

The Application of Restorative Justice in Resolving Speech Cases in the Digital Space: A Normative Analysis of the Electronic Information and Transactions Law and the Criminal Code

Rianto, Didit Darmawan, Dharma Setiawan Negara

Universitas Sunan Giri Surabaya, Indonesia

ARTICLE INFO

Article history:

Received 29 November 2022

Revised 26 December 2022

Accepted 14 March 2023

Key words:

ITE Law;

Criminal mediation;

Restorative justice;

Criminal;

Defamation;

Reputation;

Digital.

ABSTRACT

*This article examines law enforcement on speech in the digital space by linking Article 27 paragraph (3) of the ITE Law to Articles 310-311 of the Criminal Code in accordance with Constitutional Court Decision No. 50/PUU-VI/2008, as well as assessing the role of police discretion in the framework of restorative justice. The normative analysis focuses on the integration of criminal regulations, the National Police Chief's guideline SE/2/II/2021, and judicial policies that prioritize restoration. The findings show that the restorative approach – mediation, apology, and reparation – is more in line with the objectives of protecting dignity and the principle of *ultimum remedium*. Consequently, law enforcement that prioritizes restoration can reduce conflict escalation, reduce the burden of cases, and strengthen public trust. Recommendations are directed at operational standards for social media-based cases, improving investigators' competence on human rights and digital evidence issues, structural collaboration with platforms, and expanding public digital literacy. The theoretical implications affirm the relevance of the idea of law as social engineering, while the practical implications require tiered oversight to ensure consistent, transparent, and fair implementation.*

INTRODUCTION

The Preamble to the 1945 Constitution of the Republic of Indonesia, particularly the fourth paragraph, affirms that the state has a constitutional obligation to provide comprehensive protection to all citizens. This mandate means that the state must guarantee security and justice for every individual, whether they are victims of crime, suspected perpetrators, or the general public. This principle of non-discriminatory justice is in line with the basic values of Pancasila, which stipulates that every public decision should be made through a deliberative process that is oriented towards the common good and based on the spirit of kinship as emphasized in the Fourth Principle (Febriansyah & Prasetyo, 2020).

The development of information technology in recent decades has significantly enhanced human well-being through the acceleration of data access, increased efficiency in public services, and the expansion of participatory spaces (Djarmiko, 2023). The same advances have also introduced new risks, particularly when technology is used to facilitate actions that contravene the law. Hartanto and Dewi

(2020) note that digital technology possesses both a utilitarian and a destructive dimension, as it can be employed to disseminate content that harms individuals, disrupts public order, and even potentially undermines state stability.

The phenomenon of crime committed through digital spaces, including criminal acts of insult and defamation, demonstrates that social media has become a domain that is highly susceptible to deviant behavior. The various cases that circulate within digital environments require law enforcement agencies to enhance their supervisory capacity and to strengthen cross-institutional coordination. The resolution of these issues cannot be undertaken by law enforcement authorities alone, but necessitates active support from digital service providers, government institutions, and society at large.

The use of social media is closely related to citizens' right to express their opinions, a right that is guaranteed by the constitution. Challenges arise when freedom of expression is not accompanied by ethical awareness and digital responsibility.

* Corresponding author, email address: dr.dharmasetiawannegara@gmail.com

Therefore, sound digital literacy constitutes an essential prerequisite to ensure that such freedom does not evolve into an instrument for violating the dignity of others. Strengthening public awareness regarding the boundary between legitimate expression and actions that may give rise to legal violations is a crucial component of efforts to maintain a digital sphere that is healthy and civilized.

Provisions concerning freedom of expression are also contained in Article 19 paragraph 24 of the International Covenant on Civil and Political Rights, as ratified through Law Number 12 of 2005 on the Ratification of the International Covenant on Civil and Political Rights, which stipulates that every person has the right to freedom of expression. This right includes the freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other media of one's choice (Article 28 letter e paragraph (3) of the 1945 Constitution).

