

# Construction of Legislation Formation on Restorative Justice in the Neo-Classical Criminal Perspective of Law Number 1 of 2023 Concerning the Criminal Code

Original Article

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**Received : 27 April - 2025**

**Accepted : 28 May - 2025**

**Published online : 30 May - 2025**

## Abstract

Restorative Justice is a process that involves both perpetrators or their families and victims or their families in the process of restoring conditions and rehabilitating perpetrators. This concept has fundamentally developed for a long time, but with the enactment of Law No. 1 of 2023 concerning the Criminal Code, it changes the punishment paradigm that was previously inspired by classical schools focusing on secular retribution, transforming by applying neo-classical schools that maintain balance between objective factors and subjective factors. However, regulatory provisions for restorative justice show disharmonies across investigation, prosecution, and judicial levels, requiring legal construction through expert doctrines and institutional regulations to create a comprehensive framework for applicable criminal cases. This research analyzes and constructs legal frameworks for implementing restorative justice within Indonesia's criminal law system under Law No. 1 of 2023, addressing regulatory disharmonies through neo-classical criminal law perspectives. This study employs normative legal research with a juridical normative approach, analyzing primary, secondary, and tertiary legal materials through literature study techniques. The research integrates statute, conceptual, historical, and comparative approaches to explore restorative justice application in Indonesia's criminal law system, including comparative analysis with Continental European countries. Current restorative justice regulations across investigation, prosecution, and judicial levels exhibit disharmony requiring legal construction through *rechtsverfijning* and comparative methods to align with the neo-classical paradigm of the 2023 Criminal Code.

**Keywords:** Criminal Code Law No. 1/2023, Legal Construction, Neo-Classical School, Regulatory Disharmony, Restorative Justice.

## 1. Introduction

The existence of Law No. 1 of 2023 concerning the Criminal Code, hereinafter referred to as the 2023 Criminal Code, constitutes a historical milestone in criminal law reform in Indonesia, replacing the *wetboek van strafrecht* that was enacted based on Law No. 73 of 1958 concerning Declaring the Validity of Law No. I of 1946 concerning Criminal Law Regulations for the Entire Territory of the Republic of Indonesia and Amending the Criminal Code, often referred to as the Criminal Code (KUHP). The original intent of establishing the 2023 Criminal Code states that the complete mission of this reform is decolonization in the form of recodification, as well as democratization of criminal law and consolidation of criminal law.

The character of the *wetboek van strafrecht* was heavily influenced by the classical school of criminal law, which according to Muladi and Barda Nawawi Arief in Hiarij (2015) is based on three main principles: the principle of legality (no punishment without law), the



principle of guilt (punishment is only imposed if there is an element of guilt), and the principle of secular retribution (punishment is adjusted to the severity of the act). This principle emphasizes a normative and proportional approach in criminal law enforcement (Hutabarat et al., 2022).

The emphasis of this classical school is secular retribution, which is intended to seek revenge by inflicting suffering on perpetrators according to the measure and weight of the acts committed. This view was later opposed by Jeremy Bentham, who stated that punishment has no justification value if it only aims to add more suffering to society (Harkrisnowo, 2003). Moving from this, the classical school was increasingly abandoned, with the emergence of modern criminal schools, which demand maximum protection of society, as mentioned in a postulate "*le salut du peuple est la supreme loi*" (the salvation of the people is the supreme law). As stated by Prof. Edward Omar Sharif Hiariej, if the classical school interprets criminal law as act-oriented or *daad-strafrecht*, then the modern school interprets criminal law as perpetrator-oriented or *dader-strafrecht*. Moreover, the most important foundation of this school is the *ultimum remedium*, which means that criminal law must be used as the last instrument to unravel and resolve problems in society (Harkrisnowo, 2003).

Besides classical and modern schools, there is also the neo-classical school rooted in the classical school, which in its development was then influenced by the modern school. The characteristic of this school relevant to the principle of punishment individualization is the modification of the doctrine of free will and the doctrine of criminal responsibility (Sholehuddin, 2003). Other modifications include acceptance of the validity of certain mitigating circumstances and permission for testimony to determine the degree of criminal responsibility. Because the neo-classical school is a development of the classical school also influenced by the modern school, the central theme of its thinking lies in balanced aspects of criminal acts and perpetrators of criminal acts (between acts and perpetrators or *daad-dader*). The 2023 Criminal Code follows the principles of the neo-classical school, as explained in the introductory chapter, highlighting the distinction between the *wetboek van strafrecht* and this Law in terms of their underlying philosophies. The *wetboek van strafrecht* was influenced by the Classical School ideology that emerged in the 18th century, emphasizing criminal law's focus on actions or criminal behaviors. In contrast, this Law is influenced by neo-classical school ideology, which seeks to strike a balance between objective factors (external actions) and subjective factors (internal thoughts and attitudes). This school of thought emerged in the 19th century, shifting the focus from solely examining criminal actions to also considering the individual aspects of the perpetrators of these criminal acts.

The existence of this neo-classical school fundamentally intersects with new punishment concepts, namely the Theory of Restorative Justice, or restorative justice hereinafter abbreviated as RJ, where in principle this theory brings together and involves victims and perpetrators in a process that aims to restore and improve conditions for victims and rehabilitation for perpetrators (Dignan, 2004). Indonesian law has officially recognized the concept of restorative justice, particularly for young offenders. This is outlined in Article 1 number 6 of the Juvenile Criminal Justice System Law, which highlights the importance of involving perpetrators, victims, and their families in finding solutions that focus on restoring harmony rather than seeking revenge. The formulation in the aforementioned law is crystallized with diversion, which is an inseparable part of the RJ approach in the investigation and prosecution process of juvenile crimes as well as juvenile trials conducted by courts in the general judiciary environment.

The main issue is that the application of the Restorative Justice (RJ) approach to adult offenders remains unregulated, and there is a lack of coherent understanding as well as

standardized legal instruments governing its implementation. However, the 2023 Indonesian Criminal Code explicitly acknowledges the RJ approach. Article 54 paragraph (1) stipulates that the sentencing process must consider various aspects, such as the offender's degree of guilt, underlying motives and objectives, mental disposition, and whether the offense was premeditated. It also emphasizes the importance of examining the method by which the crime was committed, the perpetrator's conduct after the offense, their personal, social, and economic background, and the potential impact of sentencing on the offender's future. Additionally, the law takes into account the consequences for victims and their families, expressions of forgiveness from the victims or their families, as well as prevailing legal values and the community's sense of justice.

