



## The Implementation of *Restorative Justice* in Overcoming Prison Overcapacity is Reviewed from the Criminal Procedure Law (Cirebon Class I Prison Study)

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### ABSTRACT

The high rate of *overcapacity* in correctional institutions in Indonesia is a structural problem that has multidimensional impacts, ranging from a decline in the quality of inmate coaching to human rights violations. One of the main reasons is the still-dominant imprisonment-based criminal paradigm, including for minor crimes. To find a more humane and efficient solution. The *restorative justice approach*, as regulated in the National Police Regulation of the Republic of Indonesia Number 8 of 2021, has begun to be implemented in the criminal justice system. This study aims to analyze the normative conformity between the Perpol and the Criminal Procedure Code (KUHP) and evaluate the effectiveness of *restorative justice* in reducing the burden on prison inmates, especially in Cirebon Class I Prison. This study employs a mixed-method approach, combining normative juridical and empirical juridical methods. The study results show that although there is a potential disharmony between Perpol and the Criminal Procedure Code, applying *restorative justice* has provided room for resolving cases more adaptive to restorative justice, especially in minor cases. A study at the Cirebon Police shows that the settlement of five cases through *restorative justice* in 2025 directly contributes to the prevention of imprisonment and reduces the potential for *overcapacity*. In Cirebon Class I Prison, an *overcapacity* of 82.88% was recorded, with most inmates coming from general crimes that have the potential to be resolved through non-litigation mechanisms. Restorative justice is an essential instrument in reforming the penal system, which not only restores social relations but also enhances the efficiency of law enforcement.

## INTRODUCTION

Correctional Institutions (prisons) are institutions responsible for developing prisoners in Indonesia. Before the term "prison" was applied, this institution was known as a prison. According to data released by the Ministry of Law and Human Rights (Kemenkumham), the overcapacity rate of prisons and correctional facilities in Indonesia is expected to reach 91% by April 2025. The number of prison inmates was recorded at 269,043, consisting of 215-274 inmates and 53,769 prisoners. (sada.kemenkumham.go.id/ditjenpas. 2025).

The phenomenon of *overcapacity* in Indonesian prisons is an ongoing problem and has become a systemic issue. In many cases, dozens of people inhabit a single cell with a limited area, exceeding its capacity. As a Technical Implementation Unit (UPT), prisons must ensure that inmates' rights are still fulfilled. However, the development of globalization that encourages an increase in the quality and quantity of crime has led to a rise in the number of prison inmates. This condition results in the average prison experiencing *overcapacity*, which negatively impacts the quality of life for inmates. (Yufianda, et al. 2023)

The availability of adequate facilities and infrastructure in prisons is fundamental to inmate rehabilitation. Therefore, budget planning must consider the risks of a lack of facilities. A comprehensive development strategy is necessary to address the issue of prison overcapacity. Some factors contributing to *overcapacity* include high crime rates, the tendency to apply prison sentences as the primary form of legal sanctions, and the imbalance between the number of inmates and the capacity of prison infrastructure.

Based on a report submitted by the Chief of the Indonesian National Police (Kapolri), Police General Drs. Listyo Sigit Prabowo, the number of criminal acts in Indonesia throughout 2024 will reach 325,150 cases. This data reflects the state of public security and order and is an essential indicator in assessing the effectiveness of law enforcement policies in Indonesia. (tribratanews.polri.go.id. 2024)

The reported crime rate reflects a range of factors that influence the social, economic, and legal dynamics within a country. This trend can be influenced by law enforcement efforts, preventive policies implemented by the government, and the level of community participation in maintaining security. (Fachrurrozi. 2021) The high crime rate not only shows the complexity of social problems, but also shows the urgency to evaluate the law enforcement approach that has so far focused more on criminalization. Therefore, an alternative to more traditional case resolution, such as penal mediation and restorative justice, which have begun to be implemented in the Indonesian criminal justice system, is needed.