Roscoe Pound's notion of law as a tool of social engineering positions law as a strategic instrument for shaping, structuring, and directing social life. From this perspective, law is not understood merely as a static set of normative rules, but as a dynamic mechanism capable of regulating societal values and behavior. Pound emphasizes that the interaction between social change and legal development is reciprocal; transformations in social structures may trigger regulatory adaptation, while the existence of law can in turn promote changes in patterns of action and social orientations (Fuady, 2013). Accordingly, the effectiveness of law is largely determined by its capacity to adjust to continually evolving social configurations.

Legislative revision through Law Number 19 of 2016, which amended the provisions of Law Number 11 of 2008 on Electronic Information and Transactions, represents a normative response by the state to the dynamics of digital media use. This reform seeks to affirm the harmonization between criminal provisions on defamation in cyberspace and analogous provisions already regulated in the Criminal Code, particularly Article 310 paragraphs (1) and (2). As noted by Natsif (2019), the relationship between these regulations and human rights principles gives rise to an important discourse on the limits of freedom of expression. Within the framework of modern law, restrictions on expression are understood as instruments intended to maintain a balance between guaranteeing individual freedom and fulfilling the state's obligation to protect the dignity, reputation, and rights of others from potential violations.

The interrelation between freedom of expression and the protection of reputation necessitates a proportional regulatory framework. When an individual's expression has the potential to interfere with or diminish the rights of others, regulation must be present to ensure that no exercise of freedom negates another. This principle is consistent with guarantees contained in various international instruments such as the UDHR, as well as in the Indonesian Constitution, which recognizes the right of every citizen to personal honor. The existence of Article 310 of the Criminal Code constitutes a manifestation of this principle, in which the prohibition against attacking another person's reputation is explicitly formulated as part of efforts to preserve the integrity of social relations (Rohmana, 2017).

The formulation in Article 310 paragraph (1) stipulates that acts committed intentionally with the purpose of damaging a person's honor through specific accusations disseminated to the public may be subject to imprisonment or fines. Paragraph (2) extends this provision to acts of defamation carried out through written or visual media that are broadcast, posted, or exhibited to the public, accompanied by a higher threat of punishment. These two paragraphs demonstrate that criminal law seeks to maintain a balance between the protection of reputation and respect for freedom of opinion, while at the same time affirming the importance of clear indicators of legality (Kaban et al., 2022).

John Stuart Mill's conception of the Harm Principle provides a philosophical foundation that complements these regulations. Mill asserts that freedom may only be exercised insofar as it does not cause harm to others, which implies that no freedom is absolute. Restrictions constitute a rational consequence of social life, which places each individual within an interactive space marked by mutual influence. In line with this reasoning, Hiarij (2016) emphasizes that the characteristics of a criminal act determine the intensity of the sanctions imposed, indicating that criminal law functions not only to enforce but also to classify the degree of seriousness of violations.

Within the national legal system, legal protection has two principal dimensions. Preventive protection is directed toward avoiding disputes by requiring governmental prudence in the exercise of discretion, whereas repressive protection functions to resolve disputes through mechanisms of law enforcement and judicial processes (Renny, 2022). The Indonesian National Police holds a central role as the front line in the implementation of legal protection.

As law enforcement officials, police officers are required to make decisions based on professional, ethical, and objective considerations. Police discretion consists of actions taken by weighing the benefits and risks that may arise, and by ensuring that such decisions are driven by the public interest. At a certain point, discretion becomes an important instrument for implementing a restorative justice approach, namely the resolution of cases that prioritizes the restoration of social relations rather than mere punishment. Accordingly, the breadth of discretion vested in law enforcement officers must be understood as both a legal and moral responsibility to uphold substantive justice.

