

# **The Role of The West Java Police (Polda Jabar) As Gatekeepers In Restorative Justice In Relation To Police Regulation No. 8 Of 2021 on Restorative Justice**

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## **ABSTRACT**

This study aims to analyze the effectiveness of restorative justice in reducing case accumulation within the Indonesian National Police (POLRI), identify challenges in its implementation, and propose solutions for its integration into the legal system. Restorative justice, as regulated in National Police Chief Regulation Number 8 of 2021, seeks to resolve conflicts between violators, victims, and the community while alleviating the burden on courts and correctional institutions. This research employs an analytical descriptive method with an empirical juridical approach, collecting data through observations, interviews, and document studies. The findings indicate that while restorative justice offers a potential solution to case backlog issues, its implementation remains hindered by procedural complexity, limited expertise among police personnel, and the absence of a dedicated legal framework regulating its execution. Additionally, the misalignment between restorative justice within the police force and other law enforcement agencies further complicates its effectiveness. The study concludes that overcoming these challenges requires enhancing human resource capacity within the police, fostering public awareness of restorative justice principles, providing specialized training for investigators, and advocating for the establishment of a Criminal Procedure Code that formally regulates restorative justice mechanisms to ensure consistency and alignment across all legal institutions.

**Keywords:** restorative justice, gatekeepers, POLDA JABAR, legal transformation

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## **INTRODUCTION**

The Indonesian National Police (POLRI) functions as a law enforcement agency tasked with maintaining order, justice, and security in the lives of the people, nation, and state in Indonesia. The police act as the leading pillar in criminal law enforcement to fulfill two objectives: realizing legal certainty and social goals. In the context of public order, the law must pay attention to public order and not just achieve certainty. Due to the diversity of ethnicities, cultures, races and religions that exist in Indonesia, the police are required to understand the social order, including its socio-cultural and philosophical system (Soekanto, 2011). In the Police Law of the Republic of Indonesia Number 2 of 2002, the Police are responsible for maintaining security, law enforcement, protection, protection, and service to the community. The police are gatekeepers in the criminal justice system and part of the settlement of cases according to standards.

The police have a role as gatekeepers because the police can minimize the problem that will be delegated to the next stage. When the overflow of cases in the first stage, namely the investigation and investigation stage that cannot be completed, the accumulation of cases has an influence on other components of law enforcement (Saepudin, 2024). Historically, restorative justice explained by James Dignan explains that in modern criminal law, this restorative justice approach was first introduced in 1977 by Albert Eglash by dividing criminal

justice into 3 (three) categories, namely retributive justice, distributive justice and restorative justice (Satria, 2018).

The concept of restorative justice is used to resolve criminal acts, by providing opportunities for the parties involved, especially perpetrators and victims, to contribute to resolving the case, so that there is a transfer of the functions of perpetrators and victims where in the applicable criminal procedure law (KUHP), the parties do not only function as witnesses in litigating cases by law enforcement officials. This perspective makes a new concept to resolve a criminal case, that being sentenced to a perpetrator who is legally considered to have committed a crime that has been regulated in the law cannot provide certainty of the fulfillment of interests for the victim of the crime and provide a deterrent effect on someone who has committed a criminal act (Sunarso, Sh, & Kn, 2022).

The method of deliberation between the parties is applied to achieve justice through the concept of restorative. It aims to reach an agreement between the perpetrator and the victim and enforce responsibility for the actions that caused the loss. In the criminal justice system, the concept of restorative justice empowers victims so that they can participate in resolving cases. The criminal justice system tackles crime and seeks to reduce criminal acts by involving law enforcement agencies and correctional institutions to achieve the goal of resocialization and preventing crime. Integration in law enforcement among subsystems is essential (Setyawan, 2022).

A circular letter of the National Police Chief Number: SE/8/VII/2018 concerning the Application of Restorative Justice in the Settlement of Criminal Cases and Police Regulation Number 6 of 2019 concerning Criminal Investigation has been issued. Restorative justice seeks to restore balance by inviting perpetrators to admit mistakes and repair the damage that occurred. This justice is prioritized to fulfill the sense of justice without bringing the case to court (Hermanto & Andrizal, 2022).