The National Police of the Republic of Indonesia has responded to this development by issuing the National Police Regulation of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice. This regulation provides guidelines for investigators to terminate an investigation in certain instances, based on the principle of *restorative justice*. However, the application of this Perpol has caused legal debate because there is an alleged inconsistency with the principle of legality in Indonesia's formal criminal law as regulated in the Criminal Procedure Code (KUHP),

especially in Article 109 paragraph (2) of the Criminal Procedure Code which only recognizes the termination of an investigation based on specific legal reasons such as lack of evidence, not a criminal act, or for the sake of the law.

In this context, questions arise regarding the legal position of the Perpol in the hierarchy of laws and regulations and whether its substance has exceeded the authority given by the Criminal Code to investigators. This is important to study, considering that the provisions in the Perpol can impact the law enforcement process, especially during the investigation stage.

In practice, penal mediation allows for the settlement of cases involving the perpetrator and the victim to reach a fair agreement for both parties. This concept is getting closer to the principle of *restorative justice*, which aims to resolve cases outside the formal judicial process. It can be said that the concept of penal mediation has evolved into a form of restorative justice, applied through a diversion mechanism within the Indonesian criminal law system. (Scott, 2021).

## LITERATURE REVIEW

*Restorative justice* is an approach in the criminal justice system that emphasizes the participation of the community, victims, and perpetrators in resolving cases deliberatively. This approach differs from the retributive justice system, which is oriented towards retaliation, because restorative justice emphasizes restoring conditions to those that existed before the crime occurred. Implementing restorative justice in the criminal justice system enables a more humane and inclusive resolution of cases, reducing the reliance on prison sentences and addressing prison overcrowding. (Sept. 2025)

Criminal case resolution through a *restorative justice* approach is more oriented towards restoring the rights and interests of victims than providing retributive sanctions to the perpetrators of crimes. This approach is considered effective in reducing dependence on prison sentences, making it a potential solution to overcoming prison overcapacity.

In law enforcement, this approach can be examined from two perspectives: a broad and a limited sense. In a broad sense, law enforcement encompasses all legal subjects involved in legal interactions and adheres to applicable legal norms. Meanwhile, in a restricted sense, law enforcement involves the state apparatus responsible for ensuring that the rule of law is implemented effectively, including the use of force when necessary. (Arif. 2019)

The implementation of *restorative justice* in the criminal justice system requires the involvement of all elements of society. Public participation in reporting and testifying against a criminal act is an integral part of the law enforcement process. In addition, the interaction between law enforcement and the social environment reveals that the success of this concept in addressing prison overcapacity is highly dependent on the active involvement of the community in resolving criminal cases within a more inclusive and rehabilitative-based criminal justice system. This study analyzes the Implementation of Restorative Justice in overcoming prison overcapacity, as reviewed in the Criminal Procedure Law Case Study of Class I Cirebon Prison.

### **Perspective of Criminal Procedure Law**

The National Police Regulation of the Republic of Indonesia Number 8 of 2021 is a progressive step in reforming the criminal justice system in Indonesia. This regulation creates an opportunity for the resolution of criminal cases outside the court through a restorative justice approach, a mechanism that emphasizes dialogue among perpetrators, victims, and the community to achieve a restorative agreement. (Koto et al. 2023)

However, from the perspective of criminal procedural law, it is necessary to examine whether the existence of the Perpol is in line with the principles outlined in the Criminal Procedure Code (KUHP). The reason is that the Criminal Code, as the main procedural legal instrument, does not explicitly regulate the termination of cases based on peace between the perpetrator and the victim. The Criminal Procedure Code only recognizes the termination of an investigation through an Investigation Termination Order (SP3), as stipulated in Article 109 paragraph (2), which can only be done if there is insufficient evidence, the incident is not a criminal act, or for other legal reasons.

Perpol Number 8 of 2021 allows investigators to stop the investigation if certain conditions are met. Launching the Kopolnas website, handling criminal acts with *restorative justice* must meet general and special requirements. General requirements apply to implementing criminal investigation, investigation, or other investigative functions. Meanwhile, special requirements only apply to criminal acts based on *restorative justice* in investigation or investigation activities. (Source: 2022) As mentioned in Article 5, the material requirements include:

1. Not causing anxiety or rejection from the community;
2. It does not have an impact on social conflicts;
3. It has no potential to divide the nation;
4. It is not radicalism and separatism;
5. It is not a criminal act based on a court decision, nor is it a crime such as terrorism, a crime against state security, a crime against corruption, or a crime against people's lives.

