



A Legal Analysis of the Limitations on the Application of Restorative Justice in the Resolution of Sexual Violence Crimes

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Abstract

This study examines the juridical limitations governing the application of restorative justice in the resolution of sexual violence crimes within the Indonesian criminal justice system. The research employed a nonempirical normative legal method with descriptive analytical orientation through statutory, conceptual, and case approaches. Primary legal materials consisted of Indonesian criminal legislation, restorative justice regulations, and judicial decisions, while secondary materials were derived from scholarly doctrines and peer reviewed legal studies concerning victim protection and restorative justice theory. The findings indicate that significant normative inconsistencies persist between restorative justice policies and statutory provisions emphasizing victim protection, legal certainty, and public accountability in sexual violence cases. The absence of explicit legal boundaries regarding the admissibility of restorative mechanisms has generated interpretative disparities among law enforcement institutions and increased the risk of coercive settlement practices influenced by unequal power relations and social pressure. The study further demonstrates the necessity of reconstructing criminal law policy through harmonized regulations, offense classification standards, verified victim consent mechanisms, and institutional supervision to ensure that restorative justice remains compatible with the protection of victims and the objectives of modern criminal law reform in Indonesia.

Keywords : Restorative Justice, Sexual Violence, Victim Protection, Legal Certainty, Criminal Law.



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INTRODUCTION

The contemporary development of criminal justice systems across multiple jurisdictions has revealed an increasingly complex tension between punitive legal frameworks and restorative paradigms that prioritize reconciliation, social healing, and victim centered recovery, particularly in cases involving interpersonal violence and gender based crimes. Within this evolving discourse, restorative justice has been promoted as an alternative mechanism capable of addressing the limitations of conventional criminal proceedings that are often criticized for procedural rigidity, secondary victimization, and insufficient attention to emotional restoration. International legal scholarship has consequently expanded beyond the traditional retributive model by examining restorative practices as instruments for substantive justice, social reintegration, and participatory conflict resolution in sensitive criminal cases involving marginalized victims and unequal power relations. Yet the growing institutionalization of restorative justice has simultaneously generated significant normative controversy when applied to sexual violence crimes, because such offenses are fundamentally characterized by coercion, structural domination, psychological trauma, and violations of bodily autonomy that cannot be simplistically reduced to interpersonal disputes or negotiable private conflicts.

The Indonesian legal system reflects this global juridical transformation through the enactment of Law Number 12 of 2022 concerning Sexual Violence Crimes, which formally recognizes sexual violence as a serious violation of human dignity and public interest while emphasizing state responsibility in guaranteeing victim protection and legal accountability, a development that also corresponds with broader debates regarding the pursuit of substantive justice within restorative frameworks (Nurman, 2023). The emergence of these competing paradigms has consequently intensified academic concern regarding whether restorative justice can legitimately coexist with the

legal and moral imperatives underlying the prosecution of sexual violence offenses within contemporary criminal justice systems.

Existing studies concerning restorative justice and sexual violence demonstrate that scholars remain divided regarding the extent to which restorative mechanisms can accommodate the interests of victims without undermining legal certainty and institutional accountability. Several legal analyses have argued that restorative justice may contribute to more humane forms of conflict resolution by emphasizing victim recovery, offender responsibility, and participatory dialogue rather than purely punitive sanctions, particularly within contexts where formal legal procedures fail to provide meaningful emotional closure or social rehabilitation (Nurman, 2023). Other scholars have nevertheless emphasized that sexual violence constitutes a category of crime whose social and psychological consequences extend beyond individual harm because victims frequently experience long term trauma, depression, post traumatic stress disorder, social isolation, and diminished autonomy that continue long after the completion of criminal proceedings (Suhita, Ratih, & Priyanto, 2021).

Research within the Indonesian criminal justice context further demonstrates that attempts to apply restorative justice in sexual violence cases often intersect with broader institutional concerns regarding sentencing policy, prosecutorial discretion, and the philosophical orientation of criminal punishment itself (Rosyadi & Fatoni, 2023). Critical scholarship has also noted that the enactment of the Sexual Violence Crimes Law has not entirely resolved interpretative ambiguity concerning whether restorative approaches remain permissible under specific procedural circumstances, particularly because the legal discourse surrounding restorative justice frequently conflates structured legal restoration with informal settlement practices that lack judicial supervision (Swandari & Hariyanto, 2023). Parallel discussions concerning pornography and electronic information related offenses similarly reveal that Indonesian law enforcement institutions continue to face substantial challenges in harmonizing evolving legal norms with effective implementation mechanisms across technologically and socially sensitive crimes (Yanti, Mangku, & Kertih, 2023). The cumulative implication of these studies suggests that restorative justice cannot be evaluated solely through abstract normative ideals because its operational consequences are inseparable from broader questions of institutional power, procedural safeguards, and the vulnerability of victims within unequal social structures.