Mediation is not new to the police, because only certain cases can be resolved through mediation. In practice, the police can take action to take action on a case that occurs in the community by mediating both within the scope of investigation and then (Poeloengan, Koto, Imanuddin, Yulia, & Hamid, 2022). So this restorative justice cannot be interpreted as complete peace, but this restorative is interpreted as a method of peace between the perpetrator and the victim by being facilitated by the police as a facilitator by involving community leaders in the restorative justice process.

In the investigation process, restorative justice can be carried out if the material requirements in the National Police Chief's Regulation Number 6 of 2019 are met. These conditions include not causing public unrest, no refusal, and a statement of the parties involved not to object. This principle applies if the perpetrator's mistake is relatively not serious and is not recidivist. Restorative justice can only be applied when the case is still under investigation. The handling of criminal cases involves the police, prosecutor's office, and the judiciary (Siregar, 2019).

The Constitutional Court's decision is still not oriented towards the restorative justice mechanism, but still to the restorative mechanism. This is influenced by the Criminal Procedure Code itself which is still not oriented towards restorative justice, so there needs to be a substantial transformation of the Criminal Procedure Code. The transformative concept is carried out to create the main goal of restorative justice, namely the repair of wounds caused by their actions, and reconciliation and reconciliation among the parties and society (Rochaeti, 2015).

The application of restorative justice based on this decision still makes it difficult for the National Police because the handling of a criminal act that wants to be reconciled can only be achieved before the issuance of the SPDP (Notice of Initiation of Investigation), which is seven days, and if it exceeds seven days, it is considered a failure.

So far, the police are still using the concept of retributive justice which is still oriented towards retributive or represented by the state to the direction of empowerment (restorative) where crime is a violation against an individual that is recognized as a conflict. Because from a restorative perspective, the concept of violating acts is three, namely violations of the rights of individuals, communities and the state, where the police should place their position as defenders of the fulfillment of crime victims.

Overcoming the accumulation of cases in POLDA JABAR, restorative justice can reduce the burden on prosecutors, courts, and prisons. If all legal elements follow this principle, the police and prisons will not have problems. However, POLDA West Java faces obstacles such as the length of the restorative justice process and the short deadline for returning losses. The arrangement of perpetrators must follow existing regulations, with the aim of resolving conflicts between violators, victims, and the community in order to improve losses and relationships between individuals (Yulia & Prakarsa, 2021).

The scope of cases that enter the POLDA is different from the POLRES and POLSEK where there is no limit for the community seeking justice in reporting a criminal act that occurs, in this case the POLDA itself will sort the incoming Police Report (LP), when there is a report that does not enter the qualification of the POLDA itself, the delegation will be submitted to the POLRES and depends on the analysis of the POLRES whether it can be qualified at the POLRES or must delegated to the POLSEK.

The qualification of criminal acts that cause losses in POLDA that can be restorative justice is usually a loss of at least 1 billion or more and is also a serious case. Based on the results of a study on June 13, 2024 at POLDA JABAR, the settlement data using the restorative justice method is the termination of the case at the investigation stage and SP3 is the termination of the case at the investigation stage. Therefore, it can be concluded about the number of cases resolved through the restorative justice method as a renewable method in the police.

Research by Saepudin (2024) shows that the application of restorative justice principles in criminal case resolution has significantly developed, especially in efforts to reduce case backlogs at POLDA JABAR. This aligns with the findings of Setyawan (2022), who studied the implementation of restorative justice in traffic accident cases involving minors in the Pasuruan Police Resort. Both studies provide an overview of the challenges and potential in integrating restorative justice into Indonesia's criminal justice system, although there are still many obstacles to overcome.

The urgency of this research lies in the need to better understand the effectiveness of implementing restorative justice by POLDA JABAR in addressing case backlogs at the investigation and inquiry stages. The current focus of the legal process on punishment needs to be shifted to accommodate a more holistic approach, involving all parties—perpetrators, victims, and the community. Additionally, with new regulations like Perkap No. 8 of 2021, there is a need for evaluation to ensure that the principles of restorative justice are implemented effectively and in line with Indonesia's legal needs.

