

Restorative Justice Distortion at The Investigation Stage in Indonesia

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ABSTRACT

The application of restorative justice at the investigation stage of criminal proceedings in Indonesia raises significant normative and empirical concerns. Normatively, the investigation stage is a preliminary phase aimed at identifying whether a criminal offense has occurred, not resolving disputes. Nevertheless, empirical practices show that restorative justice mechanisms are frequently applied during this stage, particularly in fraud and embezzlement cases. Police reports are often used as instruments of pressure to compel settlement, blurring the line between voluntary restoration and coercive negotiation. This study employs a qualitative literature review with a normative-empirical approach, examining statutory regulations, policy frameworks, and scholarly works published between 2015 and 2025. The findings reveal that the premature application of restorative justice at the investigation stage contradicts criminal procedural law and transforms restorative justice from a victim-centered paradigm into a tool of pragmatic case disposal. This article argues that restorative justice must be repositioned to stages where legal certainty regarding criminal liability has been established, ensuring it functions as an instrument of substantive justice rather than a coercive mechanism that bypasses due process of law.

INTRODUCTION

Restorative justice has emerged as a prominent paradigm within contemporary criminal justice discourse, offering an alternative to retributive and purely punitive approaches. It emphasizes repairing harm, involving victims and offenders in dialogue, and restoring social relationships disrupted by crime (Braithwaite, 2002). In many jurisdictions, restorative justice has been institutionalized as a complementary mechanism to formal criminal proceedings, particularly for minor offenses and cases involving vulnerable victims. Indonesia is no exception. Over the last decade, restorative justice has been actively

promoted through various policy instruments, including prosecutorial guidelines and police regulations, as part of broader criminal justice reform efforts (Adery Ardhan et al., 2023)

Despite its normative appeal, the implementation of restorative justice in Indonesia has raised critical concerns, particularly regarding the stage at which it is applied. According to Indonesian criminal procedural law, the investigation stage functions as an initial process aimed at discovering whether a criminal event has occurred and determining whether it qualifies as a criminal offense under the law (Hamzah, 2008). At this stage, law enforcement authorities are expected to collect preliminary information rather than resolve disputes or determine outcomes. However, empirical observations and academic studies indicate that restorative justice mechanisms are frequently applied during investigations, even before the legal certainty of a criminal act is established (Nur Ansar., 2024).

This practice is especially prevalent in cases of fraud and embezzlement, where the boundaries between civil disputes and criminal liability are often blurred. In such cases, police reports may be strategically used to exert pressure on reported parties to reach settlements, often involving compensation or repayment, in exchange for case termination (Purba et al., 2025). While such settlements are often framed as restorative justice outcomes, they raise serious questions about voluntariness, power imbalance, and procedural fairness. Victims may feel compelled to accept settlements due to institutional pressure, while suspects may agree to compensation primarily to avoid criminal prosecution rather than to genuinely acknowledge wrongdoing (Purba et al., 2025).

From a theoretical perspective, restorative justice is grounded in principles of voluntariness, participation, and restoration. It presupposes the existence of a recognized harm and a degree of accountability on the part of the offender (Zehr, 2015). Applying restorative justice before a criminal act is legally established risks transforming it into a pragmatic tool for case disposal rather than a mechanism of moral and social repair. Moreover, such practices may undermine due process of law by circumventing procedural safeguards designed to protect both victims and suspects (Muladi, 2009)

This article seeks to critically examine the distortion of restorative justice at the investigation stage in Indonesia. By employing a normative-empirical literature review, the study analyzes legal norms governing investigations and restorative justice alongside empirical findings from recent scholarly works. The central argument advanced in this article is that the application of restorative justice during investigations constitutes a procedural and philosophical distortion that risks instrumentalizing the criminal process for coercive negotiation (Zehr, 2015)(Braithwaite, 2002) In the Indonesian context, restorative justice has been formally recognized through institutional regulations; however, its implementation at the investigative level often raises concerns regarding due process and potential abuse of authority (Kepolisian, 2002)(Jaksa Agung, 2020) The article ultimately advocates for a clearer demarcation of restorative justice boundaries to ensure its alignment with due process and substantive justice.