Despite the expanding body of scholarship concerning restorative justice and sexual violence, substantial conceptual and empirical gaps remain insufficiently addressed within contemporary legal literature. Much of the existing research continues to approach restorative justice either as a generalized ethical ideal or as a procedural innovation without adequately interrogating the incompatibility between restorative assumptions and the criminological characteristics of sexual violence offenses. Several studies tend to presuppose that reconciliation and dialogue inherently produce restorative outcomes while overlooking the reality that victims of sexual violence frequently occupy subordinated social positions shaped by coercion, intimidation, dependency, and stigma, conditions that fundamentally compromise the voluntariness required for legitimate restorative processes (Suhita, Ratih, & Priyanto, 2021).

Legal scholarship discussing Indonesian restorative justice practices also reveals inconsistency regarding the normative limits of out of court settlement mechanisms because some analyses interpret restorative justice as compatible with substantive victim protection, whereas others emphasize that sexual violence constitutes a non negotiable public offense requiring formal prosecution and state intervention (Rosyadi & Fatoni, 2023). Empirical studies concerning settlement practices outside judicial procedures further indicate that many victims agree to reconciliation due to social pressure, economic vulnerability, or unequal relational power rather than genuine consent, thereby raising serious concerns regarding the authenticity of restorative outcomes and the potential reproduction of impunity for perpetrators (Syafari, Fathurahim, & Robo, 2025). The absence of coherent doctrinal parameters distinguishing restorative justice from informal mediation consequently creates interpretative fragmentation within law enforcement practice and weakens the consistency of victim centered legal protection envisioned under contemporary Indonesian criminal law.

The unresolved ambiguity surrounding the legal boundaries of restorative justice in sexual violence cases has generated profound scientific and practical urgency because the stakes involved extend beyond procedural technicalities into broader questions concerning human rights protection, state legitimacy, and public trust in criminal justice institutions. Sexual violence crimes cannot be separated from structural inequalities and social stigma that frequently silence victims, normalize

coercion, and discourage formal reporting, conditions that become even more problematic when informal reconciliation mechanisms are socially or institutionally encouraged without sufficient procedural safeguards. The persistence of amicable settlement practices disguised as restorative justice creates the risk that criminal accountability may be subordinated to communal harmony, familial pressure, or economic compromise, thereby weakening deterrence and diminishing the symbolic function of criminal law in affirming the inviolability of bodily autonomy and human dignity (Swandari & Hariyanto, 2023).

Contemporary sentencing discourse within the Indonesian criminal justice system further illustrates that unresolved inconsistencies regarding restorative mechanisms may create legal uncertainty for judges, prosecutors, and law enforcement officers who must navigate competing obligations between victim recovery and formal prosecution (Rosyadi & Fatoni, 2023). At the same time, emerging studies concerning recovery rights for victims outside judicial procedures reveal that the absence of explicit legal limitations often results in fragmented protection mechanisms and unequal implementation across different regions and institutional settings (Syafari, Fathurahim, & Robo, 2025). These unresolved tensions demonstrate that the debate surrounding restorative justice in sexual violence cases is not merely theoretical but directly influences the quality of victim protection, the coherence of criminal law enforcement, and the credibility of state institutions responsible for safeguarding fundamental rights.

Within this broader scholarly landscape, the present study positions itself not as an unconditional rejection of restorative justice principles but as a critical legal inquiry into the normative limitations governing their application within sexual violence cases under the Indonesian criminal justice system. Existing scholarship has largely concentrated either on the philosophical aspirations of restorative justice or on the punitive dimensions of sexual violence legislation without sufficiently examining the juridical contradiction that emerges when restorative discourse intersects with crimes involving trauma, coercion, and asymmetrical power relations. This study therefore advances the argument that restorative justice cannot be universally transplanted across all categories of criminal offenses because the legitimacy of restorative mechanisms depends upon the structural conditions surrounding victim autonomy, institutional oversight, and the public nature of the legal interests violated.

The study also departs from prior analyses by emphasizing that the principal legal problem lies not merely in the existence of restorative practices themselves but in the absence of precise normative boundaries capable of distinguishing legitimate restorative processes from informal settlements that compromise victim protection and legal certainty. By situating restorative justice within the doctrinal framework of Indonesian criminal law, victimology, and contemporary human rights discourse, this research seeks to contribute a more integrated understanding of how restorative paradigms must be critically recalibrated when confronting crimes whose consequences extend deeply into psychological, social, and structural dimensions.