Although several studies have examined the application of restorative justice within Indonesia's legal context, there is a lack of in-depth research on the role of the police, particularly POLDA JABAR, as gatekeepers in the criminal justice system. Most previous studies have focused on theoretical aspects and comparisons with other countries, while practical implementation and the challenges faced at the local level, such as at POLDA JABAR, have been minimally addressed. Therefore, this research fills that gap by focusing on the obstacles and solutions encountered in integrating restorative justice into criminal case resolution.

The objective of this research is to explore and analyze the role of POLDA JABAR in implementing restorative justice as a case resolution mechanism that can reduce the burden on the judicial system. By understanding the challenges and best practices, this study aims to

provide valuable insights for improving the integration of restorative justice within Indonesia's criminal justice system. The findings will benefit law enforcement agencies, policymakers, and the community by promoting a more effective and inclusive approach to justice.

## **METHOD**

This study uses an analytical descriptive method with an empirical juridical approach. The type of data used in this study is qualitative data. The data collection techniques used in this study are through field studies through observation, interviews. Document study and literature study. The data were analyzed using qualitative analysis methods

## **RESULTS AND DISCUSSION**

### **The Role of POLDA JABAR as Gatekeepers in Restorative Justice**

The National Police of the Republic of Indonesia (POLRI) according to Article 1 number 1 of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia is all matters related to the functions and institutions of the police in accordance with laws and regulations. Because Indonesia is a country of law where every citizen is obliged to submit and obey the rules that have been made by the government as a stakeholder, which means that the government as a policy maker in this case delegates its authority to the National Police as a law enforcement officer. The police as one of the important pillars of law enforcement has a big role (Satjipto, 2009). Law No. 2 of 2002 Article 2 states that the police have a position as law enforcement officers who are oriented towards law enforcement in the judicial field, preventive and repressive duties. In addition to non-juridical efforts as a preventive effort (*Prenum Remidium*) which still needs capabilities and synergy from both parties, in this case law enforcement officials and the community, in law enforcement itself which is the last effort (*Ultimum Remidium*) after various preventive efforts have been made.

The scope of the National Police has a hierarchy in carrying out its duties as law enforcement officers, at the highest hierarchy as the central to regional levels. The central level of the National Police organization is called the Headquarters of the National Police of the Republic of Indonesia (Mabes POLRI), while the regional level POLRI organization is called the Regional National Police of the Republic of Indonesia (POLDA) at the provincial level, the National Police of the Republic of Indonesia Resort (POLRES) at the district/city level, and the National Police of the Republic of Indonesia Sector (POLSEK) in the sub-district area.

The criminal justice system is a concept of handling crime so that there are efforts to overcome crime in which there are police, prosecutors, advocates, and courts as determinants of justice for the justice-seeking community.

The police have a role as gatekeepers of the criminal justice system (John & A Keith, 1978). Because the police can minimize cases that will be delegated to the next stage as a form of prevention. When the overflow of cases in the first stage, namely the investigation and investigation stage that cannot be completed, the accumulation of cases has an influence on other components of law enforcement.

The police as gatekeepers are the first entrance to every law enforcement process, because it is the first gate in the criminal justice system. Cases reported to the police must go through a case resolution process that meets the standards. In Law Number 1981 concerning the Criminal Procedure Code (KUHAP) states: "The police is one of the subsystems of the criminal justice system".

Everyone who is related to the criminal justice system will definitely first be related to the police, therefore the police are gatekeepers in the criminal justice system. The police have 2 functions, namely preventive and repressive. What is meant by preventive is that the police have the authority to determine a criminal act that occurs in the community.

Restorative justice as a method that has been known for a long time in Albert Eglash's criminal justice system in the 1950s and was only widely used in 1977 (Maruna, 2014). The emergence of restorative justice in the police is the circular letter of the National Police Chief Number: SE/8/VII/2018 concerning the Application of Restorative Justice (restorative justice) in the Settlement of Criminal Cases and Police Regulation Number 6 of 2019 concerning Criminal Investigation. Based on the circular, the police are trying to prevent the accumulation of cases that occur at the next level by means of restorative justice.

