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THE APPOINTMENT OF JUDGES IN RESTORATIVE JUSTICE: BETWEEN QUASI-JUDGMENT AND RES JUDICATA FROM THE PERSPECTIVE OF LEGAL CERTAINTY

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Abstract

Restorative Justice (RJ) in the 2025 Draft Criminal Procedure Code (RKUHAP) offers an alternative to resolving criminal cases outside of court through agreements between perpetrators, victims, and law enforcement officials. However, the judge's decision on RJ's outcome has sparked debate over its legal force and certainty as a final res judicata, as well as its protection of the ne bis in idem principle. This study aims to analyze the legal force of the judge's decision in the RJ mechanism according to the 2025 RKUHAP and its implications for the ne bis in idem principle. The method used is normative juridical analysis, based on regulations and the latest legal literature. The results show that the judge's decision in RJ does not fully meet the requirements for a binding final decision, potentially causing legal uncertainty and opening the possibility of retrial. It is necessary to strengthen the norms in the 2025 RKUHAP so that the judge's decision in RJ has permanent legal force and maximally protects the principle of ne bis in idem.

Keywords: Restorative Justice; Judicial Determination; Legal Certainty.

A. INTRODUCTION

Restorative Justice (hereinafter, RJ) is an approach within the criminal justice system that emphasizes restoring relationships among offenders, victims, and the community through a participatory, dialogical resolution process.¹ The concept of restorative Justice (RJ) is rooted in the values of Indonesian customary law, which uphold social balance and deliberation as means of restoration rather than mere punishment. In its development, RJ has emerged as an alternative to the criminal justice system, which tends to be retributive, aiming to provide more substantive and humane Justice through mechanisms of loss recovery and social reconciliation between the parties involved.²

In Indonesia, the implementation of restorative Justice is supported by several normative instruments. One of its significant milestones is the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, which grants prosecutors the authority to terminate prosecution upon an agreement between the perpetrator and the victim.³ Furthermore, the Supreme Court Regulation (Perma) Number 1 of 2024 also regulates the implementation of restorative Justice at the court level.⁴ Meanwhile, the Draft of the Criminal Procedure Code (RKUHAP) 2025 introduces restorative Justice as an integral part of the national criminal justice system. This regulation as a whole reflects a paradigm shift in Indonesian criminal law from a retributive justice model to a humanistic social restoration (restorative) paradigm.

However, these regulatory advances still leave fundamental issues unresolved, namely the legal status of judges' determinations in the restorative Justice (RJ) mechanism, particularly concerning the finality of law (*res judicata*) and the principle of *ne bis in idem*. In practice, judges' determinations are often not treated as binding final decisions, which leaves the possibility that perpetrators may face legal proceedings again for the same case. This creates legal uncertainty and diminishes public trust in RJ as a legitimate and final instrument for criminal case resolution. This issue becomes even more significant because, without clarity on the status of

¹ Saidi, "Efektivitas Penerapan Restorative Justice Dalam Penyelesaian Perkara Pidana Di Wilayah Hukum Polres Serang Banten" (Universitas Islam Sultan Agung Semarang, 2025), [https://repository.unissula.ac.id/41565/%0Ahttps://repository.unissula.ac.id/41565/1/Magister Ilmu Hukum_20302400202_fulldoc.pdf](https://repository.unissula.ac.id/41565/%0Ahttps://repository.unissula.ac.id/41565/1/Magister%20Ilmu%20Hukum_20302400202_fulldoc.pdf).

² Risnawati Br Ginting and Edi Yunara, "Penghentian Penuntutan Melalui Penerapan Restorative Justice Di Tingkat Kejaksaan," *Locus Journal of Academic Literature Review* 2, no. 10 (2023): 789–806, <https://doi.org/https://doi.org/10.56128/ljoalr.v2i10.233>.

³ Kejaksaan Republik Indonesia, "Peraturan Kejaksaan Republik Indonesia Nomor 15 Tahun 2020 Tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif" (2020).

⁴ Peraturan Mahkamah Agung, "Nomor 1 Tahun 2024 Turut Mengatur Pelaksanaan RJ Di Tingkat Peradilan" (2024).

judges' determinations, RJ could potentially be viewed merely as an administrative formality without legal force.⁵

From a comparative perspective, several countries have more clearly established the legal position of restorative Justice (RJ). In Germany, RJ agreements ratified by a judge have *res judicata* effect. They cannot be brought back to court (*rechtskräftiger Beschluss*). In contrast, in the Netherlands, the outcome of RJ serves as the basis for case termination with complete protection for the perpetrator from retrial. Meanwhile, in Indonesia, a similar mechanism has not yet been explicitly regulated.⁶ For example, in the North Jakarta District Court Decision Number 45/Pid/2023, the restorative justice ruling was revoked after the victim filed an objection, demonstrating the weak guarantee of legal finality in the application of national restorative Justice.

From an implementation perspective, data from the Attorney General's Office (2023–2024) shows that out of 171,233 Notices of Commencement of Investigation (SPDP) received, only 1,985 cases were resolved through the RJ mechanism. This low number indicates that structural obstacles still exist, such as a lack of training for law enforcement officers, victims, and offenders being unprepared to understand the RJ mechanism, and procedures among the police, prosecutors, and courts that are not well integrated. In fact, restorative justice practices based on local wisdom, such as *awig-awig* in Bali or customary deliberations in Sumatra, have demonstrated the effectiveness of social recovery at the community level. Unfortunately, these practices have not yet been integrated into the formal justice system.