This study aims to conduct a comprehensive legal analysis concerning the limitations on the application of restorative justice in the resolution of sexual violence crimes within the Indonesian criminal justice system while examining its implications for victim protection and legal certainty. Employing normative legal research through statutory and conceptual approaches, the study critically evaluates the compatibility between restorative justice principles and the juridical characteristics of sexual violence offenses that involve trauma, coercion, and unequal power relations. The theoretical contribution of this research lies in developing a critical framework that distinguishes restorative justice as a structured legal paradigm from informal settlement practices that risk undermining accountability and victim rights. Its methodological contribution emerges from the integration of doctrinal interpretation, victimological analysis, and conceptual legal critique in assessing the operational boundaries of restorative justice within contemporary criminal law. By clarifying the normative limits of restorative mechanisms in sexual violence cases, this research seeks to strengthen legal coherence, reinforce victim centered protection, and provide a more precise foundation for future criminal justice reform in Indonesia.

RESEARCH METHODS

This study employed a nonempirical normative legal research design with a descriptive analytical orientation to examine the juridical limitations governing the application of restorative justice in the resolution of sexual violence crimes within the Indonesian criminal justice system. The study relied

exclusively on documentary and doctrinal legal materials rather than field based empirical data because the primary objective was to critically evaluate legal norms, judicial reasoning, and conceptual inconsistencies embedded within statutory regulations and restorative justice practices. Primary legal materials consisted of the Constitution of the Republic of Indonesia, the Criminal Code, the Criminal Procedure Code, Law Number 12 of 2022 concerning Sexual Violence Crimes, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, relevant prosecutorial and judicial regulations regarding restorative justice, as well as judicial decisions including Supreme Court Decision Number 9/Pid.Sus.Anak/2021/PN Skh and Supreme Court Decision Number 5642 K/Pid.Sus/2022 issued by the Supreme Court of the Republic of Indonesia (Mahkamah Agung RI, 2021; Mahkamah Agung RI, 2022).

Secondary legal materials were derived from peer reviewed journal articles, legal doctrines, scholarly monographs, and theoretical studies concerning restorative justice, victim protection, criminal accountability, and legal certainty, including the restorative justice framework developed by Zehr (2015). The selection of legal materials was conducted purposively based on their substantive relevance to the conceptual boundaries of restorative justice, the regulation of sexual violence crimes, and the protection of victims within Indonesian criminal law. The analytical framework combined statutory analysis, conceptual analysis, and case approach methods in order to identify normative inconsistencies, interpretive ambiguities, and legal gaps concerning the compatibility between restorative justice principles and the characteristics of sexual violence offenses involving trauma, coercion, and unequal power relations.

The analytical procedure was conducted qualitatively through systematic legal interpretation, doctrinal examination, and prescriptive legal reasoning to evaluate the coherence between restorative justice regulations and the mandatory victim protection principles established within Indonesian criminal law. Legal materials were first classified according to their hierarchical authority and thematic relevance before being interpreted through grammatical, systematic, and teleological approaches in order to assess the extent to which restorative justice mechanisms remain compatible with the objectives of legal certainty, public accountability, and victim oriented justice. The study further employed comparative doctrinal interpretation to examine the relationship between statutory provisions, judicial practices, and restorative justice theories, thereby enabling the identification of normative tensions between restorative paradigms and formal criminal prosecution in sexual violence cases.

Methodological rigor was maintained through source triangulation across statutes, judicial decisions, and academic literature, as well as through consistency checks between conceptual arguments and positive legal norms to minimize interpretive bias. The reliability of the analysis was strengthened by prioritizing authoritative legal sources, peer reviewed scholarship, and officially published judicial decisions, while analytical validity was ensured through transparent interpretative procedures and the alignment of legal reasoning with the stated objectives of the study concerning victim protection and legal certainty within the Indonesian criminal justice system.

RESULTS AND DISCUSSION

Juridical Ambiguities in the Restorative Justice Framework for Sexual Violence Crimes

The juridical construction of sexual violence regulation in Indonesia demonstrates a significant normative transformation through the enactment of Law Number 12 of 2022 concerning Sexual Violence Crimes, which places victim protection and recovery as the central objectives of criminal law enforcement. The statutory formulation under Article 5 letters a through e recognizes multiple forms of sexual violence that extend beyond conventional physical assault and include coercive reproductive and psychological violations. Article 10 paragraph (1) further establishes the obligation of the state to provide integrated protection, rehabilitation, and restitution mechanisms for victims through formal judicial procedures. This orientation reflects a victim centered criminal policy that aligns with restorative dimensions of recovery while simultaneously preserving punitive accountability against perpetrators (Rosyadi & Fatoni, 2023).

The normative expansion contained in the Sexual Violence Crimes Law also illustrates the increasing recognition of bodily autonomy and consent as legal interests protected by criminal law. The formulation of consent based violations corresponds with the redefinition of sexual crimes within the new Criminal Code under Articles 415 and 417, which emphasize integrity of the human body and personal dignity rather than moralistic interpretations of decency offenses. Gunadi (2021) argues that the evolution of decency crimes into violations against bodily autonomy requires legal interpretation

that prioritizes victim vulnerability and unequal social relations. This doctrinal development simultaneously narrows the legitimacy of informal settlement mechanisms because sexual violence is no longer categorized as a private dispute between individuals. The criminal justice system therefore assumes direct responsibility for ensuring legal certainty and public accountability in the adjudication of sexual violence cases.

