

Normative Disharmony of Restorative Justice Mechanism in Law No. 20 of 2025 concerning The Criminal Procedure Code

Hendro Widodo¹⁾ & Dzaka Imtiyaz Iqbal²⁾

¹⁾Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Indonesia, E-mail: hendro.w@unissula.ac.id

²⁾Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Indonesia, E-mail: dzakaimtiyaziqbal@unissula.ac.id

Abstract. *The enactment of Law No. 1 of 2023 concerning the Criminal Code and Law No. 20 of 2025 concerning the Criminal Procedure Code on January 2, 2026, marked a fundamental shift in the position of restorative justice in Indonesia, from a practice that initially relied on the discretion of law enforcement officers through institutional-level regulations to norms expressly regulated in law. This study aims to analyze the internal consistency of the restorative justice mechanism provisions in Articles 79 to 88 and Article 204 of Law No. 20 of 2025, and examine their implications for the principle of legal certainty. This study is a normative legal study with a statutory approach, a conceptual approach, and a case approach, using primary legal materials in the form of statutory regulations and secondary legal materials in the form of criminal law literature and accredited journal articles. The results of the study show three main findings. First, the codification of restorative justice in criminal procedure law strengthens its normative legitimacy while placing the court as the controller of case termination through the obligation to appoint the head of the district court. Second, there is a normative conflict between Article 80 paragraph (1) letter a which opens a restorative justice mechanism for criminal acts with a maximum prison sentence of five years and Article 82 letter e which actually excludes criminal acts with a maximum prison sentence of five years or more; this conflict is resolved through Supreme Court Circular Letter Number 1 of 2026 which hierarchically does not constitute a statutory regulation. Third, the failure to issue the Government Regulation mandated by Article 88 and Article 204 paragraph (9) has resulted in fragmented practice and left Police Regulation Number 8 of 2021, Prosecutor's Regulation Number 15 of 2020, and Supreme Court Regulation Number 1 of 2024 in an uncertain normative position. This study recommends a limited revision of Article 82 letter e through legislative mechanisms, accelerated issuance of Government Regulations, and harmonization of sectoral regulations so that restorative justice does not turn into an uncontrolled discretionary space.*

Keywords: Disharmony; Justice; Norms; Restorative.

1. Introduction

The Indonesian criminal justice system entered a new phase on January 2, 2026. On that date, two codifications that form the backbone of national criminal law came into effect simultaneously: Law No. 1 of 2023 concerning the Criminal Code (hereinafter referred to as the 2023 Criminal Code), which came into effect based on Article 624 three years after its enactment, and Law No. 20 of 2025 concerning the Criminal Procedure Code (hereinafter referred to as the 2025 Criminal Procedure Code), which, based on Article 369, was declared to come into effect on the same date. This simultaneous enactment ended the dominance of the colonial legacy of *Wetboek van Strafrecht*, which had lasted for more than a century, and Law No. 8 of 1981, which had been in effect for more than four decades.

One of the most substantial changes in the two codifications is the formal recognition of restorative justice as part of the architecture of the criminal justice system. The 2023 Criminal Code contains a restorative orientation at the level of material criminal law, particularly through Article 51 letter c, which places the resolution of conflicts resulting from criminal acts, restoring balance, and creating a sense of security and peace in society as one of the objectives of sentencing. This orientation is reinforced by Article 54 paragraph (1) letter j, which requires judges to consider forgiveness from victims and/or victims' families, and Article 54 paragraph (2), which provides room for judges to refrain from imposing criminal penalties or imposing measures based on considerations of justice and humanity — an institution known in the Dutch legal tradition as *rechterlijk pardon*. Meanwhile, the 2025 Criminal Procedure Code regulates restorative justice mechanisms in a separate group of norms, namely Articles 79 to 88, and adds a peace mechanism at the trial stage through Article 204.

This regulation represents a significant leap. Prior to 2026, restorative justice practices in Indonesia relied on legal instruments hierarchically subordinate to the law: Prosecutor's Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, Police Regulation Number 8 of 2021 concerning Handling Criminal Offenses Based on Restorative Justice, and Supreme Court Regulation Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice. The sole exception was Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, which, through Article 5 paragraph (1), requires the juvenile criminal justice system to prioritize a restorative justice approach. Outside of juvenile cases, restorative justice operates without a legal umbrella, making it vulnerable to criticism as a practice that relies on discretion without adequate legal basis (Rahma & Toloh, 2022).

