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## Integration of Legal Certainty and Restorative Justice in the Phases of General Criminal Investigation : An Examination of Law Enforcement by the Indonesian National Police

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**Abstract.** This research aims to elucidate the significance of restorative justice during the investigative phase and the legal assurance for investigators who apply restorative justice in cases of party noncompliance with the agreement. The author employs normative legal research, which involves the collection and analysis of legal documents pertinent to the subject at hand. This legal research employs the statute and case approaches. This writing employs primary and secondary legal materials. This article conducts prescriptive research. The findings of this research indicate that, initially, the concept of restorative justice during the investigative phase prioritizes substantive justice over procedural justice. We seek to establish substantive justice as the cornerstone of our rule of law, as it presents a promising opportunity for enhancing national well-being. The rule of law in Indonesia ought to foster the well-being of its citizens, and for this purpose, the notion of restorative justice, synonymous with substantive justice, is selected. Secondly, investigators lack legal clarity while implementing restorative justice if the participating parties violate the agreement. It may evolve into a complex issue when investigators seek to address broad criminal charges via restorative justice. The restorative justice concept is not acknowledged in general criminal offenses, although being governed by the Police Chief Regulation. Nonetheless, it is perceived that it still fails to offer legal certainty to investigators in the event of a future breach of contract or if the reported party defaults on their commitment or repeats their conduct.

**Keywords:** Legal, Certainty, Police, Regulation, Law.

### 1. INTRODUCTION

The criminal justice system is fundamentally a framework established to sustain equilibrium in safeguarding the interests of all stakeholders concerned. This system safeguards the interests of the state, society, and individuals, encompassing both criminals and crime victims. The criminal justice system operates to guarantee that the rights of all parties are fairly evaluated and accommodated, so facilitating the realization of substantive justice throughout the legal process.

The normative perspective on the criminal justice system regards its four primary components—the police, the prosecutor's office, the courts, and penal institutions—as entities that execute legislation. These four institutions function as an integral unit within the law enforcement framework. Each entity has a designated function in guaranteeing the consistent enforcement of relevant laws in alignment with the principles of justice. This method underscores the significance of regulatory duties and law enforcement in preserving societal order.

Conversely, the managerial or administrative perspective of the criminal justice system perceives these institutions as organizational entities with defined structures and operational processes. The interrelations among these institutions are both horizontal and vertical, aligned with the existing organizational framework. This approach underscores the significance of collaboration and operational efficiency among institutions to guarantee the correct functioning of the criminal justice system. This approach evaluates the system's success based on organizational performance and implementation efficiency.

Integrating these two methodologies enables the criminal justice system to operate at peak efficiency. The normative method establishes a robust legal framework, whereas the management approach guarantees the ordered and effective implementation of institutional responsibilities. From a broader viewpoint, the integration of these two techniques can enhance the criminal justice system in fulfilling its primary objectives: ensuring equitable law enforcement and safeguarding all members of society.

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of the criminal justice system. This technique evaluates the system's success by examining the organization's performance and the efficacy of its execution.

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The criminal justice system is fundamentally a framework established to uphold the interests of all parties concerned. This system safeguards the interests of the state, society, and individuals, encompassing both criminals and crime victims. The criminal justice system operates to provide the equitable consideration and accommodation of all parties' rights, so facilitating the realization of substantive justice throughout the legal process.

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Integrating these two methodologies enables the criminal justice system to operate at its highest efficiency. The normative method establishes a robust legal framework, whereas the management approach guarantees the ordered and effective implementation of institutional responsibilities. From a broader viewpoint, the integration of these two techniques can enhance the criminal justice system in fulfilling its primary objectives: ensuring equitable law enforcement and safeguarding all segments of society.

The criminal justice system is fundamentally a mechanism aimed at preserving equilibrium in safeguarding the interests of all parties involved. This system not only protects the interests of the state and society but also the interests of individuals, including offenders and crime victims. The criminal justice system operates to provide the equitable consideration and accommodation of all parties' rights, so facilitating the realization of substantive justice throughout the legal process.

The normative perspective on the criminal justice system regards its four primary components—the police, the prosecutor's office, the courts, and penal institutions—as entities that execute legislation. These four institutions function as an integral unit within the law enforcement framework. Each possesses a distinct function in guaranteeing that the relevant laws are enforced uniformly and in alignment with the ideals of justice. This methodology underscores the significance of regulatory duties and law enforcement in preserving societal order.