Several previous studies indicate that the implementation of restorative Justice in Indonesia remains partial, as evidenced by a survey conducted by Risnawati Br. Ginting, Ediwarman, Edi Yunara, and Marlina (2023), entitled "Termination of Prosecution Through the Implementation of Restorative Justice at the Prosecutor's Level" in *Locus Journal of Academic Literature Review* Vol. 2 No. 10, aim to analyze the legal basis, types of criminal acts, and the legal policies of public prosecutors in the application of restorative Justice. Using a normative legal research method with statutory, conceptual, and case approaches, this study concludes that the implementation of restorative Justice by the public prosecutor's office has a strong legal basis juridically through Law No. 11 of 2021 on the Prosecutor's Office of the Republic of Indonesia and Attorney General Regulation No. 15 of 2020, sociologically as a form of reforming a more just judicial system, and philosophically oriented

⁵ Binziad Kadafi, *Peninjauan Kembali: Koreksi Kesalahan Dalam Putusan* (Kepustakaan Populer Gramedia, 2023).

⁶ Aulia, "Reformulasi Prinsip Judicial Activism Dalam Perkara Judicial Review Yang Bersifat Open Legal Policy Oleh Mahkamah Konstitusi (Doctoral Dissertation, Universitas Islam Sultan Agung Semarang)." (Doctoral dissertation, Universitas Islam Sultan Agung Semarang, 2024).

towards restoring the relationship between the offender, the victim, and the community. This study also reveals that criminal offenses that can be terminated through restorative Justice include those with a maximum prison sentence of five years, such as theft, embezzlement, minor assault, and traffic violations, as demonstrated by case studies at the Medan District Attorney's Office. The research findings affirm that the policy of terminating prosecution through restorative Justice not only upholds humanitarian values and legal benefits but also reduces the court caseload and strengthens the public's sense of Justice.

The research conducted by Ilham Saputra Machmud, Dian Ekawaty Ismail, and Jufryanto Puluhulawa (2024) titled "The Effectiveness of the Restorative Justice Concept in Handling Assault Cases by the Bone Bolango District Prosecutor's Office" in *Hakim: Journal of Legal and Social Sciences* Vol. 2 No. 1 aims to examine the role of prosecutors in resolving assault crimes using a restorative justice approach and to identify the factors that hinder its implementation. This study uses a juridical-empirical method, with data collected through interviews, and qualitative and quantitative analyses of the practice of restorative justice implementation at the Bone Bolango District Prosecutor's Office. The study results indicate that the Prosecutor's Office has adopted the application of restorative Justice in resolving minor assault cases, particularly in cases with small losses and close social relationships between the perpetrator and the victim. Nevertheless, the effectiveness of implementation is still constrained by several factors, such as legal constraints, limited human resources, conflicts between the victim and the perpetrator, and a community culture that still tends to view Justice in terms of punishment rather than restoration. This study emphasizes that the success of implementing restorative Justice requires support from more flexible regulations, increased capacity of law enforcement officers, and strengthening public understanding of the values of humane and participatory Justice.⁷

In addition, the research conducted by Natasha Fraiskam and Tantimin (2022) entitled "Legal Protection Against Abuse Cases Based on Restorative Justice in Tanjung Pinang City," published in *Justitia: Journal of Law and Humanities* Vol. 9 No. 5, aims to analyze the application of restorative Justice as an alternative in resolving abuse cases in Indonesia, particularly in Tanjung Pinang City. This study uses a qualitative and empirical legal (non-doctrinal) approach by combining secondary data from legislation and scientific literature with field observations. Research results indicate that the concept of restorative Justice provides an alternative for resolving

⁷ Ilham Saputra Machmud, Dian Ekawaty Ismail, and Jufryanto Puluhulawa, "Efektivitas Konsep Restorative Justice Dalam Penanganan Kasus Penganiayaan Oleh Kejaksaan Negeri Bone Bolango," *Hakim: Jurnal Ilmu Hukum Dan Sosial* 2, no. 1 (2024): 157–85, <https://doi.org/https://doi.org/10.51903/hakim.v2i1.1542>.

minor assault cases through reconciliation between the perpetrator and the victim, guided by the Attorney General Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. The implementation of restorative Justice at the Tanjung Pinang District Attorney's Office has proven effective in restoring social relations between victims and perpetrators and in reducing the criminal case burden in court. Based on the results of a questionnaire conducted among the Tanjung Pinang community, 75% of respondents considered this approach to facilitate the resolution of minor cases and better reflect a sense of Justice. This study concludes that restorative Justice not only provides a fast and cost-effective resolution but also balances protecting victims' rights, restoring social relations, and holding the perpetrator accountable for their moral responsibility.⁸

Based on previous research, the main unresolved issue appears to be the lack of normative clarity regarding the binding force of judicial determinations in the restorative justice mechanism, particularly whether such decisions can be equated with rulings that have permanent legal force. In addition, the Draft Criminal Procedure Code (RKUHAP) bill has not provided a precise formulation of the legal status of these determinations. This creates a legal gap that could lead to uncertainty and inconsistency in the application of the principles of legal certainty and *ne bis in idem*. In response to this gap, this study seeks to provide a juridical analysis of the legal force of judicial determinations in the restorative justice mechanism under the RKUHAP, by reviewing theoretical, normative, and practical implications for the legal protection of the parties involved.

Based on the description above, the research problem in this study is formulated as follows:

1. What is the legal force of a judge's determination in the restorative justice mechanism according to the Draft Criminal Procedure Code (RKUHAP) from the perspective of legal certainty and the principle of *res judicata*?
2. Does a judge's determination in the restorative justice process have a binding effect that protects the perpetrator from being prosecuted again under the principle of *ne bis in idem*?

Based on the formulation of the problem, this study is conducted to fill the gap in research regarding the legal force of judges' decisions in the restorative justice mechanism according to the Draft Criminal Procedure Code (RKUHAP), as well as to analyze its relevance to legal certainty and the protection of offenders from retrial.

⁸ Natasha Fraiskam and Tantimin Tantimin, "Perlindungan Hukum Terhadap Kasus Penganiayaan Berdasarkan Keadilan Restoratif Di Kota Tanjung Pinang," *Justitia Jurnal Ilmu Hukum Dan Humaniora* 1, no. 1 (2016): 1689–99, <https://doi.org/https://doi.org/10.31604/justitia.v9i5.2453-2466>.

