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Restorative Justice in the New Criminal Procedure Code The Limits of Investigators' Authority and the Risk of Abuse in Out-of-Court Case Settlement

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Abstract

Law Number 20 of 2025 on the Code of Criminal Procedure, in force since 2 January 2026, regulates restorative justice at the statutory level for the first time through Articles 79 to 88. The mechanism may be applied at the preliminary investigation, investigation, prosecution, and trial stages. This expansion provides a stronger legal basis for practices previously governed by internal institutional regulations, but it also broadens investigators' discretion to resolve cases outside the courts. This study analyzes the construction of restorative justice in the new Code, the limits of investigators' authority, the risks of abuse, and an accountable supervisory model. It employs a normative juridical method using statutory, conceptual, and case approaches. The findings show that the new Code provides a legal basis, criteria, and judicial oversight through court approval, but its application at the preliminary investigation stage lacks adequate horizontal oversight, creating risks of transactional justice, unequal bargaining power, and class bias. The constitutional review of the phrase preliminary investigation in Article 79 paragraph (8) letter a before the Constitutional Court underscores the urgency of this issue. This study recommends layered supervision by prosecutors and courts, verification of victims' voluntariness, proportional restoration standards, and a national registry of restorative settlements.

Keywords: *restorative justice, new Criminal Procedure Code, investigators' authority, preliminary investigation, supervision*

INTRODUCTION

Restorative justice has developed as a response to the limitations of a retribution-oriented criminal justice system. Zehr (2002) explains that restorative justice views crime primarily as a violation of people and social relationships, so its resolution must involve victims, offenders, and the community to repair the harm. Braithwaite (1989) adds that restoration accompanied by reintegrative shaming is more effective in preventing reoffending than stigmatization. In Indonesia, this idea has been applied in the juvenile criminal justice system through diversion and was later adopted by the police, the prosecution service, and the Supreme Court through their respective internal regulations.

For years, restorative justice practice relied on Police Regulation Number 8 of 2021, Prosecutor's Regulation Number 15 of 2020, and Supreme Court Regulation Number 1 of 2024. Studies of this practice show its benefits for resolving minor cases, for example at sub-district police stations (Sembiring et al., 2024) and district prosecutor's offices (Sibarani et al., 2026), as well as the strategic role of public prosecutors in resolving minor criminal cases (Hasibuan

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et al., 2025). However, regulation scattered across internal rules has produced differing requirements and procedures among institutions.

Law Number 20 of 2025 on the Code of Criminal Procedure (the new KUHAP), enacted on 17 December 2025 and in force since 2 January 2026, ends this fragmentation. The new KUHAP regulates the restorative justice mechanism in Articles 79 to 88 (Antara Jatim, 2026), and Article 79 paragraph (8) provides that this mechanism can be applied at the stages of inquiry, investigation, prosecution, and trial (Marinews, 2026a). The new KUHAP also introduces a plea mechanism in Article 78 and expands the scope of pretrial review.

This expansion has sparked debate. Applying restorative justice at the inquiry stage, when it is not yet certain whether a criminal offence has occurred, is considered risky because it rests on incomplete data verification and lacks adequate horizontal oversight (Marinews, 2026a). In July 2026, the Constitutional Court held the first hearing of a judicial review of the phrase 'inquiry' in Article 79 paragraph (8) letter a of the KUHAP (MKRI, 2026). Observers have also warned of the risk of commodification of law and class bias if the requirement to restore the original state is interpreted solely as material compensation (RMOL, 2025). Accordingly, this study formulates three research questions:

1. How is the restorative justice mechanism constructed in the new KUHAP?
2. Where are the limits of investigators' authority in applying restorative justice, and what are the risks of abuse?
3. What accountable model of oversight is needed for restorative justice?

This study aims to analyze the normative construction of restorative justice in the new KUHAP, identify points vulnerable to abuse of authority, and formulate an oversight model that ensures restorative justice remains oriented towards victim restoration and the protection of suspects' rights.

METHOD

This study is normative legal research using statutory, conceptual, and case approaches (Tanjung, 2024). The statutory approach is used to examine Law Number 20 of 2025, Supreme Court Circular Letter Number 1 of 2026, and the earlier internal regulations of law enforcement institutions on restorative justice. The conceptual approach is used to examine the concepts of restorative justice, law enforcement discretion, and models of the criminal process. The case approach is used to examine early practices of restorative justice in 2026 and the petition for judicial review before the Constitutional Court.

The analysis uses the framework of criminal process models from Packer (1968), which distinguishes the crime control model, emphasizing efficiency, from the due process model, emphasizing the protection of individual rights. This framework is used to assess whether the restorative justice mechanism in the new KUHAP balances the interest in efficient case resolution with guarantees of the parties' rights. The legal materials were analyzed qualitatively using deductive reasoning.

RESULTS AND DISCUSSION

1. The Construction of Restorative Justice in the New KUHAP

The new KUHAP defines restorative justice in Article 1 point 21 as an approach to handling criminal cases that involves the parties, including victims, victims' families, suspects, suspects' families, defendants, defendants' families, and other related parties (Hukumonline, 2026a). The mechanism is carried out to restore the original state, as set out in an agreement. Its application is limited to certain offences that meet the requirements of Article 80 paragraph (1), while further provisions are mandated to be set out in a government regulation as provided in Article 88.

