

Legal Certainty Regarding The Implementation Of The Regulation Of The Indonesian National Police Number 8 Of 2021 Concerning The Handling Of Criminal Acts Based On Restorative Justice In Settlement

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Received: 2025-01-20 Revised: 2025-02-23 Accepted: 2025-04-12 Keywords: Legal Certainty, Restorative Justice, Petty Theft.	<i>This research aims to analyze the implementation of the restorative justice concept within the law enforcement system by the Indonesian National Police as regulated in Law Number 2 of 2002, the Chief of Police Circular Letter No. SE/8/VII/2018, and Police Regulation No. 8 of 2021. Restorative justice is a criminal case resolution approach that emphasizes restoring the condition of victims, offenders, and the community without undergoing formal judicial processes. However, in practice, inconsistencies often occur, particularly in petty theft cases, where some are resolved through restorative justice while others are processed through formal legal proceedings. This research adopts a normative juridical method supported by an empirical juridical approach and has both prescriptive and descriptive-analytical characteristics. Obstacles identified in the implementation include investigators' lack of understanding of restorative justice, a legalistic work culture among investigators, and limited public acceptance of out-of-court case resolutions. Additionally, Police Regulation No. 8 of 2021 does not specify the threshold of financial loss or consider the offender's motive, leading to varying interpretations. Therefore, regulatory reform, enhanced investigator capacity, and legal education for the public are necessary to ensure a more just and consistent application of restorative justice.</i>

I. Introduction

Any form of criminal act results in harm to individuals, society, the nation, and the state, and therefore must be eradicated as effectively as possible to uphold justice in this country. When examining the administration and distribution of justice in Indonesia, it is a matter of great importance to discuss, especially considering that Indonesian society, being pluralistic, cannot avoid conflicts or disputes in everyday life. These issues will continue to be common phenomena in social life, whether involving two individuals or more. This situation will increasingly complicate the legal enforcement and judicial processes if all conflicts, disputes, or disagreements are handled solely through formal legal proceedings (Juhari, 2017).

Enforcement, regarded as a segment of the criminal justice framework, fundamentally represents the objective of executing the criminal justice system as prescribed by the Criminal Procedure Code. This objective seeks to uncover the material truth (substantial truth) and uphold human rights (protection of human rights). It stands as the principal and overarching aim within the criminal justice process. Although the pursuit of material truth culminates in judicial hearings, this process should commence at the investigative phase managed by the police subsystem. The police serve as the entry point, determining whether the alleged offense warrants legal accountability and whether the individual can be identified as the perpetrator of the crime (Bonic, 2015).

The National Police, in carrying out its duties in criminal law enforcement, essentially stands between two interests: those aligned with social goals and the fulfillment of legal objectives, namely the creation of legal certainty. Law, in the context of public order, requires that it is not only a tool to achieve certainty but must also maintain order within society (Juhari, 2017).

The approach of restorative justice is gaining increasing recognition as a viable alternative in managing criminal cases, especially in response to dissatisfaction with the current criminal justice framework. This method focuses on a more compassionate way of rebuilding the relationship between the offender and the victim. Its purpose extends beyond mere punishment, aiming to address the case in a more holistic manner. This perspective aligns with those who stress the importance of rationality in criminal policy, considering the broader social consequences of legal decisions (Bonic, 2015; Andrianto, 2012).

Within the scope of Indonesian law, restorative justice is guided by existing legal provisions. The legal foundation for resolving minor criminal matters outside court is provided by the Chief of Police Circular Letter No. SE/8/VII/2018 and Police Regulation Number 8 of 2021. These regulations aim to foster peaceful resolutions and avoid protracted formal legal procedures. However, despite its application, challenges persist regarding the consistency of restorative justice enforcement alongside traditional formal criminal law (Sabang District Court, 2022).

A critical issue emerging in the application of restorative justice is the balancing of priorities between formal legal structures rooted in legal certainty (*rechtzekerheid*) and the sense of justice valued by society. This presents a particular challenge for the Indonesian National

Police (Polri) in conducting criminal investigations, especially within the realm of detective work. The ambiguity surrounding which principle should take precedence often obstructs the effective implementation of restorative justice, where formal criminal law must be followed, yet the community yearns for an approach that is more focused on peace and social justice (Andrianto, 2012; Bonic, 2015).

Law No. 2 of 2002, concerning the Indonesian National Police, allows for police action beyond formal legal procedures. One such action includes the use of restorative justice principles to ensure public security and order. Criminal cases may be resolved through restorative justice without adhering to traditional criminal processes, with an emphasis on mending relationships among the offender, the victim, and the community (Article 11 of Law No. 2/2002; Sabang District Court, 2022). This creates a legal framework for addressing minor criminal matters in a more compassionate manner.

A prominent challenge in applying restorative justice lies in deciding which should take precedence: the formal legal framework founded on legal certainty (*rechtzekerheid*) or the broader sense of justice valued by society. This dilemma is especially troublesome for the Indonesian National Police (Polri) when conducting criminal investigations, particularly in the detective role. The ambiguity over which should come first often impedes the practical implementation of restorative justice, where adherence to formal criminal law is required, yet the public seeks an approach that emphasizes peace and social justice (Andrianto, 2012; Bonic, 2015).