The protective orientation embedded in the Indonesian legal framework becomes stronger in cases involving child victims through Law Number 35 of 2014 concerning Child Protection. Article 59 paragraph (2) letter j and Article 76D impose affirmative obligations upon the state to provide special protection against sexual crimes involving minors, while Article 81 establishes severe criminal sanctions against offenders. Dewi (2020) explains that child protection norms operate under the principle of the best interests of the child, which requires legal mechanisms capable of preventing secondary victimization and social intimidation. Ilyasa (2022) further emphasizes that child victims frequently experience layered trauma that cannot be adequately addressed through informal reconciliation processes. These doctrinal positions indicate that restorative justice mechanisms may conflict with mandatory child protection standards when applied without procedural safeguards and judicial supervision.

The legal debate surrounding restorative justice becomes increasingly complex because sectoral regulations such as Prosecutorial Regulation Number 15 of 2020 and Supreme Court Regulation Number 1 of 2024 provide wider discretionary opportunities for restorative settlement. Kristanto (2022) notes that restorative justice policies were originally designed to reduce penal excessiveness and encourage substantive justice through dialogue and social recovery. Zehr (2015) conceptualizes restorative justice as a process emphasizing accountability, victim participation, and communal healing rather than punitive retaliation alone. Hambali (2020) and Maulana and Agusta (2021) similarly argue that restorative paradigms attempt to humanize criminal justice administration by prioritizing social reintegration. The absence of explicit restrictions concerning the applicability of restorative justice in sexual violence cases nevertheless creates interpretative inconsistency among law enforcement institutions.

Judicial decisions further demonstrate the existence of doctrinal inconsistency regarding the legal boundaries of restorative justice in sexual violence cases. Supreme Court Decision Number 5642 K/Pid.Sus/2022 concerning Herry Wirawan reaffirmed severe punishment and emphasized the gravity of sexual violence against children as a violation of public order and human dignity. In contrast, Decision Number 9/Pid.Sus.Anak/2021/PN Skh reflected restorative considerations through social rehabilitation and educational recovery within the juvenile justice framework. Awansyah et al. (2025) observe that judicial protection for victims often depends on the interpretative orientation of judges rather than standardized procedural parameters. Anggarini et al. (2024) also identify variations in restorative practices among law enforcement institutions handling child violence cases. These differences reveal an unresolved normative tension between punitive legality and restorative flexibility within Indonesian criminal law.

Table 1. Comparative Mapping of Legal Norms and Restorative Justice Applicability in Sexual Violence Cases

Legal Instrument	Key Provisions	Normative Orientation	Restorative Justice Space	Legal Gap
Law Number 12 of 2022 concerning Sexual Violence Crimes	Article 5 letters a through e; Article 10 paragraph (1)	Victim protection and recovery	Not explicitly regulated	Ambiguity concerning restorative limits
Law Number 35 of 2014 concerning Child Protection	Article 59 paragraph (2) letter j; Article 76D; Article 81 paragraphs (1) and (3)	Child protection and severe punishment	Unavailable	Risk of compromising child protection

Criminal Code 2023	Article 415; Article 417	Consent and bodily integrity	Not regulated	Procedural normative vacuum
Prosecutorial Regulation Number 15 of 2020 and Supreme Court Regulation Number 1 of 2024	Case termination provisions	Social recovery orientation	Broadly available	Conflict with serious offenses

Source: Processed from statutory regulations, prosecutorial regulations, and judicial regulations examined in this study based on doctrinal legal analysis (Kristanto, 2022; Swandari & Hariyanto, 2023).

The comparative mapping above demonstrates that Indonesian criminal law simultaneously accommodates two distinct orientations that are not fully harmonized at the procedural level. Substantive criminal regulations governing sexual violence emphasize mandatory protection, accountability, and victim recovery, while restorative regulations provide discretionary opportunities for settlement based on social reconciliation. Swandari and Hariyanto (2023) argue that sexual violence constitutes a serious violation against human dignity that cannot be reduced to interpersonal negotiation. Nurman (2023) nevertheless interprets restorative justice as a mechanism capable of achieving substantive justice beyond formal punishment. The coexistence of these normative approaches without explicit operational limitations creates uncertainty regarding the legal legitimacy of restorative settlement in sexual violence cases.

