

# RECONSTRUCTION OF CRIME PREVENTION POLICIES THROUGH RESTORATIVE JUSTICE THAT IS EQUITABLE AND WITH LEGAL CERTAINTY (STUDY OF CRIME PREVENTION IN THE NATIONAL POLICE OF THE REPUBLIC OF INDONESIA)

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## ABSTRACT

Criminal policy or criminal politics as an effort to prevent and control crime is essentially an integral part of efforts to protect society (social defence) and achieve social welfare, both of which are integral to social politics (social policy). This is related to the criminal justice system, carried out by the police as the front guard in maintaining security and social order in society and law enforcement. Legal reform by the Police through Restorative Justice is a new instrument for realizing social justice. Therefore, the first formulation of the problem in this paper is a) what are the policies for combating crime in the National Police of the Republic of Indonesia through Restorative Justice and legal certainty? b) How is the reconstruction of crime prevention policies in the national police of the Republic of Indonesia through Restorative Justice that is fair and has legal certainty? Methodologically, this research uses a qualitative approach, with a qualitative research design and literature study. Collecting data: a) In-depth interviews; b) Observation; c) FGD and RTD; d) literature study. The research results show several findings: First, very few cases still use alternative dispute resolution for criminal acts. Second, it is essential to have a legal and regulatory policy framework based on restorative justice, fairness, and legal certainty. Third, Pancasila is important as the basis for the state to participate in formulating restorative justice that is fair and has legal certainty.


**Keywords:** Restorative Justice, Criminal Justice System, Crime Prevention, Police, Pancasila

## INTRODUCTION

The Republic of Indonesia is a state of law as regulated in Article 1 Paragraph 3 of the 1945 Constitution of the Republic of Indonesia, which states that the State of Indonesia is a state of law, so the patterns of community behavior in all aspects of life are regulated by a law that applies in Indonesia. In the preamble to the 1945 Constitution of the Republic of Indonesia, in the 4th paragraph, the state's objectives are to protect the entire Indonesian nation and promote general welfare based on Pancasila. The National Program is contained in the 2020-2024 National Medium Term Development Plan (RPJMN) in Chapter VIII concerning Strengthening the Stability of Political, Legal, and Security Affairs and Transformation of Public Services. Indonesia's Political, Legal, Defence and Security (Polhukhankam) Development 2020-2024 is directed towards realizing democratic consolidation, supremacy of law and enforcement of human rights, clean and trustworthy bureaucracy, a sense of security and peace for all people, as well as the territorial integrity of the Unitary State of the Republic of Indonesia and state sovereignty from various threats, both from within and outside the country, these conditions are prerequisites for supporting the implementation of national development.

Criminal policy or criminal politics as an effort to prevent and control crime is essentially an integral part of efforts to protect society (social defence) and achieve social welfare, both of which are integral parts of social politics (social policy) (Satria, 2020; Situmeang, 2019). In the sense of the word, social policy in the context of realizing community protection to achieve community welfare is the ultimate goal of criminal policy or politics (Muhammad, 2019), (Ariyanti, 2019).

According to Mardjono Reksodiputro, the criminal justice system can be briefly described as a system that aims to "overcome crime," one of society's efforts to control the occurrence of crime so that it is within the limits of tolerance that it can accept. According to Mardjono Reksodiputro, understanding



crime is defined as a violation of criminal law. Criminal law is a reaction to the actions of people who have violated moral and legal norms and threatened the foundations of government, law, order, and social welfare. The perpetrators of crimes are considered to have no regard for other people's public welfare, security, and property rights (Reksodiputro, 2020).

The criminal justice system includes preventing people from becoming victims of crime, resolving crimes that occur so that people are satisfied that justice has been served and the guilty are punished, and ensuring that those who have committed crimes do not repeat their actions (Ismail, 2018). Police Regulation (Perpol) Number 8 of 2021 concerning the handling of criminal acts based on Restorative Justice, which is given to members of the State Police of the Republic of Indonesia in carrying out law enforcement duties, is carried out by the Criminal Investigation function and Regulation of the State Police of the Republic of Indonesia Number 1 of 2021 concerning Community Policing which is given to members The National Police of the Republic of Indonesia in carrying out crime prevention duties by Sabhara with the Patrol function and preemptive duties by Binmas with the Bhabinkamtibmas function. The focus of the study serves to provide boundaries so that the researcher knows precisely which data must be obtained and which is not necessary. The focus of the study is the problem chosen to be researched, and the accuracy of determining the focus will influence the research results. The focus of the study in this research is the implementation of crime prevention policies in the Indonesian National Police through a restorative justice approach that is fair and has legal certainty.

Based on the background above, the problem that will be studied in this paper can be formulated as follows:

- a. What is the Policy for combating crime in the national Police of the Republic of Indonesia through Restorative Justice and legal certainty?
- b. How is the reconstruction of crime prevention policies in the national police of the Republic of Indonesia through Restorative Justice that is fair and has legal certainty?