Conversely, the management or administrative perspective of the criminal justice system perceives these institutions as organizational entities with defined structures and operational systems. The interrelations among these institutions are both horizontal and vertical, aligned with the existing organizational structure. This approach underscores the significance of collaboration and operational efficiency among institutions to guarantee the correct functioning of the criminal justice system. This technique evaluates the system's success by examining the organization's performance and the efficacy of its execution.

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## **2. RESEARCH METHOD(S)**

The criminal justice system is fundamentally a framework aimed at preserving equilibrium in safeguarding the interests of all stakeholders concerned. This system safeguards the interests of the state and society, as well as those of people, encompassing both criminals and crime victims. The criminal justice system operates to guarantee that the rights of all parties

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Conversely, the managerial or administrative perspective of the criminal justice system perceives these institutions as management entities characterized by distinct structures and operational systems. The interrelations among these institutions are both horizontal and vertical, consistent with the existing organizational framework. This approach underscores the significance of collaboration and operational efficiency among institutions to maintain the correct functioning of the criminal justice system. This technique evaluates the system's success by examining the organization's performance and the efficacy of its execution.

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### **3. FINDINGS AND DUSCUSSION**

Criminal law serves as a mechanism to attain specific aims, which are then articulated through concepts or the substance of legislation enacted by politicians. In formulating criminal legislation, endeavors are undertaken not only to guarantee enforceability but also to incorporate the objectives of punishment, which include societal protection and offender rehabilitation. Punishment serves not as the final objective, but as a mechanism to establish equilibrium between the interests of the safeguarded community and the offender's requiring rehabilitation.

Barda Nawawi Arief says that criminal punishment serves as a mechanism to attain equilibrium between two primary objectives: the safeguarding of society and the rehabilitation of the offender. In this perspective, criminal law encompasses not only the enforcement of regulations but also the rehabilitation and reform of offenders, ensuring they do not recidivate and can reintegrate as productive members of society. Consequently, punishment ought to be regarded as a measured approach that emphasizes societal safety while acknowledging the rights of the criminal, who also requires rehabilitation.

The balance is also evident in sentencing circumstances, which, per criminal law principles, must adhere to the monodualistic principle, specifically the equilibrium between societal interests and individual rights. Punishment should be evaluated not just from an objective standpoint, focusing on the perpetrator's actions that hurt society, but also by considering subjective aspects, including the perpetrator's intent and mental state. Consequently, sentencing is not a uniform or mechanical process; it must be tailored to the specific circumstances and objectives, particularly the equilibrium between social justice and individual rehabilitation.

This principle illustrates that criminal law encompasses two facets that must be meticulously balanced: justice for the injured society and justice for the offender requiring rehabilitation. Consequently, in the formation of criminal legislation, legislators must ensure that each decision is made with equitable and proportional consideration of both sides. Effective criminal law not only administers punishment but also directs offenders towards constructive transformation, ultimately aiming to foster a safer and more harmonious community.

The objectives of punishment encompass numerous significant elements, as elucidated by G. Peter Hoefnagels, subsequently cited by Muladi and Barda Nawawi Arief. A primary purpose of punishment is to reconcile the conflict between the offender and society or the harmed victim. This penal process aims to mitigate tensions and promote the attainment of agreements among the relevant parties, facilitating the resolution of problems in a just way and in compliance with the applicable legislation. The settlement of this dispute affects both the perpetrator and the community impacted by the illegal act.

Furthermore, another objective of punishment is to deter lawbreakers and maybe others from committing acts that contravene the law. In this instance, punishment functions to deter the perpetrator and also to prevent society from deviating from legal norms. This objective

corresponds with the aspiration of fostering enhanced legal compliance within society, hence perhaps diminishing the incidence of legal infractions in the future.

The restorative justice strategy offers an alternative to criminal prosecution, emphasizing the direct involvement of the culprit, victim, and community in resolving criminal matters. Restorative justice prioritizes the restoration of the connection between the perpetrator and the victim, alongside the remediation of the harm caused by the criminal act, rather than solely emphasizing punishment of the offender. This strategy engages all stakeholders in pursuing solutions that prioritize restoration above mere punishment, deemed more effective in fostering awareness and facilitating long-term behavioral change.