Meanwhile, the formal condition for *restorative justice* is peace between the two parties, as evidenced by a peace agreement signed by all parties, except in cases involving narcotics crimes. Adequacy and a statement of ability signed by the victim demonstrate the victim's authority and the suspect's responsibility, including returning goods, compensating for losses, reimbursing costs incurred due to criminal acts, and repairing damages caused by such acts. (Anggraini, et al. 2024)

However, this raises juridical problems because it can cause incompatibility with the Criminal Code. There are two main points of rejection: first, the shift of settlement authority from the courts to the police institution; second, the potential for neglect of Article 1, Section 9 of the Criminal Code, which emphasizes that only the court has the authority to impose a criminal sentence.

However, suppose the implementation of restorative justice within the framework of the Perpol is carried out carefully, transparently, and still based on the basic principles of criminal law and criminal procedural law. In that case, this

policy can be viewed as a complement to the national criminal justice system, rather than a form of law violation. Some of the arguments underlying this position are as follows:

1. The Criminal Code does not explicitly prohibit the settlement of cases outside the court, as long as it does not violate the principle of legality, and still guarantees the rights of suspects and victims. In this context, *restorative justice* can be understood as an alternative mechanism for resolving relevant criminal cases, particularly minor cases or complaints that require more social recovery than imprisonment sanctions.
2. Perpol Number 8 of 2021 explicitly limits the scope of cases that can be resolved through *restorative justice* as stipulated in Article 5 and the existence of voluntary agreements between the parties that can be handled through this scheme as stipulated in Article 6, paragraph (1). These limitations show that *restorative justice* does not aim to replace the formal criminal justice system as a whole, but rather to provide alternative legal solutions under certain conditions.
3. The rights of the parties involved are protected. In practice, *the restorative justice process is carried out through deliberations involving investigators, community leaders, and, in some cases, legal advisors. The principles of voluntariness, equality, and the absence of coercive elements are the main foundations of its implementation.* Thus, this approach still guarantees justice for all parties.

To strengthen the legitimacy of restorative justice in the national legal system, further steps are needed in the form of adjustments to a more comprehensive legal framework. This can be done by revising the Criminal Procedure Code or establishing a special law that substantially regulates restorative justice and is binding across law enforcement institutions. This way, integrating *the restorative justice* approach with the formal legal system can run consistently and avoid creating overlapping authorities.

## METHODOLOGY

This study employs a combined approach, namely a normative juridical and empirical juridical approach. This approach was chosen to provide a comprehensive analysis from both normative and empirical perspectives. The normative juridical approach, as explained by Ronny Hanitijo Soemitro, is a research method that relies on studying applicable legal norms. This method is carried out through literature studies, examining secondary legal materials, such as laws and regulations, including Police Regulation Number 8 of 2021 and the Criminal Procedure Code. It also includes an analysis of legal principles, doctrine, expert opinions, relevant scientific literature, and journals. (Benuf, 2020)

Meanwhile, an empirical juridical approach is employed to investigate how legal provisions regarding restorative justice are implemented in practice, particularly in the context of addressing *overcapacity* in correctional institutions. Empirical data were collected through interviews with resource persons, including law enforcement officials, as well as field studies and documentation

related to the implementation of restorative justice in the studied institutions. (StuRat 2023)

By combining these two approaches, this study is expected to provide a comprehensive picture of the effectiveness of restorative justice in addressing the issue of prison overcapacity, both in terms of its normative and practical implications.