However, codification does not automatically create legal certainty. A careful reading of the 2025 Criminal Procedure Code reveals serious problems at the level of internal consistency. Article 80 paragraph (1) letter a states that the restorative justice mechanism can be applied to crimes that are threatened only with a fine of up to category III or are threatened with a maximum prison sentence of five years. In contrast, Article 82 letter e excludes from this mechanism crimes that are threatened with a prison sentence of five years or more, except

due to negligence. These two norms meet at the same point—the threat of a prison sentence of exactly five years—and produce diametrically opposite legal consequences. This problem is not merely a matter of wording, because a number of crimes that are empirically most often resolved through restorative means, particularly ordinary theft which in the 2023 Criminal Code is regulated in Article 476 with a maximum prison sentence of five years, fall precisely at this intersection.

The Supreme Court responded to this uncertainty by issuing Supreme Court Circular Letter No. 1 of 2026 concerning Guidelines for the Implementation of the 2023 Criminal Code and the 2025 Criminal Procedure Code on January 2, 2026, which affirmed that crimes punishable by five years' imprisonment can still be resolved through restorative justice mechanisms and are not exempt from their application. This response practically restores certainty for judges, but leaves a fundamental theoretical problem: the circular letter is not a statutory regulation as referred to in Article 8 of Law No. 12 of 2011 concerning the Formation of Legislation, as amended several times. Therefore, resolving conflicting norms at the statutory level through internal judicial policy instruments raises questions about its legitimacy and sustainability.

The problem is compounded by the fact that Article 88 of the 2025 Criminal Procedure Code mandates further regulation regarding the implementation of restorative justice mechanisms in a Government Regulation, and Article 204 paragraph (9) provides a similar mandate for reconciliation between defendants and victims. As of mid-2026, these Government Regulations have not been issued, while Article 366 of the 2025 Criminal Procedure Code stipulates a deadline for establishing implementing regulations of no more than one year from the law's enactment. This vacuum has created a situation that can be aptly described as a practice of running ahead of the rules: courts have implemented restorative justice mechanisms with diverse models, while technical guidelines that should standardize them are not yet available.

Academic research on restorative justice in Indonesia is already quite rich. Several studies map the urgency of integrating restorative justice into the criminal justice system (Rahma & Toloh, 2022), place it within the framework of citizens' constitutional rights (Agustina et al., 2024), analyze its application in court decisions (Ansar, 2024), and examine social reintegration following the implementation of restorative justice in the national Criminal Code (Amarini et al., 2024). Other studies highlight the resolution of criminal cases outside the courts within the framework of the *ultimum remedium* principle (Sulistiani & Fakhriah, 2023) and the renewal of restorative justice in the Indonesian criminal justice system (Akbar, 2022). The most recent study positions restorative justice in the new Criminal Procedure Code as a matter of tension between legal certainty and the discretion of law enforcement officers (Pulungan & Situmorang, 2026).

However, most of these studies were prepared before the 2025 Criminal Procedure Code came into effect, or they discussed restorative justice mechanisms in general without specifically examining the conflicting internal norms contained within them and the hierarchical implications of resolving them through circulars. This is where the novelty of this

research lies. This research does not stop at the question of whether restorative justice is appropriate to adopt—a question that has been normatively answered by lawmakers—but instead moves on to more technical and pressing questions: whether the formulation of the adopted norms is coherent, and what the consequences are if not.

Based on this description, this study formulates two questions. First, what is the status and normative construction of restorative justice mechanisms in the Indonesian criminal justice system following the enactment of the 2023 Criminal Code and the 2025 Criminal Procedure Code? Second, what are the implications of the disharmony of norms in the 2025 Criminal Procedure Code and the lack of its implementing regulations for the principle of legal certainty, and what normative reconstruction can be proposed?

2. Research Methods

This research is a normative legal research or doctrinal legal research, namely the process of discovering legal rules, legal principles, and legal doctrines to address the legal issues faced (Marzuki, 2016). The choice of this method is based on the nature of the problem being studied, namely the issue of norm coherence in a legislative product, the solution of which lies in legal reasoning based on legal materials, not in measuring social phenomena.

This research uses three complementary approaches. First, the statute approach, which examines all laws and regulations relevant to the legal issue at hand, specifically to test vertical and horizontal consistency between norms. Second, the conceptual approach, which is used to construct an analytical framework from the perspectives and doctrines developing in criminal law, particularly the doctrine of restorative justice and the doctrine of the purpose of punishment. Third, the case approach, in the sense of analyzing the ratio decidendi and the pattern of norm application at the level of judicial practice, is used in this study to a limited extent to illustrate implementation issues.