Furthermore, in the 2023 Criminal Code, Article 54, paragraph (2) emphasizes the importance of considering the seriousness of the action, the individual circumstances of the offender, and the context in which the crime was committed. Various regulations in Indonesia, such as the National Police Regulation No. 8 of 2021, the Prosecutor's Regulation No. 15 of 2020, and the Supreme Court Regulation No. 1 of 2024, outline the use of the Restorative Justice approach in handling criminal cases. These regulations highlight the limited presence of RJ implementation within Indonesia's legal system. This non-uniformity also relates to criminal acts that can apply restorative processes and the binding force of various provisions applicable in each institution. These legislations exist and each has binding force because Article 8 paragraph (2) of Law No. 12 of 2011 concerning Formation of Legislation, hereinafter abbreviated as the PPUU Law, legitimizes their enforcement. However, it should be remembered that each of these legislations has the same hierarchy, as in Article 8 paragraph (1) of the PPUU Law, so each of the aforementioned regulations cannot override one another according to the principle of *lex superior derogat legi inferiori*, so only higher regulations can overcome disharmony between these legislations, which in the context of Article 7 paragraph (1) of the PPUU Law is Laws.

The lack of consistency in regulations poses a significant challenge for law enforcement. The 2023 Criminal Code emphasizes the importance of judges upholding law and justice when handling criminal cases. According to Article 51 of the 2023 Criminal Code, the main goal of punishment is to prevent future criminal acts by implementing and enforcing legal norms. This includes providing protection and support to society, rehabilitating convicts through guidance and counseling, resolving conflicts stemming from criminal activities, restoring harmony, and promoting repentance among offenders. Based on this, constructive studies need to be conducted in forming legislation appropriate for RJ implementation in Indonesia while maintaining complete adherence to maintaining public order, as well as upholding the special function of criminal law that provides protection for legal interests and gives legitimacy to the state in carrying out its function of protecting legal interests (Sudarto, 1990).

Research on RJ has been quite extensively studied by legal academic communities, but based on the author's online research, specific studies regarding legal construction related to restorative justice referring to principles contained in neo-classical schools are relatively new studies. Moreover, the author relates this to the 2023 Criminal Code, emphasizing legal construction, where this theory relates to the process of filling legal voids or unclear legislation.

Several studies have been conducted to discuss the concept of restorative justice (RJ) in the context of Indonesia's criminal justice system. Rahmawati et al. (2022) reviews opportunities and obstacles for RJ implementation in Indonesia. Nevertheless, this book has not deeply discussed RJ legal construction, especially in relation to the national legal system that does not yet have comprehensive regulations regarding RJ. This becomes a particular

challenge, especially with the enactment of Law No. 1 of 2023 concerning the Criminal Code which will only be effective starting in 2026, so there is still room for interpretation regarding RJ concepts and practices in the context of Indonesian criminal law. On the other hand, Rahmawati et al. (2022) specifically discusses the existence and legal position of RJ in Indonesia's positive legal system. This journal also examines RJ implementation based on applicable regulations, thus providing normative and applicative descriptions of the extent to which RJ has been applied in national criminal law practice. Both studies show that discourse on RJ in Indonesia is still developing and requires strengthening both from regulatory and legal theoretical framework perspectives.

Sitinjak et al. (2023) discusses opportunities and challenges of how restorative justice is implemented in Indonesia, but does not touch on legal construction, especially since Indonesia has not yet implemented comprehensive provisions regarding RJ application, not to mention that Law No. 1 of 2023 concerning the Criminal Code will only take effect in 2026. Therefore, there is still room for interpretation regarding RJ implementation in Indonesia. This research aims to analyze and construct legal frameworks for implementing restorative justice (RJ) within Indonesia's criminal law system, particularly under Law No. 1 of 2023 concerning the Criminal Code. It seeks to address regulatory disharmonies and legal uncertainties in applying RJ, guided by the neo-classical criminal law perspective that balances objective and subjective factors.

## 2. Methods

The type of research used in this study is normative legal research with a juridical normative approach, focusing on analysis of written legal materials. Data sources used include primary legal materials such as legislation, secondary legal materials in the form of doctrines or expert opinions found in books, journals, and websites, as well as tertiary legal materials that provide explanations or guidance for primary and secondary legal materials. The nature of this research is normative-analytical, emphasizing analysis of applicable legal norms, particularly in constructing regulations for implementing restorative justice (RJ) within the framework of modern criminal law.

To support this research, data collection techniques are used through literature studies, involving tools such as books, scientific journals, previous research results, legislation, and relevant internet sources. This research uses various approaches as proposed by Cohen and cited by Marzuki, including statute approach, conceptual approach, analytical approach, comparative approach, historical approach, philosophical approach, and case approach. The statute approach is used to examine regulations such as the 1945 Constitution and Law No. 1 of 2023 concerning the Criminal Code. The conceptual approach is used to deepen concepts such as neo-classical criminal schools, legal construction, and restorative justice. The historical approach is aimed at understanding the development of RJ regulations, while the comparative approach is conducted by comparing RJ implementation in Indonesia with Continental European countries such as the Netherlands and Germany, considering the similarity of civil law-based legal systems. These approaches are used integratively to explore and understand deeply the application of restorative justice in Indonesia's criminal law system.

### 3. Results and Discussion

#### 3.1. Restorative Justice in Indonesian Criminal Law Perspective

In 1973, there was the first international meeting discussing victims' rights in the criminal justice system. This meeting later became the foundation for establishing the World Society of Victimology in 1979 (UNODC, 1999). By 1985, the United Nations General Assembly adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. Based on this declaration, the concept of RJ was born. This concept was then introduced by Albert Eglash, who defined RJ as constructive, creative actions determined independently with advocacy and providing opportunities for group involvement (Maruna, 2014). This RJ concept emerged in contrast to retributive justice, which is applied solely to retaliate against or punish criminal act perpetrators. According to Eglash, the focus of retributive justice is punishing perpetrators for crimes they committed. Meanwhile, distributive justice aims at perpetrator rehabilitation. While RJ is fundamentally a principle of restitution focusing on victim and perpetrator involvement in processes aimed at securing recovery from both material and immaterial losses for victims and rehabilitation focused on perpetrator self-improvement (Dignan, 2004).

M. Kay Harris, referencing Braithwaite and Strang, offers two explanations of restorative justice. Initially, she describes RJ as a method that unites individuals affected by a crime to communicate their pain and agree on actions to achieve restoration of circumstances. Additionally, Harris defines restorative justice as a set of values that diverge from conventional justice by prioritizing restoration over retribution (Sullivan & Tifft, 2007).