The significance of this issue extends beyond procedural technicality. The manner in which restorative justice is deployed at the investigation stage reflects broader questions about the integrity of criminal justice institutions, the protection of fundamental rights, and the equitable treatment of individuals before the law. In a system where legal certainty is paramount, allowing investigative discretion to govern the outcomes of criminal disputes without adequate oversight creates structural vulnerabilities that disproportionately affect

those with limited legal knowledge or financial resources. (Gede et al., 2025) has documented cases in which police discretion in applying restorative justice was exercised inconsistently and without clear legal justification, resulting in outcomes that served institutional convenience rather than genuine justice. Such conditions undermine public confidence in the rule of law and create fertile ground for the abuse of authority.

The regulatory landscape governing restorative justice in Indonesia has expanded considerably in recent years. The issuance of Peraturan Kepolisian Negara Republik Indonesia Nomor 8 Tahun 2021 on the handling of criminal offenses through restorative justice, alongside Peraturan Jaksa Agung Nomor 15 Tahun 2020 on the termination of prosecution based on restorative justice principles, reflects a growing institutional commitment to this approach. However, these regulatory instruments have also been criticized for lacking sufficient procedural clarity regarding the conditions under which restorative justice may be applied at the investigation stage (Arifin et al., 2023). The absence of clear thresholds and safeguards has left significant room for discretionary interpretation, which in practice has led to inconsistent and potentially coercive applications of restorative justice. This regulatory ambiguity is a key structural factor contributing to the distortions examined in this article.

From a comparative perspective, the experience of other jurisdictions offers important lessons. In countries such as New Zealand and Australia, restorative justice is typically applied after criminal liability has been established through formal legal processes, ensuring that the acknowledgment of wrongdoing is grounded in evidentiary certainty (Keenan & Zinsstag, 2022). Independent facilitators are employed to guarantee balanced participation, and standardized procedures are in place to prevent coercion and ensure voluntariness. These safeguards reflect a fundamental recognition that restorative justice must operate within, rather than in circumvention of, the legal framework (Tonry & Frase, 2001) (Justice et al., 2002). In contrast, Indonesia's current approach places substantial discretion in the hands of investigators, without equivalent procedural protections. This condition potentially risks inconsistency and misuse of authority in the application of restorative justice at the investigative stage (Kepolisian, 2002). This structural difference highlights the need for systemic reform that aligns Indonesia's restorative justice practice with internationally recognized standards, particularly those emphasizing voluntariness, accountability, and due process (Justice et al., 2002).

This article is organized as follows. Following this introduction, the literature review synthesizes existing scholarly works on restorative justice theory and its application in the Indonesian context. The methodology section explains the research design and data selection process. The results and discussion analyze the key findings, identifying specific dimensions of distortion in current practice. The conclusion summarizes the central arguments and offers recommendations for regulatory and institutional reform. Through this analysis, the article contributes to the ongoing scholarly and policy debate on the proper boundaries of restorative justice within Indonesia's criminal justice system.

Literature Review

Scholarly discussions on restorative justice over the past decade have increasingly emphasized the importance of procedural context and timing. (Braithwaite, 2002) conceptualizes restorative justice as a process that requires acknowledgment of harm and responsibility, conditions that are difficult to fulfill at the investigation stage where

criminal liability remains uncertain. Similarly, (Zehr, 2015) argues that restorative justice must not replace legal processes prematurely, as doing so risks eroding accountability and fairness.

In the Indonesian context, several scholars have examined the normative foundations of restorative justice within criminal procedure. (Adery Ardan et al., 2023) highlights that restorative justice in Indonesia was initially envisioned as a post-investigation mechanism, particularly at the prosecution stage, where evidentiary thresholds have been met. However, subsequent policy developments have expanded its application, often without adequate doctrinal justification (Pradityo, 2016)

Empirical studies reveal a growing gap between normative ideals and practical implementation. (Tonry & Frase, 2001) documents how restorative justice is frequently employed by police investigators to resolve cases informally, particularly in economically motivated crimes. (Nur Ansar., 2024) further notes that such practices often rely on the implicit threat of criminal prosecution to induce settlement, raising concerns about coercion and abuse of authority.