The legal materials used consist of three layers. Primary legal materials include Law No. 1 of 2023, Law No. 20 of 2025, Law No. 11 of 2012, Law No. 8 of 1981, Supreme Court Regulation Number 1 of 2024, Police Regulation Number 8 of 2021, Prosecutor's Regulation Number 15 of 2020, and Supreme Court Circular Letter Number 1 of 2026. At the international level, the Basic Principles on the Use of Restorative Justice Programs in Criminal Matters (United Nations Economic and Social Council, 2002) are also used. Secondary legal materials include criminal law textbooks, restorative justice monographs, accredited scientific journal articles, and international guidelines published by the United Nations Office on Drugs and Crime (2020). Tertiary legal materials include legal dictionaries and legal encyclopedias.

The legal materials were collected through literature review and online legal database searches. The analysis was conducted prescriptively and qualitatively, employing grammatical, systematic, and teleological interpretations, as well as principles for resolving normative conflicts, particularly *lex specialis derogat legi generali* and the principle of

conformity to the purpose of the law. Conclusions were drawn deductively from normative premises to an assessment of the specific cases of the regulations studied.

3. Results and Discussion

3.1. Theoretical Foundations of Restorative Justice and the Shift in the Sentencing Paradigm

Restorative justice emerged as a critique of the retributive criminal justice paradigm, which views crime solely as a violation of the state and the law, thus centering its resolution on determining culpability and inflicting suffering on the perpetrator. Zehr (1990) offers a reversal of perspective—what he calls a shift in perspective—by positioning crime as a violation of human beings and human relationships, so that the primary issue is not what rules were violated and what punishment is appropriate, but rather who was harmed, what their needs are, and who is obligated to meet those needs. In an updated edition, Zehr (2015a) emphasizes that restorative justice is not the antithesis of accountability, but rather a more demanding form of accountability, as perpetrators are asked to directly confront the consequences of their actions rather than passively serving their sentence. Zehr (2015b) also warns that restorative justice is often misunderstood as a means of forgiveness, forced reconciliation, or simply an attempt to reduce the burden of criminal cases, when in fact its core idea lies in meeting the needs of victims and assuming obligations by perpetrators.

The broadest definition cited is that formulated by Marshall (1999), who states that restorative justice is a process where all parties involved in a particular violation come together to collectively resolve how to address the consequences of the violation and its implications for the future. This formulation emphasizes three constitutive elements: stakeholder participation, a deliberative process, and a forward-looking orientation. Van Ness and Strong (2015) add that restorative justice rests on three principles—reparation of harm, involvement of affected parties, and a shift in the state's role from a monopoly on resolution to a facilitator.

An important theoretical contribution came from Braithwaite (1989) through his theory of reintegrative shaming. Braithwaite differentiates stigmatizing shaming, which separates the offender from the community and encourages the formation of a criminal subculture, from reintegrative shaming, which condemns the act but still accepts the offender as a member of the community. This theory explains why restorative processes can empirically reduce recidivism. In subsequent work, Braithwaite (2002) placed restorative justice within the framework of responsive regulation, a pyramid of law enforcement that places a dialogical approach at the bottom and repressive sanctions as the final layer, used only when the lower layers fail. This pyramid construction is important because it emphasizes that restorative justice is not the abolition of punishment, but rather a restructuring of the state's response to crime.

Criticism of restorative justice also needs to be placed in a balanced manner. Daly (2002) warns that the narrative of restorative justice is often built on myths, including the myth that

restorative processes always result in transformative encounters and the myth that restorative justice is the perfect opposite of retributive justice. Based on empirical research, Daly found that many restorative processes are flat, do not always produce genuine remorse, and still contain retributive elements. Roche (2003) highlights the issue of accountability: because restorative processes take place in relatively closed and informal settings, there is a risk of dominance by the more powerful party, a lack of oversight of the proportionality of agreements, and the loss of procedural protections available in court. Johnstone (2011) adds that the expansion of restorative justice without clear boundaries has the potential to lead to net-widening, that is, expanding the reach of state control over behavior previously untouched by the criminal justice system.

These criticisms are highly relevant to the main focus of this research. Precisely because restorative justice carries the risk of domination and disproportionality, its normative design must be clear, measurable, and unambiguous. Sherman and Strang (2007), in their synthesis of experimental evidence, concluded that restorative justice is effective in certain categories of cases and can be counterproductive if applied without proper selection. Therefore, clarity regarding the criteria for cases that can and cannot be resolved restoratively is not merely a formal legalistic requirement, but a prerequisite for effectiveness.