Despite ongoing theoretical debates around restorative justice, an increasing number of countries are incorporating it into their legal frameworks. Restorative justice is seen as a novel concept that provides a more compassionate method for addressing criminal matters. Involving both the culprit and the victim in the resolution of criminal cases aims to establish a more equitable and durable solution, rather than solely depending on a punitive penal system.

The implementation of restorative justice influences not only theoretical frameworks but also legal regulations and law enforcement actions throughout multiple nations. Certain nations have embraced this notion to enhance the efficacy of the criminal justice system and to mitigate discontent with the current justice system's performance. Restorative justice is regarded as a potential solution to numerous issues in law enforcement, particularly the discontent with sentence outcomes that are viewed as ineffective for both offenders and society at large.

Djisman Samosir contends that investigation is fundamentally a law enforcement endeavor aimed at the limitation and enforcement of citizens' rights. The primary aim is to reinstate the disturbed equilibrium between personal interests and societal interests. The inquiry seeks to uphold and establish a secure and organized environment, ensuring the respect of individual rights while considering the interests of the broader community. It is anticipated that investigations conducted by legal protocols will foster a balance between safeguarding individual rights and maintaining public order.

Investigation, as a fundamental component of criminal law enforcement, is crucial in securing justice for all involved parties. The investigative process must be executed transparently, precisely, and impartially to ensure the results are accepted by all stakeholders. The investigation must comply with relevant rules and regulations to prevent the misuse of authority that could adversely affect certain individuals or groups. Explicit and stringent

legislative stipulations establish a robust framework for investigators to execute their responsibilities impartially.

Moreover, the significance of inquiries grounded in this legislation pertains to the principles of justice and human rights. Noncompliance by law enforcement with established laws can undermine the legitimacy of the court system. Consequently, a thorough investigation must be conducted, emphasizing the principle of legality, wherein all actions undertaken by law enforcement personnel must remain within the confines of legal power.

Djisman Samosir asserted that an inquiry transcends a mere administrative procedure; it is a crucial measure in guaranteeing the equitable and legal enforcement of the law. In any criminal investigation, detectives must consistently comply with relevant laws and prioritize people's rights. It is essential to guarantee that the legal process operates with transparency and justice, while also fostering a sense of security and public confidence in the current legal system.

The resolution of criminal cases via a restorative justice method emphasizes the transformation of the perpetrator's misbehavior through personal and social reparations. The primary objective in this case is not merely to administer punishment, but to restore the relationships among the persons involved in the criminal incident. This method emphasizes restoration and reconciliation, aiming to foster harmony among the concerned parties and mitigate the adverse effects of the criminal conduct.

The application of restorative justice is reflected in the altered attitudes of the affected parties, united in the objective of attaining enhancement. This can be demonstrated through activities that demonstrate a shift in perspective, with endeavors to restore relationships adversely affected by the crime. The stakeholders engaged in this process, both directly and indirectly, are the perpetrator, the victim, and the impacted community. All these stakeholders contribute to identifying the optimal way to mitigate the consequences stemming from the crime.

The significance of collaboration among the concerned parties is evident in the process of collectively identifying the issue. Engaging in open dialogues and investigating the underlying issues allows the interested parties to attain a more profound comprehension of the factors contributing to the illegal act. This method promotes the pursuit of remedies that are both retributive and restorative, prioritizing the restoration of the harm inflicted by the

perpetrator's actions. Furthermore, restorative justice facilitates an environment for victims to achieve healing and attain justice in a more compassionate way.

Restorative justice, as part of reform initiatives, mandates that the affected parties address each other's needs, either through victim compensation or perpetrator rehabilitation efforts. This procedure seeks to rehabilitate the social and psychological states of the concerned individuals and to persuade the perpetrator to assume accountability for their acts. Restorative justice beyond mere resolution of criminal cases; it also aims to foster enhanced social cohesion among the society at large.

Eva elucidated that, in theory, there are three models that delineate the relationship between restorative justice and the criminal justice system. The initial concept is integrated within the criminal justice system itself. The Indonesian criminal justice system is segmented into multiple phases. The pre-adjudication stage is where restorative justice is implemented during the initial phase of the criminal justice process. At this level, resolution typically include peaceful interventions by law enforcement, with mediation serving as a method for addressing criminal charges. In instances involving minors, law enforcement is granted the ability to undertake preliminary measures prior to advancing actions against the suspect. These tactics encompass the issuance of warnings, both orally and in writing, alongside the development of diversion programs under police discretion, intended to prevent juveniles from entering more formal criminal justice systems.