The dogma that lives in Indonesia understands that every citizen must be seen as equal before the law. "Everyone has the right to fair legal recognition, guarantees, protection and certainty and equal treatment before the law."

The state of law has consequences that must be obeyed by every citizen and state apparatus contained in the legislation, all policies that must be complied with by state apparatus. To protect the rights of a person, a law enforcement is needed. A law enforcement cannot stand alone because in carrying out its obligations, synergy is needed between law enforcement officials.

Restorative Justice itself is included in the scope of general criminal investigation (RESKRIM-UM), in this case RESKRIM-UM POLDA JABAR for general cases, for restorative justice narcotics crimes are included in the scope of narcotics investigation (RES-NARKOBA) in this case RES-NARKOBA POLDA JABAR, restorative justice in traffic is included in the scope of the directorate of traffic (DIT-LANTAS) in this case DIT-LANTAS POLDA JABAR.

Based on the results of the interview, the scope of the case that enters the POLDA is different from the POLRES and POLSEK where there is no limit for the community seeking justice in reporting a criminal act that occurs, in this case the POLDA itself will sort the incoming Police Report (LP), when there is a report that does not enter the qualifications of the POLDA itself, the delegation will be submitted to the POLRES and depends on the analysis from the POLRES whether it can be entered qualifications at the POLRES or must be delegated to the POLSEK.

The qualification of criminal acts that cause losses in POLDA that can be restorative justice is usually a loss of at least 1 billion or more and also includes cases that are heavier than those at the POLRES and POLSEK levels.

**Table 1.** Recapitulation of the Implementation of Restorative Justice Cases in 2022 – 2024

Total Items	A2	SP3	Year
18	13	5	2022
52	30	22	2023
4	4	15	2024

Source: DIT RESKRIM UM POLDA JABAR Processed by the author.

Based on the results of a study on June 13, 2024 at POLDA JABAR, the settlement data uses the restorative justice method as shown in Table 1. A2 is the termination of the investigation level and SP3 is the termination of the case at the investigation stage that has been called. Therefore, it can be concluded about the number of cases resolved through the restorative justice method as a renewable method in the police.

The application of restorative justice is used to resolve a criminal act, by providing opportunities for parties who focus on the perpetrator and victim to resolve it. This method is not new for law enforcement officials in the criminal justice system because not only in the police, the prosecutor's office and even the court itself, this method has been applied for a long time as an example in court known as mediation. Restorative justice in the police first appeared in the circular letter of the National Police Chief Number: SE/8/VII/2018 concerning the

Application of Restorative Justice (restorative justice) in the Settlement of Criminal Cases and Police Regulation Number 6 of 2019 concerning Criminal Investigation Cases. As a renewable method in resolving a criminal act that occurs. The application of restorative justice within the police has been regulated through Police Regulation Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice. The latest police regulation has more comprehensive formal and material requirements compared to the previous police chief regulation, therefore not all cases can be resolved with the restorative justice method based on the regulation.

The diversion of restorative justice arises due to public dissatisfaction with law enforcement. Criminal sanctions are focused on the crime applied to the crime committed. Meanwhile, the sanction of action comes from the idea of what the punishment is for. If in the retributive theory, criminal sanctions are directed at the actions of one person through the imposition of suffering (so that the person concerned becomes a deterrent), then the sanction of action will be directed to an effort to give advice and help so that he changes (Susanto & Korporasi, 1995). Therefore, there is a change in punishment based on restorative justice in order to increase public trust in law enforcement officials.

Many factors (points of view), including substance, structure, and legal culture. Because the scope of criminal procedural law material is only limited to the content aspect, the Criminal Justice System will have a wider scope than criminal procedural law (Lawrence, 2001). Because Indonesia only focuses on the content of the law itself, therefore the cultural aspect in the law should also be the focus because in Indonesia the theory of restorative justice has been known for a long time.