## RESULTS AND DISCUSSION

### Prison Conditions and the Impact of Restorative Justice on Prison Overcapacity

Until now, Correctional Institutions (prisons) have experienced a *severe overcapacity* problem. For almost 25 years (Sholehudin, 2021), the problem of prison overcapacity has remained an unresolved issue for the Coordinating Ministry for Law, Human Rights, Immigration, and Corrections, particularly the Ministry of Immigration and Corrections. Referring to official data published by the Ministry of Law and Human Rights (Kemenkumham), the *overcapacity* level in prisons and correctional facilities in April 2025 will reach 91% with a total of 269,043 inmates, consisting of 215,274 inmates and 53,769 prisoners from the capacity of prisons and correctional facilities, which is only 140,934. (sada.kemenkumham.go.id/ditjenpas. 2025)

Based on a case study conducted in April 2025 at the Cirebon Class I Prison, data revealed that the overcapacity level in the prison reached 82.88%, with 1015 inmates occupying a space intended for only 555 inmates. The level of overcapacity experienced by all prisons and correctional facilities in Indonesia certainly hampers their ability to carry out their service and coaching functions. Suppose this situation of overcapacity is not seriously addressed. In that case, it can cause various problems such as violence and conflicts between inmates, a decrease in the quality of life of inmates, and health problems, for example, accelerating the spread of infectious diseases.

Table 1. Number of Inmates of Class I Cirebon Prison Based on Type of Crime, May 2025

| No.                         | Types of Criminal Acts | Number of Inmates |
|-----------------------------|------------------------|-------------------|
| 1.                          | Narcotic               | 384               |
| 2.                          | Psychotropic           | 1                 |
| 3.                          | Corruption             | 2                 |
| 4.                          | Trafficking in People  | 3                 |
| 5.                          | General Crimes         | 625               |
| 6.                          | Foreign Citizen (WNA)  | 11                |
| Total                       |                        | 1.015             |
| Prison Capacity: 555 people |                        |                   |
| Overcapacity Rate: 82.88%   |                        |                   |

Source: KPLP Staff & Public Relations of Cirebon Class I Prison

Serious efforts are needed to overcome this overcapacity problem so that prisons and correctional facilities can carry out service and coaching functions optimally, so that the impact caused by *overcapacity* can be suppressed. Efforts to build new prisons as a solution to the problem of *overcapacity* have so far proven to be ineffective. This is due to the growth rate of the number of inmates, which has increased significantly and is not proportional to the speed of development and the availability of correctional facilities and infrastructure. This inequality has resulted in the construction of new prisons not being able to keep up with the surge in the number of inmates, so the problem of overcapacity remains a structural issue in the penitentiary system in Indonesia. In this context, the legal approach cannot be separated from the goals of national development, as affirmed in the theory of development law by Prof. Mochtar Kusumaatmadja. According to him, law is a tool of social engineering, where law functions not only as a means of social control, but also as an instrument to realize planned social change. (Fadillah, 2022)

Based on this theoretical framework, solving the problem of *overcapacity* in prisons should not only rely on developing physical facilities but also demand a renewal of the criminal law paradigm through a more just and efficient approach. One alternative that aligns with the idea of law as a tool for social change is the optimization of the *restorative justice approach*. This approach aims to create a more humane and participatory criminal case resolution by prioritizing restoring relationships between perpetrators, victims, and the community. Implementing *restorative justice*, especially in minor criminal cases, reduces the number of prison inmates and reflects a shift in legal values towards a more progressive and responsive approach to the community's needs.

Reducing the number of inmates who must serve prison sentences is one of the main impacts of implementing *restorative justice* on prison *overcapacity*. *Restorative Justice* offers alternatives to punishment outside of prison, such as mediation between perpetrator and victim, community service, and community-based rehabilitation programs. This alternative to punishment can significantly reduce the number of people entering prisons. For example, petty criminals or drug users who should go to prison can be directed to participate in rehabilitation programs or social work. This not only reduces the prison population but also prevents overcapacity, which often becomes a serious problem in many prisons in Indonesia (Abdurrifai, 2021).