This study aims to reaffirm the conceptual foundations of law in Indonesia and to assess why public trust in the criminal justice system has weakened, as well as to examine the extent to which the existing legislative framework is capable of responding to these issues. More specifically, the research is directed toward four layers of analysis. First, it seeks to reformulate the theoretical basis of the relationship between written and unwritten law in the national legal system and to examine its implications for the fulfillment of substantive justice in criminal cases ranging from minor to serious offenses. Second, it evaluates the effectiveness of investigators' authority to terminate investigations, together with the legal grounds that extinguish the right to prosecute, in order to ensure that case processing is based on sufficient evidence and does not generate an unnecessary caseload. Third, it analyzes the doctrine and practice of restorative justice as an alternative mechanism for case handling, including its origins, values, and the range of policy instruments that have been issued by the National Police and the Supreme Court, with particular attention to case eligibility criteria, the design of mediation, and the protection of the rights of all parties. Fourth, it examines the harmonization of Article 27 paragraph (3) of the Electronic Information and Transactions Law with Articles 310 and 311 of the Criminal Code in accordance with the Constitutional Court's interpretation, and then evaluates the role of police discretion in cases involving digital expressions so that law enforcement remains proportional, recovery oriented, and capable of preventing unnecessary criminalization.

In line with these objectives, this study also seeks to formulate operational criteria for the application of restorative justice in cases arising from the use of social media, to develop indicators of successful mediation that ensures justice for both victims and

offenders, and to propose recommendations for investigative governance that prioritize education, prevention, and social restoration. Ultimately, the study aims to establish a policy roadmap that strengthens legal certainty, enhances public trust, and optimizes the measured use of both administrative and criminal instruments within the law enforcement ecosystem in the digital era.

RESEARCH METHOD

The research approach employed in this study is based on the normative juridical method, which positions legal principles as the primary object of analysis, as explained by Soekanto (1995). The focus of the research is directed toward a systematic examination of positive legal norms through a stepwise process of data elaboration, beginning with the collection of relevant information and proceeding to the identification of core issues that require conceptual and analytical clarification. This procedure of data decomposition, as proposed by Hartanto and Sudarmono (2020), is intended to ensure that the problems under study can be formulated with precision.

The subsequent analytical stage is conducted by examining the coherence and consistency between Law Number 19 of 2016 on Electronic Information and Transactions and the Chief of Police Circular Letter Number SE/2/II/2021 on Awareness of Ethical Culture in Digital Spaces. The synchronization of these two instruments is regarded as crucial for assessing the effectiveness of the legal mechanisms designed to respond to the increasing prevalence of special criminal offenses, particularly defamation and insult perpetrated through social media platforms. This study also treats the protection of human rights as a key aspect, in line with the mandate of the Constitution of the Republic of Indonesia of 1945, which affirms the obligation of the state to ensure the fulfillment of the fundamental rights of its citizens.

This normative analysis is grounded in the principle of constitutional supremacy, which, according to Asshiddiqie (2005), constitutes not only a defining feature of a state based on the rule of law, but also the principal foundation for the realization of modern democracy. The constitution is understood as the highest form of social agreement, so that every policy or legal action must refer to the values it embodies. Within this framework of the rule of law, law enforcement functions as an instrument to create order, safeguard truth, and protect the welfare of the wider community. This function is implemented through preventive measures intended

to avert violations, as well as repressive measures applied once violations have occurred. These two dimensions complement one another in constructing a social environment that is safe and secure and in ensuring that law operates not only as a mechanism of control, but also as a means of restoring justice.

RESULT AND DISCUSSION

Legal Concepts in Indonesia

Law functions as a social instrument designed to regulate interactions among individuals in order to create social order and conditions of peaceful coexistence. As a social institution, law serves as a body of norms oriented toward the fulfillment of fundamental human needs and the preservation of communal life at various levels of society (Alexander, 2023). In Indonesia, the principle of the rule of law is understood not only through the application of written rules, but also through the recognition of unwritten norms. This conception affirms that the national legal system provides space for the coexistence of civil law and common law traditions, as reflected in Article 1 paragraph (1) of the Criminal Code, which affirms the applicability of law in a broad sense.