B. RESEARCH METHODS

This study uses a normative juridical method, a legal research approach that examines and analyzes written legal norms in legislation, doctrine, and relevant jurisprudence related to the research topic. This method is chosen because the focus of the research is to study the position of judicial determinations in the Restorative Justice (RJ) mechanism according to the Draft of the Criminal Procedure Code (RKUHAP 2025) from the perspective of legal certainty and the principle of *ne bis in idem*, which are normative aspects of criminal procedural law. The normative juridical approach is considered the most appropriate because the issue studied is systematic and doctrinal in nature, rather than empirical. Through this method, the research seeks to identify gaps, ambiguities, and disharmony in the regulation of restorative Justice, as well as to build rational legal arguments grounded in applicable legal principles.

In its implementation, this study uses a statute approach by examining regulations related to RJ (Restorative Justice) and judicial rulings in the Criminal Procedure Code Draft Act of 2025; a conceptual approach by analyzing legal concepts such as *res judicata* and *ne bis in idem*; and a case approach to review relevant court decisions. This research is descriptive-analytical in nature, using deductive logic to draw specific conclusions from general norms found in regulations and legal doctrines. The research data entirely comes from literature studies consisting of primary, secondary, and tertiary legal materials without any field data collection. Using this method, the study is expected to provide a comprehensive understanding of the legal force of judicial rulings in the RJ mechanism, as well as normative recommendations to strengthen criminal procedural law in Indonesia.

C. RESULTS AND DISCUSSIONS

1. The Legal Authority of Judges' Decisions in the Restorative Justice Mechanism According to the Draft Criminal Procedure Code from the Perspective of Legal Certainty and the Principle of *Res Judicata*

Restorative Justice in Indonesia began to be formally regulated in the Draft Code of Criminal Procedure (RKUHAP 2009) and is seen as an alternative for resolving criminal cases that emphasizes the restoration of relationships among offenders, victims, and the community. One important mechanism in Restorative Justice is the judge's ratification of a peace agreement reached by the parties during the penal mediation process. This ratification is intended to confer legal legitimacy on the agreement's outcome and formally signify that the case has been resolved outside litigation. However, in the context of the principle of *res judicata*, the legal status of a judge's ratification in Restorative Justice remains a subject of debate. The principle of *res judicata*, which holds that a court's decision that has acquired finality cannot be re-

examined in the same case, underscores the finality and binding nature of a legal judgment.⁹ The question is whether a judge's determination in Restorative Justice can be equated with a final (verdict) decision in a criminal court, so that the offender cannot be prosecuted again for the same case under the principle of *ne bis in idem*.

In practice, some legal experts argue that because a judge's determination in Restorative Justice does not go through formal proof processes, trials in absentia, or adversarial proceedings, it does not meet the requirements to be considered a *res judicata* decision in the narrow sense.¹⁰ This means that there is still a possibility of retrial if there is a violation of the agreement or procedural inconsistencies. However, the progressive view states that if a Restorative Justice agreement is made voluntarily, valid, and officially recorded as a decree by a judge, then, substantively, the decree should be regarded as part of a legally binding decision. This view emphasizes that protection of the offender from double criminalization is part of the guarantee of legal certainty and Justice, as mandated by Article 28D paragraph (1) of the 1945 Constitution.¹¹

Therefore, to realize legal protection in line with the principle of *res judicata*, it is necessary to reform the norms that not only recognize the existence of the Restorative Justice mechanism within the criminal procedural law system, but also provide clarity that the outcome of this process, once determined by a judge, has binding force equivalent to a court ruling. Without such formal recognition, the offender remains in legal uncertainty, and the victim is not assured that the applicable legal system will respect the agreed results. Emphasizing the norm regarding the *res judicata* effect in the context of Restorative Justice is crucial, not only to ensure the protection of the parties' rights, but also to maintain consistency between restorative justice practices and the fundamental principles of national criminal law.

According to Article 1, point (18), of the Draft Code of Criminal Procedure (RKUHAP) 2025, agreements in Restorative Justice serve as a formal endorsement of out-of-court settlements made by the offender, the victim, and other related parties. However, the provision does not explicitly stipulate that the results of such an agreement have the same legal force as a final and binding court decision (*res judicata*). This ambiguity raises normative issues regarding the legal standing of a judge's ruling on the agreement. In judicial practice, a judge's determination of the outcome of Restorative Justice is more often viewed as an administrative action

⁹ Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia* (Yogyakarta: Liberty, 1993).

¹⁰ Syahril Andi, "Analisis Yuridis Terhadap Kedudukan Keterangan Saksi Mahkota Sebagai Alat Bukti Dalam Proses Peradilan Pidana Menurut Kitab Undang-Undang Hukum Acara Pidana" (Universitas Batanghari, 2022), <http://repository.unbari.ac.id/id/eprint/1125%0A>.

¹¹ Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara RI* (Konstitusi Press, 2006), hlm 229.

aimed at documenting the agreement, rather than as a judicial resolution of the case.¹² This means the determination has no executive power, unlike a conventional court ruling, which goes through a process of evidence examination and legal argumentation in a trial.¹³

The weak legal basis for this decision results in inadequate legal certainty for the parties, especially the perpetrators, who have fulfilled their obligations under the agreement in *Restorative Justice*. Without a clear and final legal status, perpetrators remain under the shadow of possible re-prosecution or recriminalization for the same case, as no norm explicitly guarantees that settlement through Restorative Justice closes access to further criminal proceedings. This clearly contradicts the principle of *ne bis in idem*, which prohibits the repeated prosecution of a person for the same act that has been legally resolved through the criminal justice system.¹⁴ On the other hand, victims are also harmed because this ambiguity weakens the binding force of the agreed restoration and can lead to distrust of the restorative justice process itself.¹⁵