Dispute resolution involving communities in Indonesia has been a hereditary practice, even before this nation was formed. This is driven by the majority of the population living in non-urban areas with social values emphasizing tolerance, solidarity, and conflict avoidance. Although restorative justice (RJ) concepts have not been explicitly applied, these customary practices reflect RJ approaches such as community councils and citizen panels focusing on community involvement in dispute resolution. In line with Daniel S. Lev's view, Javanese and Balinese communities prioritize family-based resolution, which aligns with restorative justice principles (Sullivan & Tifft, 2007). In the context of legislation, several RJ terminologies are included, as shown in the following table:

**Table 1. Restorative Justice Terminology**

Regulations and Circulars	Terminology
Law No. 11 of 2012 concerning Juvenile Criminal Justice System	Resolution of criminal cases by involving perpetrators, victims, families of perpetrators/victims, and other related parties to jointly seek fair solutions emphasizing restoration to original conditions, not retribution.
Joint Memorandum of Understanding between Chief Justice of Supreme Court, Minister of Law and Human Rights, Attorney General, and National Police Chief concerning Implementation of Adjustment of Minor Criminal Act Limits and Fine Amounts, Fast Examination Procedures, and Application of Restorative Justice	Resolution of minor criminal cases conducted by investigators at the investigation stage or judges from the beginning of trials by involving perpetrators, victims, families of perpetrators/victims, and related community leaders to jointly seek fair solutions emphasizing restoration to original conditions.
Supreme Court Regulation No. 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice	An approach in handling criminal cases conducted by involving parties including victims, victims' families, defendants/children, families of defendants/children, and/or other related parties, with processes and objectives that seek restoration, not just retribution.

Regulations and Circulars	Terminology
Attorney General's Regulation No. 15 of 2020 concerning Cessation of Prosecution Based on Restorative Justice	Resolution of criminal cases by involving perpetrators, victims, families of perpetrators/victims, and other related parties to jointly seek fair solutions emphasizing restoration to original conditions, not retribution.
Republic of Indonesia National Police Regulation No. 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice	Resolution of criminal acts by involving perpetrators, victims, victims' families, community leaders, religious leaders, customary leaders, or stakeholders to jointly seek fair solutions through peace emphasizing restoration to original conditions.

Reflecting on the context of community justice, it can be seen that adversarial models based on arrest and punishment of perpetrators do not align with community views. Still according to the community justice movement, what is needed is a community handling strategy where the crime occurred, not merely a perpetrator handling strategy. Arrests, prosecutions, and punishments are indeed very necessary, but they are not the actual main objective. The main goal is to make the community where the crime occurred safe again for people residing there (Sullivan & Tiftt, 2007).

### 3.2. Legal Construction for Implementing Restorative Justice through Neo-Classical Perspective Based on the 2023 Criminal Code

Before the development of the neo-classical school, the first school to develop was the classical school, which emerged as a reaction to the old regime in 18th century France that fundamentally caused legal uncertainty, inequality in law, and injustice. This school was based on the desire for criminal law to be systematically organized and emphasized legal certainty (Muladi & Arief, 1992). According to Sudarto (1990), the classical school regarding punishment is retributive and repressive toward criminal acts. This school also holds indeterministic views regarding human free will that emphasizes the actions of crime perpetrators, thus desiring criminal law focused on acts rather than perpetrators (*daad- strafrecht*) (Sholehuddin, 2003). This aligns with the concept of retributive justice that punishes perpetrators for crimes and acts they committed. This school, as quoted by Prof. Eddy Hiariej from Muladi & Arief (1992) states that the classical school in criminal law rests on three pillars. First, the principle of legality stating there is no punishment without law, and no prosecution without law. Second, the principle of guilt containing that people can only be punished if there are elements of guilt and intent. Third, the principle of secular retribution which concretely is not imposed with the intention of achieving beneficial results, but rather proportional to the measure of acts committed.

Meanwhile, the second school is the modern school, where criminal law aims to protect society from crime. This objective adheres to the postulate "*le salut du peuple est la supreme loi*" meaning the highest law is society's safety. Thus, the modern school is also called the positive school because it provides space to use natural science methods with the intention of positively influencing crime perpetrators as far as such acts can be corrected. In subsequent development, the neo-classical school emerged as a development of the classical school with modifications from the modern school. According to Barda Nawawi Arief, the 2023 Criminal Code emphasizes *monodualistic* thinking or known as *daad-dader strafrecht*, namely criminal law that considers objective aspects of acts (*daad*) and also subjective aspects of persons (*dader*) (Arief, 2008).

The primary purpose behind the creation of the 2023 Criminal Code reflects victimology, as it addresses the importance of understanding crime victims and ensuring their fair

treatment while also preventing abuse of power. This legislation is inspired by the post-World War II advancements in victimology, which highlight the significance of justice for crime victims. The concepts of *daad-dader strafrecht* and victimology are set to impact the development of the criminal law by shaping the formulation of illegal actions, criminal liability, and the types of punishments and measures that can be enforced based on the underlying principles of criminal law. Based on this, the neo-classical school, besides considering whether the criminal act perpetrator's actions are indeed worthy of blame both objectively and subjectively, also emphasizes the purpose of punishment itself, namely protecting society's and individual interests, so this neo-classical school concept has the same resonance as RJ implementation.

Referring to Table 2, restorative justice implementation differs across legislation, as shown in the following table:

**Table 2. Restorative Justice Provisions**

Regulations and Circulars	Restorative Justice Provisions
Law No. 11 of 2012 concerning Juvenile Criminal Justice System	Restorative Justice is realized through Diversion: <ol style="list-style-type: none"> <li>a. threatened with imprisonment below 7 (seven) years; and</li> <li>b. not a repetition of criminal acts.</li> </ol>
Joint Memorandum between Chief Justice of Supreme Court, Minister of Law and Human Rights, Attorney General, and National Police Chief concerning Implementation of Adjustment of Minor Criminal Act Limits and Fine Amounts, Fast Examination Procedures, and Application of Restorative Justice	Minor Criminal Acts as regulated in Articles 364, 373, 379, 384, 407, and Article 482 of the Criminal Code with maximum imprisonment threat of 3 (three) months or fines of 10,000 (ten thousand) times the fine amount.
Supreme Court Regulation No. 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice	(1) Judges apply guidelines for adjudicating criminal cases based on Restorative Justice if one of the following criminal acts is fulfilled: <ol style="list-style-type: none"> <li>a. criminal acts committed are minor criminal acts or victim losses valued not more than Rp2,500,000.00 (two million five hundred thousand rupiah) or not more than local provincial minimum wage;</li> <li>b. criminal acts are complaint offenses; c. criminal acts with maximum punishment threat of 5 (five) years imprisonment in one of the charges, including jinayat criminal acts according to qanun;</li> <li>c. criminal acts with child perpetrators whose diversion failed; or</li> <li>d. traffic criminal acts in the form of crimes.</li> </ol> (2) Judges are not authorized to apply guidelines for adjudicating criminal cases based on Restorative Justice in cases where: <ol style="list-style-type: none"> <li>a. Victims or Defendants refuse to make peace;</li> <li>b. there are Power Relations; or</li> <li>c. Defendants repeat similar criminal acts within 3 (three) years since Defendants finished serving court decisions with permanent legal force.</li> </ol>
Attorney General's Regulation No. 15 of 2020 concerning Cessation of Prosecution Based on Restorative Justice	Suspects commit criminal acts for the first time; <ol style="list-style-type: none"> <li>a. Criminal acts are only threatened with fines or threatened with imprisonment of not more than 5 (five) years, and;</li> <li>b. Criminal acts are committed with evidence value or loss value caused by criminal acts</li> </ol>