Recent developments, however, indicate a decline in public confidence in the effectiveness of the criminal justice system. Retribution-oriented mechanisms are regarded as having failed to convince the public, as there are cases in which perpetrators of serious crimes escape accountability merely because formal evidentiary elements are not met, whereas minor offenses frequently result in swift criminal sanctions. This imbalance has generated the perception that the judicial system operates without consistency and does not fulfill the community's sense of justice (Pinem, 2023).

Similar criticism is directed at the civil law system, which is deemed unable to adequately realize substantive justice. Excessive reliance on written regulations often neglects social values and other moral principles that are in fact relevant to the resolution of disputes. This situation has fostered public doubt regarding the capacity of the positive legal system to accommodate the demands of material justice (Arifin, 2020).

Within the framework of criminal law, investigators are granted the authority to terminate investigations when certain legal grounds are fulfilled. The Criminal Procedure Code, through Article 109 paragraph (2), stipulates that an investigation may be discontinued if there is insufficient evidence, if the event does not constitute a criminal offense, or if there are legal reasons for

terminating the investigation. This provision is intended to ensure that investigative processes are continued only when there is an adequate legal basis, thereby preventing ineffective law enforcement measures (Rijadi & Priyati, 2017).

In addition, the law recognizes circumstances that extinguish the state's right to prosecute or to execute a sentence, such as the principle of *ne bis in idem* under Article 76 paragraph (1) of the Criminal Code, the death of the suspect, or the expiration of the limitation period. Although the mechanism for terminating an investigation has been normatively regulated, the law still provides room for investigators to take other lawful measures when necessary. This is affirmed in Article 16 paragraph (1) letter l of Law Number 2 of 2002 on the Indonesian National Police, which stipulates that police officers may take certain actions insofar as such actions can be justified under the law. Accordingly, discretionary authority remains vested in law enforcement officials, provided that it is exercised in a proportional, lawful manner and in accordance with the purposes of administering criminal justice.

Implementation of Restorative Justice

The restorative justice approach has developed as an alternative paradigm in the resolution of criminal cases, by placing the dialogical process between offenders, victims, and the community as the principal foundation for conflict resolution. This model seeks to strengthen the relationship between formal judicial mechanisms and community-based dispute resolution practices that have long existed in society (Asmara & Iskandar, 2021). In modern law, the idea of restorative justice cannot be separated from early experiments in Canada in the 1970s, when the concept of victim-offender mediation was introduced as a form of intervention for juvenile offenders (Braithwaite, 2002). At that stage, victims and offenders were brought together to formulate forms of accountability that were considered relevant and appropriate for judicial consideration. In line with its subsequent development, this approach expanded and came to be used to address various categories of criminal offenses, which demonstrates its flexibility in responding to demands for a more humanistic conception of justice.

The values embodied in restorative justice are, in essence, not new to Indonesian society. Various customary communities have long implemented conflict resolution mechanisms that emphasize the restoration of social relations and forgiveness. Such traditions can still be found in Papua, Bali, Toraja, Minangkabau, and other customary communities

that resolve criminal matters internally without involving state authorities (Maulana & Agusta, 2021). For these communities, the measure of justice does not rest on retributive punishment, but rather on the offender's acknowledgment of wrongdoing and willingness to restore the disrupted social relationships (Istiqamah, 2018). Thus, the moral and philosophical foundations of restorative justice have in fact been deeply rooted in the practice of customary law in the Indonesian archipelago.

From the perspective of the national legal system, restorative justice gains legitimacy because it is consistent with the values of Pancasila and with principles of restoration that are embedded in Indonesia's legal culture. This concept is understood as a case resolution mechanism that prioritizes the restoration of the victim's condition, including through compensation, the achievement of reconciliation, or the involvement of the offender in community service as a form of accountability. Marshall emphasizes that restorative justice constitutes a deliberative process that brings together all parties affected by a violation in order to jointly determine the most appropriate way to address its consequences, with a forward-looking orientation toward the future of social relations.