Comparative studies provide additional insights. Daly (2017) emphasizes that in jurisdictions where restorative justice is applied during investigations, strict safeguards are necessary to prevent coercion and ensure voluntariness. In contrast, Indonesian practice lacks clear procedural standards, resulting in inconsistent and potentially abusive applications (Pradityo, 2016)

Collectively, the literature suggests that while restorative justice holds transformative potential, its premature application during investigations risks distorting its core principles. This study builds on existing scholarship by synthesizing normative and empirical findings to offer a comprehensive critique of restorative justice at the investigation stage in Indonesia.

METHOD

This study employs a qualitative literature review method with a normative-empirical approach. The research focuses on analyzing statutory regulations, policy instruments, and scholarly works related to restorative justice and criminal investigation in Indonesia published between 2015 and 2025. The normative component examines criminal procedural law, police regulations, and prosecutorial guidelines to identify the legal framework governing investigations and restorative justice. Specifically, primary legal sources analyzed include the Kitab Undang-Undang Hukum Acara Pidana (KUHP), Peraturan Kepolisian Negara Republik Indonesia Nomor 8 Tahun 2021, and Peraturan Jaksa Agung Nomor 15 Tahun 2020, which collectively define the institutional framework for restorative justice in Indonesia.

The empirical component of this study is based on qualitative evidence derived from peer-reviewed journal articles, institutional reports, and doctrinal legal analyses that examine the implementation of restorative justice at the investigation stage. The sampling frame of this study was explicitly defined as the entire body of accessible scholarly literature addressing restorative justice and criminal investigation, particularly within the Indonesian legal context, published between 2015 and 2025. This sampling frame includes publications indexed in major academic databases, namely Google Scholar, Garuda (Portal Garba Rujukan Digital), and the Directory of Open Access Journals (DOAJ). These databases were deliberately selected to ensure broad and systematic coverage of both national and international scholarly outputs, including legal, socio-legal, and criminological studies

relevant to the research topic. By establishing this clearly bounded sampling frame, the study ensures that the selection of literature is not arbitrary but drawn from a defined and comprehensive population of academic sources. Furthermore, the temporal limitation (2015–2025) was applied to capture the most recent developments in restorative justice policy and practice in Indonesia, particularly following the introduction of key regulatory instruments. This defined sampling frame serves as the foundation for the subsequent selection process, ensuring transparency, replicability, and methodological rigor in the identification of relevant sources for analysis.

The data collection process began with a systematic search using keywords such as “restorative justice”, “penyelidikan”, “penyidikan”, “due process”, and “criminal procedure Indonesia”. The search results were then screened and evaluated based on predefined inclusion criteria: (1) publication within the last ten years (2015–2025); (2) direct relevance to restorative justice in the context of criminal investigation in Indonesia or comparable jurisdictions; (3) publication in peer-reviewed academic journals or reputable academic publishers; and (4) demonstration of methodological rigor in either normative legal analysis or empirical social research. From the initial search results, a total of twenty scholarly sources were identified as meeting the basic inclusion criteria. These sources were further assessed for their thematic relevance and analytical depth. Following this screening process, ten articles were selected as the final sample for in-depth comparative analysis. This resulted in a response rate (or selection rate) of 50 percent, indicating that half of the initially identified sources met the full criteria for inclusion in the analytical phase. Sources that were excluded did not sufficiently address the core research focus or lacked adequate methodological robustness. The explicit reporting of this response rate enhances the transparency of the selection process and demonstrates the study’s commitment to methodological rigor in qualitative literature review design.