To address this legal vacuum, it is crucial to have normative regulations that not only formally recognize the existence of the Restorative Justice mechanism but also provide juridical consequences for judicial rulings. One solution is to categorize such rulings as part of court products that have permanent legal force, provided they meet specific formal and substantive requirements, such as voluntary consent, non-coercion, substantive Justice, and supervision by judicial institutions. In this way, the agreements arising from Restorative Justice are not only morally and socially valid but also legally valid and protected under the principle of *res judicata* and the rule of law.¹⁶

Offenders who have received a judge's ruling on Restorative Justice can still be subjected to legal proceedings again if there is an objection or withdrawal of agreement by the victim or other parties. Thus, a judge's ruling cannot yet function as *res judicata*, permanently ending legal proceedings. This contradicts the main objective of Restorative Justice, which is to achieve a final resolution that avoids protracted judicial processes and provides maximum legal protection for both offenders and victims. Restorative Justice fundamentally emphasizes resolving cases in a peaceful, final, and voluntary manner. Once an agreement has been reached and

¹² Arpandi Karjono, Parningotan Malau, and Ciptono Ciptono, "Penerapan Keadilan Restoratif Justice Dalam Hukum Pidana Berbasis Kearifan Lokal," *Jurnal Usm Law Review* 7, no. 2 (2024): 1035–50.

¹³ Altje Agustin Musa, Meiske Mandey, and Christine J J Goni, "Kewajiban Negara Menjamin Perlindungan Hukum Terhadap Saksi Dan Korban Pada Penyidikan Ditinjau Dari Hukum Acara Pidana," *Nuansa Akademik: Jurnal Pembangunan Masyarakat* 9, no. 2 (2024): 323–36, <https://doi.org/https://doi.org/10.47200/jnajpm.v9i2.2480>.

¹⁴ R. Wiyono, *Prinsip-Prinsip Dasar Hukum Acara Pidana* (Jakarta: Sinar Grafika City, 2019), hlm142

¹⁵ Cahya Wulandari, "Dinamika Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia," *Jurnal Jurisprudence* 10, no. 2 (2021): 233–49, <https://doi.org/10.23917/jurisprudence.v10i2.12233>.

¹⁶ Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara RI*.

formalized in a judge's ruling, there should be a guarantee that the case cannot be reopened without a strong and legitimate legal reason.¹⁷

This risk also highlights the weak protection of the principle of *ne bis in idem* in restorative justice practices in Indonesia. In the modern criminal law system, *ne bis in idem* is considered an essential part of human rights protection, preventing double criminalization for the same act.¹⁸ Without the status of *res judicata*, the perpetrator remains in legal uncertainty, as the agreement can be revoked or ignored at any time by the party that initially agreed. In addition, law enforcement officers may face normative confusion when confronted with cases resolved through Restorative Justice that lack binding legal force. This situation opens the door to procedural injustice and contradicts the principle of due process of law, which is the primary foundation of criminal procedural law.¹⁹

To address this issue, it is necessary to normatively emphasize that a judge's determination in Restorative Justice, as long as it meets the principles of voluntariness, equality, transparency, and has undergone judicial oversight, must be considered final, binding, and of permanent legal force. This is important not only to guarantee the rights of offenders and victims to a fair and thorough resolution, but also to maintain the integrity of the national criminal justice system. Within this framework, the state is obligated to ensure that every Restorative Justice outcome legitimized by a judge's determination cannot be contested, except in cases of fundamental procedural violations or indications of hidden criminalization. Thus, a judge's determination is not merely an administrative symbol, but a concrete form of respect for substantive restorative Justice.

Some legal experts argue that, to ensure legal certainty and the protection of the principle of *ne bis in idem*, the 2025 Criminal Procedure Code (RKUHAP) should explicitly stipulate that a judge's determination of restorative Justice (RJ) has permanent and binding legal force. This also aligns with the spirit of reforming criminal procedural law that prioritizes humane and solution-oriented Justice, as emphasized by members of Commission III of the Indonesian House of Representatives, Habiburokhman,²⁰ which emphasizes the importance of integrating

¹⁷ Miftahul Huda, "Hak Atas Memperoleh Kepastian Hukum Dalam Perspektif Persaingan Usaha Melalui Telaah Bukti Tidak Langsung," *Jurnal Ham* 11, no. 2 (2020): 255–67, <https://doi.org/DOI:http://dx.doi.org/10.30641/ham.2020.11.255-267>.

¹⁸ Muladi, *Kebijakan Kriminal Dalam Penanggulangan Kejahatan* (Jakarta: Badan Pembinaan Hukum Nasional, 1995).

¹⁹ Lilik Mulyadi, *Perkembangan Hukum Acara Pidana Dalam Perspektif Teoretis Dan Praktik Peradilan Di Indonesia* (Bandung: Citra Aditya Bakt, 2015).

²⁰ Komisi III DPR RI, "Komisi III Dorong Integrasi Nilai Keadilan Restoratif Aceh Dalam RUU KUHP," 2025, <https://emedia.dpr.go.id/2025/10/15/komisi-iii-dorong-integrasi-nilai-keadilan-restoratif-aceh-dalam-ruu-kuhap/>.

a restorative approach in the 2025 RKUHAP so that the legal system becomes more progressive and people-oriented.