## LITERATURE REVIEW

### Background and Implication

This concept is strongly influenced by the views of criminology and sociology, which try to find solutions to conflict resolution from the perspective of the philosophy of punishment. The philosophy of punishment developed from the concept of retaliation to the idea of improving the perpetrator and the concept of punishment as an educational program for the perpetrator. In this way, it results in attention to the promotion of justice (restorative justice) towards victims being neglected, even though, in reality, the essence of criminal law enforcement is in the form of law enforcers representing the state in addition to upholding the existence of the law to achieve legal goals, also representing victims to sue perpetrators as a form of protection for victims as citizens.

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The National Police of the Republic of Indonesia, as part of the criminal justice system (SPP), is the front guard that is directly in contact with the community in tackling crime, where criminal policies (criminal politics) will be used in carrying out their duties through penal law enforcement which detective and

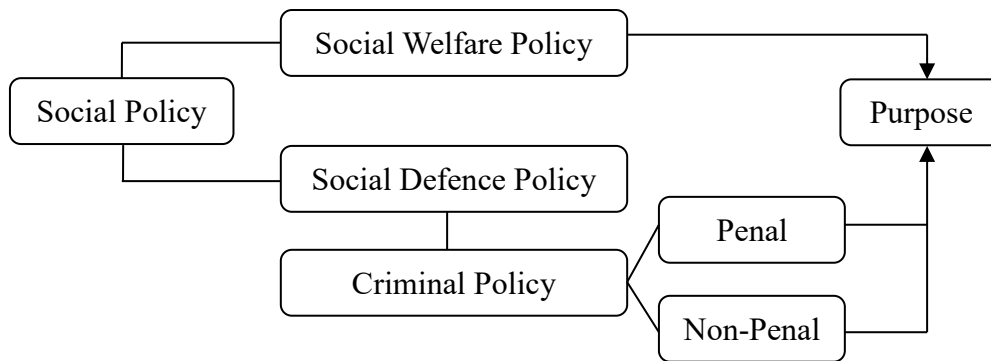
non-criminal functions will carry out (Maerani, 2015). Penalized by the patrol and Bhabinkamtibmas functions, all of which remain based on restorative justice. Security disturbances or crimes in society will affect the security situation and public order if not appropriately managed. The National Police of the Republic of Indonesia, in carrying out its duties to tackle crime, has been given authority in the form of police discretion to take steps to enforce the law to realize legal objectives in the form of justice, benefit, and legal certainty. (Ramadhan et al., 2021)

**Reconstruction**

According to the Indonesian Dictionary, reconstruction is 1.n returning it to its original state, 2.n re-arranging (depicting) it. Meanwhile, according to the Big Indonesian Dictionary, reconstruction is 1.n returning it to its original state, 2.n re-arranging (depiction) it. In the Black Law Dictionary, reconstruction is the act or process of rebuilding, recreating, or reorganizing something, reconstruction here is interpreted as the process of rebuilding or recreating or reorganizing something. (Kbbi, 2016)

**Crime Prevention Policy**

Policies or efforts to overcome crime are essentially an integral part of protection efforts (social defence) and efforts to achieve social welfare (Silaen & Siregar, 2020). Therefore, the ultimate goal or main objective of criminal politics is: "protection of society to achieve social welfare".



**Figure 1. Social Policy scheme**

Crime prevention efforts can be broadly divided into two, namely through "penal" channels (criminal law) and through "non-penal" channels (not/outside criminal law). Efforts to overcome crime through the "penal" route focus more on the "repressive" nature (suppression/eradication/suppression) after the crime occurs, while the "non-penal" route focuses more on the "preventive" nature (prevention/deterrence/control) before the crime occurs. It is a rough difference because repressive actions can also be considered preventive.

By looking at the scheme above, crime prevention efforts must be taken with an integrated policy approach. Namely, there is integration between criminal politics and social politics, and there is integration between criminal and non-penal crime prevention efforts. Criminal policy, an effort to overcome crime, can be carried out through penal or non-penal measures. Crime prevention and control must support social welfare and social defence objectives. An essential aspect of social welfare and defence is the immaterial aspect of social welfare/protection, especially the values of trust, truth, honesty, and justice.

