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Juridical Reconstruction and Integration of Restorative Justice Mechanisms: Transformation of Police Peace Agreements into Legally Binding Court Decisions

Bahori Ahoen
Bahori Ahoen Institute, Indonesia
Email: orie_ahoen@yahoo.com

ABSTRACT

The evolution of the contemporary criminal justice system in Indonesia is marked by a fundamental shift from a retributive paradigm centered on retaliation and physical punishment toward a restorative justice paradigm that prioritizes victim recovery and social reintegration. This shift has been operationalized through internal legal instruments such as Police Regulation (Perpol) Number 8 of 2021. However, a critical juridical void exists: peace agreements reached at the police investigation stage currently have only the status of private agreements (*onderhands*), which are administrative in nature and thus lack inherent executorial power. This research report presents an in-depth analysis of the urgency and mechanism of transforming such peace agreements into an *Acte van Dading* (Deed of Settlement) recognized by the District Court. By integrating police discretionary authority with the court's civil adjudicatory authority through the "Lawsuit for Confirmation of Peace Agreement" mechanism based on Supreme Court Regulation (PERMA) Number 1 of 2016, the legal system can guarantee legal certainty (*rechtszekerheid*), close the loophole for re-prosecution through the ne bis in idem principle, and ensure civil execution without new litigation. Through a comparative law approach examining Civil Law and Common Law jurisdictions, as well as the theoretical framework of Therapeutic Jurisprudence, this article argues that this integration is not merely an administrative procedure but constitutes the foundation for sustainable substantive justice.

Keywords: Restorative Justice; Criminal Justice System; Peace Agreements; Acte van Dading; Deed of Settlement.

INTRODUCTION

The modern criminal justice system in many countries, including Indonesia, has long been dominated by a retributive approach (Irwanto et al., 2025; Kasim & Rizal, 2023; Taufiqurokhman & Sodikin, 2026; Zahra, 2024). In this model, crime is viewed solely as a violation against the state and statutes, where the victim's role is marginalized to merely being a witness for the state's prosecution interests. The main objective of this process is the infliction of pain, which is expected to provide a deterrent effect.

However, empirical reality shows that this approach often fails to meet the true needs of justice. Correctional institutions experience overcrowding, recidivism rates remain high, and, most crucially, crime victims are often left with material losses and trauma that remain unrecovered even though the perpetrator has been imprisoned (Daly, 2020; Tonry, 2019). As a response to this systemic failure, the restorative justice paradigm emerged as an alternative, offering a new perspective (Zehr, 2018; Van Ness & Strong, 2020). Restorative justice does not view crime merely as a violation of the law, but as a violation of human relationships that causes harm to the victim, the community, and the perpetrator themselves (Braithwaite, 2019; Walgrave, 2021). Its main goal shifts from retaliation to restoration, reconciliation, and the reparation of harm (Clamp & Doak, 2022).

In Indonesia, the adoption of restorative justice has gained significant momentum through regulatory reform within law enforcement agencies (Sutrisno, 2022; Prabowo & Siregar, 2023). The Indonesian National Police (Polri), as the vanguard of the criminal justice system, has issued Police Regulation (Perpol) Number 8 of 2021 concerning the Handling of Criminal Offenses Based on Restorative Justice (Hutabarat, 2022; Arief, 2021). This regulation grants authority to investigators to terminate the investigation of certain criminal offenses if a peace agreement has been reached between the perpetrator and the victim, a progressive step

that prioritizes ultimum remedium (criminal law as a last resort) (Yusuf, 2023; Rahmawati, 2024; Firmansyah, 2022).

Although Perpol No. 8 of 2021 provides a basis for case termination (SP3), there is a fundamental weakness regarding the legal status of the peace agreement itself. Doctrinally, in Indonesian civil law, an agreement made before a police investigator—without involving a notary or the court—has the status of a private deed (*onderhands*). Based on Article 1338 of the Civil Code, such an agreement indeed acts as law for those who make it (*pacta sunt servanda*), but it does not possess executorial power (*executoriale kracht*) like a court decision.

Risk of Default (*Wanprestasi*): If the perpetrator promises to pay compensation in installments as a condition for peace but then breaks the promise after the SP3 is issued, the victim cannot immediately request execution through seizure from the court. The victim is forced to file a new breach-of-contract lawsuit, which consumes time and costs, thereby undermining the principle of a simple, fast, and low-cost judiciary.

Pretrial Vulnerability: The status of investigation termination (SP3) based on internal police agreements can be challenged by third parties through the pretrial mechanism (Article 77 of the Criminal Procedure Code/KUHAP). If the pretrial judge annuls the SP3, the criminal case must be reopened, nullifying the peace that has been achieved.