In addition, judges' determinations in restorative Justice must be accompanied by strict monitoring and evaluation mechanisms to ensure that the approved agreements truly reflect substantive Justice and do not harm either party. This is important to maintain the credibility of restorative Justice as an effective and fair alternative within the Indonesian criminal justice system.²¹

Without strict regulations and strong oversight, there is concern that Restorative Justice could be misused by certain parties to avoid formal legal proceedings while failing to consider Justice fully. For example, in cases involving an imbalance of power between the perpetrator and the victim, such as domestic violence or cases where the perpetrator has strong economic or political influence, peace agreements facilitated without strict supervision can result in a new form of impunity. Therefore, it is essential that, in every judicial determination of a Restorative Justice agreement, in-depth verification be conducted of the parties' voluntariness, the fairness of the agreement's outcome, and the absence of pressure, intimidation, or conflicts of interest in the process.²²

In addition, the integration of the *res judicata* principle into the determination of Restorative Justice should be accompanied by clear technical implementation rules, such as regulations in the Supreme Court Regulation (Perma) or the Attorney General Decree, to ensure uniform application across all jurisdictions of the Indonesian judiciary. These regulations can include minimum standards for the form of determination, procedures for requesting approval of an agreement, and an explicit prohibition on retrial of cases resolved through Restorative Justice and determined by a judge. With this approach, the Indonesian criminal procedure system not only becomes more responsive to community needs but also ensures fair and civilized legal certainty for all parties involved in the restorative justice process.²³

With the issuance of Supreme Court Regulation Number 1 of 2024 (PERMA Number 1 of 2024), there is an effort to strengthen the restorative justice mechanism in criminal judicial processes, providing more straightforward guidelines for judges in adjudicating cases based on the principles of restorative Justice. This regulation emphasizes that judges must apply restorative Justice in minor criminal cases under

²¹ Mashendra Mashendra and La Gurusi, "Future Implementation of *Ius Constituendum* and Restorative Justice in the Criminal Justice System," *Jurnal Hukum Volkgeist* 7, no. 1 (2022): 77–80, <https://doi.org/https://doi.org/10.35326/volkgeist.v7i1.2864> V.

²² Dinda Heidyuan Agustalia and Deni Setya Bagus Yuherawan, "Makna Kepentingan Umum Pada Kewenangan Deponering Dalam Perspektif Kepastian Hukum," *Jurnal Suara Hukum* 4, no. 1 (2022): 160–89, <https://doi.org/DOI: http://dx.doi.org/10.30641/ham.2020.11.255-267>.

²³ Nur Basuki Minarno, *Restorative Justice Dan Hukum Pidana: Konsep, Praktik Dan Pengaturannya Di Indonesia* (malang: Setara Press, 2020).

certain conditions, including a maximum loss value of IDR 2,500,000, a maximum penalty of five years, and the consent of both the victim and the defendant.²⁴ However, although PERMA Number 1 of 2024 provides more structured guidelines, the status of a judge's ratification of a PHI settlement has not yet been explicitly regulated as a ruling with permanent legal force (*res judicata*).

The absence of explicit regulations governing the authority of *res judicata* creates legal uncertainty, as a judge's determination in RJ may be viewed as a temporary decision and overturned if procedural flaws are found or one of the parties raises objections. This is different from ordinary court decisions, which, once legally binding, cannot be contested and protect the parties from repeated claims. This lack of clarity has the potential to weaken RJ's role as a final resolution that provides legal certainty and protection for both perpetrators and victims.

In addition, PERMA Number 1 of 2024 also prohibits the implementation of restorative Justice (RJ) if there is an imbalance of power between the perpetrator and the victim, or if the defendant refuses to participate in the RJ process. This provision indicates that the implementation of RJ must consider substantive Justice and the protection of human rights, not merely procedural formalities. However, this limitation may also narrow the scope of RJ, so not all minor criminal cases can be resolved through this mechanism, ultimately affecting RJ's effectiveness and reach in criminal justice practice.²⁵

In line with this, some academics and legal practitioners believe that the 2025 RKUHAP should be revised to include more explicit provisions on the determination of judges in RJ, thereby conferring binding legal force equivalent to that of ordinary court decisions. This is important to provide legal certainty and ensure that RJ results are truly final and indisputable, thereby avoiding repetitive legal processes and strengthening public trust in the criminal justice system.²⁶ In addition, precise regulation regarding the legal status of judicial determinations in restorative Justice also aligns with the principle of human rights protection, particularly the right to legal certainty and fair treatment in judicial processes. The Constitutional Court has affirmed this in several of its decisions, holding that fair legal certainty is part of the rule-of-law principle mandated by Article 1, paragraph (3), of the 1945 Constitution of the Republic of Indonesia. Thus, the state is obliged to ensure that individuals who

²⁴ Agus Sugiyatmo and Ermania Widjajanti, "PENARAPAN PENGURANGAN HUKUMAN TINDAK PIDANA BERDASARKAN RESTORATIF JUSTICE MENURUT PERMA NOMOR 1 TAHUN 2024," *Journal of Social and Economics Research* 6, no. 2 (2024): 525–37, <https://doi.org/https://doi.org/10.54783/jsr.v6i2.650>.

²⁵ Riadi Asra Rahmad, *Hukum Acara Pidana, Hukum Acara Pidana*, vol. 6 (Jakarta: Jakarta: Sinar Grafika, 2019).

²⁶ hukumonline, "Refleksi Terhadap Upaya Pengarusutamaan Restorative Justice Di Indonesia," 2023.

have resolved their cases through the restorative justice process and have obtained a court ruling cannot be prosecuted again for the same matter. This is not only for the sake of legal efficiency but also for substantive Justice and respect for the legal rights of citizens as a whole.