Regulations and Circulars	Restorative Justice Provisions
<p>Republic of Indonesia National Police Regulation No. 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice</p>	<p>not more than Rp2,500,000.00 (two million five hundred thousand rupiah) (excluded for criminal acts committed against persons, bodies, lives, and human freedom).</p> <p>Other requirements:</p> <ol style="list-style-type: none"> <li>There has been restoration to original conditions by Suspects through:</li> <li>There has been peace agreement between Victims and Suspects;</li> <li>Community responds positively.</li> </ol> <p>Handling Criminal Acts based on Restorative Justice must meet requirements:</p> <ol style="list-style-type: none"> <li>General; and/or</li> <li>Special;</li> </ol> <p>General Requirements consist of:</p> <ol style="list-style-type: none"> <li>Material and</li> <li>Formal requirements.</li> </ol> <p>Material requirements include:</p> <ol style="list-style-type: none"> <li>Not causing unrest and/or rejection from society;</li> <li>Not impacting social conflict;</li> <li>not potentially dividing the nation;</li> <li>not of radicalism and separatism nature;</li> <li>not repeat offenders of Criminal Acts based on Court Decisions; and</li> <li>not Terrorism Criminal Acts, Criminal Acts against state security, Corruption Criminal Acts, and Criminal Acts against human life.</li> </ol> <p>Formal requirements include:</p> <ol style="list-style-type: none"> <li>Peace from both parties, except for Drug Criminal Acts;</li> <li>Fulfillment of victim rights and perpetrator responsibilities, except for Drug Criminal Acts;</li> </ol> <p>Special Requirements are additional requirements for Criminal Acts:</p> <ol style="list-style-type: none"> <li>Information and electronic transactions;</li> <li>Drugs; and</li> <li>Traffic.</li> </ol>

Based on Table 2, it can be seen that there is no unified law application regarding Restorative Justice implementation, especially for adults, whether at investigation, prosecution, or judicial levels. Each regulation has different legal interpretations regarding determination of criminal acts that can be subject to restorative justice. This differs from cases involving children under 18 (eighteen) years old, because restorative justice has been realized in the diversion process, so its regulation is explicitly regulated by the SPPA Law. Regulatory disharmony regarding RJ specifically for adult cases is a logical implication of Criminal Code regulations that only regulate Punishment as a combination of Criminal Acts (TP) and Guilt containing Criminal Responsibility, without recognizing RJ regulatory concepts. This differs from the 2023 Criminal Code context, as quoted from the 2023 Criminal Code Academic Paper, which is not oriented solely on views regarding criminal law emphasizing acts or their consequences (*Daadstrafrecht/Tatsrafrecht* or *Erfolgstrafrecht*) influenced by the Classical school, but also oriented/based on persons or guilt of persons committing criminal acts (*Daadstrafrecht/Tatsrafrecht/Schuldstrafrech*), influenced by the Modern school.

The disharmony in regulations related to restorative justice requires legal discovery, which is a logical consequence of the provision that not all law can be found in statutes, thus requiring the exploration of other legal sources such as doctrine, jurisprudence, treaties, and customs. Mandatorily, in criminal law, the concept of legal discovery is allowed according to Law No. 48 of 2009 on Judicial Power, which requires judges to investigate and understand societal standards of justice and legal values. This differs from civil cases that are bound by the postulate "*secundum allegat judicare*" or judges following the will of the disputing parties. This legal discovery is supported by the adage "*Argumentum ab auctoritate est fortissimum in lege*," meaning arguments formulated based on comprehensive knowledge are the strongest before the law. One method and concept of legal discovery is through legal construction via legal narrowing or "*rechtsverfijning*" or legal refinement, based on the principle that the application of norms in legislation is too broad and abstract in nature.

Doctrinally, restorative justice is defined as a method of resolving criminal cases by involving both perpetrators or their families and victims or their families, working together to find just solutions to restore the original state. Furthermore, according to Tony Marshall as cited by Bambang Waluyo, the concept of restorative justice emphasizes the involvement of all parties to collectively solve criminal problems and form an agreement regarding the adverse consequences of an offense (Waluyo, 2022). Additionally, restorative justice views crime as a violation against society and reciprocal relationships among community members. Such violations create obligations, and justice involves victims, offenders, and community members in setting things right properly, focusing on restoration for victims regarding both material and immaterial losses for which the perpetrator is responsible (Ali, 2009).

This concept is identical to out-of-court settlement, often called Alternative Dispute Resolution (ADR). In the context of criminal procedural law, this concept is known as "*Afdoening Buiten Process*" regulated in Article 82 of the Criminal Code regarding the elimination of prosecutorial authority for violation cases threatened only with fines, which are dismissed if the maximum fine amount and incurred costs are voluntarily paid if prosecution has begun. *Afdoening Buiten Process* (ABP) has significant differences from restorative justice: first, ABP provisions only apply to violation cases threatened with fines, while restorative justice applies to both violations and crimes; second, ABP only eliminates examination at the prosecution level, while restorative justice is pursued at all levels, both pre-adjudication and during adjudication processes.

Supreme Court Regulation (Perma) No. 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice introduces a fundamentally different approach compared to previous regulations. First, this Perma explicitly affirms that restorative justice is not intended to eliminate criminal responsibility, unlike Attorney General Regulation No. 15 of 2020 and Police Regulation No. 8 of 2021, which allow termination of legal processes at investigation or prosecution stages. Second, this Perma emphasizes restoration for victims, relationships between defendants and victims/society, and encourages defendant accountability while avoiding imprisonment, especially for children.

Third, Perma 1/2024 is oriented toward post-crime restoration, accommodating the interests of victims, perpetrators, and their families in a balanced manner. The principle of "the best interest of the child" is strongly integrated, in line with Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. Even if diversion fails, judges are still required to consider restorative approaches. Although this Perma's scope is broader than other regulations, its application remains subject to applicable criminal procedural law as affirmed in Article 4 of the Perma.

As quoted from Harvard International Review (2020), RJ represents an alternative view from the predominant legal system that is adversarial and retributive. According to the article, RJ places emphasis on promoting harmony and overall community well-being instead of punishment. In societies where the application of laws has led to land theft and widespread imprisonment, restorative justice principles have been utilized for a significant period of time to steer clear of depending on a flawed legal system. Based on this, RJ serves as a foundation to avoid judicial systems deemed ineffective in reconciliation processes and ensuring community stability is reestablished. Additionally, many views consider that RJ application makes criminal law enforcement too lenient and will result in many potential subsequent crimes. However, according to a recent article in the Harvard International Review, punitive measures like the "tough on crime" approach have proven ineffective in deterring criminal behavior and reducing repeat offenses. It may be time to explore alternative systems that prioritize different principles.