Absence of Perfect Evidentiary Strength: Without court confirmation, the agreement can be denied in the future, unlike an authentic deed or a court decision, which possesses perfect evidentiary value.

This report aims to reconstruct the existing legal framework to bridge the gap between police discretion and civil legal certainty. The solution offered is the integration of case settlement mechanisms at the police level with civil judicial institutions through the *Acte van Dading* (Deed of Settlement) instrument. This research explores how civil procedural law institutions, specifically Article 130 HIR/154 RBG and PERMA No. 1 of 2016, can be utilized to validate the work of restorative justice at the police level. The goal is to transform "administrative peace agreements" into "legally binding court decisions" (*inkracht van gewijsde*), thereby providing guarantees of execution and complete legal protection for all parties.

The primary philosophical foundation of this integration can be drawn from John Rawls' theory of Justice as Fairness. Rawls (1971) argues that the most fundamental principles of justice are those that would be agreed upon by free and rational individuals in a position of equality. In the context of criminal settlement, "justice" is not always identical to imprisonment imposed by the state. For victims, justice often means the recovery of economic losses, admission of guilt from the perpetrator, and security guarantees—outcomes rarely provided by a prison verdict. By facilitating a meeting between the perpetrator and the victim to agree on a form of settlement, the state respects the rational autonomy of its citizens to define justice within their private sphere, as long as it does not violate public order. The transformation of this agreement into a court decision is a form of state legitimacy over the micro-social contract made by its citizens.

The theoretical framework of Therapeutic Jurisprudence (TJ), developed by Wexler and Winick (1991) emphasizes the psychological and emotional impact of law on its subjects. TJ views law not merely as a set of abstract rules, but as a social force that can be either therapeutic (healing) or anti-therapeutic (harmful). The conventional criminal justice system is often anti-therapeutic: the process is adversarial, time-consuming, and frequently re-victimizes the victim through aggressive cross-examination. Conversely, a restorative justice mechanism, which concludes with an *Acte van Dading*, offers high therapeutic value. For victims, it provides quick closure, certainty of compensation, and validation of their suffering without the trauma of a prolonged trial. For perpetrators, it encourages active accountability (fixing mistakes) rather than passive accountability (accepting punishment), which is more effective for social

reintegration and preventing recidivism. For society, it reduces prolonged conflict and saves judicial resources. Integrating police agreements into court decisions strengthens this therapeutic aspect by eliminating anxiety regarding future legal uncertainty.

To understand the urgency of this reconstruction, it is necessary to map the diametrical differences between the retributive paradigm held by the old Criminal Code (KUHP) and the restorative paradigm promoted by modern regulations.

METHOD

Regulatory Dynamics of Restorative Justice in Indonesia

The implementation of restorative justice in Indonesia is currently scattered across various sectoral regulations that have not been fully integrated into a single codified criminal procedure system (KUHAP).

Police Regulation (Perpol) No. 8 of 2021

Perpol 8/2021 is the most progressive legal instrument at the investigation level. This regulation grants attributional authority to investigators to stop cases (SP3) if material and formal requirements are met.

a. Material Requirements: The crime does not cause public unrest, does not result in social conflict, is not terrorism/corruption, and the perpetrator is not a recidivist.
b. Formal Requirements: Existence of a peace letter from both parties and proof of restoration of rights to the victim.

Its main weakness is the "administrative" nature of this settlement. Police only have the authority to stop the investigation. They do not possess judicial authority to declare that the compensation agreement has executorial power. If the perpetrator defaults, the police cannot seize the perpetrator's assets; they can only re-process the criminal case (if not expired), which is often not the desire of the victim who is in greater need of economic compensation.

Prosecution Regulation (Perja) No. 15 of 2020

The Prosecution Service has a similar mechanism via Perja 15/2020 for the Termination of Prosecution Based on Restorative Justice. Requirements include a penalty threat under 5 years and losses under Rp 2.5 million. Although providing certainty at the prosecution level, this regulation also does not create a civil executorial title for the victim.

Supreme Court Regulation (PERMA) No. 1 of 2024

The Supreme Court has recently issued PERMA 1/2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice. This regulation serves as a legal umbrella for judges to apply restorative principles in trial. Judges are encouraged to decide cases with "conditional sentences" or recovery actions if peace is reached before the court. However, PERMA 1/2024 focuses on cases that have already entered the court (adjudication stage). It does not directly address the needs of cases settled at the investigation stage (police). Therefore, a bridge is needed between Perpol 8/2021 (police stage) and court authority, which is found in PERMA No. 1 of 2016 concerning Mediation Procedures.

RESULT AND DISCUSSION

Comparative Law Review

To strengthen this reconstruction argument, a comparative analysis with other countries applying Civil Law and Common Law systems is crucial. This demonstrates that the need for "enforceability" of restorative agreements is a global issue.