The restorative approach has become increasingly important because it offers a paradigm that places humanity and deliberation at the core of case resolution, rather than punishment alone. In contrast to the normative law enforcement model that focuses on penal sanctions, this mechanism designs a mediation process that involves offenders, victims, families, and other relevant parties in order to formulate an agreement that is regarded as fair by all. One of its applications can be seen in the diversion mechanism for juvenile offenders, which enables settlement outside the formal criminal justice system. Mohammad Kemal Pratama (Oktaviani, 2022) identifies three principal pillars that underpin restorative justice. First, an ideology that places multiparty dialogue as a means of avoiding negative consequences in the future. Second, inclusivity that ensures the active participation of both victims and offenders. Third, reparation as a concrete step to redress the harm that has occurred. Through these values, restorative justice not only resolves cases, but also functions as an instrument for the restoration of social relations and for sustainable reconciliation.

Modern approaches to punishment are no longer understood solely as instruments for imposing sanctions, but also as mechanisms that enable recovery for victims and encourage offenders to accept moral and social responsibility for their

actions. This shift in orientation affirms that contemporary penal systems seek to balance the need to protect victims with the demand for offender accountability. Supeno, as cited by Hadi (2010), formulates five core principles in the application of restorative justice. These principles include the obligation of offenders to repair the harm caused, the provision of opportunities for offenders to demonstrate their capacity and qualities, the involvement of victims and their families in the recovery process, the creation of forums for collective problem solving, and the affirmation of a proportional relationship between wrongdoing and the social response given. Taken together, these principles offer a more comprehensive mechanism for redressing harm, strengthening the offender's role in the recovery process, and fostering community participation.

In the practice of restorative justice, the dialogical process between offenders and victims commonly involves family members or other elements of the community. The presence of these third parties is not merely ceremonial, but serves to reinforce the social legitimacy of the agreement reached. Barton (2003) emphasizes that the success of this approach is highly dependent on the involvement of multiple actors who provide moral and social support. The fundamental distinction between restorative justice and the retributive justice paradigm lies in their philosophical orientation. While the retributive approach focuses on punishment, restorative justice emphasizes solutions that do not generate new social wounds and that preserve community harmony. Accordingly, this mechanism not only avoids potential negative impacts arising from formal punishment, but also contributes to rebuilding the social relationships that have been damaged by the violation.

The development of digital technology necessitates increasingly prudent behavior in the use of social media, since online interactions entail legal implications that cannot be disregarded. In digital spaces, every individual is obliged to exercise the right to freedom of expression without infringing upon the rights of others, including by maintaining ethical standards of communication so as not to cause legal harm. Responsible use of social media makes it possible to create a digital ecosystem that is safe and respectful (Andriati, 2018).

The normative basis governing insult and defamation in digital spaces has been affirmed through Constitutional Court Decision Number 50/PUU-VI/2008. The Court held that Article 27 paragraph (3) of the Electronic Information and

Transactions Law must be understood in a harmonious manner with Articles 310 and 311 of the Criminal Code, which regulate criminal offenses of insult. Consequently, the interpretation of the elements of Article 27 paragraph (3) of the Electronic Information and Transactions Law cannot be separated from the general criminal law doctrine on insult and defamation, so that these provisions must be applied in a consistent and mutually reinforcing manner (Jannah & Hakim, 2023).

The reality of interaction on social media demonstrates that minor issues can escalate into major conflicts if not handled appropriately. This phenomenon illustrates how swiftly the flow of digital information can reshape public perceptions and sharpen disagreements. The uncontrolled dissemination of information often aggravates situations, because public opinion may be formed on the basis of fragmented, incomplete, or unverified information. As a result, conflict escalation becomes difficult to control, particularly when narratives formed in digital spaces are emotional and contain provocative elements. Bawono (2019) warns that irresponsible social media practices can lead to cybercrime, which constitutes the dark side of digital technological advancement and has serious consequences for modern social life.