The criminal approach system using RJ may sound utopian because RJ is a form of insurgency, as quoted from Sullivan & Tiftt (2007), restorative justice is a form of insurgency because it 'competes with' the state (and power-based social arrangements generally) in how it responds to interpersonal or intergroup conflicts and how it defines what harms the human community should give restorative attention to in the first place. This insurgency context arises because RJ's approach differs from subjective criminal law, which emphasizes the state's right to punishment for prosecution, conviction, and execution of punishment that essentially lies within formal criminal law scope. RJ in this context responds to crimes with non-violent and restorative approaches and views all crimes as collective matters to be resolved restoratively, while in the state context, there are limitations on crimes that can be resolved collectively (Sullivan & Tiftt, 2007). This context makes RJ insurgent because it views everything as collective consciousness, as quoted from Sullivan & Tiftt (2007), when an individual experiences harm, every person is affected to varying extents. It is the collective responsibility of all to rectify such situations as each individual bears some responsibility for the harm that occurred, whether they were actively or passively involved in the creation of that 'living entity composed of blood, flesh, and bones.'

Referring to modern criminal law context as proposed by Merkel, quoted by Hiariej (2015): "*Der strafe komt eine subsidiare stellung zu*" (criminal law always holds a subsidiary position to other legal remedies). Furthermore, the state is obligated to address legal violations or injustices that cannot be adequately handled by other legal means. Thus, criminal punishment is and must always be viewed as "*ultimum remedium* (Hiariej, 2014)" The context in modern criminal law influencing neo-classical thought actually legitimizes the RJ approach as the primary means of addressing crimes before ultimately using criminal law as a last resort. In the preamble of the 2023 Criminal Code, it is suggested that RJ application should play a crucial role in balancing public and individual interests, protecting both perpetrators and victims, taking into account actions and intentions, ensuring legal certainty while striving for justice, harmonizing written law with societal norms, and upholding both national and universal values, as well as human rights and responsibilities. Based on this, we must understand together that RJ application in Indonesia is not utopian but rather a logical consequence of our nation applying and positioning Pancasila as national ideology and meta-norm providing basic social values, making collective consciousness in its application essential.

In a comparative approach framework, analysis of countries adopting civil law systems shows that restorative justice (RJ) regulations have obtained formal recognition at the legislative level. This can be clearly observed in criminal law systems in the Netherlands and

Germany, both having codified legal traditions like Indonesia. In the Netherlands, RJ provisions are explicitly regulated in the Dutch Code of Criminal Procedure, specifically in Article 51h. This provision affirms several important principles: (1) public prosecutors must encourage police to immediately provide information to victims and perpetrators regarding RJ procedures; (2) courts may consider RJ agreement results in imposing sentences or criminal measures; (3) prosecutors must facilitate RJ procedures after obtaining victim consent; and (4) further technical provisions are regulated in administrative regulations. Additionally, RJ in the Netherlands is applied broadly, covering all types of crimes without categorical exceptions, emphasizing crimes involving concretely identifiable victims. RJ can also be applied to all parties, both adults and children aged 12 to 18 years, as well as youth up to age 23 through adolescent criminal law, provided perpetrators acknowledge their actions and all involved parties provide voluntary and informed consent. This process can occur throughout all stages of the criminal justice system, from police investigation, prosecution, trial, to execution stages.

The disharmony in regulations related to restorative justice requires legal discovery, which is a logical consequence of the provision that not all law can be found in statutes, thus requiring the exploration of other legal sources such as doctrine, jurisprudence, treaties, and customs. Mandatorily, in the context of criminal law, legal discovery is indeed possible as regulated in Law No. 48 of 2009 concerning Judicial Power, which states that judges are obligated to explore, follow, and understand legal values and the sense of justice in society. This differs from civil cases that are bound by the postulate "*secundum allegat judicare*" or judges following the will of the disputing parties. This legal discovery is supported by the adage "*Argumentum ab auctoritate est fortissimum in lege*," meaning arguments formulated based on comprehensive knowledge are the strongest before the law. One method and concept of legal discovery is through legal construction via legal narrowing or "*rechtsverfijning*" or legal refinement, based on the principle that the application of norms in legislation is too broad and abstract in nature.

Doctrinally, restorative justice is defined as a method of resolving criminal cases by involving both perpetrators or their families and victims or their families, working together to find just solutions to restore the original state. Furthermore, according to Tony Marshall as cited by Bambang Waluyo, the concept of restorative justice emphasizes the involvement of all parties to collectively solve criminal problems and form an agreement regarding the adverse consequences of an offense. Additionally, restorative justice views crime as a violation against society and reciprocal relationships among community members. Such violations create obligations, and justice involves victims, offenders, and community members in setting things right properly, focusing on restoration for victims regarding both material and immaterial losses for which the perpetrator is responsible.

This concept is identical to out-of-court settlement, often called Alternative Dispute Resolution (ADR). In the context of criminal procedural law, this concept is known as "*Afdoening Buiten Process*" regulated in Article 82 of the Criminal Code regarding the elimination of prosecutorial authority for violation cases threatened only with fines, which are dismissed if the maximum fine amount and incurred costs are voluntarily paid if prosecution has begun. *Afdoening Buiten Process* (ABP) has significant differences from restorative justice: first, ABP provisions only apply to violation cases threatened with fines, while restorative justice applies to both violations and crimes; second, ABP only eliminates examination at the prosecution level, while restorative justice is pursued at all levels, both pre-adjudication and during adjudication processes.

Supreme Court Regulation (Perma) No. 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice introduces a fundamentally different approach compared to previous regulations. First, this Perma explicitly affirms that restorative justice is not intended to eliminate criminal responsibility, unlike Attorney General Regulation No. 15 of 2020 and Police Regulation No. 8 of 2021, which allow termination of legal processes at investigation or prosecution stages. Second, this Perma emphasizes restoration for victims, relationships between defendants and victims/society, and encourages defendant accountability while avoiding imprisonment, especially for children.

Third, Perma 1/2024 is oriented toward post-crime restoration, accommodating the interests of victims, perpetrators, and their families in a balanced manner. The principle of "the best interest of the child" is strongly integrated, in line with Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. Even if diversion fails, judges are still required to consider restorative approaches. Although this Perma's scope is broader than other regulations, its application remains subject to applicable criminal procedural law as affirmed in Article 4 of the Perma.