1. Civil Law Jurisdictions: The Netherlands and Germany

   As countries that bequeathed their legal systems to Indonesia, practices in the Netherlands and Germany are highly relevant.

   The Netherlands: There is a mechanism called Mediation in Strafzaken (Mediation in Criminal Cases). If mediation is successful, the Public Prosecutor can stop the case or request the judge to impose a lighter sentence. Interestingly, this mediation agreement can be included in the case file and used as the basis for a judge's decision containing compensation obligations (schadevergoeding). If the perpetrator does not pay, the state (via CJIB - the fine collection agency) can execute the payment, even replacing it with detention if payment fails. This shows full integration between the agreement and state execution.

   Germany: The concept of Täter-Opfer-Ausgleich (TOA) is regulated in Section 46a of the German Criminal Code (StGB). Restitution agreements reached in TOA can be declared executable (vollstreckbar) if registered as a judicial settlement (gerichtlicher Vergleich) under Section 794 of the Code of Civil Procedure (ZPO). This German mechanism is very similar to the proposal for using Acte van Dading in Indonesia, where civil procedural instruments are used to reinforce criminal mediation results.

2. Common Law Jurisdictions: United States and New Zealand

   Texas, USA: The Texas Code of Criminal Procedure (Art. 56.23) explicitly regulates that victim-offender mediation agreements ratified by the prosecutor and approved by the court become binding. Violation of this agreement can lead to the revocation of deferred prosecution. Here, the binding power is directly embedded in the criminal procedure.

   New Zealand: Through Family Group Conferences (FGC), agreements reached (usually by juvenile offenders) are submitted to the Youth Court. The court then makes the plan part of a formal decision. Supervision of its implementation is carried out by the juvenile justice system, not through separate civil execution.

3. Synthesis: Hybrid Model for Indonesia

   From the comparison above, it is evident that developed nations have mechanisms to give "teeth" to restorative agreements. Indonesia, whose system is still compartmentalized between criminal and civil law, requires a hybrid model. Adopting the German model (using civil procedures to reinforce criminal agreements) is the most realistic and juridical step at present without needing a total overhaul of the Criminal Procedure Code (KUHAP). This model utilizes PERMA 1/2016 as a procedural bridge.

Reconstruction Mechanism: Transformation into Court Decision

This section outlines technically and juridically how peace agreements at the police level are transformed into a Peace Deed possessing executorial power.

Legal Basis: Utilization of PERMA No. 1 of 2016

Although PERMA 1/2016 primarily regulates mediation in civil disputes in court, Article 36 opens space for a "Lawsuit for Confirmation of Peace Agreement" (Lawsuit for Confirmation of Peace Agreement). This provision allows parties who have reached an

agreement outside of court (including at the police station) to file a request for the agreement to be confirmed as a Peace Deed.

Transformation Procedure (Step-by-Step)

This process changes the document status from a private deed to a judicial deed.

Table 1. Peace Agreement Transformation Flow

Stage	Action	Juridical Explanation & Implications
1. Negotiation	Mediation at Police.	Facilitated by investigator (Perpol 8/2021). Focus on loss recovery and *moral repair* (apology).
2. Drafting Act	Signing of Agreement.	Document must be detailed: compensation amount, payment terms, default sanctions. Signed on stamp duty.
3. Legalization	*Nazegelen* (Post-stamping).	Document is registered at the Post Office to meet formal requirements as evidence in court (Stamp Duty).
4. Registration	Confirmation Lawsuit (E-Court).	Victim (as Plaintiff) and Perpetrator (Defendant) file a *voluntair* lawsuit to the local District Court.
5. Judge Verification	Inspection of Article 27(2) Requirements.	Judge checks: Voluntariness, no law violation, no harm to third parties, and enforceability.
6. Decision	Issuance of *Acte van Dading*.	Judge reads the decision in an open session. The agreement now has *Inkracht* status.

Analysis: Step 5 is the most crucial. The judge acts as a "gatekeeper". In the context of restorative justice, the judge must ensure there is no power imbalance (unequal power relations), for example, the victim being forced to make peace by thugs or corporations. If the judge finds indications of coercion, the confirmation must be rejected.

Juridical Power of Acte van Dading

This transformation grants three main legal attributes to the agreement:

1. Executorial Power (Executoriale Kracht): The Peace Deed contains the header "For Justice Based on the One Almighty God". This gives authority to the Head of the District Court to lead forced execution (dwangsom) if the perpetrator breaks the promise. The victim no longer needs to file a new lawsuit. They simply request execution, and the court will issue an aanmaning (warning) and subsequently an execution seizure (beslag) against the perpetrator's assets.