The doctrinal inconsistency becomes more problematic when examined through victimological analysis concerning trauma and unequal power relations. Suhita et al. (2021) explain that victims of sexual violence commonly experience prolonged psychological harm including depression, fear, social withdrawal, and post traumatic stress disorder. Informal settlement mechanisms may therefore intensify psychological pressure when victims are encouraged to reconcile with perpetrators under social or familial coercion. Aini et al. (2025) emphasize that victim recovery cannot be measured solely through compensation or apology because meaningful justice also requires recognition of suffering through formal legal accountability. Restorative settlement without institutional safeguards risks transforming victim participation into procedural symbolism rather than genuine empowerment.

The legal gap identified in this study also concerns the absence of normative indicators for determining valid victim consent within restorative processes. Syafari et al. (2025) found that many non judicial settlements in sexual violence cases are influenced by economic dependency, family pressure, or unequal social relations between victims and perpetrators. Hadjon (1987) argues that legal protection must prevent abuses of power that undermine individual rights and procedural fairness. Bariah et al. (2017) further maintain that criminal responsibility remains essential for preserving the preventive and deterrent functions of criminal law. The absence of evaluative standards concerning voluntariness and coercion weakens the legal legitimacy of restorative mechanisms applied to sexual violence disputes.

The transition from retributive to restorative criminal paradigms within Indonesian law therefore remains incomplete and conceptually fragmented. Haris et al. (2024) demonstrate that restorative justice has achieved relative effectiveness in narcotics related cases because those offenses involve different social harms and victim structures compared with sexual violence crimes. Yanti et al. (2023) similarly argue that the success of criminal justice mechanisms depends upon compatibility between offense characteristics and settlement procedures. Sexual violence offenses involve violations of bodily integrity, trauma, and structural inequality that distinguish them fundamentally from ordinary interpersonal disputes. These characteristics justify stricter procedural limitations concerning the applicability of restorative justice within sexual violence adjudication.

The juridical analysis ultimately indicates that the principal legal problem does not arise from the absence of restorative justice regulations but from the lack of harmonization between victim protection norms and restorative settlement policies. Indonesian criminal law has established substantial protections through the Sexual Violence Crimes Law, Child Protection Law, and the 2023 Criminal

Code, yet operational standards concerning restorative applicability remain undefined. This normative disconnection creates inconsistent enforcement practices and increases the possibility of subordinating victim interests to social compromise. Harmonization is therefore required to determine categories of sexual violence offenses that must be categorically excluded from restorative settlement mechanisms. Such reform would strengthen legal certainty, preserve public accountability, and ensure that victim protection remains the primary orientation of criminal justice policy in Indonesia.

Legal Protection and Police Discretion in Facilitating Restorative Justice for Sexual Violence Cases

The transformation of Indonesian criminal justice policy reflects a gradual shift from punitive orientation toward restorative mechanisms that emphasize social recovery and procedural responsiveness within law enforcement institutions. Within this transition, the police occupy a strategic institutional position as gatekeepers of the criminal justice system because they exercise the earliest authority in determining the procedural direction of criminal cases. The discretionary authority attached to police institutions enables law enforcement officers to respond flexibly to social realities that cannot always be accommodated through rigid procedural formalism, particularly in cases involving vulnerable victims and complex interpersonal relations (Hambali, 2020). Zehr (2015) conceptualized restorative justice as a mechanism that prioritizes repair of social harm rather than mere punishment, thereby influencing the contemporary interpretation of policing functions beyond conventional coercive enforcement.

The institutional legitimacy of police discretion in Indonesia derives primarily from Article 16 paragraph (1) letter 1 of Law Number 2 of 2002 concerning the Indonesian National Police, which authorizes officers to undertake other legally responsible actions within the scope of their official duties. This provision positions police discretion as a lawful instrument intended to preserve public order while maintaining proportionality and legal accountability in criminal proceedings. Hadjon (1987) argued that discretionary power within administrative and law enforcement institutions requires legal protection to prevent criminalization of officials acting in good faith under statutory authority. The restorative orientation embedded within police practice also reflects broader criminal justice reforms that increasingly recognize substantive justice and victim recovery as important dimensions of legal legitimacy (Nurman, 2023).

The emergence of restorative justice within Indonesian legal policy further expanded the operational role of police institutions in facilitating consensual settlement processes before cases reach formal adjudication. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System institutionalized diversion mechanisms as a restorative alternative for child offenders, creating an important reference for restorative practice within broader criminal law enforcement. Kristanto (2022) explained that Prosecutor Regulation Number 15 of 2020 strengthened restorative settlement mechanisms by allowing case termination based on reconciliation and social restoration under specific procedural requirements. PERMA Number 1 of 2024 subsequently reinforced judicial recognition of restorative principles by emphasizing proportionality, recovery, and reconciliation as complementary objectives of criminal adjudication. These normative developments indirectly increased the strategic significance of police discretion because law enforcement officers become the first institutional actors assessing whether restorative facilitation remains procedurally appropriate.

