

# Settlement of Criminal Cases through Peace Agreements from the Perspective of Restorative Justice in Indonesia: Challenges and Legal Implications

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## ABSTRACT

**The study purpose was.** This study aims to examine the settlement of criminal cases through peace-based mechanisms within the framework of restorative justice, with particular emphasis on the challenges of implementation and the resulting legal implications in the practice of law enforcement in Indonesia.

**Materials and methods.** This research employs a normative legal research method, utilizing statutory and conceptual approaches. The analysis is conducted through a systematic review of primary, secondary, and tertiary legal materials relevant to restorative justice and criminal case resolution.

**Results.** The findings indicate that peace-based settlement mechanisms in criminal cases have gained formal recognition through various policies and regulatory instruments that support the application of restorative justice. Nevertheless, their implementation continues to face several obstacles, including the absence of comprehensive and unified regulation, inconsistencies in application among law enforcement authorities, and the risk of unequal bargaining positions between offenders and victims during the reconciliation process.

**Conclusions.** The study concludes that the settlement of criminal cases through peace agreements has the potential to promote a more recovery-oriented form of justice. However, its effective application requires stronger regulatory frameworks, consistent implementation practices, and adequate oversight mechanisms to ensure alignment with the principles of legal certainty and the protection of human rights.

**Keywords:** criminal cases, peace agreements, restorative justice, criminal justice system

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## INTRODUCTION

The development of modern criminal law reflects a significant shift in paradigm from a retributive approach toward a more humane and recovery oriented model. Criminal justice systems that have traditionally emphasized the punishment of offenders are increasingly viewed as insufficient in addressing the demands of substantive justice, particularly for victims and society at large. Punitive and repressive sanctions often overlook essential aspects such as victim compensation, the restoration of social relationships, and the reintegration of offenders into the community. These limitations have encouraged the emergence of alternative approaches to criminal case resolution, including peace-based mechanisms within the framework of restorative justice (Mertokusumo, 2010).

Restorative justice is understood as an approach to criminal case resolution that prioritizes the restoration of harm by actively involving offenders, victims, and the community in the process of resolving conflict. This approach does not perceive crime solely as a violation against the state, but also as an act that causes tangible harm to victims and disrupts social harmony. Accordingly, restorative justice seeks to deliver a balanced form of justice that considers the interests of all parties involved, rather than focusing exclusively on the imposition of criminal sanctions upon offenders (Zehr, 2015).

In the Indonesian context, the concept of resolving criminal cases through reconciliation or peace agreements is not entirely new. Practices of conflict resolution through deliberation and consensus have long been embedded in customary law and local wisdom. However, within the framework of positive law, the application of peace-based settlements in criminal cases remains subject to debate, particularly in relation to the principles of legality, legal certainty, and uniformity in enforcement practices. Nevertheless, in recent years, the state has begun to provide broader recognition for the application of restorative justice through various policies and regulatory instruments adopted by the police, the prosecution service, and the judiciary (Rahardjo, 2009).

The settlement of criminal cases through peace-based mechanisms is widely regarded as having several advantages. These include reducing the caseload of courts, expediting the resolution of conflicts, and offering a more tangible sense of justice for victims. In addition, such mechanisms may help prevent prolonged disputes and reduce the social stigma attached to offenders. On the other hand, the application of reconciliation in criminal cases also raises a number of legal concerns, including the potential abuse of authority, unequal bargaining positions between offenders and victims, and apprehensions that peace-based settlements may undermine the fundamental objectives of criminal law enforcement as a means of protecting the public interest (Muladi, 2008).

Another significant challenge lies in the absence of comprehensive and uniform regulations governing the categories of criminal cases eligible for settlement through peace agreements. This regulatory gap has resulted in differing interpretations and practices among law enforcement officials, thereby generating legal uncertainty. Moreover, the effective implementation of restorative justice requires a fundamental shift in the mindset of law enforcement authorities, who have long operated within a formalistic and procedural framework. Without adequate understanding and commitment, restorative justice risks becoming a purely rhetorical concept lacking substantive application (Marzuki, 2017).

Based on the foregoing discussion, the settlement of criminal cases through peace agreements from a restorative justice perspective constitutes a crucial and relevant issue for in-depth examination. Such analysis is essential not only to clarify the conceptual and juridical foundations of peace-based mechanisms in criminal law, but also to identify the challenges and legal implications of their implementation within Indonesia's criminal justice system. It is therefore expected that this study will contribute to the academic development of national criminal law and serve as a reference for policymakers and law enforcement authorities in implementing restorative justice in a more consistent and equitable manner.