According to Law No. 2 of 2002 on the Indonesian National Police, the police are granted the authority to act outside the constraints of formal legal procedures. One such action involves the use of restorative justice principles to preserve public security and order. Criminal cases may be addressed through restorative justice without the need for conventional criminal processes, with a focus on restoring relationships among the offender, the victim, and the community (Article 11 of Law No. 2/2002; Sabang District Court, 2022). This offers a legal foundation for resolving minor criminal matters in a more compassionate and restorative way.

II. Research Method

This study employs a normative juridical approach, which involves conducting legal research by reviewing literature and secondary data pertinent to the applicable positive law (Marzuki, 2009). Additionally, it integrates an empirical juridical perspective that connects legal norms with the actual social conditions in society (Nasution, 2008). This combination enables the researcher to analyze various legal rules, including laws and related literature, while relating them to real-world issues. The research is both prescriptive and descriptive-analytical, aiming to provide legal recommendations and offer a systematic description of the subject matter (Syamsudin, 2007). The data collection method utilized is library research, which includes examining primary legal sources (such as legislation), secondary legal materials (scholarly publications), and tertiary legal resources (like legal dictionaries), along with conducting interviews to gather empirical data (Ashshofa, 1996). All data is analyzed qualitatively using content analysis and legal systematics to categorize and resolve the legal questions posed (Soekanto & Mamudji, 2009). The analysis follows a systematic and

exploratory process focused on the relevant legal content, without relying on statistical methods (Rahardi, 2007).

III. Results and Discussion

a. The Level of Legal Certainty in the Application of Indonesian National Police Regulation No. 8 of 2021 in Resolving Ordinary Theft Cases

As an integral component of the Integrated Criminal Justice System, the Indonesian National Police (Polri) holds a vital position in the enforcement of laws. Under Article 2 of Law No. 2 of 2002 concerning the Police, the police are tasked with performing one of the state's duties, which involves safeguarding, serving, and ensuring the enforcement of laws. Furthermore, Article 14, paragraph (1), letter g, of the same law authorizes the police to conduct criminal investigations, beginning with investigative actions carried out by officers. Law enforcement by the police must, of course, comply with the applicable regulations (KUHAP) and align with the strategic priorities set by the Chief of Police, which emphasize the vision of Transformation toward a Predictive, Responsible, and Transparent Police Force (PRESISI) (Rahardi, 2007).

In its detailed explanation, Predictive refers to predictive policing, emphasizing the police's capacity to foresee situations and circumstances that may present challenges and potential risks to public safety. Responsibility is viewed as a commitment to accountability, demonstrated through words, actions, conduct, and responsiveness in carrying out duties, all focused on safeguarding the public's interest and fulfilling their expectations for security and order. On the other hand, Transparent justice is understood as the embodiment of principles, thinking approaches, and systems that are open, accountable, humane, and subject to easy scrutiny (Hutahaean, 2022).

The shift toward a Predictive, Responsible, and Transparent Indonesian National Police (Polri) encompasses four main areas, sixteen priority programs, fifty-one activities, and one hundred seventeen action plans. Within its operational framework, one of the key priority programs set by the Chief of Police is enhancing law enforcement performance. A central focus of the Chief of Police is ensuring that law enforcement processes align with societal justice. Achieving this requires prioritizing progressive legal approaches in addressing cases, particularly through restorative justice, which balances not only legal certainty but also fairness and practical outcomes. This approach resonates with the views of Gustav Radbruch. Restorative justice involves resolving criminal cases by bringing together the perpetrator, victim, their families, and other involved parties to collectively seek a just resolution, focusing on restoring the situation to its original state rather than pursuing punitive measures (National Legal Development Agency of the Ministry of Law and Human Rights of the Republic of Indonesia, 2013).

b. Requirements for Handling Criminal Acts Based on Restorative Justice

As previously discussed, the handling of criminal acts through restorative justice is governed by the Indonesian National Police Regulation No. 8 of 2021 (Perpol No. 8 of 2021), detailed in Chapter II, Articles 3 through 10. Article 3, paragraph (1), stipulates that the resolution of