The second model involves the application of restorative justice during the adjudication phase, specifically in the trial process. In the previous paradigm, judicial institutions were frequently perceived as solely executing procedural functions, so inhibiting the establishment of more profound justice. The public frequently expresses dissatisfaction over this issue, particularly in nations that follow the civil law system, which emphasizes the principle of legality in both formal and substantive legislation. Consequently, judges possess little latitude to exercise creativity in devising remedies that address the community's sense of fairness. The use of restorative justice during the adjudication phase allows for diversion to be executed not only by the police but also by judges in their decisions. Judges may modify the kind of punishment or impose alternative sanctions that are more appropriate for the circumstances of both the offender and the victim, while also facilitating the reconciliation process.

The third model involves the use of restorative justice during the post-adjudication phase, typically following the verdict. During this phase, programs with a restorative justice framework complement the traditional criminal punishments rendered in the judgment. The program does not supplant the sentence; rather, it seeks to enhance the socioeconomic conditions of the culprit, the victim, and the community following the issuance of the conviction. Thus, this model provides an opportunity for the perpetrator to improve themselves and take responsibility for their actions through a more humane and rehabilitative process, while still respecting the applicable legal aspects.

In addition, Eva also proposed a second model that places restorative justice outside the criminal justice system through other institutions or organizations. This concept gives an alternative perspective to the formal criminal justice system, wherein restorative justice seeks to mitigate the severity of criminal law, commonly referred to as "soft justice." This model emphasizes a more voluntary and informal case settlement process, prioritizing conflict resolution above formal and stringent legal procedures. McCold's perspective endorses this assertion by claiming that pure restorative justice is superior due to its voluntary nature, facilitating a more tranquil conclusion without necessitating the involvement of the formal criminal court system.

The final paradigm discussed is the application of restorative justice beyond the criminal justice system, while still incorporating law enforcement. In this paradigm, while the resolution process is not wholly contained inside the criminal justice system, law enforcement continues to participate in endeavors to guarantee the attainment of justice. This permits adaptability in case resolution through a more compassionate methodology, while being compliant with the legal framework. Law enforcement acts as a facilitator in this process, helping various parties to reach an agreement that benefits all involved. Consequently, restorative justice can be implemented more extensively, even beyond the traditional criminal justice framework.

The Indonesian National Police (Polri) has released Chief of Police Circular Letter Number: SE/8/VII/2018 concerning the Implementation of Restorative Justice in Criminal Case Resolution, which seeks to govern the application of restorative justice as an alternative method for resolving criminal cases. This circular indicates that criminal cases suitable for resolution via restorative justice methods involve minimal losses and are classified as petty crimes. Nonetheless, this method is inapplicable to grave offenses, particularly those that yield human casualties. This decision seeks to establish a balance between the tenets of justice and

legal efficacy, while ensuring that more severe offenses are punished via the proper legal avenues.

The Indonesian National Police released Circular Letter Number SE/2/II/2021, which governs Ethical Cultural Awareness to establish a clean, healthy, and productive Indonesian digital environment. This circular pertains to ethical concerns in the digital realm, encompassing the use of digital platforms for illicit activities. Despite the lack of clear correlation between these two circulars, both illustrate the Indonesian National Police's endeavors to implement restorative justice ideas across many legal scenarios, encompassing both traditional offenses and those associated with online conduct. The application of restorative justice in the digital realm is anticipated to diminish conflict potential and offer more profound and constructive resolutions.

Restorative justice in Indonesia is governed by Article 7 of Law Number 11 of 2012 regarding the Juvenile Criminal Justice System. In this context, the resolution of criminal cases involving young offenders must prioritize diversion strategies, which aim to resolve cases without formal judicial proceedings, contingent upon specific criteria being satisfied. Diversion is applicable solely to offenses punishable by imprisonment of less than seven years and not including recidivism. This phase seeks to provide youngsters the chance to rectify their errors through rehabilitation, rather than through punitive measures centered on retribution. This legislation aims to shift the court system's focus towards the rehabilitation and development of children, rather than solely enforcing punitive measures that may exacerbate their psychological situation.