2. The Appointment of Judges in the Restorative Justice Process Has Binding Authority That Can Protect the Offender from Being Re-prosecuted Based on the Principle of Ne Bis in Idem

Nebis Nebis in idem (or non bis in idem) is a classic legal doctrine originating from Roman law, which literally means “not twice for the same thing.” This principle states that a person cannot be subjected to legal action or prosecution twice for the same matter. The ne bis in idem principle is a fundamental principle in modern criminal law and is widely recognized in various national and international legal instruments, such as Article 14, paragraph (7) of the International Covenant on Civil and Political Rights (ICCPR) and Article 38 of the Criminal Procedure Code.²⁷ The aim is to protect citizens from the threat of double criminalization and to ensure legal certainty and stability after a case has been resolved through a legitimate judicial process.²⁸

The principle of ne bis in idem becomes particularly relevant and crucial for protecting offenders from the risk of repeated prosecution after resolving cases through lawful non-litigation mechanisms approved by a judge. If a Restorative Justice agreement that has obtained a judge’s approval is not given *res judicata* status, the offender remains at risk of being prosecuted again for the same legal event. This not only contradicts the spirit of restorative Justice but also threatens the offender’s constitutional right to fair and non-discriminatory legal protection. Therefore, to ensure the applicability of the ne bis in idem principle within the restorative justice system, it is necessary to normatively affirm that a judge’s ruling on the outcome of Restorative Justice has permanent and binding legal force, so it cannot be used as a basis for a retrial unless there is a serious violation of the procedure or substance of the agreement.²⁹

In addition, the application of the ne bis in idem principle in the Restorative Justice mechanism is a concrete form of protection for the principles of due process of law and fair trial, where everyone has the right to assurance that a

²⁷ Romario Tandaraja Hasian, “Akibat Hukum Dan Penerapan Asas Nebis In Idem Dalam Pembatalan Putusan Arbitrase Di Pengadilan,” *Unes Law Review* 6, no. 4 (2024): 11184–91, <https://doi.org/https://doi.org/10.31933/unesrev.v6i4.2106>.

²⁸ Lenna Andriyani, “Dekonstruksi Pemaknaan Prinsip Keadilan Restoratif Dalam Sistem Peradilan Pidana Di Indonesia Berdasarkan Pancasila” (UNS (Sebelas Maret University), 2024).

²⁹ Pujiyono Appludnopsanji, “Restrukturisasi Budaya Hukum Kejaksaan Dalam Penuntutan Sebagai Independensi Di Sistem Peradilan Pidana Indonesia,” *Sasi* 26, no. 4 (2020): 571–81, <https://doi.org/https://doi.org/10.47268/sasi.v26i4.359>.

matter that has been resolved will not be arbitrarily reopened. Within the framework of a state based on law, respect for this principle is an essential guarantee of the effectiveness and legitimacy of Restorative Justice within the national criminal justice system. Without this protection, Restorative Justice risks losing its role as a peaceful and efficient solution to criminal cases, as it would be seen as failing to ensure legal certainty equivalent to that of the formal judicial process.³⁰

However, because the court's decree in restorative Justice (RJ) under the 2025 Criminal Procedure Code has not yet been recognized as *res judicata*, the protection of the *ne bis in idem* principle for the perpetrator is less effective. A perpetrator who has undergone the RJ process and received a court decree still has the potential to face legal proceedings again if there are objections from the victim or other parties who feel aggrieved. This situation creates legal uncertainty and reduces public confidence in the RJ mechanism as a final, fair solution for resolving cases.

This uncertainty also affects the implementation of restorative Justice, which is supposed to provide space for recovery and reconciliation. If offenders feel legally unprotected, their motivation to participate in the restorative justice process and take responsibility constructively may decrease. Therefore, clear regulations regarding the status of judicial decisions and the protection of the *ne bis in idem* principle are essential to ensure that restorative Justice can be carried out effectively and deliver just outcomes.

The uncertainty surrounding the legal status of the judge's decision also affects the victim's position in the Restorative Justice process. When there is no certainty that the agreement reached is final, the victim may feel unprotected again, especially if there is social pressure or regret over the agreement. In such situations, the victim can at any time withdraw the deal and push for formal legal proceedings, which ultimately disrupts the stability of case resolution and creates new psychological burdens for both the perpetrator and the victim. In fact, the main spirit of Restorative Justice is to make Justice that is participatory, dialogical, and thorough, not to reopen wounds or conflicts that have already been agreed to be resolved peacefully.

Furthermore, this ambiguity complicates matters for law enforcement officers, particularly police and prosecutors, in establishing case-handling policies. Without legal guarantees of the finality of Restorative Justice outcomes,

³⁰ Rahmansyah Fadlul Al Karim Rambe and Muhammad Aufa Abdillah Sihombing, "Implikasi Perlindungan Hak Asasi Manusia Dalam Hukum Pidana," *Jurnal Ilmiah Penegakan Hukum* 11, no. 1 (2024): 24–31, <https://doi.org/10.31289/jiph.v11i1.11182>.

investigators or prosecutors may hesitate to halt investigations or prosecutions, even if a judge's ruling has affirmed the agreement. This can lead to inefficiencies in the criminal justice system because energy and resources continue to be spent on cases that should have already been legally concluded. Moreover, this uncertainty could also create opportunities for disparities in treatment across different legal regions, depending on how officers interpret the legal authority of a judge's ruling within the Restorative Justice mechanism.³¹

On the other hand, the state has a constitutional obligation to protect every citizen's right to fair and equal legal certainty. Therefore, legislators play a significant role in refining regulations on Restorative Justice in the 2025 Draft Criminal Procedure Code (RKUHAP). A normative formulation is needed that explicitly states that a judge's determination of a valid and substantively qualified Restorative Justice agreement must be considered a ruling with permanent legal force (*res judicata*). This provision will strengthen the guarantee that the case cannot be reopened without truly extraordinary legal reasons, such as evidence that the agreement was obtained through coercion or fraud.³²

With this strengthening, Restorative Justice can genuinely become a fair middle ground between law enforcement and social rehabilitation. The criminal process is not merely an arena for punishment, but a constructive space to repair relationships, restore victims, and encourage perpetrators to take moral and social responsibility. This aligns with a justice paradigm oriented towards comprehensive conflict resolution, not just legal formalities. Certainty regarding the principle of *ne bis in idem* in Restorative Justice is not only a normative technical issue but also concerns the legitimacy of the criminal justice system in the eyes of society, which seeks a more humane and sustainable form of Justice.³³

Several related regulations, such as the Attorney General Regulation Number 15 of 2020 and the Chief of Police Regulation Number 8 of 2021, have regulated the implementation of restorative Justice (RJ) at the investigation and prosecution levels. However, there is still no uniformity and harmonization with the provisions in the Draft Criminal Procedure Code (RKUHAP) of 2025. This has caused inconsistencies and legal uncertainty that need to be addressed through

³¹ Dwi Prasetyo and Ratna Herawati, "Tinjauan Sistem Peradilan Pidana Dalam Konteks Penegakan Hukum Dan Perlindungan Hak Asasi Manusia Terhadap Tersangka Di Indonesia," *Jurnal Pembangunan Hukum Indonesia* 4, no. 3 (2022): 402–17, <https://doi.org/https://doi.org/10.14710/jphi.v4i3.402-417>.