Based on information obtained through the Cirebon Police Wakasatreskrim, in March 2025, it was explained that *restorative justice* effectively reduces *prison overcapacity*. The effectiveness of the policy lies in the legal position of the results of the settlement of *restorative justice*, which is considered equivalent to a court decision with permanent legal force (*inkrah*). In practice, if a case is still in the investigation stage, it can be stopped; Or if it is already in the investigation stage, the investigation process can be stopped based on a decree with permanent legal force. This policy has positive implications in reducing the number of criminal acts that must be processed to the criminal stage and reducing the burden on the state, both in administrative and financial aspects. However, not all cases can be resolved through the *restorative justice* mechanism, because its

implementation requires the fulfillment of formal and material provisions as stipulated in Article 5 and Article 6 of Perpol Number 8 of 2021. This regulation provides a legal framework for law enforcement officials, especially at the investigation level, to stop handling cases if certain conditions are met. With this legal basis, investigators' termination of the case through the issuance of SP3 (Investigation Termination Order) is not contrary to the principle of legality. Still, it is a form of legal policy to support a fair and efficient settlement of cases. This policy is concrete evidence that the state is beginning to accommodate a more restorative legal approach in the Indonesian criminal justice system.

Table 2. Data on the Number of Cases Completed Through Restorative Justice at the Cirebon Police in May 2025

| No. | Crimes That End Using<br><i>Restorative Justice</i>                            | Number of Inmates |
|-----|--------------------------------------------------------------------------------|-------------------|
| 1.  | Embezzlement                                                                   | 1                 |
| 2.  | By Fighting the Right to Coerce Others With<br>Violence or Threats of Violence | 1                 |
| 3.  | Extortion                                                                      | 1                 |
| 4.  | Evil Help/Tadah                                                                | 1                 |
| 5.  | Embezzlement in Departments                                                    | 1                 |

Source: Kaur Wasmintu Satreskrim Cirebon Police

Furthermore, the Deputy Head of Criminal Investigation of the Cirebon Police explained that applying the restorative justice approach in resolving criminal cases has a positive impact, especially in preventing perpetrators from repeating their actions. Based on data and observations made during the implementation of the mechanism, there were no repeated cases of individuals who had previously resolved cases through *restorative justice* channels. These findings indicate that resolving cases with a dialogue approach and restoring relationships between perpetrators and victims is effective in resolving conflicts peacefully, but also contributes to changing the behavior of perpetrators for the better. As well as to achieve a wider interest, namely, maintaining social harmony. (Nadeak, et al. 2019)

This phenomenon reflects that *restorative justice* is an alternative to resolving cases outside the litigation route and has rehabilitative and educational power for perpetrators of criminal acts. The perpetrators involved in this process are not only asked to account for their actions. Still, they are also actively involved in recovering victims' losses and social reconciliation, to create awareness and empathy for the impact of their actions. (Flora et al. 2025)

With the absence of repeated cases by perpetrators involved in the *restorative justice process* in the Cirebon Police area, it can be concluded that this approach has a constructive deterrent effect and has great potential in building legal awareness in the community. This effectiveness is certainly a positive indicator in supporting law enforcement policies that are humane, fair, and

oriented towards restoring social relations between perpetrators, victims, and the community.

*Restorative justice* also helps the psychological condition of the perpetrators of criminal acts. Offenders often feel isolated and hopeless in the conventional justice system, which can worsen their mental state. The more humane and involved approach offered by *restorative justice* makes perpetrators feel valued and Heard. Through dialogue and mediation, perpetrators of criminal acts can speak openly about their actions and hear directly from victims about the consequences of their actions. Many inmates may find this experience transformational; It will open their eyes to their actions from a different point of view and encourage them to try to improve themselves. So, *restorative justice* helps perpetrators of crimes better psychologically, which is important for a successful rehabilitation process.

In terms of prison management, implementing *restorative justice* can help officers reduce their workload. Prison officers can focus more on effective rehabilitation and reintegration programs as the number of inmates who must be supervised and managed is reduced. In addition, *restorative justice* helps create a safer and more peaceful prison environment. Restorative justice improves prison stability and security by reducing conflicts and tensions between inmates and increasing victim and community satisfaction. With a safer and more peaceful environment, prison officers have better working conditions, which results in a more efficient correctional system overall.

However, the implementation of *restorative justice* does not always run smoothly. To achieve optimal results, some obstacles must be overcome in implementing restorative justice. One of the main problems is that the community and law enforcement do not understand or know *restorative justice*. Many people still believe that justice can only be achieved through severe and commensurate punishment. As a result, *restorative justice* notions centered on restoration and reconciliation are often perceived as weak or ineffective. To address this problem, more intensive efforts are needed to disseminate information about the benefits of *restorative justice*.