This condition indicates the need for ethical digital awareness as an integral part of the public's legal literacy. Strengthening individual capacity to understand legal boundaries and public responsibilities in online interactions constitutes a preventive measure to reduce the risk of violations. In addition, the legal system must enhance technology-based supervisory mechanisms so that potential violations can be detected and addressed swiftly and appropriately. Firm law enforcement against the dissemination of hate speech, defamation, and false information will create a deterrent effect and reinforce a sense of digital security within society. The government, educational institutions, and digital platform providers share a collective responsibility to foster a culture of civil communication in online spaces. In this way, social media can once again function as a constructive medium for the exchange of ideas, rather than as an arena of conflict that undermines social order.

Accordingly, digital literacy, communication ethics, and the capacity to understand legal boundaries in online environments are imperative so that members of society do not become trapped in legal consequences that could in fact be avoided through prudence and mutual respect.

The Concept of Restorative Justice

The police, as a state institution, occupy a strategic position in upholding the rule of law and ensuring that social life proceeds in an orderly and secure manner. As emphasized by Iskandar (2018), the police institution not only perform a law enforcement function, but also provide protection and public service as part of the constitutional mandate of a state based on the rule of law. Article 2 of Law Number 2 of 2002 specifies the scope of these duties, which include the maintenance of public order, law enforcement, protection, guidance, and service. This formulation positions the police as key actors who are tasked not only with responding to violations, but also with promoting social conditions that are conducive to the well-being of the community (Suda & Suwanda, 2022).

In carrying out these duties, the Chief of the Indonesian National Police is vested with certain powers to act independently in order to safeguard the public interest. These powers, however, are not absolute, but are constrained by legal norms and professional codes of ethics. Article 18 paragraphs (1) and (2) of Law Number 2 of 2002 allow the Chief of Police to exercise personal judgment only in urgent situations, on the condition that such actions are consistent with statutory provisions and with institutional ethical principles (Limbong & Riswadi, 2022). Accordingly, police discretion must always be situated within a strict and accountable legal framework.

At the operational level, police officers frequently encounter situations that are not fully anticipated by written regulations. Discretion functions as a mechanism that enables officers to assess concrete circumstances and to adopt decisions that are proportionate. Felsiano and Paripurna (2010) define discretion as an authority granted by law to officials to act on the basis of rational judgment and moral integrity in cases where positive legal norms do not yet provide explicit guidance. Article 22 paragraph (2) letters b and c of Law Number 30 of 2014 reinforce this concept, while Article 16 paragraph (2) of the Police Law sets out normative limits, stipulating that discretionary actions must not contradict the law, must be consistent with official duties, must be reasonable, must be prompted by urgent circumstances, and must respect human rights. Thus, discretion does not constitute an unrestricted sphere, but rather a reasoned instrument that must be employed carefully and responsibly.

The application of restorative justice in the handling of criminal cases in Indonesia began to gain formal legitimacy through police policy. A key instrument in this process is the Telegram Letter of

the Head of the Criminal Investigation Agency Number STR/583/VIII/2012, which first introduced guidelines for the implementation of restorative justice in criminal investigations, followed by the Circular of the Chief of Police Number SE/8/VII/2018. These policies mark a paradigm shift from a predominantly retributive approach toward a mode of case resolution that is more dialogical and recovery oriented. Through these circulars, restorative justice is positioned as an operational foundation that investigators and inquiry officers are required to consider in dealing with certain categories of cases (Utami et al., 2023).