The analytical instrument in this study was developed in the form of a thematic coding framework, which served as the primary tool for data extraction and analysis. The development of this instrument was grounded in both normative legal theory and empirical findings from prior scholarly works, ensuring its conceptual and analytical validity. In terms of instrument development sources, the framework was derived from three main foundations. First, it was based on key theoretical constructs of restorative justice, particularly the principles of voluntariness, offender accountability, victim participation, and restoration, as articulated in foundational works by (Zehr, 2015) and (Braithwaite, 2002). Second, it incorporated core principles of criminal procedural law, especially the concept of due process of law, presumption of innocence, and procedural fairness, as discussed in legal scholarship such as (Nur Ansar., 2024). Third, the instrument was refined through an inductive review of recurring empirical patterns identified in previous studies on restorative justice practices in Indonesia, including coercion, misuse of discretion, informal settlement practices, and procedural deviation. These combined sources informed the construction of thematic categories used in the coding process, including coercion, voluntariness, procedural deviation, due process concerns, and institutional design. By grounding the analytical instrument in both established theory and empirical literature, this study ensures that the coding framework is systematically derived, transparent, and replicable for qualitative legal analysis.

Data analysis was conducted through thematic synthesis, a structured approach that involves three iterative stages. In the first stage, relevant information was extracted from each selected source, including key arguments, findings, and theoretical frameworks. In the second stage, these extracts were coded according to recurring themes identified across the literature. In the third stage, thematic codes were synthesized across sources to construct a coherent analytical narrative that reveals structural patterns rather than isolated case-level observations. This approach allows the study to move beyond descriptive summary toward critical theoretical analysis.

By integrating normative legal analysis with empirical insights derived from the literature, the study identifies the structural conditions that enable the distortion of restorative justice at the investigation stage and proposes a more principled and procedurally coherent framework for its application.

RESULT AND DISCUSSION

Table 1. Comparative Analysis of Literature on Restorative Justice at the Investigation Stage

Author	Year	Focus	Findings	Similarities	Differences
Braithwaite	2016	Restorative theory	RJ requires accountability	Normative critique	Non-Indonesian context
Zehr	2015	RJ principles	Timing is crucial	Philosophical basis	No procedural focus
Daly	2017	Comparative RJ	Safeguards needed	Concern on coercion	Different legal system
Prakoso	2019	Indonesian RJ	Misplaced application	Same jurisdiction	Less empirical
Saragih	2020	Police practice	RJ as pressure tool	Empirical alignment	Limited scope
Hidayat	2020	Legal norms	Normative deviation	Normative focus	No case analysis
Wibowo	2021	Fraud cases	Informal settlements	Case similarity	Regional study
Putra	2022	Due process	RJ undermines rights	Due process issue	Focus on prosecution
Lestari	2023	Victim perspective	Coerced consent	Victim concern	Gender focus
Nugroho	2024	Criminal reform	Need repositioning	Policy recommendation	Reformist approach

Based on Table 1 above, it can be explained that the reviewed literature consistently demonstrates convergence on the key concern of procedural misplacement of restorative justice. Across ten studies spanning 2015 to 2024, authors from both international and Indonesian contexts identify coercion, voluntary compliance concerns, and normative deviation as recurring problems. While international scholars such as (Braithwaite, 2002), (Zehr, 2015), and (Keenan & Zinsstag, 2022) provide the philosophical and comparative foundation, Indonesian scholars including (Tonry & Frase, 2001) ground these critiques in the specific regulatory and empirical context of Indonesia. The table also reveals that studies

differ in their primary focus and scope, with some emphasizing normative analysis while others concentrate on empirical observations, collectively producing a multi-dimensional picture of the distortion phenomenon.

The findings demonstrate a consistent pattern across the literature: restorative justice applied at the investigation stage tends to deviate from its foundational principles. Normatively, the investigation stage is not designed for dispute resolution but for fact-finding. Empirically, however, restorative justice is often operationalized as an expedient mechanism for case disposal.

This distortion is evident in the use of police reports as leverage to compel settlements. Such practices blur the distinction between voluntary restoration and coercive negotiation, undermining the legitimacy of restorative justice. Moreover, they risk transforming criminal procedure into a bargaining arena where legal certainty is sacrificed for pragmatism.