As quoted from the Harvard International Review, RJ represents an alternative view from the predominant legal system that is adversarial and retributive. According to the article, RJ emphasizes the importance of reconciliation and overall healing of the community rather than punishment. In areas where law enforcement has led to land theft and high rates of incarceration, restorative justice principles have been utilized to steer away from the failing court system. Based on this, RJ serves as a foundation to avoid judicial systems deemed ineffective in reconciliation processes and ensuring community stability is reestablished. Additionally, many views consider that RJ application makes criminal law enforcement too lenient and will result in many potential subsequent crimes. However, it should be emphasized that "tough on crime" approaches, as in retributive justice concepts, according to the Harvard International Review, traditional methods of preventing crime and reducing repeat offenses have not been successful, indicating that it is now necessary to explore alternative approaches.

The criminal approach system using RJ may sound utopian because RJ is a form of insurgency, according to the Handbook of Restorative Justice, restorative justice can be seen as a type of rebellion as it challenges the authority of the state and power structures in its approach to resolving conflicts and determining which harms should be addressed in a restorative manner. This insurgency context arises because RJ's approach differs from subjective criminal law, which emphasizes the state's right to punishment for prosecution, conviction, and execution of punishment that essentially lies within formal criminal law scope. RJ in this context responds to crimes with non-violent and restorative approaches and views all crimes as collective matters to be resolved restoratively, while in the state context, there are limitations on crimes that can be resolved collectively. This context makes RJ insurgent because it views everything as collective consciousness, according to the words of Sullivan & Tift (2007), if one person experiences harm, everyone is affected to some extent. It is the collective responsibility of all individuals to rectify such situations because everyone played a role in causing the harm, whether actively or passively. In their view, all individuals are co-creators of the harm, contributing directly or indirectly to the suffering experienced by that individual.

Referring to modern criminal law context as proposed by Merkel, quoted by Eddy Hiariej: "*Der strafe kommt eine subsidiare stellung zu*" (criminal law always holds a subsidiary position to other legal remedies). Furthermore, the state is obligated to address legal violations or injustices that cannot be adequately handled by other legal means. Thus, criminal punishment is and must always be viewed as "*ultimum remedium*." The context in modern

criminal law influencing neo-classical thought actually legitimizes the RJ approach as the primary means of addressing crimes before ultimately using criminal law as a last resort. The 2023 Criminal Code is designed to prioritize the use of Restorative Justice by emphasizing the need to balance public and individual interests, protect both perpetrators and victims, consider actions and intentions, uphold legal certainty while ensuring justice, maintain the harmony between written and societal laws, and respect both national and universal values, as well as human rights and responsibilities. Based on this, we must understand together that RJ application in Indonesia is not utopian but rather a logical consequence of our nation applying and positioning Pancasila as national ideology and meta-norm providing basic social values, making collective consciousness in its application essential.

In a comparative approach framework, analysis of countries adopting civil law systems shows that restorative justice (RJ) regulations have obtained formal recognition at the legislative level. This can be clearly observed in criminal law systems in the Netherlands and Germany, both having codified legal traditions like Indonesia. In the Netherlands, RJ provisions are explicitly regulated in the Dutch Code of Criminal Procedure, specifically in Article 51h. This provision affirms several important principles: (1) public prosecutors must encourage police to immediately provide information to victims and perpetrators regarding RJ procedures; (2) courts may consider RJ agreement results in imposing sentences or criminal measures; (3) prosecutors must facilitate RJ procedures after obtaining victim consent; and (4) further technical provisions are regulated in administrative regulations. Additionally, RJ in the Netherlands is applied broadly, covering all types of crimes without categorical exceptions, emphasizing crimes involving concretely identifiable victims. RJ can also be applied to all parties, both adults and children aged 12 to 18 years, as well as youth up to age 23 through adolescent criminal law, provided perpetrators acknowledge their actions and all involved parties provide voluntary and informed consent. This process can occur throughout all stages of the criminal justice system, from police investigation, prosecution, trial, to execution stages.

Meanwhile, in Germany's criminal law system, there is the concept of *Täter-Opfer-Ausgleich* (TOA) or *Offender-Victim Arrangement* (OVA), which substantially regulates mediation between perpetrators and victims as part of the out-of-court settlement mechanism. TOA regulations have been institutionalized in the German legal system, where legislators have established several formal requirements for conducting such mediation, including mutual consent from both parties, the perpetrator's willingness to take responsibility, and the relevance of the crime that allows for restoration of social relationships between perpetrator and victim. Both countries demonstrate that RJ is not only positioned as an alternative instrument but also as an integral part of the criminal justice system that promotes participatory justice and restoration principles. This comparison provides an argumentative basis that Indonesia, which also adopts the civil law system, has strong foundations to adopt and develop RJ in the national criminal law sphere more comprehensively and systematically. The main requirements are:

- a. Reconciliation Efforts: The perpetrator must demonstrate genuine efforts to achieve peace with the victim.
- b. Restitution: The perpetrator must provide full or substantial compensation for damages caused, or make serious efforts to provide such compensation.

These efforts are typically undertaken when victims refuse to participate in perpetrator-victim mediation. As a legal consequence, this provision gives courts the opportunity to reduce sentences or, in certain cases where the maximum criminal threat is imprisonment up to one year or fines up to 360 daily units, to free perpetrators from criminal charges. However, in

practice, most violations handled through mediation are minor to moderate violations. Minor violations typically are not included in mediation because the principle of legal proportionality provides possibilities for resolution without formal intervention. As an alternative, Article 153a of the German Criminal Procedure Code allows public prosecutors to discontinue criminal proceedings under certain conditions, such as when violations are considered minor and there is no public interest in prosecution. Furthermore, Article 46b of the German Criminal Code gives courts the authority to reduce sentences or even free perpetrators from criminal charges if they voluntarily provide significant information to reveal or prevent serious crimes related to their actions.

The implementation of restorative justice (RJ) in the Netherlands and Germany shows that this model can be integrated into various stages of the criminal justice process, both pre-adjudication and adjudication. In the Netherlands, RJ is applied broadly without restrictions on types of crimes. Conversely, in Germany, RJ implementation is limited to minor and moderate crimes and is excluded when there are significant public interests. Based on this comparison, there are two main aspects that need attention in RJ implementation in Indonesia: (1) identification of legal process stages that allow RJ implementation; and (2) categorization of crimes suitable for resolution through RJ approaches.

Normatively, the Juvenile Criminal Justice System Law (UU SPPA) is the first regulation in Indonesia that explicitly adopts the RJ concept. Through an original intent approach, it can be understood that the main purpose of UU SPPA is to encourage diversion mechanisms based on restorative justice. This mechanism emphasizes resolution of juvenile criminal conflicts through active participation of perpetrators, victims, and society with the aim of improvement, reconciliation, and restoration without prioritizing retaliation.