The exercise of police discretion in sexual violence cases nevertheless requires heightened professional caution because these crimes involve unequal power relations, psychological trauma, and strong public interest considerations. Ilyasa (2022) emphasized that victims of sexual violence frequently experience pressure arising from family expectations, social stigma, and emotional dependency, conditions that may compromise the voluntariness of restorative agreements. Police officers facilitating communication between victims and perpetrators therefore carry the responsibility to ensure that consent emerges from genuine willingness rather than intimidation or coercive compromise. The legitimacy of police intervention depends not only on formal authority but also on compliance with due process principles, victim centered protection, and procedural transparency (Awansyah et al., 2025).

Table 2. Mapping of Legal Foundations for Police Discretion and Institutional Legal Protection

Instrument	Form of Authority	Scope of Police Action	Legal Risk	Form of Protection
Law Number 2 of 2002 concerning the Indonesian National Police	Discretionary authority under Article 16 paragraph (1) letter l	Facilitation of restorative dialogue and procedural mediation	Allegations of abuse of authority	Legal justification based on responsible official conduct
Criminal Procedure Code	Investigative and procedural authority	Documentation of agreements and witness examination	Procedural irregularity claims	Protection through compliance with procedural law
Law Number 11 of 2012 concerning Juvenile Criminal Justice System	Diversion mechanism	Restorative settlement for child offenders	Misapplication beyond statutory scope	Statutory legitimacy of diversion procedures
Prosecutor Regulation Number 15 of 2020	Restorative prosecution policy	Coordination of restorative case settlement	Administrative inconsistency	Institutional prosecutorial guidelines
PERMA Number 1 of 2024	Judicial restorative framework	Judicial consideration of restorative outcomes	Judicial review of procedural fairness	Recognition within judicial policy framework

Source: Processed and analyzed from Law Number 2 of 2002, Law Number 11 of 2012, Prosecutor Regulation Number 15 of 2020, PERMA Number 1 of 2024, and doctrinal interpretations by Hadjon (1987), Kristanto (2022), and Nurman (2023).

The mapping presented in Table 2 demonstrates that police discretion in restorative facilitation is not an isolated institutional practice but rather a normatively interconnected mechanism supported by multiple legal instruments within the Indonesian criminal justice system. The table further illustrates that legal protection for police officers emerges through procedural compliance and institutional legitimacy rather than through absolute immunity from accountability. Anggarini et al. (2024) observed that restorative practices implemented within policing institutions require careful balancing between social reconciliation and adherence to legal safeguards protecting victims and public interests. This framework confirms that professional discretion remains legally defensible only when officers act transparently, proportionally, and within recognized procedural boundaries.

Police involvement in restorative facilitation also reflects the broader evolution of criminal justice administration toward responsive and socially adaptive law enforcement practices. Maulana and Agusta (2021) argued that restorative justice within Indonesia developed as a corrective mechanism addressing limitations of conventional punitive systems that frequently neglect social reconciliation and victim recovery. Within this context, police institutions function not merely as coercive state agents but also as facilitators of procedural dialogue aimed at reducing social conflict escalation. Such developments nevertheless require institutional accountability because discretionary authority without supervision may generate inconsistent practices across different jurisdictions. Procedural documentation therefore becomes essential to ensure that restorative facilitation remains legally traceable and professionally reviewable.

The possibility of criminalization against police officers remains one of the central concerns associated with restorative facilitation in sexual violence cases. Rosyadi and Fatoni (2023) emphasized that sexual violence offenses are categorized as serious crimes affecting public morality and human dignity, thereby creating sensitivity regarding any form of nonlitigation settlement. Police officers who facilitate reconciliation may consequently face accusations of obstructing justice or undermining victim protection when procedural safeguards are inadequately documented. Hadjon (1987) maintained that

legal protection for state officials depends fundamentally on the existence of lawful authority, proportional conduct, and good faith execution of official duties. Institutional legal certainty therefore becomes indispensable for preventing arbitrary criminalization of officers acting within authorized discretionary limits.

Professionalism within restorative facilitation further requires police officers to maintain neutrality and procedural integrity throughout the settlement process. Dewi and Alimuddin (2022) explained that accountability in handling morality related offenses depends significantly on transparent procedural supervision and adherence to legal ethics. Police institutions must ensure that restorative mechanisms do not function as instruments for coercive compromise or social pressure against vulnerable victims. Consent verification, psychological assessment, witness documentation, and written procedural records become crucial indicators of lawful facilitation under due process standards. These safeguards simultaneously protect victims from secondary victimization while protecting officers from allegations of procedural misconduct.