In this context, restorative justice targets not only the offenders but also aims to resolve issues and enhance the connection between the perpetrator and the victim. The focus of this approach is to achieve social and legal balance, by giving the perpetrator a chance to rectify their mistakes, while also providing the victim with space to obtain recovery. Consequently, restorative justice transcends mere punishment, focusing instead on an equitable and meaningful resolution that engages all stakeholders to foster enduring peace.

Restorative justice underscores the significance of a criminal accountability procedure conducted directly by the offender towards the victim and the impacted community. This approach emphasizes not only the offender as a legal entity but also the restoration of the fractured relationships among the perpetrator, the victim, and the community. This approach seeks to enhance comprehension of the repercussions of the perpetrator's acts on others and the

means by which these actions might be collaboratively remedied. If the offender and the victim can achieve a consensus through discourse grounded in the idea of justice, then formal punishment, regarded as an ultimum remedium or final resort, may be circumvented.

The restorative justice method positions the offender not as the primary focus, but as an integral component of a broader healing process. The attainment of justice is derived not solely from punishment or sentence, but also from endeavors to restore the social ties impaired by the act. The process of collaborative discussion among the perpetrator, the victim, and the community allows all sides to articulate their emotions, requirements, and aspirations. In this instance, conversation is essential for attaining a significant consensus, which necessitates accountability from the offender while also offering the victim and the community a chance to be acknowledged and rehabilitated.

This indicates that restorative justice prioritizes conflict resolution over the mere imposition of punishment. The primary objective is to reinstate the societal equilibrium disturbed by criminal activity. The culprit is required to recognize their errors, assume accountability for their acts, and undertake tangible measures to rectify the situation. Moreover, the victims can articulate their losses and pursue a route to recovery, while the community, also impacted by the crime, contributes to the restoration of communal well-being.

Consequently, restorative justice establishes a novel paradigm within the criminal judicial system that prioritizes reconciliation above retribution. This approach provides a more humane alternative for resolving criminal cases, allowing each side to actively engage in pursuing a fair and satisfactory resolution. This method can effectively diminish crime recidivism rates, enhance interpersonal interactions, and eventually foster a more peaceful social environment.

#### **4. CONCLUSION AND RECOMMENDATION**

Restorative justice during the investigative phase possesses a distinct significance in contrast to justice that prioritizes legal protocols. Restorative justice emphasizes substantive justice, prioritizing the restoration of relationships and the resolution of problems among the perpetrator, the victim, and the community. Within the framework of Indonesian jurisprudence, the implementation of restorative justice seeks to establish a legal system that not only complies with procedural norms but also is founded on principles of justice that promote the well-being and happiness of its citizens. The aspiration to establish a legal framework that emphasizes

societal prosperity and happiness underpins the selection of restorative justice, which promotes restoration over mere punishment.

Nonetheless, the application of restorative justice in investigations encounters obstacles pertaining to legal certainty. When parties fail to adhere to the established agreement, investigators may encounter ambiguous circumstances and possible legal complications. The situation becomes increasingly intricate in instances of common criminal offenses, when, despite the presence of a Kapolri legislation pertaining to restorative justice, investigators nevertheless regard legal certainty as insufficiently robust. Should the reported party violate their commitment or reoffend, the investigator faces a challenging predicament, as the efficacy of the resolution process undertaken through restorative justice remains uncertain.

Consequently, there is a necessity for more explicit and thorough legislation concerning the implementation of restorative justice in investigations, particularly in relation to basic criminal offenses. This technique is predominantly recognized in the juvenile criminal justice system via the diversion mechanism, which allows for resolution without engaging in the official court procedure. This restricted application necessitates a modification or enhancement of rules at the legislative level to more precisely govern the implementation of restorative justice across numerous offenses, rather than being confined solely to juvenile instances. This will establish a more inclusive framework that can be comprehensively integrated into the investigative process.

Clearly defined and acknowledged legal regulations will provide investigators with legal assurance in implementing the restorative justice approach. The significance of legal certainty is crucial to ensure that the law enforcement process transcends mere proceduralism, thereby fostering a constructive impact on the establishment of a just and harmonious society. Consequently, to establish a legal system that ensures security and justice for all stakeholders, it is essential to reinforce the legislative foundations that facilitate the implementation of restorative justice at every phase of the judiciary, particularly during the investigative stage.

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