Criminal politics is integral to social politics (i.e., policies or efforts to achieve social welfare). G. Peter Hoefnagels (in (Arief, 2008)) regarding criminal policy stated as follows:

“Criminal policy as a science of policy is part of a larger policy: the law enforcement policy. .... The legislative and enforcement policy is part of social policy”. Based on that description, G.P. Hoefnagels provides the following scheme:

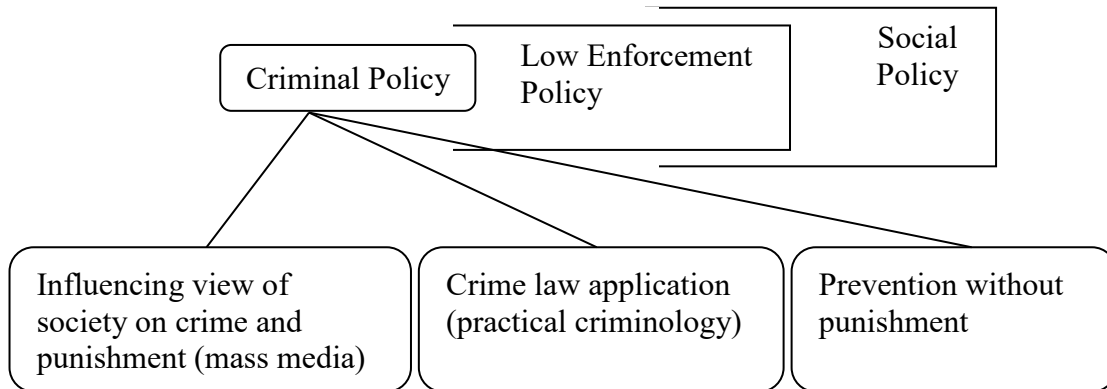


Figure 2. Policy Scheme

**Justice and Restorative Justice**

According to Tony F. Marshall, restorative justice is an approach to solving crime problems between parties, namely victims, perpetrators, and the community, in an active relationship with law enforcement officials. Furthermore, Gerry Johnstone quoted Tony F. Marshall's opinion that to solve the crime problem, restorative justice uses the following assumptions: The source of crime is social conditions and relations in society. Preventing crime depends on society's responsibility (including local government and central government about social policy in general) to address the social conditions that can cause crime. The parties' interests in resolving criminal cases cannot be accommodated without providing facilities for personnel involvement. Measures of justice must be flexible to respond to essential facts, personnel needs, and resolutions in each case. Cooperation between law enforcement officers and between officers and the community is essential to optimize the effectiveness and efficiency of how cases are resolved. Justice is achieved by balancing interests between the parties (Stone, 2006).


**Criminal Justice System**

According to L. Friedman (in (Arief, 2008)) conveys that the justice system (or law enforcement system - from now on abbreviated as SPH) is seen integrally, as a unity of various sub-systems (components) which consist of the component "legal substance" (legal substance), "legal structure" (legal structure), and "legal culture" (legal culture). As a law enforcement system, the judicial/law enforcement process is closely related to these three components: legal norms/legislation (substantive/normative components), law enforcement institutions/structures/apparatus (structural/institutional components), and procedural/mechanisms. Administration), and other legal culture (cultural components). What is meant by "legal culture" values in the context of law enforcement, of course, is more focused on the values of legal philosophy, legal values that live in society and awareness/attitudes of legal behavior/social behavior, and education/ Legal studies. In a broad sense, legal and cultural values include basic ideas/ideas/insights and scientific values (intellectual philosophy/conceptions/basic ideas).

**Legal Certainty**

According to Donal Albert Rumokoe who cited Apeldoorn's opinion, the meaning of legal certainty has two aspects, namely: regarding the fact that the law can be determined (*bepaalbaarheid*) in concrete matters, that is, parties seeking justice want to know what the law is in a particular matter before they start a case. According to Roscoe Pound, this is in terms of predictability (the possibility of predicting). Likewise, according to Algra et al, an important aspect of legal certainty is that the judge's decision can be predicted in advance. Legal certainty means legal security, meaning protection for the parties against arbitrariness by judges (Rumokoy, 2018).

Legal certainty is a greater value of written regulations than unwritten ones. With written regulations, people can more easily find, read and determine what the law is. According to Kelsen (Sikti, 2022), According to Hans Kelsen, Legal certainty is a greater value of written regulations than unwritten ones



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#### **METHOD**

Meanwhile, according to Erlyn Indarti, a paradigm is an umbrella philosophical system that includes ontology, epistemology, and a certain methodology. Each paradigm consists of a series of "basic beliefs" or world views that cannot simply be interchanged with basic beliefs or world views from ontology, epistemology, and other paradigm methodologies (Sikti, 2022).

Postpositivism is a movement that wants to correct Positivism's weaknesses. One side of Postpositivism agrees with Positivism that reality exists according to natural laws. On the other hand, Postpositivism believes that humans cannot get the truth from reality if researchers distance themselves from it or are not directly involved with it. The relationship between researchers and reality must be interactive.

This research will use an empirical legal research approach with socio-legal studies. According to (Irwansyah, 2020), the empirical legal research method functions to see the law in absolute terms and examine how the law works in society. Because this empirical legal research examines people and their living relationships in society, it can also be considered sociological legal research.

