentence suggests de facto that the corridor for discontinuing prosecution based on RJ was not activated (or was piloted but did not meet the threshold), so that the public interest, order, and deterrence are seen as taking precedence over diversion.<sup>15</sup>

In court, judges receive judicial guidance through the Guidelines for the Implementation of Reconciliation in General Courts (Decree of the Director General of Criminal Justice 1691/DJU/SK/PS.00/12/2020). These guidelines provide a verification toolkit: (i) testing the parties' voluntariness, (ii) assessing the proportionality of sanctions if restoration is achieved, and (iii) ensuring the process remains open to reason (rule of reason) and open to conscience (الضمير). In cases that ultimately result in imprisonment and the return of evidence, the pattern that emerges is a retributive configuration with restorative elements: the victim's property is restored (through the return of evidence), the tools of the crime are confiscated for destruction, and the sentence is imposed in a limited manner to reinforce prohibitive norms, without precluding opportunities for post-sentence social development. This pattern is often chosen when full restoration is not achieved during pre-adjudication or when the social impact is deemed significant.<sup>16</sup>

From a doctrinal perspective, the material foundation (the elements of actus reus "taking" and mens rea "unlawfully controlling") remain the anchor for the judgment of guilt, while the procedural foundation (KUHAP) functions as a "procedural constitution" that oversees the legality of the commencement of investigations (Article 1 number 2 in conjunction with Article 109 paragraph (2)), providing judicial control via pretrial (Article 77), up to the corridor of termination of prosecution (Article 140 paragraph (2)). Moeljatno and Andi Hamzah's views on the principles of legality, error (schuld), and proportionality remain relevant, now translated into a corrective RJ policy, namely adding a "path of recovery" without replacing criminal responsibility when public wrong has been made clear. In other words: RJ is a context-sensitive instrument, not a blanket solution.<sup>17</sup>

Recent academic trends, particularly within the UNISSULA ecosystem, support a fit-for-purpose RJ design: effective for low-harm theft that requires rapid recovery, but its application should be withheld when recovery is not achieved or there is a risk to public order. Articles in the Law Development Journal, Research Law Journal, and Law Reconstruction emphasize two important points: (i) the need for auditable documentation to prevent coerced settlements and (ii) the urgency of synchronizing the National Police, Prosecutor's Office, and the Judiciary to prevent forum shopping and disparities in practice. Within this framework, the final outcome of the Aerox case, a limited prison sentence, recovery of goods, and confiscation of equipment, can be interpreted as an effort to balance certainty, justice, and utility (العدالة-المصلحة) within the framework of the rule of law.

<sup>15</sup> Kejaksaan Republik Indonesia. (2020). *Peraturan Jaksa Agung Nomor 15 Tahun 2020 tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif*.

<sup>16</sup> Direktorat Jenderal Badilum MA RI. (2020). *Keputusan Dirjen Badilum Nomor 1691/DJU/SK/PS.00/12/2020 tentang Pedoman Penerapan Restorative Justice*.

<sup>17</sup> Moeljatno. (2008). *Asas-Asas Hukum Pidana*; Hamzah, A. (2008). *Asas-Asas Hukum Pidana*. Relevansi asas legalitas-kesalahan-proporsionalitas terhadap kebijakan RJ.

### 3.3. Legal Impact of Implementing Restorative Justice Principles

Based on its basic concept, restorative justice (العدالة التصالحية) shifts the way we interpret the state's response to crime: from a paradigm that emphasizes retribution to a horizon of restoration, including the restoration of concrete losses, social relations, and the victim's sense of justice. This shift in orientation does not mean abandoning the principle of legality; rather, it reorders the priority order of criminal penalties so that retribution and deterrence align with restoration and reintegration. At this point, procedural law and institutional policies act as "rails" that ensure that restitution is pursued legally, measurably, and auditably, so that the rule of law aligns with the rule of reason and public conscience (الضمير).<sup>18</sup>

*Restorative Justice is not a "replacement" for criminal law, but rather a corrective lens that reorganizes the order of punishment objectives, ensuring that retribution and deterrence remain present but move in harmony with restoration and reintegration. In this lens, victims do not cease to be witnesses to harm, but rather subjects whose voices are taken into account in the restoration plan (return of goods, compensation, informed and voluntary apologies). The state still upholds the principle of legality, but the direction of the response is shifted to restoring social relations and repairing harm so that the rule of law meets the rule of reason and public conscience in a balanced decision.*<sup>19</sup>

The framework operates through institutional channels: the Criminal Procedure Code (KUHAP) maintains due process as a procedural safeguard; upstream, Perpol 8/2021 provides the door to assessing the eligibility of RJ; in the middle, Perja 15/2020 regulates prosecutors' discretion as dominus litis to stop prosecution if material and formal requirements are met; and downstream, the 2020 Badilum Guidelines guide judges in assessing voluntariness, the credibility of restitution, and the proportionality of sanctions. This upstream-midstream-downstream pattern prevents over-criminalization in low-harm cases, while still providing a firm normative signal when eligibility is not achieved, thus maintaining certainty, justice, and utility (العدالة—المصلحة).<sup>20</sup>

Next, we move on to the practical stage at the investigative level you requested:

In investigative practice, restorative justice acts as a gatekeeper for low-harm cases. Investigators assess eligibility based on the nature of the offense, the extent of the damage, the status of the first offender, the confession, good faith, and, most importantly, the existence of concrete restitution for the victim, as agreed voluntarily (informed and voluntary

<sup>18</sup> Lihat kerangka integratif RJ pada hulu–tengah–hilir: KUHAP (sebagai pagar *due process*) dan kebijakan RJ lintas institusi.