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The most fundamental change is the elevation of the regulation from institutional internal rules to statute, accompanied by judicial oversight. After an agreement is implemented at the investigation or prosecution stage, the termination of the case must be ratified by the district court. This ratification is an instrument of judicial oversight to ensure that the termination genuinely meets the requirements of restorative justice. In addition, the termination of investigation and prosecution can be challenged through pretrial review (Marinews, 2026b). A comparison of the arrangements before and after the new KUHAP is presented in Table 1.

Nevertheless, the transition to statutory regulation has not entirely removed uncertainty. The new KUHAP provides that implementing regulations of the old law remain in force insofar as they do not conflict with the new law (Antara Jatim, 2026), while the government regulation mandated by Article 88 has not yet been issued. As a result, law enforcement officers may interpret differently whether the provisions of the old police, prosecutor's, and Supreme Court regulations can still be used to fill gaps in technical regulation. Such differing interpretations may lead to inconsistent practices across regions, as occurred before the new KUHAP came into force.

Table 1. Comparison of Restorative Justice Arrangements before and after the New KUHAP

Aspect	Before 2 January 2026	Under Law Number 20 of 2025
Legal basis	Police Reg. 8/2021, Prosecutor's Reg. 15/2020, Supreme Court Reg. 1/2024	Articles 79 to 88 of the KUHAP
Stage of application	Varies by institution	Inquiry, investigation, prosecution, and trial
Requirements	Set by each institution	Set by statute (Article 80) and government regulation
Oversight	Internal to each institution	District court ratification and pretrial review
Link with other instruments	Limited	Linked with plea agreements and community service punishment under the National Criminal Code

Source: Compiled from Law Number 20 of 2025 and Marinews (2026).

Early practice shows that the restorative justice mechanism can also be applied at trial. The Donggala District Court, for example, applied the restorative justice mechanism in a theft case in April 2026 and imposed 120 hours of community service at the mosque of the Donggala Police Resort, referring to the draft government regulation on the restorative justice mechanism (Marinews, 2026c). This practice shows that restorative justice in the new KUHAP does not stand alone but is linked to new types of punishment in the National Criminal Code and to the plea mechanism.

This linkage calls for caution. Hasibuan and Tanjung (2026) emphasize the need for a standard for testing the validity of guilty pleas to guarantee the defendant's voluntariness. The same principle applies to restorative agreements: an agreement is meaningful only if it arises from the free will of the parties, not from pressure by officers, fear of facing a lengthy criminal process, or unequal economic positions.

2. The Limits of Investigators' Authority and the Risk of Abuse

The most vulnerable point in the construction of the new KUHAP is the application of restorative justice at the inquiry stage. At this stage, inquiry officers are only seeking and identifying events suspected of being criminal offences, so there is no certainty yet about whether an offence occurred or about the identity of the perpetrator. Where no criminal offence has yet been established, a peace agreement between the perpetrator and the victim may be concluded on the basis of the victim's report (Hukumonline, 2026b). This construction raises logical and juridical problems: how can a person be asked to make good the loss for an act not yet established as a criminal offence and before he or she has the status of a suspect with the rights attached to it?

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This problem is the core of the petition for judicial review before the Constitutional Court. The petitioners argue that restorative justice at the inquiry stage, as regulated in Article 79 paragraph (8) letter a of the KUHAP, may cause constitutional harm and ask that the phrase 'inquiry' be declared conditionally unconstitutional (MKRI, 2026). A study within the Supreme Court also notes that restorative justice at the inquiry stage was designed without the construction of coordination, control, and horizontal oversight that exists at the investigation and prosecution stages (Marinews, 2026a).

From the perspective of suspects' rights, Hasibuan and Surbakti (2025) affirm that protecting suspects' rights at the investigation stage is the core of fair criminal procedure. At the inquiry stage, such protection is not yet fully attached because suspect status has not been established. As a result, a person may be pushed to agree to a payment or certain obligations to avoid further proceedings, without legal counsel and without certainty about the basis of the accusation. Within Packer's (1968) framework, such a practice places the efficiency of the crime control model above the guarantees of the due process model.

The second risk is transactional justice and class bias. If restoring the original state is interpreted as the ability to pay compensation, economically capable offenders can more easily avoid criminal proceedings, while poor offenders continue to be prosecuted (RMOL, 2025). Conversely, economically weak victims may be pressured to accept disproportionate compensation. This inequality contradicts the aim of restorative justice, which places the needs of victims and the responsibility of offenders in balance (Zehr, 2002).

The interests of victims also deserve special attention. In out-of-court settlement practice, victims are often in a dilemma between accepting a quick offer of restoration and pursuing a long and uncertain criminal process. If victims do not receive adequate information about their rights, including the rights to restitution and assistance, a restorative agreement may become a means of suppressing reports rather than repairing harm. Therefore, restorative justice must be accompanied by guarantees that victims understand their legal options and can refuse an agreement without adverse consequences.