Bogdan and Taylor (in (Moleong, 2021)) define qualitative methodology as a research procedure that produces descriptive data in the form of written or spoken words from people and observable behavior. According to them, this approach is directed at the setting and the individual in a holistic (whole) manner. So, in this case, it is not permissible to isolate individuals or organizations into variables or hypotheses, but it is necessary to view them as part of a whole (Moloeng, 2001). According to Moleong (in Aris Prio, 2022), qualitative data analysis is an effort used by working with data, organizing data, sorting it into manageable units, synthesizing, looking for and finding patterns, finding what is essential and what to learn. Moreover, decide what to tell others. A literature study will also complement this research.

#### **RESULTS AND DISCUSSION**

The research was conducted by the Department of Criminology, Faculty of Social and Political Sciences (FISIP), University of Indonesia, in 2023, and quantitative data collection activities were carried out through surveys using interview techniques with 1,220 respondents in 33 provinces throughout Indonesia. The survey was conducted considering demographic differences such as gender, age, and social class, with an estimated margin of error of approximately 2.9% and a confidence level of 95%. In general, the public's attitudes tend to support the provision of imprisonment (retributive) for perpetrators of criminal acts. However, when explored further, this community view turns out to be relative or not dichotomous. Both justice (restorative and retributive) values can be accepted and believed by individuals simultaneously, depending on their experience and perception of criminal acts and certain social situations. The majority of the public (94.4%) agree with imprisonment, where support and approval will decrease when the public knows that there are alternative forms of punishment (approval of imprisonment falls to 50%) and when victims receive compensation (approval of imprisonment falls to 46%). The community's attitude, which tends to be punitive, also aligns with the findings of a minimal level of knowledge regarding restorative justice. Almost 90% of people have never heard of restorative and retributive justice. However, when society faces alternative criminal solutions prioritizing the victims' recovery needs, society shifts its understanding (UI, 2023).

Public knowledge regarding restorative justice is still low, but it can still be implemented in Indonesia. The restorative justice approach aligns with the locality and traditional values of Indonesian society, including customary laws that apply in many regions of the archipelago and have become guidelines for behavior over a long period. The values adhered to by Indonesian society, which value balance, harmonization, and peace, are the roots of restorative justice. In addition, some of Indonesia's communal and cosmos-oriented customary law practices allow for alternative punishments. Customary law practice in Indonesia prioritizes harmony, which aligns with the values of restorative justice.

The law must be implemented and enforced, and everyone hopes that the law can be established in the event of a concrete event. The enactment of the law basically must not deviate from *fiat justitia et pereat mundus* (even though the world will collapse, the law must be enforced). The community expects benefits in implementing or enforcing the law. Law is for humans, so implementing law or law enforcement must provide benefits or usefulness for society. The community is very interested in



implementing or enforcing the law so that justice is taken into account. Implementation and enforcement of the law must be fair.

Mardjono Reksodiputro conveyed that the goals of the criminal justice system will only be completed (achieved) if the lawbreaker has reintegrated into society and lives as a law-abiding citizen. In this framework, it is important to note that (Ul, 2023) The efficiency of the police, namely a high crime disclosure rate accompanied by fair investigations, is required for good correctional administration. Excessive use of temporary detention will result in correctional institutions accommodating inmates above their capacity limits, so input and output from correctional institutions must be balanced properly. Be it through good investigative selection or an accelerated judicial process. Third, accelerating disparities in the criminal justice system.

Each functional component has the authority to filter the flow of cases entering the law enforcement process, both based on statutory regulations and based on sociological aspects. At the investigation level, case screening takes the form of Police actions, which in Police practice are called Police discretion. At the prosecution level, there is the authority of the Prosecutor to prosecute a case based on Article 35 letter c of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, which reads: "Prosecutor The Supreme Court has the duty and authority to set aside cases for the sake of the public interest" which is often called the principle of opportunity, while at the judicial level, it takes the form of a judge's decision on acquittal, conditional or free sentences, and fines, while at the community level, it takes the form of a reduced sentence or remission.


Crime prevention is carried out by the National Police of the Republic of Indonesia as the front guard who is in direct contact with crimes that occur in society. This is very important to control crimes that occur in society so that a sense of security will be realized. The way to deal with crimes committed by the Indonesian National Police can be through a penal legal approach and a non-penal approach based on restorative justice, which is carried out by the functions and organs within the Indonesian National Police, such as the detective function, the patrol function, and the Bhabinkamtibmas function.

M.Faal is of the opinion that the duties, functions, and authority of the police of the Republic of Indonesia can be described as follows: namely, as an instrument of the state that enforces the law and is obliged to maintain and improve legal order through taking action/repression against any violations of the law, maintaining the enforcement of the law (so that violations do not occur). Law provides guidance to the community so that legal awareness and legal compliance in the community can be realized (law-abiding citizens). Then, there is the role of protecting and providing services to the community by protecting the community both personally and their property, increasing patrols, guarding, and escorting. Providing services to people who need police assistance, protecting people so they can protect themselves and their property. (Faal, 1991)

Providing information and counseling on the importance of security and public order for the smooth running of national development, as well as information and education about the Swakarsa security system. This is expressed in the duties and authority of the Indonesian National Police through Law Number 2 of 2002 concerning the Indonesian National Police Article 16 Paragraph (2) and Article 18 Paragraph (1). Apart from that, this must also be done so that it does not conflict with legal regulations, is in line with legal obligations, is proper, reasonable, and appropriate considerations based on compelling circumstances, and respects human rights.