At the international level, the Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, adopted through Resolution 2002/12 (United Nations Economic and Social Council, 2002), establish several key principles: voluntary consent of the parties, equality of bargaining power, availability of procedural safeguards, and judicial oversight of agreements. Technical guidelines published by the United Nations Office on Drugs and Crime (2020) emphasize that restorative justice programs must have eligibility criteria clearly defined in national law to avoid discriminatory application.

In Indonesian criminal law literature, the idea of restorative justice intersects closely with the long-standing discourse on criminal law reform. Muladi and Arief (1992) remind us that criminal policy must be understood as part of a social policy oriented toward community protection and social welfare, not merely retribution. Arief (2008) emphasizes that criminal law reform is essentially a renewal of value orientation, so that changes in the formulation of articles without changing the perspective of law enforcement officials will not produce meaningful reform. Zulfa (2009) provides a conceptual foundation for the application of restorative justice in Indonesian criminal law enforcement practices, while Marlina (2009) demonstrates that diversion in juvenile criminal justice is the earliest entry point for the institutionalization of restorative justice in Indonesia. Atmasasmita (2011) places this issue within the framework of an integrated criminal justice system, emphasizing that the failure of coordination between subsystems is a major source of inefficiency in law enforcement.

This theoretical framework offers two analytical implications. First, restorative justice has strong philosophical legitimacy and aligns with the objectives of punishment as formulated in Article 51 of the 2023 Criminal Code. Second, precisely because of its informal and consensus-based nature, restorative justice demands rigorous normative design. Normative ambiguity

in this context is not simply a technical flaw in the legislation, but rather opens up space for the problems warned about by Roche (2003) and Johnstone (2011).

3.2. Normative Construction of Restorative Justice Mechanisms Post-2025 Criminal Procedure Code

a. From Administrative Discretion to Statutory Norms

Prior to January 2, 2026, the restorative justice architecture in Indonesia was sectoral and dispersed. At the prosecution stage, Prosecutor's Regulation Number 15 of 2020, through Article 5 paragraph (1), stipulates three cumulative requirements: the suspect must be a first-time offender; the offense is punishable by a fine or imprisonment of no more than five years; and the offense is committed with a value of evidence or loss of no more than IDR 2,500,000.00. Article 5 paragraph (6) adds considerations in the form of restoration to the original state, the existence of a peace agreement, and a positive response from the community.

At the investigation stage, Police Regulation Number 8 of 2021 differentiates between material and formal requirements. Article 5 contains sociological material requirements: not causing public unrest and/or rejection; not impacting social conflict; not having the potential to divide the nation; not being radical or separatist; not being a repeat offender based on a court decision; and not being a terrorist, criminal offense against state security, criminal offense against corruption, or criminal offense against human life. Article 6 paragraph (1) contains formal requirements in the form of reconciliation between both parties and fulfilling the victim's rights and the perpetrator's responsibilities, with exceptions for narcotics crimes.

At the court examination stage, Supreme Court Regulation Number 1 of 2024 stipulates the scope of cases that can be tried restoratively, which according to Article 6 paragraph (1) includes minor crimes or victim losses of no more than IDR 2,500,000.00, complaint offenses, crimes with a maximum prison sentence of five years, and traffic crimes, with limitations in Article 6 paragraph (2) including if the victim or defendant refuses peace, there is an unequal power relationship, or there is a repetition of the crime.

This configuration has fundamental structural weaknesses. The three instruments are legal products of each law enforcement agency, were drafted without a mechanism for harmonization across subsystems, and set non-identical criteria. As a result, the same case can receive different treatment solely depending on the stage of its handling. Furthermore, because there is no law delegating the authority to terminate a case on the basis of restorative justice, the validity of these instruments is questionable from the perspective of the principle of legality in criminal procedure law. This criticism is consistent with the findings of Rahma and Toloh (2022) regarding the urgency of integrating restorative justice regulations into the criminal justice system through statutory instruments, as well as Akbar's (2022) analysis of the need for systemic reform.

The 2025 Criminal Procedure Code addresses these structural weaknesses. Article 1, number 21, defines restorative justice as an approach to handling criminal cases involving all parties, including the victim, the victim's family, the suspect, the suspect's family, the defendant, the defendant's family, and/or other related parties, with the aim of restoring the original situation. This formulation is conceptually aligned with Marshall's (1999) definition, although it places greater emphasis on the outcome of recovery than on the encounter process.