## METHODS

This study employs normative legal research aimed at examining and analyzing legal norms governing the settlement of criminal cases through peace-based mechanisms from a restorative justice perspective. Normative legal research is considered appropriate because the focus of the study is directed toward the examination of legal principles, norms, and provisions of positive law related to the application of restorative justice within Indonesia's criminal justice system, as well as its legal implications for legal certainty and justice (Soekanto & Mamudji, 2015).

The research utilizes two main approaches, namely the statutory approach and the conceptual approach (Marzuki, 2017). The statutory approach involves a systematic review of relevant legislation, including provisions contained in the Criminal Code (KUHP), the Criminal Procedure Code (KUHAP), as well as regulations and policy instruments governing the implementation of restorative justice by law enforcement authorities. Meanwhile, the conceptual approach is employed to analyze legal concepts, doctrines, and theories related to restorative justice and the settlement of criminal cases through reconciliation as articulated by legal scholars.

The sources of legal materials in this research consist of primary, secondary, and tertiary legal materials. Primary legal materials include legislation, court decisions, and official policy documents related to the settlement of criminal cases through peace agreements. Secondary legal materials comprise textbooks, scholarly journal articles, research reports, and expert opinions relevant to the research topic. Tertiary legal materials serve as supporting references, such as legal dictionaries and legal encyclopedias, to clarify the meaning of terms and concepts used in the study (Ibrahim, 2006).

The collection of legal materials is conducted through library research by identifying, classifying, and reviewing legal materials relevant to the research issues (Zed, 2014). All collected legal materials are subsequently analyzed qualitatively using methods of legal interpretation and juridical reasoning to identify meanings, relationships, and implications of the legal norms under examination (Amiruddin & Asikin, 2016).

The analysis of legal materials is carried out by describing applicable legal provisions, comparing legal norms with their practical implementation, and assessing their conformity with the principles of restorative justice. The results of the analysis are then systematically organized to address the research questions and to draw prescriptive conclusions, offering legal arguments and conceptual recommendations for strengthening the settlement of criminal cases through peace-based mechanisms within Indonesia's criminal justice system.

## RESULTS AND DISCUSSION

### 1. Conceptualizing the Settlement of Criminal Cases through Peace within the Framework of Restorative Justice

Based on normative and conceptual analysis, the settlement of criminal cases through peace-based mechanisms represents a manifestation of the paradigm shift in modern criminal law from a retributive orientation toward a restorative justice approach. Within the restorative justice paradigm, criminal acts are understood as social events that cause tangible harm to victims and the broader community; therefore, their resolution cannot rely solely on the punishment of offenders. Peace-based settlements function as instruments for restoring harm, re-establishing social balance, and rebuilding relationships disrupted by criminal conduct.

Atmasasmita (2020) emphasizes that restorative justice is grounded in three fundamental pillars: the harm caused by crime, the responsibility of the offender, and the needs of the victim. These pillars are clearly reflected in peace-based mechanisms, where offenders are encouraged to acknowledge wrongdoing and assume responsibility, while victims are given meaningful opportunities to express the impacts they have suffered and to obtain restoration. Accordingly, peace is not merely understood as the formal termination of conflict, but rather as a social and legal process aimed at achieving substantive justice.

Within Indonesia's legal system, this approach holds strong relevance to societal values of deliberation and familial consensus deeply rooted in local customs and customary law. Sociologically, conflict resolution through reconciliation has long been practiced within indigenous legal traditions. However, the primary challenge lies in integrating such practices into a positive legal system founded on the principles of legality and legal certainty. Therefore, restorative justice through peace must be positioned proportionally as an integral component of a modern and responsive criminal justice system.

### 2. Regulatory Dynamics and the Practice of Peace-Based Case Settlement

The analysis demonstrates that, normatively, recognition of peace-based settlement in criminal cases in Indonesia has developed gradually. Various policies and regulations incorporating restorative justice principles indicate institutional efforts to respond to public demands for more humane forms of justice. Nevertheless, these regulatory frameworks remain fragmented and have not yet been fully integrated into a coherent national criminal law system.

This situation has significant implications for law enforcement practice. Law enforcement officials are afforded considerable discretionary authority in determining whether a criminal case is eligible for settlement through peace mechanisms. On the one hand, such discretion enables contextual justice tailored to specific circumstances. On the other hand, in the absence of clear and uniform guidelines, discretion may be inconsistently applied or even misused. Prasetyo (2022) argues that legal norms lacking clarity and systematic formulation may undermine legal certainty and generate injustice.

Furthermore, the application of peace-based settlements in criminal cases often involves a dilemma between individual interests and the public interest. Not all criminal offenses are suitable for resolution through reconciliation, particularly those with widespread social consequences.

Accordingly, clear and rational criteria are essential to determine the scope of restorative justice application so that it does not conflict with the fundamental function of criminal law as a means of protecting the public interest.