Police Regulation (Perpol) Number 8 of 2021 concerning the handling of criminal acts based on Restorative Justice, which is given to members of the State Police of the Republic of Indonesia in carrying out law enforcement duties, is carried out by the Criminal Investigation function and Regulation of the State Police of the Republic of Indonesia Number 1 of 2021 concerning Community Policing which is given to members The National Police of the Republic of Indonesia in carrying out crime prevention duties by Sabhara with the Patrol function and preemptive duties by Binmas with the Bhabinkamtibmas function. The police discretion contained in Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia in Article 16 Paragraph (2) and Article 18 Paragraph (1) is more oriented towards simplifying police functions, so it is different from the restorative justice model.

Restorative Justice is a new legal philosophy which is a combination of old theories of punishment, but is oriented towards resolving cases that focus on the perpetrator, victim and society. Here restorative justice contains the value of classical criminal theory focused on efforts to restore victims contained in the theories of retributive punishment, deterrence, rehabilitation and resocialisation.



According to Dedi Prasetyo, the characteristics of implementing restorative justice in response to a criminal act are as follows (Prastyo, n.d). Carrying out identification and steps to repair the losses caused, involving all related parties, making efforts to transform the existing relationship between society and the government in responding to various criminal acts.

The National Police of the Republic of Indonesia in carrying out its duties and authority functions depends on Law Number 1 of 1946 concerning Criminal Law Regulations which was updated with Law Number 73 of 1958 concerning declaring the enactment of Law Number 1 of 1946 concerning Criminal Law Regulations for All Regions. Republic of Indonesia and amend the Criminal Code (State Gazette of the Republic of Indonesia of 1958 number 127, which is currently known as the Criminal Code (KUHP), Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHP), Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia, Law Number 1 of 2023 concerning the Criminal Code which will come into force on January 1 2026. From here the restorative justice model has not been clearly explained.

The spirit of restorative justice is already stated in Law Number 1 of 1946 concerning Criminal Law Regulations, namely Article 81 of the Criminal Code which reads: "postponement of criminal prosecution is related to judicial disputes, delaying the expiration date". Then Article 82 Paragraph (1) of the Criminal Code which states that the authority to prosecute violations is punishable by a fine is only abolished, if the maximum fine and costs incurred when the prosecution has been initiated are voluntarily paid, with the authority of the official appointed for that purpose by the regulations. General and within the time specified by him. Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHP), namely Article 7 Paragraph (1) letter J of the Criminal Procedure Code, reads, "carrying out other responsible actions according to law". Article 98 Paragraph (1) of the Criminal Procedure Code which reads: "if an act which is the basis of an indictment in a criminal case examination by a district court, causes harm to another person, then the Chief Judge of the Session at the request of that person may determine the consolidation of the case for compensation to criminal case." Article 109 Paragraph (2) of the Criminal Procedure Code reads: "In the event that the investigator stops the investigation because there is not enough evidence or the incident turns out not to be a criminal act or the investigation is stopped by law, then the investigator notifies this matter to the public prosecutor, suspect or family." Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia, Article 15 Paragraph (1) letter b which reads: "to help resolve disputes between members of the public that can disturb public order". Article 16 Paragraph (1) letter 1 reads: "In order to carry out the duties of the National Police of the Republic of Indonesia, it is authorized to carry out other responsible actions according to law." Then Article 18 Paragraph (1) which reads: "In the public interest, officials of the Indonesian National Police in carrying out their duties and authority can act according to their own judgment." Likewise in Law Number 1 of 2023 concerning the Criminal Code (KUHP) in article 132 Paragraph 1 letter g which reads: "there has been a settlement outside the judicial process as regulated in the Law".

As is the opinion of legal experts in Indonesia, restorative justice thinking has actually been applied for a long time. According to Supomo in (Susylawati, 2009), customary law that has been in effect for centuries in Indonesia has viewed crime as a disturbance of the cosmic balance. Therefore, the perpetrator of the crime is obliged to restore this balance by recovering the losses suffered by the victim and society. In line with Supomo's opinion, Eva Zulfa emphasized that the values of traditional society are the roots of restorative justice, which contains the values of balance, harmonization, and peace in society. According to (Zulfa, 2009), customary law contains: a) a religious style of law as a form of inner unity of Indonesian society as a communal unit; b) the communal nature of customary law places individuals as people who are bound to society, not free in everything because they are limited by social norms that apply to them as a unit; c) the aim of community association is to maintain physical and spiritual balance between individuals, groups and their living environment. This goal is basically borne by each member (individual) for the sake of achieving a common goal (communal); d) maintaining inner and outer balance stems from the view of the order in the universe (cosmos), where the interest of society is a harmonious relationship between everything that is in accordance with the lines and balance of the cosmos; e) violation of customary law is a violation of the interests of the cosmos; f) if an individual does not live a cosmos line, then that person and society will suffer and suffer the consequences that occur because they are outside the cosmos line that exists for collective existence.