Article 79 regulates the substance of the agreement. The form of restoration of the original state must be stated in the agreement (paragraph 2), the agreement must be implemented within a maximum of seven days (paragraph 3), the withdrawal of the report or complaint can only be done after the perpetrator has fulfilled all the agreements (paragraph 4), and after all the agreements are implemented, the case must be stopped and a court order requested (paragraph 5). This construction is important because it places the implementation of the agreement — not just reaching an agreement — as a condition for stopping the case, thus closing the gap between agreements that are merely formalities.

Article 81 regulates initiation and affirms the principle of voluntariness. Restorative justice mechanisms can be initiated through a request from the perpetrator, suspect, defendant, or their family and/or the victim or their family, or through an offer from the investigator, public prosecutor, or judge (paragraph 1). Paragraph (2) emphasizes that the mechanism must be carried out without pressure, coercion, intimidation, deception, threats of violence, violence, torture, and acts that degrade humanity. This norm is an internalization of the principle of voluntariness as stipulated in the Basic Principles (United Nations Economic and Social Council, 2002) and addresses some of Roche's (2003) concerns regarding the potential for domination in informal processes.

Articles 83 through 86 regulate procedures at the inquiry, investigation, and prosecution stages. Agreements are made before an authorized official and outlined in a letter of agreement signed by the parties and the official, which then becomes the basis for issuing a letter of termination of investigation, a letter of termination of investigation, or a letter of determination to terminate prosecution. The most significant difference from the previous regime is the obligation of judicial control: Article 84 requires investigators to notify the public prosecutor of a letter of termination of investigation and request a decision from the head of the district court within a maximum of three days, and Article 86 regulates a similar obligation for a letter of determination to terminate prosecution.

The requirement for the presiding judge to determine the case constitutes a substantial normative correction. Under Prosecutor's Regulation No. 15 of 2020 and Police Regulation No. 8 of 2021, case termination based on restorative justice rests entirely within the internal control of law enforcement agencies without an effective external oversight mechanism. This situation has given rise to criticism that restorative justice has the potential to become a loophole in case negotiations. By placing the court as the issuer of the decision, the 2025 Criminal Procedure Code translates the principle of judicial oversight in the Basic Principles into positive legal norms and simultaneously places restorative justice within the framework

of an integrated criminal justice system as conceptualized by Atmasasmita (2011). This finding aligns with the analysis of Pulungan and Situmorang (2026), who position court control as a counterweight to the discretion of law enforcement officials.

Article 87 stipulates that if the mechanism as regulated in Article 79 to Article 86 cannot be implemented, its implementation is carried out at the examination stage in court through a court decision and the implementation of the court decision. This provision is supplemented by Article 204 which regulates peace in court: the judge asks about the possibility of peace between the defendant and the victim with the exception of certain categories (paragraph 5), the peace agreement is evidenced by a letter signed by the defendant, the victim, and the judge (paragraph 6), the recovery must have been fulfilled before the agreement is finalized (paragraph 7), and the peace agreement is taken into consideration to reduce the sentence or impose a supervision sentence (paragraph 8).

Article 204 paragraph (8) shows the close relationship between procedural law and substantive law. The supervision penalty referred to is a new principal penalty regulated in Article 65 paragraph (1) letter c of the 2023 Criminal Code and can be imposed based on Article 75 against defendants who commit crimes with a maximum prison sentence of five years. In addition, the 2023 Criminal Code provides community service as a principal penalty based on Article 65 paragraph (1) letter e, which according to Article 85 can be imposed for crimes with a prison sentence of less than five years with a minimum duration of eight hours and a maximum of two hundred and forty hours. Equally important, Article 70 of the 2023 Criminal Code stipulates that a prison sentence should, if possible, not be imposed if certain circumstances are found, including the perpetrator committing a crime for the first time, the victim's losses are not large, or the victim and their family have received compensation. Thus, the restorative orientation in the 2025 Criminal Procedure Code has adequate means of execution in substantive criminal law — a coherence that was lacking in the previous regime, as also noted by Amarini et al. (2024) in a study on social reintegration after the implementation of restorative justice.

b. Position of the Juvenile Criminal Justice Regime

It should be emphasized that the restorative justice mechanism in the 2025 Criminal Procedure Code does not replace the diversion regime in Law No. 11 of 2012. Article 1 number 7 of the law defines diversion as the transfer of the settlement of children's cases from the criminal justice process to a process outside the criminal justice system, and Article 7 paragraph (1) requires that diversion be attempted at the level of investigation, prosecution, and examination of children's cases in the district court. Article 7 paragraph (2) stipulates the conditions in the form of a prison sentence of less than seven years and not a repetition of the crime, while Article 9 regulates considerations that must be taken into account and exceptions to the requirement for the victim's consent.