criminal cases through restorative justice must satisfy both general and specific criteria. In addition, Article 4, paragraph (1), defines the general criteria, which include both material and formal requirements. Article 5 outlines the material criteria, which consist of: (a) avoiding public unrest or opposition, (b) preventing social conflict, (c) not having the potential to cause national division, (d) not relating to radicalism or separatism, (e) excluding repeat offenders with previous court rulings, and (f) excluding crimes involving terrorism, state security offenses, corruption, or crimes against human life. Article 6, paragraph (1), discusses the formal criteria, which include: (a) reconciliation between the parties, except in drug-related offenses, and (b) ensuring the fulfillment of both the victim's rights and the perpetrator's duties, except for drug-related offenses. In paragraph (2) of Article 6, it clarifies that the reconciliation mentioned in paragraph (1), letter (a), must be evidenced by a reconciliation agreement signed by the parties involved. Further, paragraph (3) of Article 6 indicates that the restoration of the victim's rights and the perpetrator's duties may involve: (a) the return of property, (b) compensation for damages, (c) reimbursement of costs incurred due to the crime, and/or (d) compensation for harm caused by the criminal act. Paragraph (4) of Article 6 specifies that the fulfillment of the rights as outlined in paragraph (3) must be documented by a statement letter in accordance with the signed agreement by the victim. Finally, paragraph (5) of Article 6 asserts that the formats of the reconciliation agreement in paragraph (2) and the statement letter in paragraph (4) are included as attachments in the Chief of Police Regulation (Perpol). For specific criteria, which apply to offenses involving Electronic Information and Transactions, drugs, and traffic violations, further rules are set out in Articles 7 to 10 (Indonesian National Police Regulation No. 8 of 2021).

Based on the above explanation, it can be inferred that once the material and formal prerequisites are satisfied, the police have the authority to halt the investigation or inquiry through a designated case review process, provided the cessation is in compliance with legal provisions (Indonesian National Police Regulation No. 8 of 2021).

c. The Level of Legal Certainty in the Application of Indonesian National Police Regulation No. 8 of 2021 in the Resolution of Ordinary Theft Cases

The enforcement of Perpol No. 8 of 2021 brings with it public hopes for justice and legal certainty for both victims and offenders. However, several obstacles hinder the full application of this regulation, one of the primary issues being the limited understanding of restorative justice among investigators. This is due to the fact that not all investigators have been involved in the socialization efforts regarding criminal case resolutions through restorative justice. A number of investigators continue to perceive case resolution as merely a traditional form of reconciliation, with entrenched work cultures and a strict adherence to positivist principles further complicating its effective implementation.

Conversely, the application of restorative justice also encounters difficulties for both the public, including victims and offenders. A significant issue is the inability of the parties involved to come to a consensus, as each side holds firm in their belief of being in the right. Additionally, the cases under consideration often gain widespread attention, causing public backlash against resolving them through restorative justice. Many members of the

community have yet to embrace this approach, complicating the process and introducing numerous challenges.

Moreover, Police Regulation No. 8 of 2021 fails to define a threshold for the value of damages resulting from criminal acts, which could lead to varying interpretations among investigators. This stands in contrast to the Attorney General's Regulation No. 15 of 2020, which establishes a clear limit on the value of losses, simplifying the decision on whether a case can be addressed through restorative justice. Additionally, Police Regulation No. 8 lacks explicit provisions regarding the perpetrator's motive or intent (*mens rea*), further adding to the ambiguity of applying restorative justice. These inconsistencies in perception contribute to a lack of uniformity in handling cases through the same approach.

In light of these circumstances, the implementation of restorative justice in cases of common theft frequently encounters obstacles in fulfilling the principle of legal certainty. Discrepancies arise in handling cases with comparable criminal elements, where some are resolved through restorative justice and others via the traditional criminal justice system. This highlights the necessity for revisions in Police Regulation No. 8 of 2021 to promote a more consistent and efficient application. Enhanced clarity in the regulations and wider dissemination of information would aid in overcoming the current challenges.

IV. Conclusion

The challenges or barriers encountered in the application of restorative justice are outlined as follows:

1. A significant barrier to the implementation of restorative justice is the insufficient understanding of its principles among investigators. This results from the limited dissemination of information about Police Regulation Number 8 of 2021. Many investigators have not been exposed to socialization efforts concerning the handling of criminal cases through restorative justice, causing some to perceive the resolution process as just a routine reconciliation rather than a comprehensive approach.
2. The entrenched work culture of investigators, which favors a rigid legalistic and positivist mindset, serves as a significant barrier. Many investigators are still bound by conventional approaches to case handling, preventing the integration of restorative justice due to their deeply rooted ways of thinking.
3. From the viewpoint of society, both the victim and the offender in cases of ordinary theft encounter various challenges when attempting to apply restorative justice, including:
 - a. Disagreement among the parties involved, with each side believing they are justified in their stance.
 - b. Instances that have already gained widespread attention within the community result in resistance when an attempt is made to resolve them through restorative justice.

- c. A significant portion of the population in Indonesia has not yet embraced the use of restorative justice as a means of resolving cases.
4. Moreover, Police Regulation No. 8 of 2021, specifically in Article 5 related to material requirements, fails to provide a cap on the extent of damages caused by criminal acts, causing divergent viewpoints among investigators on how restorative justice should be applied. This contrasts with Attorney General's Regulation No. 15 of 2020, which imposes a damage limit of Rp. 2,500,000. Additionally, the Police Regulation lacks clarity on the perpetrator's motive or intent (*mens rea*), which can influence whether restorative justice should be implemented. For instance, determining whether a theft was driven by financial hardship or other factors like gambling or drug addiction. Consequently, discrepancies arise in applying restorative justice, with some cases being resolved through this approach and others processed within the criminal justice system, despite having comparable criminal elements.

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