As written above, legal certainty means that the law must be certain, namely a condition that is not easy to change according to changes in society and can be obeyed by society at any time and place, so the law is not easy to change (Halilah & Arif, 2021). Justice is also the most important and primary goal of the law, namely to compel society in general (utility/doelmatigheid) and law enforcers, in particular, to carry out all activities according to the law that regulates them (Rahman, 2020; Zamzami, 2018). The duties of the Police, as formulated in the provisions of Article 13 of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia, are to maintain security and public order, enforce the law, and provide protection, guidance, and service to the community.

In cases such as the theft of cocoa by Grandma Minah (55 years) in Banyumas, Central Java, who had picked 3 cocoa pods on a plantation owned by PT. Rumpun Sari Antan (RSA) was subsequently sentenced by the court to 1 month and 15 days in prison with a probation period of 3 months. It started with Minah's grandmother harvesting soybeans on her land in Sidoarjo Hamlet, Darmakradenan Village, Ajibarang District, Banyumas, Central Java, on August 2, 2010. Minah's land is also managed by PT. RSA for growing cocoa. Next, Minah's grandmother saw 3 cocoa pods and picked them to sow as seeds in the land she cultivated. After being picked, the 3 cocoa pods were not hidden but simply placed under the cocoa tree (news.detik.com, 2023). Likewise, in the case of banana theft by two (2) handicapped youths in Cilacap who were mentally retarded and had not graduated from elementary school, they were jailed because they were caught stealing nine (9) bunches of bananas on November 11 2011 in the names of Kuatno (22 years old) and Topan. (25 years old), a resident of Mertasinga Village, North Cilacap District, Cilacap Regency, Central Java, who is being processed by the Kesugihan Police, Cilacap Police, and the perpetrator has been languishing at the Cilacap Correctional Institution (LP).

*Ius Constitutum* is the positive law of a country on the one hand, and *Ius Constituendum* which is aspired to by society and the state may not be in harmony with the Positive Law or various other provisions. So it is necessary to pay attention to the sense of justice and sociological aspects that exist as part of the criminal justice system (SPP), by maintaining a sense of justice. Here the importance of a non-penal, preventive approach by the National Police of the Republic of Indonesia which can be carried out by the police's patrol and bhabinkamtibmas functions (Soebekti, 2022).

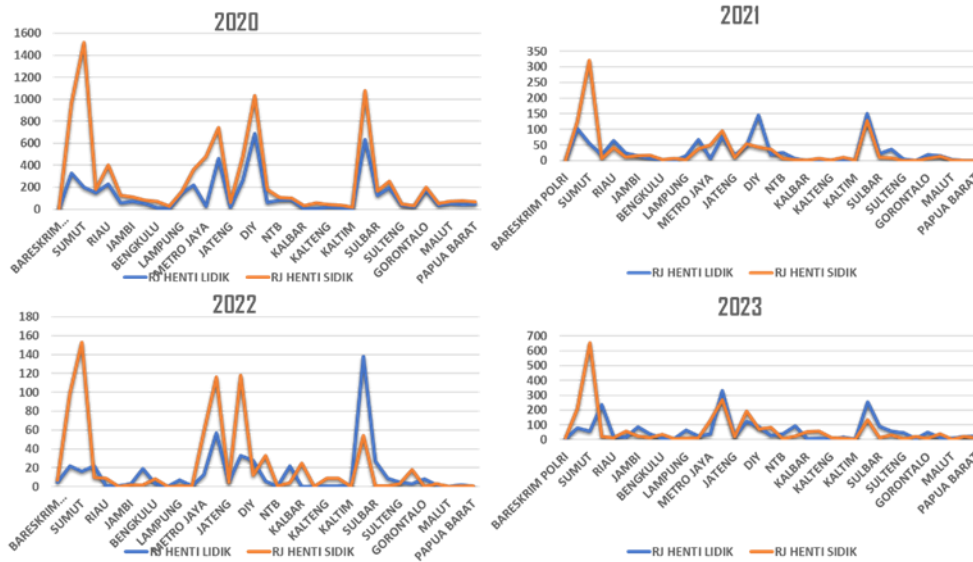


Figure 3. Graphic Data on Settlements through Restorative Justice 2020 to. 2023  
Source: National Police Criminal Investigation Unit, 2023