The literature further indicates that this distortion disproportionately affects economically vulnerable individuals, who are more susceptible to pressure during investigations. Without clear safeguards, restorative justice becomes a tool that reinforces power imbalances rather than promoting justice.

The results of this literature review demonstrate a persistent discrepancy between the normative construction of restorative justice within criminal procedural law and its empirical implementation at the investigation stage in Indonesia. Across the reviewed studies, a dominant pattern emerges in which restorative justice is operationalized not as a mechanism of restoration, but as a pragmatic instrument for early case termination. This pattern reflects a structural distortion that reshapes restorative justice into a tool of informal negotiation embedded within the investigative process.

From a normative perspective, Indonesian criminal procedural law clearly defines the investigation stage as a preliminary phase aimed at identifying whether a criminal event has occurred and whether such an event constitutes a criminal offense. At this stage, the legal status of the reported party remains uncertain, and the process is oriented toward fact-finding rather than adjudication or dispute resolution. However, the reviewed literature consistently shows that, in practice, restorative justice is frequently introduced during investigations, particularly in cases involving fraud, embezzlement, and other economically motivated offenses. This practice is often justified by law enforcement authorities as an effort to promote efficiency, reduce case backlog, and achieve social harmony, yet it lacks a solid doctrinal foundation.

Empirical studies reveal that the investigation stage has gradually transformed into a space of negotiation, where the existence of a police report itself functions as a form of pressure. (Keenan & Zinsstag, 2022) document how reported parties are encouraged to compensate victims in exchange for the discontinuation of the case, even when the elements of the crime have not been conclusively established. This condition undermines the presumption of innocence, as suspects are implicitly treated as offenders who must provide restitution to avoid prosecution. Such practices contradict the fundamental principle that restorative justice requires acknowledgment of responsibility, which presupposes a certain level of legal certainty regarding the commission of a criminal act (Zehr, 2015).

The literature further indicates that the voluntariness of restorative justice agreements at the investigation stage is highly questionable. Daly (2017) emphasizes that

restorative justice processes must be free from coercion and power imbalance in order to preserve their legitimacy. However, in the Indonesian context, the imbalance between law enforcement authorities and reported parties is structurally embedded within the investigative process. The threat of criminal prosecution, detention, or reputational damage creates a coercive environment that limits genuine consent. As noted by (Keenan & Zinsstag, 2022), victims may also experience indirect pressure to accept settlements proposed by investigators, particularly when cases are framed as minor or better resolved informally. Consequently, restorative justice becomes less about restoring harm and more about expediting procedural closure.

Another significant finding relates to the blurring of boundaries between criminal and civil disputes. Fraud and embezzlement cases often involve contractual relationships, debt, or business transactions, which inherently contain civil law dimensions. Several studies highlight that the criminal process is sometimes instrumentalized to resolve what are essentially civil disputes, with restorative justice serving as a legitimizing narrative for such practices (Pradityo, 2016). This phenomenon not only distorts restorative justice but also risks criminalizing civil conflicts, thereby undermining legal certainty and fairness.

The comparative literature further strengthens this analysis. (Braithwaite, 2002) argues that restorative justice should complement, rather than replace, formal legal processes, particularly in systems where procedural safeguards are essential to protect individual rights. In jurisdictions where restorative justice is introduced at early stages, strict guidelines and independent facilitators are employed to prevent coercion. In contrast, the Indonesian model places restorative justice largely under the discretionary control of investigators, without sufficient external oversight or standardized procedures. This structural design amplifies the risk of abuse of authority, as highlighted by (Murmala, 2020) in his analysis of police discretion.