The basic principles of restorative justice according to (Liebmann, 2007) include: supporting the victim, the perpetrator being responsible, dialogue for understanding, repairing losses, the perpetrator being aware of how to avoid crime, and the community helping integration. The community and law enforcement play a role in the peace process, although law enforcement is generally passive.

Because there is no Criminal Procedure Code that regulates Restorative Justice because the community takes part in this matter, therefore the public needs to understand its application. For Gatekeepers alone, later the police will issue a peace deed.

### **Obstacles to the Implementation of Restorative Justice in Minimizing the Accumulation of Cases in POLDA JABAR**

The police face obstacles in the implementation of Restorative Justice because of the limited time to implement it. The Constitutional Court stated that the maximum time for investigators to complete this process is 7 days. Delays in the submission of SPDPs can lead to legal uncertainty and harm the constitutional rights of reported persons and victims. This is important so that all parties can prepare themselves well.

The Constitutional Court's decision is still not oriented towards the restorative justice mechanism, but still to the restorative mechanism. This is influenced by the Criminal Procedure Code itself which is still not oriented towards restorative justice, so there needs to be a substantial transformation of the Criminal Procedure Code. The transformative concept is carried out to create the main goal of restorative justice, namely the repair of wounds caused by their actions, and reconciliation and reconciliation among the parties and society (Nur, 2015).

The Criminal Procedure Code itself does not yet require the application of restorative justice. The application of restorative justice based on this decision still makes it difficult for the National Police because the handling of a criminal act that wants to be reconciled can only be achieved before the issuance of the SPDP (Notice of Investigation Commencement), which is seven days, and if it exceeds seven days, it is considered a failure.

So far, the police are still using the concept of retributive justice which is still oriented towards retributive or represented by the state to the direction of empowerment (restorative) where crime is a violation against an individual that is recognized as a conflict. Because from a restorative perspective, the concept of violating acts is three, namely violations of the rights of individuals, communities and the state, where the police should place their position as defenders of the fulfillment of crime victims. Because not all cases can be carried out restorative justice, investigators in carrying out investigative activities must carry out registration of investigation administration and be carried out centrally. Every development of case handling in criminal investigation activities must be issued SP2HP. The most prominent thing in the investigation process is that restorative justice can be carried out, provided that it does not cause public unrest or there is no community rejection, does not have an impact on social conflicts, there is a statement from all parties involved not to object, and waives the right to sue before the law and is enforced because the level of guilt of the perpetrator is relatively not severe, namely mistakes in the form of intentionality and the perpetrator is not recidivist (Pitoy, 2023).

PERKAP No. 8 of 2021, concerning the Handling of Criminal Acts based on Restorative Justice, Article 2 states that the Handling of Criminal Acts based on Restorative Justice is carried out in the implementation of the Criminal Investigation, Investigation, or Investigation functions.

Furthermore, the handling of criminal acts can be stopped by investigation or investigation. The handling of cases in restorative justice must meet the material requirements including:

1. Does not cause unrest and/or rejection from the community,
2. No impact on social conflicts;
3. It does not have the potential to divide the nation;
4. Not radicalism and separatism;
5. Not a repeat of the Criminal Offense based on a Court Decision, and
6. Not a crime of terrorism, a crime against state security, a crime of corruption and a crime against people's lives

Meanwhile, formally the settlement of cases in a restorative justice manner is carried out in the form of:

1. Peace from both sides, except for Narcotics Crimes, and
2. Fulfillment of the rights of victims and responsibilities of perpetrators, except for Narcotics Crimes.

Item (2) Peace as referred to in paragraph (1) letter a, evidenced by a peace agreement letter and signed by the parties.

Item (3) The fulfillment of the rights of victims and the responsibilities of the perpetrators as intended in paragraph (1) b, can be in the form of:

1. Return goods;
2. Compensate for losses;
3. Replace costs incurred as a result of the Criminal Act; and/or
4. Replace the damage caused by the Criminal Act.