The seven-year threshold in the juvenile criminal justice system is looser than the five-year threshold in the 2025 Criminal Procedure Code. This difference is not an inconsistency, but

rather a logical consequence of the principle of *lex specialis derogat legi generali* and the principle of the best interests of the child. Marlina (2009) has shown that diversion in juvenile criminal justice is designed with a different protection orientation than the resolution of adult criminal cases. Thus, the validity of the 2025 Criminal Procedure Code does not diminish the validity of Law No. 11 of 2012 as *lex specialis*.

3.3. Normative Disharmony and Its Implications for Legal Certainty

a. Conflict between Article 80 paragraph (1) letter a and Article 82 letter e

The most serious problem in the regulation of the restorative justice mechanism of the 2025 Criminal Procedure Code lies in the conflict between the authorizing norms and the limiting norms. Article 80 paragraph (1) stipulates three cumulative conditions: (a) the crime is punishable only by a maximum fine of category III or is punishable by a maximum imprisonment of five years; (b) the crime is committed for the first time; and (c) it is not a repetition of the crime, except for crimes for which the verdict is a fine or crimes committed due to negligence.

Meanwhile, Article 82 contains nine categories of criminal acts that are excluded from the restorative justice mechanism, namely crimes against state security, against friendly countries or heads of friendly countries and their representatives, public order, and morality; terrorism; corruption; sexual violence; crimes punishable by imprisonment of five years or more, except due to negligence; crimes against human life; crimes punishable by special minimum sentences; certain crimes that are very dangerous or detrimental to society; and narcotics except for those who have the status of users or abusers.

Eight of the nine categories of exceptions are qualitative and coherent with the authorizing norm, because they filter based on the nature of the crime, not on the threat of punishment. The problem arises in letter e, which filters quantitatively using the same variables as Article 80 paragraph (1) letter a, but with overlapping limits. Grammatically, the phrase "maximum 5 (five) years" in Article 80 paragraph (1) letter a covers the threat of exactly five years, while the phrase "5 (five) years or more" in Article 82 letter e also covers the threat of exactly five years. At the point of the threat of exactly five years, both norms mandate mutually negating legal consequences.

This issue is not hypothetical. A number of crimes that are statistically most often resolved through a restorative approach fall right at the five-year threshold, particularly theft in its principal form, embezzlement, and fraud. If Article 82 letter e is applied literally, the scope of the restorative justice mechanism shrinks drastically, leaving only crimes with a penalty of under five years and crimes that carry a maximum fine of category III. This consequence would render Article 80 paragraph (1) letter a largely ineffective, an interpretation that contradicts the principle that lawmakers do not formulate futile norms.

From the perspective of the principle of norm conflict resolution, the three classical principles cannot be satisfactorily applied. The principle of *lex superior derogat legi inferiori* is irrelevant

because both norms are contained in the same law. The principle of *lex posterior derogat legi priori* is also inapplicable because both were enacted simultaneously; applying the principle of article order mechanically to conclude that Article 82 overrides Article 80 has no theoretical basis. The principle of *lex specialis derogat legi generali* is debatable: Article 82 can be viewed as a special norm that excludes the general norm of Article 80, but this view actually results in the shrinking of the scope outlined above.

A teleological interpretation offers a more satisfactory solution. By reading both norms within the framework of the objectives of the formation of the 2025 Criminal Procedure Code and the objectives of criminalization in Article 51 letter c of the 2023 Criminal Code, Article 82 letter e should be read as an affirmation that criminal acts with a threat of more than five years are excluded, so that the threat of exactly five years remains within the scope of Article 80 paragraph (1) letter a. This interpretation maintains the efficacy of both norms while being consistent with the principle of *in dubio pro reo* and with Article 53 paragraph (2) of the 2023 Criminal Code which requires judges to prioritize justice when there is a conflict between legal certainty and justice.

b. Hierarchical Problem Resolution through Circular Letters

The Supreme Court has adopted a position consistent with this teleological interpretation. Supreme Court Circular Letter No. 1 of 2026 affirms that crimes punishable by five years' imprisonment can still be implemented through restorative justice mechanisms and are not exempt from their application. The circular also strengthens the role of the chief justice of the district court by stipulating that a request for a ruling must be submitted no later than three working days after the termination order is issued, and the chief justice must issue a ruling no later than three working days after the request is received. It also provides transitional guidelines based on the principle of prioritizing provisions that are more favorable to the defendant.