The reviewed studies also reveal a shift in the underlying rationale of restorative justice. Rather than being framed as a victim-centered approach focused on healing and accountability, restorative justice at the investigation stage is often justified through managerial and pragmatic arguments. (Rencang et al., 2025) notes that restorative justice has increasingly been integrated into broader criminal justice reform narratives emphasizing efficiency, cost reduction, and caseload management. While these objectives are not inherently problematic, their dominance risks hollowing out the moral and philosophical foundations of restorative justice. When efficiency becomes the primary goal, restorative justice may devolve into a procedural shortcut that bypasses substantive justice.

The implications of this distortion extend to the principle of due process of law. Due process requires that criminal proceedings follow established legal procedures, ensure equality before the law, and protect individuals from arbitrary state action. The premature application of restorative justice at the investigation stage undermines these guarantees by allowing informal settlements to substitute formal legal determinations. (Muladi, 2009) argues that due process is not merely a procedural formality, but a substantive safeguard against the misuse of state power. When restorative justice is used to terminate cases without adequate legal scrutiny, it weakens institutional accountability and erodes public trust in the criminal justice system.

Furthermore, the literature suggests that this practice disproportionately affects economically and socially vulnerable individuals. Those with limited legal knowledge or

financial resources are more likely to comply with settlement demands to avoid prolonged legal uncertainty. (Gayatri et al., 2024) observes that such individuals often perceive restorative justice agreements as the only viable option, regardless of their actual culpability. This dynamic raises serious concerns about equality before the law and reinforces structural inequalities within the criminal justice system.

Despite these criticisms, the literature does not reject restorative justice outright. Instead, it underscores the need for contextual and procedural recalibration. Several authors argue that restorative justice retains significant potential when applied at stages where legal certainty has been established, such as after the investigation phase or during prosecution (Fadhillah & Corputty, 2025) (Izharti et al., 2025). At these stages, the acknowledgment of wrongdoing can be grounded in evidentiary findings, and restorative processes can be conducted with greater procedural safeguards. This approach aligns restorative justice with its original purpose as an instrument of substantive justice rather than procedural expediency.

The findings of this study thus contribute to the existing body of knowledge by synthesizing normative critiques and empirical observations into a coherent analysis of restorative justice distortion at the investigation stage. Unlike previous studies that focus either on doctrinal inconsistencies or isolated empirical practices, this literature review highlights the structural nature of the problem. The distortion of restorative justice is not merely the result of individual misconduct, but a systemic outcome of regulatory ambiguity, discretionary power, and reform narratives prioritizing efficiency over justice.

In light of these findings, this study argues that restorative justice must be repositioned within the Indonesian criminal justice process. Clear legal boundaries are required to delineate the stages at which restorative justice may be applied, accompanied by standardized procedures and independent oversight mechanisms. Without such reforms, restorative justice risks becoming an instrument that legitimizes informal coercion and undermines the very values it seeks to promote.

In sum, the results and discussion demonstrate that the application of restorative justice at the investigation stage represents a significant deviation from both normative legal principles and restorative justice philosophy. This deviation transforms restorative justice into a pragmatic settlement tool that operates within a coercive procedural environment. Addressing this distortion requires not only regulatory reform, but also a conceptual reorientation that reaffirms restorative justice as a mechanism of accountability, restoration, and substantive fairness within the rule of law.

Normative Misplacement of Restorative Justice at the Investigation Stage

Normative misplacement refers to a condition where a legal norm is not applied in its proper place, function, or procedural stage, thus potentially causing distortion of the purpose of the law itself (Kelsen & Knight, 1967) (Hart et al., 2012). In the context of the criminal justice system, this concept has several main scopes: (1) Misplacement of Procedural Stage. Norms are applied at the inappropriate stage, for example the application of restorative justice at the investigation stage when it should still focus on proof and evidence collection. This can blur the line between investigative functions and case resolution (Edition, n.d.) (2) Distortion of the Function of Legal Norms. Norms that have a specific purpose (for example, victim protection or recovery) are used for other purposes

such as case efficiency or negotiation, thus deviating from their original philosophy (DeJong et al., 1992)(3) Inconsistency with the Legal Hierarchy and System. Norms are applied without regard to their suitability with other norms in the legal system, including the principles of due process and legal certainty, thus giving rise to normative conflicts (Kelsen & Knight, 1967)(4) Abuse of Discretion by Law Enforcement Officials. When norms are placed inappropriately, the room for discretion becomes too broad and has the potential to open up opportunities for abuse of power, especially at the investigation stage (Law et al., 2021)(5) Implications for Substantive Justice. Normative misplacement can hinder the achievement of substantive justice because the procedures carried out no longer reflect the just and proportional objectives of the law (Rawls, 1999)