Point (4) The fulfillment of the rights as intended in paragraph (3), as evidenced by a statement in accordance with the agreement signed by the victim. Article 7 of the special provisions as referred to in Article 3 (1) letter b, is an additional requirement for Criminal Cases:

1. Electronic information and transactions
2. Drug
3. Traffic

Article 15

- (1) Termination of Investigation or Criminal Investigation as referred to in Article 2 paragraph (5) shall be carried out by submitting a written request to:
  - a. Head of the National Police Criminal Investigation Agency, for the National Police Headquarters Level
  - b. Regional Police Chiefs, for the Regional Police Level
  - c. To the Resort Police, for the Resort Police and Sector Police

Article 20

- (1) Supervision of the termination of Investigations or Investigations based on Restorative Justice in the handling of Criminal Acts by investigators or investigators is carried out through the title of a special case
- (2) Supervision as intended in paragraph (1) is carried out by
  - a. The Bureau of Supervision of the Investigation of the National Police Criminal Investigation Agency, at the Level of the National Police Headquarters
  - b. Investigation Supervision Section, at the level of the Regional Police
  - c. Head of Criminal Investigation at the Resort Police and Sector Police Level

Police rules regarding criminal acts in general, if seen in the rules, are included in the General Criminal Investigation Department, especially in POLDA JABAR, therefore seeing the object in restorative justice. As for the criminal acts referred to in PERKAP No. 8 of 2021 concerning restorative justice regarding traffic and narcotics, it is different from the authority to handle it within the scope of the police. Based on the results of restorative justice interviews held at the West Java Police, there are more cases regarding article 311 of the Criminal Code concerning the Crime of Defamation, 372 of the Criminal Code concerning the Crime of Embezzlement, 263 of the Criminal Code concerning the Crime of Falsification of Letters or Documents and 265 of the Criminal Code concerning Forgery of Letters. The requirements for the completeness of Restorative justice according to the results of the interview are:

1. Peace Request Letter addressed to the leadership of the SATKER/KAPOLDA/DIT RESKRIMUM
2. The holding of a special case title
3. Peace Letter from the complainant and the reported party as evidenced by the restoration of rights (receipt)
4. Clarification or additional examination of the complainant and the reported person
5. Memorandum of office on special cases that present whistleblowers and reported persons, community leaders, and other participants in case titles
6. Special case title recommendation
7. Sprin (Warrant) to stop the investigation (SP3) / Sprin to stop the investigation (A2) and the letter of determination
8. The existence of SP2HP (A2) stops investigating or fingerprinting
9. Notification letter to the Public Prosecutor
10. Registration in the B19 special book on the registration of Restorative Justice cases.

If in formal and material requirements with many procedures that must be completed within 7 days, it is clearly very difficult for the police, especially the West Java Police, because of the many procedures that must be handled, this is clearly contrary to the existence of justice, usefulness and justice because this makes the status of the perpetrator unclear as an independent person or a suspect. Within 7 days, there must be a notification letter to the prosecutor's office. Not to mention that there are not many police personnel who have the skills to carry out restorative justice.



## **CONCLUSION**

The application of restorative justice in the West Java Police has not yet effectively functioned as a gatekeeping mechanism to prevent case accumulation, as justice and criminal procedures are still not fully oriented towards restorative justice. The complex and procedural nature of the required processes makes its implementation challenging within the police force. Additionally, the limited number of experts in handling restorative justice further hinders its execution, affecting the police's ability to serve as facilitators in resolving criminal acts within the community. A major obstacle is the misalignment between police-led restorative justice efforts and other law enforcement agencies due to the absence of a Criminal Procedure Code that specifically regulates restorative justice procedures both materially and formally. To address these internal and external challenges, the police must enhance the quality of human resources and professionalism to ensure optimal service delivery. Increasing public awareness of restorative justice principles, particularly the legal doctrine of *\*ultimum remedium\**—where criminalization is considered a last resort—can further support its effective implementation. Additionally, providing specialized professional training for RESKRIM-UM personnel and advocating for the establishment of a Criminal Procedure Code that formally regulates restorative justice can help create alignment among law enforcement agencies and ensure a more systematic and effective approach to restorative justice in Indonesia.

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