Lack of resources is another obstacle to implementing *restorative justice*. Adequate resources, such as trained mediators, venues for mediation, and skills training programs, are needed to run *restorative justice programs* well. Many police forces in Indonesia, especially at the investigation level, still face difficulties obtaining these resources. As a result, the application of *restorative justice* is often limited and cannot reach all perpetrators of criminal acts in Indonesia. Therefore, support from the government is needed to provide the necessary resources and expand the reach of *restorative justice programs*.

In addition, the resistance of perpetrators and victims can pose challenges to implementing *restorative justice*. Not all actors are willing to participate in mediation, especially if they believe it will not favor them. Not only that, but not all victims are eager to talk to the perpetrator, especially if they continue to experience the trauma and pain caused by the crime that occurred. It takes a sensitive approach, efforts to build trust, and adequate support for perpetrators and victims to overcome these barriers. (Pambudi & Wibowo, 2021)

Despite many challenges, implementing *restorative justice* in Indonesia shows excellent potential to reduce overcapacity. By providing off-prison punishment options, such as community service and mediation, *restorative justice* can help reduce the number of inmates in prisons and prevent *overcapacity*. Additionally, *restorative justice*, which focuses on recovery and reconciliation, can help improve relationships among perpetrators, victims, and society. It can also provide perpetrators with an opportunity to improve themselves and prepare for reintegration into society.

## CONCLUSION AND RECOMMENDATIONS

Implementing *restorative justice*, as stipulated in the National Police Regulation of the Republic of Indonesia Number 8 of 2021, represents a progressive breakthrough in the Indonesian criminal justice system, aiming to create a more humane and efficient case settlement process. From a normative point of view, although there is a potential conflict with the provisions of the Criminal Procedure Code, especially regarding the authority to terminate investigations outside the SP3 mechanism, the application of *restorative justice* can still be justified as long as it does not conflict with the principles of legality, guarantees the constitutional rights of the parties, and is carried out transparently and voluntarily.

Empirically, a case study at Cirebon Class I Prison shows that implementing *restorative justice* can significantly reduce the number of inmates and reduce the *overcapacity rate*, which reaches 82.88%. In addition to providing solutions to the limitations of the physical capacity of prisons, this mechanism also shows a deterrent and rehabilitative effect on perpetrators. It improves the quality of social relations between perpetrators, victims, and the community. However, the implementation of this policy still faces challenges in the form of limited technical regulations, resources, and resistance to a legal culture that is still oriented towards imprisonment.

## ADVANCED RESEARCH

Future research should focus on several key aspects that need to be considered to support the effectiveness of implementing the *restorative justice* approach in the Indonesian criminal justice system. First, it is necessary to increase the understanding and capacity of law enforcement officials, especially at the police level, in implementing the principles of *restorative justice*. This step is important so that the approach can be applied in a targeted and consistent manner in the field.

Second, there is a need to strengthen a more comprehensive legal basis through laws and regulations drafted in a structured and thorough manner. Applying the *restorative justice* approach at the investigation level has a basis through Perpol Number 8 of 2021. However, it is still limited to the technical scope in police institutions. Higher regulations are needed at the legal level for its application to take place broadly, comprehensively, and consistently at all stages of the criminal justice process (starting from investigation, prosecution, to corrections). Rules at the level of law will provide stronger legitimacy, ensure legal certainty, and expand the scope of the application of *restorative justice* in various forms of certain criminal acts. Collaboration between the government

and the House of Representatives is crucial to ensure that the resulting regulations provide legal certainty and protect the rights of all parties involved in the restorative case settlement process.

Third, restorative justice needs to be expanded to certain types of criminal acts, especially those that are mild, involve children as perpetrators, or have no broad social impact. This approach is considered more effective in resolving cases humanely and fairly and can contribute to reducing the number of correctional inmates.

These efforts are expected to form a criminal justice system that is more adaptable to society's dynamics without compromising the principles of justice and legal protection, which are the fundamental basis of law enforcement.

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