Therefore, the RJ process should be able to refer to the concept of UU SPPA which seeks diversion at the investigation, prosecution, and court examination levels, so that *mutatis mutandis*, these provisions can also be applied to Restorative Justice for adults. Additionally, in RJ implementation, attention must also be paid to Article 12 of UU SPPA, which mandates that diversion agreement results must be submitted to the district court according to its legal jurisdiction within a maximum deadline of 3 (three) days from when the agreement is reached to obtain a court determination. This provision must also be mandatorily applied to adult RJ approaches, because fundamentally, it represents a legal concept stating that "a legal system in which rules are clear, well-understood, and fairly enforced," with elements of legal certainty within it, while simultaneously containing principles of legality, predictability, and transparency (Mochtar & Hiariej, 2021).

Furthermore, court determinations are fundamentally necessary as part of an integrated justice system or Integrated Criminal Justice System which, according to Atmasasmita (2010), is based on several points:

- a. Emphasis on coordination and synchronization of criminal justice components (police, prosecution, courts, and correctional institutions)
- b. Supervision and control of power use by criminal justice components
- c. Effectiveness of crime prevention systems takes priority over case resolution efficiency
- d. Use of law as an instrument to strengthen the administration of justice

Court decisions hold significant importance as they carry out the power granted to them under the principle of "In the Name of Justice Based on Almighty God," in accordance with Article 29 of the 1945 Constitution of the Republic of Indonesia. This article states that the state is founded on Almighty God and ensures the freedom for individuals to practice their religion and beliefs.

Restorative Justice (RJ) offers a different perspective compared to the traditional criminal justice system, focusing on repairing social connections between offenders, victims, and the community. Sullivan & Tifft (2007) affirm that RJ views the suffering of all parties as collective concern, different from the state which is selective in responding to such suffering. Therefore, normatively, RJ should ideally be applicable to all types of crimes without distinguishing their seriousness level (Dubber, 2014).

However, Nils Christie in "Conflicts as Property" affirms that pure RJ is not suitable for crimes involving value conflicts (conflicts of value), such as murder and rape, because they contradict society's normative order. RJ is more appropriately applied to property conflicts or minor crimes, where compensation-based resolution is considered more efficient and reduces the burden of punishment (Sullivan & Tifft, 2007). In Indonesia, RJ implementation is explicitly regulated for the first time in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), which positions RJ as an integral part of the diversion process. This approach prioritizes juvenile case resolution through mediation involving perpetrators, victims, families, and society, with the main goal of restoration, not retaliation. Thus, RJ implementation must consider the nature of crimes, violated social values, and community capacity to actively participate in the restoration process (Sullivan & Tifft, 2007).

RJ use is often limited by the level of crimes, because some crimes classified as serious produce widespread psychological effects not only on victims but on society as a whole. However, Sherman, L. W. and Strang, H. stated in a research conducted by the International Centre for Criminal Law Reform and Criminal Justice Policy that restorative justice may have a more profound healing effect on serious offenders compared to others. Additionally, it holds more weight for the community when violent crimes are in question. The belief that restorative justice is only effective for less serious offenses is incorrect, as it can be successful even in cases of serious crimes or with perpetrators deeply involved in criminal behavior patterns. Furthermore, it can be applied effectively in situations where there was a prior relationship between the offender and the victim, even in cases involving violence.

It should be emphasized that from this research, RJ can be effectively applied only if there is a relationship between perpetrator and victim. The same research also states that professionals and researchers have debated the advantages of using RJ in handling serious crime cases, such as domestic violence, child abuse, and gender-based violence. Additionally, there are arguments stating that empowerment experiences gained through RJ can balance feelings of humiliation, loss of power, and loss of control that often occur in criminal justice processes.

RJ implementation in serious crime cases is done carefully, especially in sexual violence or child abuse cases, due to rejection from related professionals. These cases raise safety concerns and other issues, requiring careful assessment by experts. Two main problems identified are: first, the tendency to exaggerate risks posed by perpetrators, making professionals too cautious in considering dialogue and restoration. Second, fear of negative impacts of restorative justice on victims, which could make professionals make decisions on behalf of victims, or victim salvation.

Based on this explanation, RJ implementation cannot *mutatis mutandis* be applied to all cases; it needs to be viewed in *concreto*. Because we are conducting legal construction here, the task of a legal principle is to implement justice, utility, and legal certainty. Justice is the basic value, utility is the practical value, and certainty is the instrumental value. Nevertheless, justice and utility on one side often conflict with legal certainty. If there is conflict between justice-utility and legal certainty, then justice-utility must take priority. This is based on the old maxim that what is considered just and good is the law, or "*aequum et bonum est lex legum*

(Mochtar & Hiariej, 2021)." Jeremy Bentham, as the figure who proposed utility theory, stated that law aims to realize utility. The content of legal regulations must guarantee the greatest happiness for the greatest number of people (Mochtar & Hiariej, 2021).

Based on Article 7 paragraph (2) of the Juvenile Criminal Justice System Law (UU SPPA), diversion implementation is limited only to crimes threatened with imprisonment below seven years and not repeat offenses. This limitation shows that the restorative justice (RJ) approach in the form of diversion is focused on minor crimes, as affirmed in Article 9 letter a of UU SPPA which indicates that the lower the criminal threat, the higher the diversion priority. Thus, serious crimes such as murder or drug trafficking are not included in the diversion scope.

This normative limitation reflects the influence of absolute theory in classical thought that emphasizes the importance of retaliation for crimes as a form of eliminating legal disorder. This thinking is reflected in Herbart's view that perpetrator suffering must be proportional to victim suffering. However, this paradigm is beginning to shift in the 2023 Criminal Code which adopts a neo-classical approach. Article 51 of the 2023 Criminal Code emphasizes that punishment is not only for deterrence but also for rehabilitation, conflict resolution, and social restoration. Therefore, in the context of modern criminal law, broader RJ approaches need consideration, not merely limited by criminal threats but also based on perpetrator characteristics, social impact, and potential for victim and perpetrator restoration.

The adoption of neo-classical thought in the 2023 Criminal Code reaffirms retributive principles as the basis of punishment, which functions to foster remorse and free guilt in convicts, as regulated in the aforementioned Article. However, in punishment implementation, Article 54 paragraph (1) of the 2023 Criminal Code mandates judges to consider various subjective and objective aspects including forms of guilt, motives, mental attitudes, planning, methods of crime, post-crime attitudes, as well as social and economic conditions of perpetrators, punishment effects on perpetrators' futures, impacts on victims, victim forgiveness, and legal values and justice prevailing in society.

Furthermore, Article 54 paragraph (2) adopts the principle of "*recelelijce pardon*" or judicial pardon which provides discretionary space for judges not to impose punishment if acts are classified as minor and based on considerations of justice and humanity, including considering perpetrator personal circumstances and conditions during and after crimes are committed.