The third risk is abuse of discretion by officers. The authority to terminate cases at an early stage gives inquiry officers and investigators broad latitude, especially if the process is neither recorded nor supervised. Experience in handling narcotics cases shows that broad discretion without oversight can open space for transactional practices (Tanjung, 2022). Therefore, the expansion of restorative justice must be balanced by an expansion of accountability.

3. An Accountable Oversight Model for Restorative Justice

Based on this analysis, this study proposes a layered oversight model resting on four principles: certainty of the criminal event, voluntariness of the parties, proportionality of restoration, and transparency. The principle of certainty of the criminal event requires that restorative agreements imposing obligations on the reported person may be concluded only after there is sufficient preliminary evidence that a criminal offence has occurred. At the inquiry stage, the role of inquiry officers should be limited to facilitating reconciliation that does not create legal obligations, while binding agreements are shifted to the investigation stage.

The principle of voluntariness of the parties requires verification that victims and offenders agree on the settlement without pressure. Such verification can be carried out through legal counsel for offenders, assistance for victims by service institutions or community leaders, and examination by the judge when issuing the ratification. Experience with diversion in the juvenile criminal justice system shows the importance of neutral facilitators and procedures that guarantee meaningful participation (Bahirra et al., 2026).

The principle of proportionality of restoration requires that the form of restoration not be limited to monetary payment but may take the form of an apology, repair of damage, work for the benefit of the victim or the community, or other combinations, taking into account the offender's ability. In this way,

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restorative justice does not become a privilege for offenders who can afford to pay. The principle of transparency requires that every restorative settlement be recorded in a national registry accessible to public prosecutors, courts, and oversight bodies, so that patterns of abuse can be detected.

The application of the oversight model must also take into account certain types of cases that are prone to abuse. In narcotics abuse cases, for example, a restorative approach is better directed towards the rehabilitation of users than towards agreements between particular parties, because such offences have no clear individual victim. Tanjung (2022) shows that handling narcotics cases requires a legal policy strategy that clearly distinguishes between users and distribution networks. Restorative justice that is not carefully limited could be exploited by offenders connected to distribution networks to evade legal proceedings.

In this model, the public prosecutor plays an important role in horizontal oversight. Tanjung et al. (2026) show that the pre-prosecution and prosecution functions position prosecutors as case controllers who ensure that investigations proceed lawfully. This function needs to be expanded so that every restorative settlement at the inquiry and investigation stages is notified to the public prosecutor, who may give an opinion before court ratification is requested. A summary of the oversight model is presented in Table 2.

Table 2. Layered Oversight Model for Restorative Justice

Risk	Proposed Safeguard	Implementer
Agreements before the criminal event is established	Binding agreements only after sufficient preliminary evidence; inquiry limited to facilitating reconciliation	Inquiry officers and investigators
Pressure on the parties	Legal assistance for offenders and victims; examination of voluntariness by the judge	Advocates, victim service institutions, courts
Transactional justice and class bias	Varied forms of restoration according to the offender's ability; reasonable limits on compensation	Investigators, public prosecutors, courts
Abuse of discretion	Mandatory notification to the public prosecutor; court ratification; pretrial review	Public prosecutors and courts
Lack of data	An auditable national registry of restorative settlements	Government through the implementing regulation of Article 88

Source: Author's formulation based on the analysis.

This model can be realized through the government regulation mandated by Article 88 of the KUHAP, without having to wait for a statutory amendment. The implementing regulation is the entry point for establishing an adequate accountability system for restorative justice at the inquiry stage (Marinews, 2026a). If the Constitutional Court grants the judicial review petition conditionally, this model can also serve as a reference for translating constitutional conditions into technical procedures.

Beyond normative regulation, the effectiveness of this model depends on the readiness of law enforcement personnel. Inquiry officers and investigators need to be equipped with the ability to facilitate neutral dialogue, recognize unequal power relations, and assess whether a case is suitable for restorative resolution. The prosecution service's experience in applying restorative justice to cases of handling stolen goods and minor offences shows that success depends greatly on officers' care in assessing the requirements and the sincerity of the parties (Sibarani et al., 2026; Hasibuan et al., 2025). Therefore, joint training for the police, prosecution service, and courts should be part of the implementation of the new KUHAP.

CONCLUSION

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The new KUHAP has elevated restorative justice from institutional internal regulations to a statutory norm applicable at all stages of the criminal process, accompanied by judicial oversight through ratification and pretrial review. However, its application at the inquiry stage was designed without adequate horizontal oversight and before the criminal event is established, risking transactional justice, unequal bargaining positions, class bias, and abuse of discretion. The judicial review of the phrase 'inquiry' in Article 79 paragraph (8) letter a confirms that this problem has a constitutional dimension.

This study recommends a layered oversight model set out in the government regulation implementing Article 88 of the KUHAP, comprising a restriction on binding agreements at the inquiry stage, verification of the parties' voluntariness, forms of restoration proportional to the offender's ability, mandatory notification to the public prosecutor, and a national registry of restorative settlements. Further research should empirically assess restorative justice practice at the inquiry stage once the implementing regulation is issued.

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