Practically, this step is commendable, as it restores certainty to courts across Indonesia in a very short time. However, from a legal theory perspective, this resolution presents three problems.

First, the issue of norm hierarchy. The Supreme Court circular is not included in the types and hierarchy of statutory regulations as regulated in Article 7 of Law No. 12 of 2011, and although Article 8 recognizes the existence of regulations stipulated by the Supreme Court as long as they are ordered by higher regulations or established based on authority, the instrument in question is the Supreme Court regulation, not the circular. Circulars are essentially internal policy instruments (*beleidsregel*) that are binding internally. Using such an instrument to resolve conflicting norms at the statutory level means placing the solution hierarchically lower than the problem it resolves.

Second, the issue of cross-subsystem binding power. The Supreme Court's circular binds the courts, but not the police and prosecutors, as other subsystems within the criminal justice system. In fact, the application of restorative justice mechanisms at the inquiry, investigation,

and prosecution stages occurs outside the judicial environment. As a result, situations can arise where investigators refuse to apply restorative justice mechanisms to cases with a five-year sentence because they adhere to Article 82 (e), while the courts will accept it if submitted. This lack of uniformity is precisely the form of uncertainty that the codification aims to avoid.

Third, the issue of sustainability. Circulars can be amended or revoked through internal procedures that are much simpler than amending laws. Legal certainty that relies on easily amended instruments is fragile. For suspects or defendants, this means that access to restorative resolution depends on policies that can change at any time, rather than on rights guaranteed by law.

This situation demonstrates that resolution through circulars, however necessary as an emergency measure, cannot be a permanent solution. As Arief (2008) emphasized, criminal law reform requires consistency at both the value and technical levels of legislation.

c. Lack of Government Regulations and Fragmentation of Sectoral Regulations

The second problem is the lack of implementing regulations. Article 88 of the 2025 Criminal Procedure Code mandates that further provisions regarding the implementation of restorative justice mechanisms in Articles 79 to 87 be regulated in a Government Regulation, and Article 204 paragraph (9) provides a similar mandate for reconciliation between the accused and the victim. Article 366 stipulates that implementing regulations must be established no later than one year after the law is enacted. As of mid-2026, the Government Regulation had not been issued.

The impact of this gap is operational and immediate. A number of crucial technical issues lack guidance: who acts as facilitator in restorative deliberations and what qualifications are required; how is the proportionality of the agreement assessed to prevent an agreement that is excessively burdensome to the perpetrator or detrimental to the victim; how is protection provided to victims in an unequal power relationship with the perpetrator; what is the status of the perpetrator's confession in the restorative process if the process fails and the case proceeds to trial; and how is the implementation of the agreement monitored within the seven-day deadline stipulated in Article 79 paragraph (3).

The final question regarding the status of a perpetrator's confession is theoretically the most complex and poses the greatest risk to rights protection. In a system that does not explicitly prohibit the use of such confessions as evidence, perpetrators face a dilemma: being open in the restorative process risks compromising their position if the process fails, while remaining secretive negates the meaning of the restorative process itself. The Basic Principles (United Nations Economic and Social Council, 2002) explicitly stipulate that participation in a restorative process should not be used as evidence of guilt in subsequent judicial proceedings, and the United Nations Office on Drugs and Crime (2020) guidelines reaffirm this principle. The absence of a comparable norm in Indonesian positive law represents a protection gap that must be addressed immediately.

The lack of implementing regulations also leaves sectoral regulations in a normatively uncertain position. Article 367 of the 2025 Criminal Procedure Code states that all regulations concerning criminal procedure that conflict with the law are declared null and void. This provision raises questions about the status of Prosecutor's Regulation No. 15 of 2020, Police Regulation No. 8 of 2021, and Supreme Court Regulation No. 1 of 2024, which have not yet been formally revoked.

There are at least three points of contention that can be identified. First, the loss threshold. Prosecutor's Office Regulation Number 15 of 2020 and Supreme Court Regulation Number 1 of 2024 use a loss threshold of IDR 2,500,000.00, while the 2025 Criminal Procedure Code (KUHP) does not recognize a nominal threshold at all and only uses criminal penalties as a criterion. The application of the nominal threshold after the enactment of the 2025 Criminal Procedure Code narrows the scope of the law through subordinate regulations. Second, judicial control. Prosecutor's Office Regulation Number 15 of 2020 and Police Regulation Number 8 of 2021 do not require the appointment of a district court chief, while Articles 84 and 86 of the 2025 Criminal Procedure Code require it. Third, the exclusion criteria. The sociological criteria in Article 5 of Police Regulation Number 8 of 2021, such as "not causing public unrest," have no equivalent in the 2025 Criminal Procedure Code and are highly open to subjective interpretation.