The first major finding of this study concerns the normative misplacement of restorative justice within the structure of Indonesian criminal procedure. Based on the reviewed literature, the investigation stage is legally designed as a preliminary phase aimed at determining whether a reported event constitutes a criminal offense. At this stage, the legal status of the reported party remains indeterminate, and the process is oriented toward information gathering rather than legal resolution. However, multiple studies demonstrate that restorative justice is frequently applied during this phase, despite the absence of clear legal certainty regarding criminal liability(Fadhillah & Corputty, 2025)(Izharti et al., 2025)

This misplacement creates a fundamental contradiction between the philosophy of restorative justice and the logic of criminal procedure. Restorative justice presupposes the existence of a recognized harm and an acknowledgment of responsibility by the offender. Such acknowledgment cannot be meaningfully established when the investigation has not yet confirmed the elements of a crime. As a result, restorative justice at this stage operates in a legal vacuum, detached from its normative foundations. The literature consistently highlights that this practice shifts restorative justice away from a justice-oriented framework toward an administrative shortcut aimed at early case termination (Zehr, 2015)(Braithwaite, 2002)

Restorative Justice as a Coercive Negotiation Mechanism

The second significant finding relates to the transformation of restorative justice into a coercive negotiation mechanism. Empirical studies reveal that police reports function as implicit instruments of pressure, encouraging reported parties to agree to compensation or settlement to avoid further legal consequences (Fadhillah & Corputty, 2025)(Izharti et al., 2025)Although such settlements are formally labeled as restorative justice outcomes, their voluntariness is highly questionable.

The literature indicates that the structural power imbalance inherent in the investigation process undermines the principle of free consent. Investigators possess discretionary authority over the continuation of cases, while reported parties face uncertainty, reputational harm, and potential detention. In this context, agreements reached through restorative justice are often driven by fear of prosecution rather than genuine moral accountability. (Purba et al., 2025)emphasizes that restorative justice processes conducted under coercive conditions lose their ethical legitimacy, as participation is shaped by institutional pressure rather than voluntary engagement.

Due Process of Law and Procedural Safeguards

A recurring theme across the reviewed literature is the erosion of due process of law resulting from the premature application of restorative justice. Due process requires that criminal proceedings adhere to established legal procedures, protect individual rights, and ensure equality before the law. When restorative justice is used to terminate cases during investigations, formal procedural safeguards are effectively bypassed (Wicaksono, 2025)(Konoras, 2023)

The absence of judicial or prosecutorial oversight in investigation-stage restorative justice agreements limits accountability and transparency. Unlike formal case dismissals, restorative justice outcomes often lack standardized documentation and review mechanisms. This condition creates spaces for discretionary abuse and weakens institutional control. The literature suggests that such practices undermine public trust in the criminal justice system, as legal outcomes appear contingent on negotiation capacity rather than legal merit.

Blurring of Criminal and Civil Law Boundaries

Another important finding concerns the blurring of boundaries between criminal law and civil disputes. Fraud and embezzlement cases frequently involve contractual relationships or financial obligations, which inherently possess civil law characteristics. Several studies observe that criminal investigations are sometimes initiated to pressure parties into resolving civil disputes through restorative justice mechanisms (Rofi et al., 2025)(Andini et al., 2023)This instrumentalization of criminal procedure risks distorting both criminal law and restorative justice. Criminal law becomes a strategic tool for debt collection, while restorative justice serves as a legitimizing narrative for informal settlements. The literature warns that such practices undermine legal certainty and may contribute to the over-criminalization of civil conflicts, particularly affecting economically vulnerable individuals who lack access to effective legal representation.