The principle of due process remains central in determining whether restorative facilitation conducted by police institutions can be considered legally legitimate. Criminal proceedings involving sexual violence continue to require formal investigative procedures because restorative engagement cannot eliminate the state obligation to uphold legal accountability and victim protection. Swandari and Hariyanto (2023) argued that restorative justice within sexual violence cases should operate only as a complementary mechanism rather than a substitute for formal criminal law enforcement. The police therefore remain obligated to document reports, collect evidence, and preserve investigative integrity even when victims express willingness to pursue conciliatory dialogue. Such procedural consistency reinforces institutional accountability and strengthens public trust in restorative policing practices.

The normative development of restorative justice within Indonesian criminal law demonstrates that police discretion has evolved into an important component of contemporary law enforcement administration. Legal protection for police officers facilitating restorative dialogue originates from the interconnected framework of police authority, prosecutorial policy, judicial guidance, and procedural accountability standards. The effectiveness of such protection nevertheless depends on professional caution, transparent documentation, voluntary victim consent, and strict adherence to due process requirements as emphasized by Hadjon (1987), Nurman (2023), and Awansyah et al. (2025). The findings indicate that restorative facilitation by police institutions can achieve legal legitimacy only when discretion operates within clearly supervised procedural boundaries that prioritize victim protection, institutional accountability, and public confidence in the criminal justice system.

Reconstruction of Legal Policy on the Application of Restorative Justice in Sexual Violence Crimes

The development of restorative justice within the Indonesian criminal justice system reflects a broader transformation from punitive justice toward victim oriented legal protection. Sexual violence crimes nevertheless possess characteristics that distinguish them from ordinary criminal offenses because they involve psychological trauma, coercion, and unequal power relations that frequently undermine the autonomy of victims in legal decision making. The absence of explicit limitations concerning the scope of restorative justice in sexual violence cases has generated normative inconsistency between restorative policies and the mandatory victim protection principles established under Law Number 12 of 2022 concerning Sexual Violence Crimes (Swandari & Hariyanto, 2023). Normative legal analysis indicates that current regulations still permit interpretative flexibility among law enforcement institutions regarding the admissibility of restorative mechanisms in serious sexual offenses.

The inconsistency emerges because restorative justice regulations were initially formulated to address minor offenses and juvenile delinquency rather than crimes involving severe violations of bodily integrity and human dignity. Zehr (2015) conceptualized restorative justice as a mechanism of accountability and social healing, yet its implementation requires proportional adaptation to the gravity of the offense and the vulnerability of victims. Indonesian legal policy currently lacks a unified classification framework determining which categories of sexual violence may qualify for limited restorative intervention and which must remain exclusively within formal prosecution. Rosyadi and Fatoni (2023) argue that sexual violence constitutes a public law violation that cannot be reduced into

a private dispute between victim and offender because the offense directly affects social morality and collective legal order.

Normative fragmentation is further intensified by the coexistence of victim protection statutes and discretionary restorative justice policies that are not systematically harmonized. Law Number 12 of 2022 emphasizes legal certainty and state responsibility toward victims, while prosecutorial and judicial restorative regulations provide broad interpretative discretion without clear substantive restrictions (Kristanto, 2022). The absence of operational standards regarding victim consent creates significant risks of coercive settlement practices influenced by social stigma, family pressure, and economic dependency. Syafari, Fathurahim, and Robo (2025) demonstrate that extra judicial settlements in sexual violence cases frequently occur under unequal social conditions that compromise the voluntariness of victim participation.

The legal reconstruction required within Indonesian criminal law must therefore establish a limited restorative justice model specifically designed for sexual violence cases. Such reconstruction should not abolish restorative principles entirely, but rather redefine their procedural boundaries in accordance with victim protection standards and public accountability obligations. Nurman (2023) explains that substantive justice can only be achieved when restorative mechanisms preserve legal certainty and avoid legitimizing impunity. The reconstruction model consequently requires strict classification criteria, institutional supervision, and legally verified victim consent as mandatory prerequisites before any restorative process may proceed.

Table 3. Model of Legal Policy Reconstruction for Restorative Justice in Sexual Violence Crimes

Aspect	Current Regulation	Legal Problem	Proposed Reconstruction
Scope of Restorative Justice	General restorative policies remain broadly interpreted	No explicit exclusion of serious sexual violence offenses	Restrict restorative justice to limited and exceptional categories
Victim Consent	No uniform consent verification standard	Risk of coercion and unequal power relations	Mandatory psychological and legal assessment of victim consent
Classification of Sexual Crimes	No offense based restorative categorization	Interpretative inconsistency among institutions	Establish statutory classification based on gravity and trauma impact
Institutional Supervision	Limited procedural oversight	Potential abuse of discretionary authority	Independent multidisciplinary supervision mechanism
Legal Harmonization	Separate sectoral regulations	Normative conflict between statutes	Integrated national restorative justice framework
Public Accountability	Settlement orientation varies institutionally	Risk of impunity perception	Mandatory judicial review for restorative agreements

Source: Constructed from doctrinal analysis based on Zehr (2015), Nurman (2023), Swandari and Hariyanto (2023), and Indonesian statutory regulations.