Nevertheless, Restorative Justice (RJ) implementation in the 2023 Criminal Code must be strictly limited, especially for crimes with special characteristics, namely those with severe victimization impacts, transnational organized nature, special criminal procedural rules, deviations from general material criminal law principles, involvement of special law enforcement institutions (such as KPK, BNN, Komnas HAM), international convention support, and crimes that are highly reprehensible (*super mala per se*) and receive strong condemnation from society. These limitations are important to maintain balance between restorative justice and protection of public interests and victims. Thus, the 2023 Criminal Code integrates neo-classical approaches oriented toward individual justice and humanity, while still placing firm boundaries on RJ implementation scope to not ignore substantive justice principles and victim protection.

Articles 70 paragraphs (1) and (2) of the 2023 Criminal Code explicitly limit imprisonment sentences by considering various mitigating conditions. In paragraph (1), imprisonment sentences should be avoided as much as possible if conditions such as defendants being children, elderly (over 75 years), first-time offenders, insignificant victim losses, or defendants having provided compensation are met. Additionally, subjective factors

such as unconsciousness of crime consequences, strong influence from other parties, or victim encouragement are also considerations. Psychological and social aspects, including defendant personalities believed not to repeat crimes and potential suffering caused to defendants and their families, also become bases for avoiding imprisonment. Non-correctional guidance expected to succeed is prioritized, as long as it does not reduce crime severity.

However, paragraph (2) establishes limitative exceptions, namely imprisonment of five years or more, special minimum criminal threats, crimes highly dangerous to society, and crimes harmful to state finances or economy. These exceptions indicate that despite mitigating conditions, legal interests and public interests may require imprisonment sentences.

Thus, Article 70 of the 2023 Criminal Code reflects proportionality principles and restorative justice in criminal sanctions, where imprisonment sentences are not the only choice but are considered based on perpetrator characteristics, crime impacts, and social context comprehensively, except in cases explicitly excluded for public and state interest protection.

Referring to the aforementioned Article, RJ implementation for crimes with imprisonment threats of 5 (five) years or more cannot be done, including crimes with special characteristics as previously explained. Additionally, it is interesting to note Supreme Court Regulation No. 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice, where RJ cannot be conducted if there are Power Relations within it, and as regulated in Article 1 number 10 of the aforementioned Perma, power relations are hierarchical relations, inequality and/or dependency of social, cultural, knowledge/educational, and/or economic status that creates power in one party over another, thus harming parties with lower positions. This provision is very important to be applied in future RJ regulations, aiming to prevent position disparities between crime perpetrators and victims, which would psychologically impact victims who have no choice but to accept peace requests from crime perpetrators.

Based on studies of various laws and regulations as listed in Table 2, and through legal construction approaches, common threads in implementing restorative justice principles can be identified. Restorative justice is an alternative approach in criminal case resolution that emphasizes victim loss restoration and perpetrator responsibility, not merely punishment. The implementation of restorative justice principles is normatively limited to crimes meeting certain criteria, namely: (a) not repeat crimes (recidivism); (b) agreement exists between perpetrators or their families and victims or their families, as long as there are no power relations; (c) proportional loss compensation has been made as regulated in Supreme Court Regulation No. 1 of 2022, Government Regulation No. 43 of 2017, and Government Regulation No. 7 of 2018 jo. Government Regulation (PP) No. 35 of 2020; (d) not including extraordinary crimes categories such as corruption, terrorism, or serious human rights violations; and (e) having imprisonment threats below five years.

Procedurally, restorative justice can be implemented throughout all criminal justice system stages, from pre-adjudication, investigation, prosecution, to adjudication. RJ agreement implementation must be documented in official reports and receive determinations from Chief Judges in respective legal jurisdictions (Perma No. 4 of 2014 and Attorney General Regulation No. 15 of 2020).

However, based on analysis of Table 2, regulatory disharmony governing RJ implementation is evident. Several provisions are regulated in government regulations or institutional regulations, whose positions are lower than Laws, as regulated in Article 7 paragraph (1) of Law No. 12 of 2011 concerning Formation of Laws and Regulations. Except

for Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), which as *lex specialis* only regulates restorative justice for juvenile crimes.

This situation creates legal uncertainty and potential overlapping authority among law enforcers in implementing restorative justice. Therefore, codification of restorative justice principles in the form of separate Laws is needed to apply generally (*lex generalis*) and be binding throughout all criminal justice system stages. The urgency of forming RJ Laws not only functions to overcome regulatory disharmony but also as transformative steps in the national criminal law system. This approach can provide space for victim restoration as part of punishment goals, replacing retributive paradigms that have been dominant and pay little attention to rights and sustainability of crime victims' lives.

#### 4. Conclusion

Normatively, restorative justice is scattered across various laws and regulations at the levels of investigation, prosecution, and trial, which leads to disharmony and a risk of legal uncertainty. This situation has implications for the fulfillment of the rights of victims or their families, as well as the rehabilitation of offenders. The enactment of the 2023 Indonesian Criminal Code (KUHP) offers hope for the implementation of restorative justice, shifting the paradigm from the classical school of criminal law which is primarily focused on secular retribution to a modern school perspective as embraced by the new KUHP. This modern approach emphasizes the offender's personal circumstances and, in its original intent, also stresses the restoration of the victim or victim's family as a consequence of the criminal act.

However, the concept of restorative justice is not specifically regulated in the said law (UU a quo), thereby necessitating legal discovery through legal construction, using methods such as *rechtsverfijning* (legal refinement) and comparative study, particularly in civil law countries like the Netherlands and Germany. By applying the *rechtsverfijning* method, one can trace a common thread between the doctrines that definitively explain restorative justice and the provisions of the regulations issued by law enforcement institutions. These provisions still largely adhere to the classical school and show significant differences, hence the need for a new paradigm aligned with the 2023 KUHP, which definitively leans toward the neo-classical school.

Through legal refinement and comparative methods, several criteria can be identified for determining which criminal acts are eligible for a restorative justice (RJ) approach. These include cases that are not repeat offenses (recidivism), involve mutual agreement between the offender or their family and the victim or the victim's family provided there is no imbalance of power between the parties and instances where compensation proportionate to the victim's losses has been provided, in accordance with amounts regulated by separate legislation. Furthermore, the RJ approach is generally considered inappropriate for extraordinary crimes, crimes with specific or aggravated characteristics, or offenses that pose significant harm or danger to society. Eligibility is also typically limited to offenses punishable by less than five years of imprisonment.

To ensure the integration of RJ within the broader criminal justice system, any restorative justice agreement must be formalized through a decision issued by the Chief Judge of the District Court within the relevant jurisdiction. Given the current legal vacuum surrounding the implementation of RJ, it is imperative for the government to enact specific legislation that provides technical and procedural guidelines. Such regulation is essential to ensure legal certainty and consistency in the application of restorative justice.

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