The National Police of the Republic of Indonesia and its staff have been carrying out investigations and investigations, the achievements of each Regional Police vary according to the type of crime. By looking at this data, investigators from the Indonesian National Police from the upper units of the National Police Headquarters down to the lower front line police units have not been optimal in implementing restorative justice at the investigation (non-penal) stage as stated in Police Regulation Number 8 of 2021 concerning Handling Criminal Acts Based on Justice. Restorative and Article 18 of Law Number 2 of 2002



concerning the National Police of the Republic of Indonesia regarding police discretion. The progress of Restorative Justice Implementation in Indonesian Police can be described as follows:

**Table 2 Restorative Justice Implementation in Indonesian Police 2021 - 2023**


No.	SATKER	CT	RJ	% RJ	No.	SATKER	CT	RJ	% RJ
1.	POLDA SUMATERA UTARA	39.822	1.930	4.8%	19.	POLDA GORONTALO	2.528	197	7.8%
2.	POLDA JAWA TIMUR	29.826	1.403	4.7%	20.	POLDA SULAWESI TENGAH	4.639	197	4.2%
3.	POLDA JAWA BARAT	23.112	1.400	6.1%	21.	POLDA SULAWESI BARAT	1.628	191	11.7%
4.	POLDA ACEH	8.005	1.148	14.3%	22.	POLDA KEPULAUAN RIAU	2.662	171	6.4%
5.	POLDA SULAWESI SELATAN	16.933	1.087	6.4%	23.	POLDA NUSA TENGGARA TIMUR	5.695	133	2.3%
6.	POLDA D.I. YOGYAKARTA	5.277	885	16.8%	24.	POLDA MALUKU	2.287	117	5.1%
7.	POLDA SUMATERA SELATAN	12.130	700	5.8%	25.	POLDA MALUKU UTARA	1.126	99	8.8%
8.	POLDA BANTEN	4.411	487	11.0%	26.	POLDA KEP BANGKA BELITUNG	1.579	94	6.0%
9.	POLDA RIAU	12.796	479	3.7%	27.	POLDA KALIMANTAN SELATAN	4.538	91	2.0%
10.	POLDA NUSA TENGGARA BARAT	5.174	441	8.5%	28.	POLDA KALIMANTAN TENGAH	2.626	78	3.0%
11.	POLDA SUMATERA BARAT	6.354	403	6.3%	29.	POLDA KALIMANTAN UTARA	1.022	75	7.3%
12.	POLDA BALI	2.984	351	11.8%	30.	POLDA PAPUA BARAT	2.456	69	2.8%
13.	POLDA LAMPUNG	9.384	321	3.4%	31.	POLDA PAPUA	3.883	53	1.4%
14.	POLDA METRO JAYA	25.660	319	1.2%	32.	POLDA KALIMANTAN BARAT	3.611	43	1.2%
15.	POLDA SULAWESI UTARA	8.629	317	3.7%	33.	POLDA BENGKULU	2.943	36	1.2%
16.	POLDA SULAWESI TENGGARA	3.384	311	9.2%	34.	POLDA KALIMANTAN TIMUR	3.525	19	0.5%
17.	POLDA JAWA TENGAH	9.395	262	2.8%	35.	BARESKRIM POLRI	758	3	0.4%
18.	POLDA JAMBI	4.361	227	5.2%	<b>JUMLAH</b>		<b>275.143</b>	<b>14.137</b>	<b>5.1%</b>

Source: Indonesian National Police Criminal Investigation Unit, 2023

Meanwhile, the practice of restorative justice in several states, such as the Netherlands, is very effective where almost all prisons are empty (less occupied) because the alternative (non-prison) punishments for criminals are more dominant, as regulated in Article 167 of the netbook van Straf ordering (Dutch Criminal Procedure Code). China has also implemented the principle of restorative justice through reconciliation, which can be implemented at every stage of the process of handling criminal cases, both during the investigation, prosecution, and trial stages. This also includes mediation carried out by mediation committees, public security institutions, prosecutors, and courts. New Zealand also implements consistent restorative justice through social work, sentence supervision, and house arrest. In Indonesia itself, the investigation process carried out by the National Police of the Republic of Indonesia includes, among other things, constructing the criminal case that occurred so that it is clear what the case is about and the roles and responsibilities of each party in the case. Second, determine who the perpetrator or suspect in the case is, how the action was carried out, and its relationship to the loss and damage caused. The next step is to formulate proportionally the loss and damage caused by the actions carried out by the perpetrator or suspect in the criminal incident. Formulate who the victim is, how much loss they are entitled to, and how much compensation must be given to restore the loss and damage caused. Identify competent community members to be involved in the mediation process between victims and perpetrators. Preparing mediation forums and conferences between parties. Become a mediator in the mediation or conference process between victims, perpetrators, and the community, providing criteria for the position of the case and offering solutions. Prepare all administration related to resolving problems between parties.