This fragmentation places law enforcement officials in a difficult position. Adhering to institutional regulations risks violating the law, while abandoning them entirely means operating without technical guidance because Government Regulations are absent. In practice, this situation encourages the creation of internal policies for each institution, which in turn repeats the sectoralization problem that codification aims to address. This situation validates Roche's (2003) concerns about the accountability deficit in restorative practices and confirms Pulungan and Situmorang's (2026) findings regarding the tension between legal certainty and official discretion.

d. Normative Reconstruction

Based on the analysis above, this study offers four normative reconstructions that are hierarchical in nature.

First, at the legislative level, a limited revision is needed to Article 82 letter e of the 2025 Criminal Procedure Code by changing the phrase "threatened with imprisonment of 5 (five) years or more" to "threatened with imprisonment of more than 5 (five) years." This single phrase change definitively eliminates the conflicting norms, provides binding certainty for the entire criminal justice subsystem, and returns the resolution of legislative issues to the legislators. This kind of limited revision can be achieved through narrow changes to the law without reopening the entire material of the Criminal Procedure Code.

Second, at the level of implementing regulations, the issuance of Government Regulations as mandated by Article 88 and Article 204 paragraph (9) needs to be accelerated. These Government Regulations must at least contain: qualifications and certification of facilitators;

standards for assessing the proportionality of agreements; mechanisms for protecting victims in cases of unequal power relations; prohibitions on the use of statements made in the restorative process as evidence if the process fails; procedures for monitoring the implementation of agreements; and mechanisms for restoring victims' rights if the agreement is not implemented.

Third, at the harmonization level, Prosecutor's Office Regulation Number 15 of 2020, Police Regulation Number 8 of 2021, and Supreme Court Regulation Number 1 of 2024 need to be revoked or formally adjusted after the Government Regulation is issued. Formal revocation is necessary to end uncertainty regarding their applicability, considering that Article 367 of the 2025 Criminal Procedure Code only states that they are invalid to the extent they contradict each other, without specifying which provisions are in question.

Fourth At the institutional level, a permanent cross-subsystem coordination mechanism is needed to monitor the implementation of restorative justice mechanisms and provide an open database. The availability of data on case types, forms of agreements, levels of agreement implementation, and rates of reoffending are prerequisites for evidence-based evaluation, as exemplified by Sherman and Strang (2007). Without such a database, assessments of the success of restorative justice mechanisms will continue to rely on the number of cases dismissed, which in reality only measures administrative output and not actual recovery outcomes.

It should be emphasized that this normative reconstruction is a necessary, but not sufficient, condition. As Arief (2008) reminds us, true criminal law reform is a renewal of value orientation. Clarity of norms will not produce meaningful restorative justice if law enforcement officials continue to view this mechanism solely as a means of reducing the backlog of cases. Within Braithwaite's (2002) framework, restorative justice only works if it is positioned as the first layer in a responsive law enforcement pyramid, not as an administrative shortcut.

4. Conclusion

Based on the above description, two conclusions can be drawn. First, the enactment of the 2023 Criminal Code and the 2025 Criminal Procedure Code on January 2, 2026, changed the status of restorative justice from a practice based on the discretion of officials based on institutional regulations to a norm regulated by law. This change strengthens the normative legitimacy of restorative justice, provides coherence between procedural law and material law through supervision, community service, sentencing guidelines under Article 54, and the institution of judicial pardons. It also places the court in control of case termination through the obligation to appoint the head of the district court under Articles 84 and 86 of the 2025 Criminal Procedure Code. *Second*, behind this strengthening there are two issues that threaten legal certainty. The conflict between Article 80 paragraph (1) letter a and Article 82 letter e of the 2025 Criminal Procedure Code at the point of the threat of imprisonment of exactly five years creates uncertainty regarding the scope of the restorative justice

mechanism, and its resolution through Supreme Court Circular Letter Number 1 of 2026 is hierarchically inadequate, not binding on the police and prosecutors, and fragile in terms of sustainability. Meanwhile, the non-issuance of the Government Regulation mandated by Article 88 and Article 204 paragraph (9) has resulted in the absence of technical guidelines regarding facilitators, proportionality of agreements, victim protection, and the status of perpetrators' confessions, while leaving Prosecutor's Regulation Number 15 of 2020, Police Regulation Number 8 of 2021, and Supreme Court Regulation Number 1 of 2024 in an uncertain normative status.

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