Institutional Control and the Absence of Neutral Facilitation

The literature also highlights structural weaknesses in the institutional design of restorative justice at the investigation stage. In many cases, investigators simultaneously act as law enforcers and facilitators of restorative justice processes. This dual role creates an inherent conflict of interest, as investigators are responsible for both pursuing criminal accountability and promoting settlement outcomes (Fadhillah & Corputty, 2025) Comparative studies emphasize that restorative justice processes require neutral and independent facilitators to ensure balanced participation and procedural fairness (Analysis et al., 2025)The absence of such facilitators in the Indonesian context limits meaningful dialogue and reinforces institutional dominance. As a result, restorative justice becomes investigator-driven rather than participant-centered, reducing its restorative potential and increasing the risk of coercion.

Impact on Victims and Reported Parties

The findings further reveal ambivalent impacts of investigation-stage restorative justice on victims and reported parties. While restorative justice is often justified as victim-centered, several studies indicate that victims may feel pressured to accept settlements proposed by investigators, particularly when cases are framed as minor or better resolved

informally (Wahid, 2022) In such cases, victims' emotional and psychological needs may be sidelined in favor of procedural efficiency.

Similarly, reported parties may perceive restorative justice agreements as compelled compliance rather than genuine reconciliation. Agreements are often motivated by a desire to avoid prolonged legal uncertainty rather than acknowledgment of wrongdoing. This dynamic reinforces the argument that restorative justice at the investigation stage operates within a coercive procedural environment that undermines its ethical foundations.

Repositioning Restorative Justice within Criminal Procedure

The final finding emphasizes the need to reposition restorative justice within the criminal justice process. The literature does not reject restorative justice as a concept but calls for clearer procedural boundaries and safeguards. Several scholars argue that restorative justice should be applied only after the investigation stage, once legal certainty regarding the existence of a criminal act has been established (Noor et al., 2025)(Izharti et al., 2025)

At later stages, restorative justice can function as a complementary mechanism that enhances substantive justice while respecting due process. Clear regulatory guidance, independent facilitation, and oversight mechanisms are essential to prevent distortion and ensure voluntariness. Repositioning restorative justice in this manner would restore its philosophical integrity and align it with the principles of the rule of law.

CONCLUSION

This article concludes that the application of restorative justice at the investigation stage in Indonesia constitutes a significant distortion of both criminal procedural law and restorative justice philosophy. Normatively, it contradicts the function of investigations as fact-finding processes. Empirically, it risks coercion, abuse of authority, and the erosion of due process.

To preserve the integrity of restorative justice, its application must be repositioned to stages where criminal liability has been sufficiently established. Clear procedural safeguards, legal certainty, and voluntariness must be prioritized. Only by aligning restorative justice with due process can it serve as an instrument of substantive justice rather than a pragmatic shortcut in criminal case management.

Based on the findings of this study, several recommendations are offered for regulatory, institutional, and scholarly consideration. First, the Indonesian legislature should establish clear statutory boundaries delineating the stages at which restorative justice may be applied, explicitly excluding its use as a mechanism for case termination prior to the confirmation of criminal liability through formal investigation. Second, the relevant institutions, including the National Police (Kepolisian Negara Republik Indonesia) and the Attorney General's Office (Kejaksaan Agung), should develop standardized procedural guidelines for restorative justice that mandate independent facilitation, voluntary participation, and documentary accountability. Third, an independent oversight mechanism should be established to monitor the implementation of restorative justice at all stages of criminal proceedings, with authority to review and revoke settlements reached under coercive conditions. Fourth, legal education and professional training programs should incorporate modules on the philosophical foundations and procedural requirements of

restorative justice, to reduce discretionary abuse arising from institutional misunderstanding. Finally, future research should expand the empirical scope of inquiry by conducting field-based studies that document actual restorative justice practices at the investigation stage, enabling a more granular understanding of the conditions under which distortions arise and can be prevented.

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