³² Andry Syafrizal Tanjung and Jafan Fifaldi Harahap, "Restorative Justice Regulations in Reforming Criminal Procedure Law," *Daengku: Journal of Humanities and Social Sciences Innovation* 4, no. 1 (2024): 155–61, <https://doi.org/10.35877/454ri.daengku2359>.

³³ Salsabila Ayu Pramita, "Penerapan Restorative Justice Dalam Penologi Modern: Alternatif Pemidanaan Di Era Reformasi Hukum," *Jurnal Kajian Hukum Dan Kebijakan Publik* E-ISSN: 3031-8882 2, no. 2 (2025): 899–912, <https://doi.org/https://doi.org/10.62379/dj83v892>.

revisions and improvements of regulations so that RJ can be implemented consistently and provide adequate legal protection.

In this context, emphasizing that a judge's determination of restorative Justice (RJ) has permanent and binding legal force will provide legal certainty and protect the principle of *ne bis in idem*. Thus, offenders who have resolved their cases through RJ will not face the risk of retrial, while victims are assured of the restoration of their rights and substantive Justice.³⁴ In addition, harmonizing the various regulations governing restorative Justice across the police, prosecution, and judiciary is crucial to creating an integrated and effective criminal justice system. This will also support the establishment of a more humane and solution-oriented legal system, in line with the spirit of reforming Indonesia's criminal procedure law.³⁵

The lack of harmonization between regulations can also create disparities in case handling on the ground, where the application of Restorative Justice depends heavily on the subjective interpretation of law enforcement officers within each institution. As a result, in similar cases, someone might receive a resolution through the Restorative Justice mechanism in one region, yet face criminal prosecution in another region merely due to differences in understanding or local law enforcement policies. This disparity clearly contradicts the principle of equality before the law as guaranteed in Article 27, paragraph (1) of the 1945 Constitution. It indicates the need to unify the legal framework so that the implementation of Restorative Justice is not partial or discriminatory.

Therefore, the revision of the Criminal Procedure Code in 2025 should not only regulate the procedures for Restorative Justice in general, but also emphasize the mechanism of inter-agency coordination among the police, the prosecutor's office, and the court in implementing the agreements reached. The judge's decision must be the final and binding point in the Restorative Justice process, so that there is no room for reinterpretation or resubmission of the same case. By making this decision, the state finalizes the case with permanent legal force, providing legal certainty and avoiding waste in the criminal justice system.³⁶

In addition, this harmonization will also strengthen the legitimacy of Restorative Justice in the public eye. When the community sees that the RJ process

³⁴ Yusna Arsyad, Fence M. Wantu, and Dian Ekawaty Ismail, "Menata Kembali Prinsip Restorative Justice Dalam Sistem Peradilan Pidana Indonesia: Sebuah Gagasan Mencapai Idealitas," *Ilmu Hukum Prima (IHP)* 6, no. 2 (2023): 253–65, <https://doi.org/10.34012/jihp.v6i2.4438>.

³⁵ E WAHID, "Harmonization Of Legal Systems: Analysis Of The Relationship Between The Principle Of Restorative Justice And Criminal Procedure Law (Kuhap) In Indonesia," *International Journal* 13, no. 9 (2024): 845–49, <https://doi.org/10.21275/sr24914131300>.

³⁶ Yuni Priskila Ginting et al., "Upaya Penyelesaian Tindak Pidana Melalui Upaya Restorative Justice Dengan Melibatkan Keluarga Pelaku/ Keluarga Korban," *Jurnal Pengabdian West Science* 3, no. 04 (2024): 410–28, <https://doi.org/10.58812/jpws.v3i04.1117>.

is not merely symbolic but is truly recognized by the national legal system and produces final results, trust in this mechanism will increase. This is important for broadening social acceptance of dispute resolution approaches that do not always require formal punishment and can be achieved through a dialogical process that is humane, fair, and constructive. If Restorative Justice is guaranteed by a consistent and mutually integrated legal framework, it can become one of the main pillars of criminal justice reform that promotes social Justice.

The principle of *ne bis in idem* is an essential pillar of criminal law that prohibits the re-prosecution of cases that have been decided with final legal force (*res judicata*). This principle is not only intended to protect individual rights from repeated legal proceedings but also to uphold the authority of court decisions and to enhance the efficiency of the administration of criminal Justice. In the context of Restorative Justice, protecting this principle is crucial because agreements reached among the offender, the victim, and the community have a final resolution dimension in both moral and social terms. Once a judge's decision has ratified such an agreement, the offender should no longer be subjected to a retrial for the same matter, as this would contradict the principle of *ne bis in idem* and create legal uncertainty.

Furthermore, the recognition of the principle of *ne bis in idem* in Restorative Justice demonstrates the criminal justice system's commitment to the principle of due process of law and to the protection of human rights. The Restorative Justice process that culminates in a judge's determination should carry the same legal consequences as an ordinary court ruling. This means that as long as no substantive or procedural legal defects are found in the process, the agreement must be respected and its binding force recognized by all law enforcement institutions. When an offender can still be retried for actions resolved through RJ, it creates a bad precedent for legal protection and undermines RJ's legitimacy as a form of resolution. Therefore, it is essential for lawmakers to explicitly include provisions in the Draft Criminal Procedure Code (RKUHAP) or related laws stating that the results of Restorative Justice approved by a judge have permanent legal force, finality, and binding effect. This will not only strengthen offenders' position in obtaining legal certainty but also encourage the public and victims to have greater trust in the RJ process as a fair, efficient, and humane alternative. Thus, the principle of *ne bis in idem* will not only remain an abstract norm but will also be internalized in modern and progressive criminal law practice.