In principle, the application of restorative justice must provide justice and legal certainty for all parties. The National Police of the Republic of Indonesia, under the leadership of the Chief of the National Police of the Republic of Indonesia, General Listyo Sigit Prabowo, has followed up on the national program as stated in the 2020-2024 RPJMN agenda regarding national law enforcement, sub-improvement of the criminal and civil legal system in point 2 regarding the implementation of restorative justice. Implemented in the National Police Chief's priority program in activity 12 of implementing restorative justice as a form of case resolution to create just law enforcement and further broken down in the action plan in the form of the Indonesian National Police prioritizing progressive law in resolving cases through restorative justice which not only looks at the legal aspect but also on expediency and justice.

Philosophically, the state needs to guarantee protection to its citizens in a fair manner as stated in the Preamble to the 1945 Constitution, the fourth paragraph, and the National Medium Term Development Plan for 2020 - 2024 in the form of aspects of the duties, functions, and authority of legal officers in this case. The National Police of the Republic of Indonesia carry out crime prevention, both penal and non-penal, through restorative justice, which has not been maximized.



According to Rahardi, in carrying out their functions as law enforcement officers, they are obliged to understand the implementation of their duties, namely by being guided by first, the principle of legality, the principle of obligation, the principle of participation, the principle of prevention, the principle of subsidiarity. The police, as the first bulwark in achieving social justice, need to be truly neutral and independent without being influenced by things and institutions that can influence the performance of the Indonesian National Police. (Pratama, 2012)

In enforcing criminal law, the police need to harmonize the relationship between good and appropriate values and rules in creating, maintaining, and sustaining peace. According to Soerjono Soekanto, the main problem of law enforcement lies in the factors that might influence it, namely the legal factors as written in the Law (soerjono Soekanto, 2014). The law enforcement factor is the application of the law. Facilities or facilities are factors that support law enforcement, and finally, factors from society and culture as a result of work, creativity, and feelings in social life. As stated by Prof. Dr. Barda Nawawi Arief, criminal law reform essentially contains the meaning of an effort to reorient and reform criminal law in accordance with the central socio-political, socio-philosophical, and socio-cultural values of Indonesian society which underlie social policy and law enforcement policy in Indonesia. (Arief, 2008) Pancasila, as the basic philosophy of the Indonesian nation, has a composition of five (5) precepts that form one unity and has the basic nature of absolute unity, namely in the form of a monodualist nature, as an individual being as well as a social being, in addition to being an independent personal being, as well as God's creature. Pancasila is a philosophy of collective life in the Unitary State of the Republic of Indonesia and is not only a choice but, more than that, a reality of life. In line with Pancasila as a philosophical basis in crime prevention policies, in relation to creating a criminal policy (Criminal Policy) in dealing with crime based on restorative justice and based on Pancasila by paying attention to the entire community life system as a whole with other systems that are integrated harmoniously, in harmony and balanced in harmonizing cultural, moral and religious values, within the framework of the Unitary State of the Republic of Indonesia which upholds *Bhinneka Tunggal Ika*.

Pancasila can be used as a set of values that become a reference in the formation, regulation, and implementation of restorative justice, namely the truth about Pancasila as a philosophical foundation in restorative justice, which is obtained through logical, systematic, and methodical thinking. Literally, philosophy is defined as a basis for thinking that contains basic values. For the Indonesian people, the Pancasila philosophy is part of the Eastern philosophical system, which exudes superior values, as a theism-religious philosophical system.

Pancasila can be used as a guideline in implementing restorative justice as follows: The state is based on belief in the Almighty God, which guarantees the freedom of every citizen to embrace their religion and belief in the nation's community, and the state has mutual obligations and responsibilities in carrying out state and social life and nation. Thus, religious life or belief in Almighty God becomes important in carrying out the process and achieving justice. Second, a unitary state is a state based on Pancasila and the 1945 Constitution. Third, Pancasila democracy must be able to elect its representatives and leaders who can deliberate to reach a consensus in prioritizing the general interest above the interests of groups or individuals for the sake of providing social welfare for all people. Then social justice is also the goal of the implementation of the state and nation. Then, the importance of upholding humane, fair, and civilized morals.

## CONCLUSION

In principle, applying restorative justice must provide justice and legal certainty for all parties. This is also in line with the foundation of the Republic of Indonesia, namely Pancasila, which is humane and civilized to realize Indonesia's national goals: independence, sovereignty, justice, and prosperity. The role, duties, and authority of the police, both in terms of Criminal Law and Criminal Procedure Law (KUHAP), are essential to be used as statutory norms in the latest Police Law or a Law that regulates the criminal justice system. Restorative justice aims to restore the conditions to normal for victims and perpetrators, and values lost or damaged can be restored through deliberation to reach a consensus/agreement. However, the implementation is still deficient, approximately 5-11% from all over Indonesia. This is the essential spirit of the Indonesian nation, which is civilized and just. However, do not forget that legal certainty is also essential to prioritize when realizing Indonesia's national goals.

This can be implemented through criminal policies/crime prevention policies that are and have legal certainty through restorative justice.

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