2. Permanent Legal Certainty (Inkracht van Gewijsde): Referring to Article 130 HIR or Article 154 RBG, a peace decision has the same power as a final level judge's decision. The avenues for appeal and cassation are closed. This provides absolute certainty that the dispute has ended. There is no longer a worry that the perpetrator will "counter-sue" or the victim will demand more in the future.
3. Protection of Ne Bis In Idem: Although ne bis in idem (Article 76 KUHP) technically applies to criminal verdicts, the existence of a civil Peace Deed that is inkracht regarding the same object provides a very strong defense argument. If the police or prosecutor try to reopen the case, this Deed serves as authentic proof that the conflict has been completely resolved by the state, which usually leads to an interlocutory decision of "Prosecution Cannot be Accepted" (Niet Ontvankelijke Verklaard).

Implication Analysis: Benefits and Challenges

1. Economic Implications and Judicial Efficiency

   From the perspective of Economic Analysis of Law, this mechanism is highly efficient. Full litigation costs (investigation, prosecution, trial to cassation) are very expensive for the state and parties. By converting police agreements into Peace Deeds, the state saves on law enforcement operational budgets. Victims receive real restitution rather than just moral satisfaction seeing the perpetrator imprisoned, which is economically unprofitable for the victim.
2. Implications for Human Rights and Power Relations

   One of the main criticisms of RJ is the potential privatization of justice that harms weaker parties (women, children, the poor). There is a risk that victims are forced to accept cheap compensation to avoid intimidation by the perpetrator. Mitigation: The confirmation procedure in court mitigates this risk. The requirement for parties to appear before a judge provides an opportunity for the state to verify "voluntariness". In cases of kawin tangkap (bride kidnapping) in Sumba, for example, research shows the need for independent companions so that victims are not pressured by patriarchal customary laws. The court mechanism can be the final filter to prevent such unfair agreements from being validated.
3. Administrative Challenges and Sectoral Ego

   The biggest obstacle to implementing this model in Indonesia is the lack of integration in the administrative systems between agencies (Criminal Justice System Integrated Database). Currently, the Police and District Courts often operate independently. Police stop cases (SP3) without providing guidance to victims to register their agreements with the court. Consequently, many RJ agreements are left "hanging" without execution power. Solution: A Joint Decree (SKB) is needed between the Chief of Police, the Attorney General, and the Supreme Court to mandate investigators to suggest the registration of a Peace Deed whenever RJ is successfully conducted.

Future Legal Policy Direction (*Ius Constituendum*)

This reconstruction, although effective, is currently based on sectoral regulations and creative interpretation of civil procedural law. For the long term, Indonesia needs to institutionalize this mechanism in legislation.

1. Revision of the Criminal Procedure Code (RUU KUHAP)

   Indonesia's criminal procedure law (Law No. 8 of 1981) is outdated and purely retributive in character. Future revisions of the KUHAP must explicitly accommodate a "Restorative Justice Track". Legislative Recommendation: A clause needs to be added stating that: "Every peace agreement reached in the investigation or prosecution stage

must be registered with the district court to obtain an executorial determination, which simultaneously becomes the basis for permanent termination of prosecution.". This would adopt the De Jure Punishment model like in Norway or the judicial confirmation model in Germany.

2. Expanding the Scope of Criminal Offenses

   Currently, RJ is limited to minor crimes. However, empirical evidence from jurisdictions like Colorado (USA) shows that RJ is also effective for more serious crimes (such as robbery or serious assault) if the focus is on healing victim trauma, not merely avoiding punishment. With the safeguard of an executable Peace Deed, Indonesia can gradually expand the scope of RJ to property crimes with larger loss values, because the guarantee of loss recovery is already protected by the state.

CONCLUSION

The analysis demonstrates that integrating restorative justice mechanisms at the police level with the civil justice system through the *Acte van Dading* constitutes a juridical necessity. Although peace agreements reached during police investigations are materially valid, they lack executorial force; transforming them into a court-recognized Peace Deed grants binding legal certainty through executorial power and *inkracht van gewijsde* status. This integration also creates normative synergy by harmonizing Perpol No. 8 of 2021 with PERMA No. 1 of 2016, resulting in a hybrid framework that balances the flexibility of police discretion with the certainty of judicial enforcement. Substantively, the approach fulfills the principles of Therapeutic Jurisprudence and Justice as Fairness by ensuring victims receive guaranteed compensation while perpetrators obtain certainty regarding case resolution. Future research should focus on empirical evaluation of the implementation of this integrated mechanism, particularly its effectiveness in reducing recidivism, ensuring compliance with settlement agreements, and assessing its impact on judicial efficiency and public trust in the legal system.

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