### 3. Structural and Cultural Challenges in the Implementation of Peace-Based Mechanisms

The findings indicate that challenges in implementing peace-based settlements extend beyond normative issues to encompass structural and cultural dimensions. Structurally, Indonesia's criminal justice system remains heavily influenced by formalistic and procedural approaches. Law enforcement officials tend to prioritize compliance with procedural requirements, often relegating restorative considerations to a secondary position.

Culturally, there is still limited understanding of the true essence of restorative justice. Peace is frequently perceived as a form of "forgiveness" or "elimination of punishment," rather than as a process of accountability oriented toward restoration. Such perceptions may generate resistance among law enforcement officials and the public alike, many of whom continue to view punishment as the sole embodiment of justice.

Another critical challenge concerns the position of victims. Although restorative justice aims to strengthen victim participation, in practice victims are not always situated in an equal bargaining position vis-a-vis offenders. Economic disparities, power relations, and social pressures may influence victims' decisions to accept reconciliation. Without strict oversight, peace-based settlements may inadvertently legitimize injustice. Muladi (2008) underscores that victim protection must remain a central principle in all restorative-oriented criminal law policies.

### 4. Legal Implications for the Principles of Legal Certainty, Justice, and Utility

The application of peace-based criminal case settlement generates complex legal implications for fundamental legal principles, particularly legal certainty, justice, and utility. These principles constitute the core pillars of a legal system designed to balance individual interests and societal needs. Therefore, a comprehensive analysis of the implications of reconciliation in criminal cases is essential to prevent tensions among these principles.

From the perspective of legal certainty, peace-based settlement requires a clear, firm, and consistent regulatory framework. Legal certainty demands that law enforcement actions be grounded in predictable and uniformly applicable norms. In the context of restorative justice, the absence of detailed standards concerning eligible offenses, procedural requirements, and substantive conditions may lead to disparities in handling similar cases. Such disparities risk eroding public trust in the criminal justice system and fostering perceptions of inconsistent law enforcement. Consequently, peace-based settlement must be embedded within a legal framework that provides clear limitations and safeguards consistent with the principles of legality and equality before the law.

Legal certainty is also closely related to the discretionary authority of law enforcement officials. While discretion is necessary to enable context-sensitive justice, unchecked discretion may open opportunities for abuse of power. In this regard, comprehensive regulation of restorative justice is essential to ensure that discretion serves the pursuit of justice rather than becoming a source of legal uncertainty (Wibowo, 2023).

From the perspective of justice, peace-based settlement offers greater potential for achieving substantive justice than conventional punitive approaches. Substantive justice emphasizes the fulfillment of genuine fairness for all parties, particularly victims, rather than mere procedural compliance. Through reconciliation mechanisms, victims are afforded opportunities to express their experiences, losses, and expectations, thereby preventing their marginalization within the justice process. At the same time, offenders are encouraged to acknowledge wrongdoing and assume moral and social responsibility.

This approach aligns with Zehr's (2015) conception of law as a means of realizing justice that lives within society. Law should not be confined to formal textual norms but must be responsive to evolving societal values. In this context, peace-based settlement serves as an instrument that enables law to function in a more humane and restorative manner. Nevertheless,

restorative justice also carries risks if not accompanied by adequate victim protection mechanisms, particularly where power imbalances undermine genuine consent.

From the perspective of utility, peace-based settlement holds significant potential to enhance the efficiency of the criminal justice system. Resolving cases outside formal judicial processes may reduce court caseloads, expedite resolution, and conserve state resources. Moreover, this approach can mitigate the negative social consequences often associated with criminal proceedings, such as stigmatization of offenders and prolonged social conflict. From a utilitarian standpoint, peace-based settlement thus offers substantial benefits for both the legal system and society.

However, such utility must not be achieved at the expense of justice and human rights protection. If reconciliation is employed merely as a pragmatic tool to alleviate institutional burdens without regard to substantive justice, the fundamental objectives of law may be distorted. Therefore, utility must be balanced proportionally with legal certainty and justice. Effective oversight and accountability mechanisms are essential to ensure that peace-based settlements deliver sustainable benefits without generating structural injustice.

## 5. The Relevance of Peace-Based Settlement for National Criminal Law Reform

The discussion demonstrates that peace-based settlement of criminal cases holds strategic significance within the context of national criminal law reform. This approach reflects a shift from a repressive paradigm toward one emphasizing restoration and humanity. Within this framework, criminal law is no longer positioned solely as an instrument of retribution, but as a means of restoring victim losses, repairing disrupted social relationships, and fostering moral and social accountability among offenders. This transformation corresponds with contemporary societal demands for justice that is not merely formal but substantively fair.