The reconstruction model presented in Table 3 demonstrates that the principal weakness of current legal policy lies not in the absence of restorative justice itself but in the absence of legally measurable limitations governing its implementation. Hadjon (1987) emphasized that legal protection requires procedural safeguards capable of preventing abuse of authority and coercive practices against vulnerable individuals. A victim centered restorative mechanism therefore demands independent psychological assessment, legal assistance, and institutional supervision to ensure that any agreement reflects genuine voluntariness rather than social pressure. This analytical finding indicates that restorative justice cannot operate solely as an informal negotiation mechanism because sexual violence cases involve substantial public interests and human rights dimensions.

The establishment of offense classification standards constitutes another essential element of legal reconstruction. Not all sexual offenses possess identical levels of violence, coercion, or psychological harm, which means legal differentiation becomes necessary to determine whether restorative approaches may be exceptionally considered. Ilyasa (2022) explains that victimological analysis requires criminal policy to account for trauma severity, dependency relations, and the long term impact experienced by victims of sexual violence. Serious offenses involving children, repeated violence, abuse of authority, or severe psychological harm should therefore remain categorically excluded from restorative settlement mechanisms.

Legal certainty additionally depends on the formulation of standardized victim consent parameters within restorative procedures. Current restorative practices frequently rely upon formal statements of agreement without examining whether victims possess genuine psychological freedom to refuse settlement proposals. Suhita, Ratih, and Priyanto (2021) identify that victims of sexual violence often experience fear, intimidation, shame, and emotional dependency that impair autonomous decision making. The reconstructed policy consequently requires mandatory psychological evaluation and independent legal representation before restorative negotiations may be recognized as legally valid.

Institutional supervision mechanisms also require substantial reform because restorative procedures currently depend heavily on discretionary authority exercised by law enforcement officers. Yanti, Mangku, and Kertih (2023) argue that effective criminal law enforcement depends upon consistency between procedural mechanisms and the social objectives underlying criminal prohibition. A multidisciplinary supervisory structure involving prosecutors, psychologists, victim protection agencies, and judicial institutions would strengthen transparency and minimize procedural abuse within restorative practices. Such supervision would simultaneously reinforce public confidence that restorative justice does not function as a disguised form of legal compromise benefiting perpetrators.

Future criminal policy reform within Indonesia should prioritize harmonization between restorative justice regulations and statutory victim protection frameworks. Mahfud MD's legal policy perspective concerning responsive law supports the necessity of aligning procedural flexibility with constitutional guarantees of justice and human dignity. Satjipto Rahardjo similarly viewed progressive law as a legal system capable of adapting to social realities without sacrificing substantive protection for vulnerable groups. The formulation of *ius constituendum* concerning restorative justice in sexual violence crimes should therefore codify explicit procedural restrictions, offense classifications, consent standards, and supervisory obligations within a unified national legal framework.

The reconstruction of restorative justice policy in sexual violence crimes ultimately demonstrates that legal reform must prioritize victim dignity, legal certainty, and public accountability simultaneously. Existing regulations have succeeded in recognizing sexual violence as a serious violation of human rights, yet operational inconsistencies continue to create uncertainty concerning restorative intervention boundaries. Normative reconstruction through harmonized legislation, limited restorative classification, verified victim consent, and institutional oversight would strengthen coherence within the Indonesian criminal justice system while preventing restorative justice from evolving into a mechanism of informal impunity. This analytical conclusion confirms that restorative justice may only function legitimately in sexual violence cases when embedded within a strictly regulated victim protection framework consistent with the objectives of modern criminal law reform.

CONCLUSION

This study demonstrates that the application of restorative justice in the resolution of sexual violence crimes within the Indonesian criminal justice system remains constrained by significant normative inconsistencies, regulatory fragmentation, and the absence of explicit legal limitations governing its implementation. The analysis reveals that Law Number 12 of 2022 concerning Sexual Violence Crimes, the Child Protection Law, and the renewed Criminal Code collectively emphasize victim protection, legal certainty, and public accountability as central objectives of criminal law, while restorative justice regulations continue to provide broad discretionary space without a harmonized classification of sexual offenses eligible for restorative mechanisms. The findings further indicate that the use of restorative approaches in sexual violence cases frequently risks subordinating victim interests to social compromise because victim consent may emerge within unequal power relations, psychological pressure, and structural vulnerability. Legal reconstruction is therefore required through the establishment of clear offense classifications, mandatory standards for voluntary victim consent,

institutional supervision mechanisms, and integrated restorative justice regulations capable of balancing substantive justice with procedural accountability. The study concludes that restorative justice may only function legitimately in sexual violence cases when positioned as a strictly limited and carefully supervised mechanism that prioritizes victim dignity, prevents impunity, and reinforces the coherence of Indonesian criminal law policy.

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