<sup>19</sup> Muladi. (2010). *Restorative Justice dalam Sistem Peradilan Pidana*. Bandung/Jakarta: penerbit akademik; Zehr, H. (2002). *The Little Book of Restorative Justice*. Intercourse, PA: Good Books.

<sup>20</sup> epolision Negara RI. (2021). *Perpol No. 8 Tahun 2021 tentang Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif*; Kejaksaan RI. (2020). *Perja No. 15 Tahun 2020 tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif*; Dirjen Badilum MA RI. (2020). *Keputusan No. 1691/DJU/SK/PS.00/12/2020 tentang Pedoman Penerapan Restorative Justice*; lihat juga UNISSULA—Law Development Journal (2020–2024) untuk temuan empiris penerapan RJ.

consent). If the eligibility criteria are met, investigators facilitate deliberation, draft an agreement, and document it thoroughly; if not, the case proceeds through due process toward prosecution. This upstream stage prevents overcriminalization while maintaining due process within the framework of the Criminal Procedure Code (KUHAP), ensuring a balance between certainty, justice, and utility.

In investigative practice, restorative justice acts as a gatekeeper for low-harm cases. Investigators assess eligibility based on the nature of the offense, the extent of the loss, the status of the first offender, the confession, good faith, and, most importantly, the existence of real restitution for the victim, as voluntarily agreed (informed and voluntary consent). If the eligibility criteria are met, investigators facilitate deliberation, draft an agreement, and document it fully; if not, the case proceeds along the due process path toward prosecution. This upstream stage prevents overcriminalization while maintaining due process within the framework of the Criminal Procedure Code (KUHAP), ensuring a balance between certainty, justice, and utility.

At the point of prosecution, the prosecutor's role as dominus litis becomes central. Through the principle of limited opportunity, prosecution can be stopped if the material and formal requirements of RJ are met: the loss is small or has been remedied, the perpetrator is not a recidivist, a voluntary settlement has been reached, and the public interest is maintained. Discretion is not a free hand here; It is a space of responsibility, requiring independent verification of voluntariness, proportionality, and guarantees of non-recurrence. If any of these prerequisites fail, for example, if there is no real remedy, the adjudication route becomes dominant again. This type of governance makes diversion an accountable option without sacrificing victim protection and social order.

Padang District Court Decision No. 134/Pid.B/2025/PN Pdg illustrates how cases are still directed to adjudication. Near dusk on December 10, 2024, at approximately 6:31 PM WIB, a man saw another person's Yamaha Aerox parked at M. Djamil Hospital in Padang, with the handlebars unlocked and the parking area relatively empty. He approached, climbed into the vehicle, and pushed it out through the pedestrian gate. Outside the hospital complex, he ordered an online motorcycle taxi (Maxim) and asked the driver to help push it, claiming his motorcycle was broken down, to his home in Lubuk Buaya. There, he parked the motorcycle, tried to start it with a screwdriver but failed, and then left it for about a week. The owner realized the loss—checked CCTV footage and reported it; the police then arrested the perpetrator in the Andalas area and found evidence at the perpetrator's house. The process continued to trial, the perpetrator was found guilty and sentenced to 6 months in prison with the obligation to pay court costs; the motorcycle and documents were returned to the victim, while the screwdriver was confiscated to be destroyed. This series shows that the RJ eligibility indicators, especially real and immediate restoration, were not met, so that ius puniendi returned to the path of proportional punishment without closing the aspect of restoring the victim's rights.

#### **4. Conclusion**

Norms governing theft (KUHP/KUHP 2023—transitional, KUHAP, SKB 2020, Perpol 8/2021, Perja 15/2020) and how they are related. Criminal norms governing the crime of theft remain based on the KUHP as the substantive law that establishes the formulation of the offense (typification), its elements, and the potential penalties. During the transition period to the KUHP 2023, the general structure of punishment has changed, but the substance of the prohibition remains the doctrinal anchor to maintain legal certainty. Meanwhile, the KUHAP serves as a fence of due process of law—regulating procedures for investigation, prosecution, and trial. Along with the development of modern criminal law, institutional policies such as the 2020 Joint Decree on the Implementation of Restorative Justice, Perpol 8/2021, and Perja 15/2020 serve as operational rails that expand the possibility of resolving cases through restorative justice. These norms do not erase the illegal nature of theft, but rather provide a legitimate and measurable path to redress when the eligibility requirements are met. Thus, there is a direct link between material law, procedural law, and institutional policies that mutually reinforce each other so that the handling of the crime of theft remains accountable and humane. The application of restorative justice in Padang District Court Decision No. 134/Pid.B/2025/PN PDG at the investigation-prosecution-trial stages. Reading the Padang District Court case shows that restorative justice is not treated as an antithesis to the rule of law, but as a corrective lens that guides criminal responses to be more sensitive to victim recovery, perpetrator reintegration, and public order (al-mashlahah). At the investigation and prosecution stages, the RJ space is used selectively through a feasibility assessment: the existence of real redress, voluntary willingness of the parties, low levels of destructiveness, and the absence of public unrest.

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See general: Criminal Code/Criminal Procedure Code & RJ policies as an analytical framework; confirmation of the availability of copies of the 2025 decisions in the decision directory is still being phased in.

See the integrative framework for RJ at the upstream–midstream–downstream levels: the Criminal Procedure Code (as a due process barrier) and cross-institutional RJ policies.