Philosophically, peace-based settlement is closely aligned with the values of Pancasila as the foundational ideology of the Indonesian state. The principle of just and civilized humanity is reflected in efforts to recognize both victims and offenders as legal subjects possessing inherent dignity and rights. Similarly, the principle of social justice is realized through the pursuit of proportional and balanced solutions for all parties involved. In this sense, restorative justice through peace-based mechanisms represents an actualization of Pancasila values within the practice of national criminal law.

From a juridical perspective, the relevance of peace-based settlement is evident in ongoing efforts to reform criminal law toward greater adaptability and responsiveness to societal developments. Criminal law that relies excessively on punishment often fails to address the complex social factors underlying criminal behavior. Accordingly, restorative justice through reconciliation may function as a corrective mechanism for the limitations of conventional penal systems, particularly in cases involving limited social impact and realistic prospects for restoration.

Nevertheless, it must be emphasized that restorative justice through peace-based settlement cannot serve as an absolute substitute for the penal system. Punishment remains essential for maintaining public order and deterrence, especially in serious crimes with extensive societal impact. Therefore, peace-based settlement should be understood as a complementary mechanism within the criminal justice system, applied based on clear and rational criteria to preserve the balance between individual and public interests.

The relevance of peace-based settlement to national criminal law reform also extends to institutional and policy dimensions. Strengthening restorative justice requires harmonized regulations governing the authority of law enforcement officials to apply reconciliation mechanisms. Without an integrated legal framework, restorative justice implementation risks inconsistency and legal uncertainty. Accordingly, national criminal law reform should prioritize the establishment of explicit regulations defining the scope, procedures, and limitations of peace-based settlements in criminal cases (Johnstone et al., 2018).

Beyond regulatory aspects, human resources and legal culture are decisive factors in the successful application of restorative justice. Law enforcement officials must possess comprehensive understanding of restorative principles so that peace-based settlement is not reduced to an administrative formality, but functions as a genuine restorative process. Simultaneously, public legal

awareness must be enhanced to ensure that reconciliation is not misconstrued as the “purchase of justice” or avoidance of punishment, but rather as a responsible and dignified mechanism for conflict resolution.

From a sociological perspective, peace-based settlement has considerable potential to strengthen social cohesion and prevent recurring conflict. By involving victims, offenders, and the community, reconciliation processes may rebuild trust and social solidarity disrupted by criminal acts. This demonstrates that restorative justice not only affects individual case resolution but also contributes to broader social stability. Accordingly, this approach is highly relevant as part of a criminal law reform strategy oriented toward social development.

In conclusion, peace-based settlement of criminal cases possesses strong and multidimensional relevance for national criminal law reform. It aligns with the nation’s philosophical and constitutional values while addressing practical demands for a more efficient, just, and humane criminal justice system. Through strengthened regulation, enhanced capacity of law enforcement officials, and active public participation, restorative justice through peace-based mechanisms may serve as a key pillar in developing a forward-looking and equitable national criminal law system.

## CONCLUSION

Based on the analysis and discussion, it can be concluded that the settlement of criminal cases through peace-based mechanisms from a restorative justice perspective represents a relevant and strategic approach within Indonesia’s criminal justice system. This approach reflects a paradigmatic shift in criminal law from a retributive orientation toward a restorative model that positions victims, offenders, and the community as central subjects in the process of case resolution. Accordingly, restorative justice through reconciliation functions not merely as a conflict resolution mechanism, but also as a means of achieving more substantive and humane justice.

The application of criminal case settlement through peace agreements carries significant legal implications for the fundamental principles of legal certainty, justice, and utility. From the perspective of legal certainty, peace-based mechanisms require a clear and consistent regulatory framework to prevent disparities in case handling and inconsistencies in law enforcement practices. In terms of justice, reconciliation provides broader opportunities for the fulfillment of victims’ rights and interests, while simultaneously encouraging offenders to assume moral and social responsibility for their actions. From the perspective of utility, the settlement of criminal cases through peace agreements has the potential to enhance the efficiency of the criminal justice system and to minimize the negative social impacts associated with formal punitive processes.

Nevertheless, this study also emphasizes that the settlement of criminal cases through peace-based mechanisms cannot be positioned as an absolute substitute for the penal system. Rather, it should be understood as a complementary approach whose application must be limited by clear criteria, particularly for certain categories of criminal cases in which genuine restoration is feasible. In the absence of firm regulatory guidelines and effective oversight mechanisms, the implementation of peace-based settlements risks generating new forms of injustice, especially for victims who occupy weaker bargaining positions.

Therefore, strengthening restorative justice through peace-based mechanisms requires synergy among comprehensive regulatory frameworks, the capacity and integrity of law enforcement officials, and the development of public legal awareness. With adequate legal foundations and consistent implementation, the settlement of criminal cases through peace agreements may serve as a vital pillar in the reform of national criminal law, oriented toward justice, humanity, and the broader social benefits of the legal system.

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