However, under current regulations, particularly PERMA Number 1 of 2024 and its implementing regulations, the judge's determination of the outcomes of restorative Justice (RJ) has not been explicitly recognized as a final, binding

decision that protects the offender from retrial. As a result, offenders who have received a judge's RJ determination may still face retrial if the victim or other interested parties object. This creates legal uncertainty and may reduce the effectiveness of RJ as a final and fair alternative for resolving criminal cases.³⁷

Furthermore, the discrepancy between restorative justice provisions at the investigation and prosecution levels and the regulations at the court level creates a legal gap. For example, Police Regulation Number 8 of 2021 and Attorney General Regulation Number 15 of 2020 provide a broader scope for the implementation of restorative Justice in the early stages of investigation and prosecution. In contrast, Supreme Court Regulation Number 1 of 2024 more strictly limits the application of restorative Justice at the court level with stricter requirements. This disharmony can lead to inconsistencies in legal protection for perpetrators and victims, as well as open up the possibility of retrial, which contradicts the principle of *ne bis in idem*.³⁸

To address this issue, several legal experts have proposed that the 2025 Draft Criminal Procedure Code (RKUHAP) and its supporting regulations explicitly stipulate that judges' determinations in restorative Justice (RJ) proceedings have binding legal force, thereby protecting perpetrators from retrial and providing more substantial legal certainty. Strict oversight and evaluation mechanisms should also accompany this regulation to ensure that RJ agreements truly reflect substantive Justice and do not harm any party.³⁹ Thus, strengthening the legal status of judges' determinations in Restorative Justice and harmonizing related regulations are key to ensuring the protection of the principle of *ne bis in idem*, while also enhancing the effectiveness of Restorative Justice as a humane and fair instrument for criminal case resolution. In this regard, the status of judges' determinations must be elevated from merely administrative decisions to quasi-judicial rulings with *res judicata* effect. This is important so that the results of Restorative Justice agreements are not only legally valid but also carry the same binding force and legal protection as ordinary court decisions. If such determinations are not recognized as binding, perpetrators remain vulnerable to recriminalization or changes in attitude by victims or law enforcement, which runs contrary to the spirit of restorative Justice.

³⁷ Mahkamah Agung Republik Indonesia, "Peraturan Mahkamah Agung Nomor 1 Tahun 2024 Tentang Pedoman Mengadili Perkara Pidana Berdasarkan Keadilan Restoratif" (2024).

³⁸ Hukumonline, "Keadilan Restoratif Dalam RUU KUHP: Glorifikasi Pemulihan Atau Formalisasi Perdamaian," 2025.

³⁹ CNN Indonesia, "Pakar Hukum Ungkap RUU KUHP Belum Sinkron Dengan KUHP," 2025, <https://www.cnnindonesia.com/nasional/20250528204943-12-1234356/pakar-hukum-ungkap-ruu-kuhp-belum-sinkron-dengan-kuhp>.

More than that, a mechanism for monitoring and evaluating the implementation of Restorative Justice must also be established in a structured manner by an independent supervisory body or the internal criminal justice system, to ensure that all agreements ratified by a judge's decree truly reflect the principles of substantive Justice. This evaluation should include aspects of process transparency, equal involvement of all parties, and voluntariness in reaching an agreement. With accountable supervision, the state can ensure that Restorative Justice is not manipulated by power or particular interests, and that the outcomes genuinely guarantee the protection of the rights of all parties, including the offender, the victim, and the wider community. As a concrete step, the Draft Criminal Procedure Code The year 2025 and sectoral regulations such as the Prosecutor's Regulation and the Police Regulation must include an explicit clause stating that if a case has been resolved through Restorative Justice and ratified by a judge's ruling, the case cannot be reopened, except in the event of fraud or serious violations in the agreement process. This provision will serve as a strong normative basis for protecting the principle of *ne bis in idem*, while also demonstrating that Indonesia's criminal justice system is moving towards a more responsive approach to the community's Justice needs.

D. CONCLUSION

A judge's determination in the Restorative Justice (RJ) mechanism, based on the Draft Criminal Procedure Code (RKUHAP 2025), does not yet have the legal force of a final decision (*res judicata*). Although Article 1(18) of the RKUHAP 2025 defines the determination as the ratification of an RJ agreement, the absence of an explicit clause on binding force leaves its status ambiguous. This determination is only administrative in nature and does not undergo a complete evidentiary process, thus failing to meet the *res judicata* requirement that ensures the finality of a decision. As a result, RJ agreements are vulnerable to annulment through extraordinary legal remedies or to withdrawal by the victim, creating legal uncertainty for the offender. To ensure legal certainty, the RKUHAP 2025 should regulate the judge's determination as a quasi-decision with *res judicata* effect through an explicitly revised provision.

The judge's decision in restorative Justice (RJ) has not fully protected the *ne bis in idem* principle because it is non-final. Offenders who have completed RJ through a judge's decision remain at risk of prosecution again if the victim objects or law enforcement initiates further action. This contradicts the principle of *ne bis in idem* (Article 76 of the 2025 Draft Criminal Procedure Code), which prohibits double prosecution for the same case. This uncertainty reduces the effectiveness of RJ as a final solution and could potentially undermine public trust. Therefore, harmonization between RJ decisions and the principle of *ne bis in idem* is needed by explicitly

recognizing that a judge's decision is permanently binding, thereby protecting offenders from the risk of re-prosecution.

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