The Chief of Police Circular not only functions as a technical guideline, but also as an oversight mechanism to ensure that the implementation of restorative justice proceeds in a uniform manner throughout the Indonesian National Police (Umam et al., 2022). In this way, the policy provides legal protection for all parties involved, while at the same time ensuring that case resolution continues to take into account the public interest and the community's sense of justice.

Restorative justice policy was subsequently reinforced through instruments issued by the Supreme Court. The Decree of the Director General of the General Courts Agency Number 1691/DJU/SK/PS.00/12/2020 integrates the principles of restorative justice into the criminal justice system and underscores the need for structural reform to reduce dependence on imprisonment. The four operative provisions of this decree instruct all district courts to implement restorative justice guidelines in an orderly manner, to ensure supervision by the high courts, and to provide a mechanism for correction in the event that errors are identified at a later stage (Hawalia & Darusman, 2022). Within this policy framework, restorative justice becomes an integral component of the reform of Indonesia's criminal justice system and functions as an instrument for case resolution that is more humanistic and proportionate.

Efforts to strengthen digital space governance in Indonesia acquired a new policy orientation through the issuance of a Circular by the Chief of the Indonesian National Police concerning the importance of ethical culture in online activities. Circular Number SE/2/II/2021, signed by General Listyo Sigit Prabowo on 19 February 2021, emerged as a response to the dynamics surrounding the implementation of Law Number 19 of 2016, which amended Law Number 11 of 2008 on Electronic Information and Transactions. This regulation has been regarded as generating tension between law enforcement and the protection of freedom of

expression in the digital sphere. Through this circular, the Chief of Police affirms that the use of digital technology requires ethical awareness so that freedom of opinion remains protected while at the same time contributing to the creation of an online environment that is safe, healthy, and productive (Sinthiya & Ipnuwati, 2022).

The policy emphasizes that law enforcement practices in the digital domain must be oriented toward substantive justice. Accordingly, the Indonesian National Police place educational and persuasive approaches as initial measures in addressing alleged legal violations, in order to prevent unnecessary criminalization and to ensure that the digital sphere remains a medium for responsible public dialogue. In its implementation, investigators are instructed to follow several operational guidelines, including understanding the evolution of digital interactions, mapping patterns of violations and their social implications, and prioritizing preventive mechanisms through virtual police and virtual alerts designed to monitor, warn, and educate users.

In addition, investigators are required to conduct careful assessments of public complaints by distinguishing between criticism, suggestions, disinformation, and defamation that carries criminal consequences. Communication with the parties from the earliest stages is established as a mandatory procedure so that space for mediation is fully available before a case proceeds to formal legal processes. Case conferences conducted comprehensively with the involvement of the Criminal Investigation Department or cyber units ensure that decision-making is carried out collectively and based on factual considerations (Hartanto et al., 2022).

The guidelines also reaffirm the principle of *ultimum remedium*, namely that criminal law ought to be employed as a measure of last resort. Restorative justice is positioned as the primary approach, except in cases that may threaten national integrity, such as those involving issues of ethnicity, religion, race, and intergroup relations, radicalism, or separatism. When the parties opt for an amicable settlement, investigators are obliged to facilitate this process and to refrain from detention if the alleged offender has demonstrated good faith. Coordination with public prosecutors is likewise mandated in order to maintain consistency in case handling up to the prosecutorial stage (Su'udi, 2022).

This Circular affirms a transformation in the policing approach to cases related to the Electronic Information and Transactions Law. Law

enforcement is directed to become more humane, dialogical, and oriented toward social restoration, with penal measures regarded as a final step once all opportunities for peaceful settlement have been exhausted. In this way, the policy serves to ensure that Indonesia's digital sphere develops into a public communication ecosystem that is responsible, ethical, and respectful of citizens' constitutional rights.

Implementation of the National Police Chief Circular Letter

In the initial period of the National Police Chief's leadership, the handling of cases involving violations of criminal provisions, including those under the Electronic Information and Transactions Law, demonstrated a shift in orientation toward the application of restorative justice principles. During the first one hundred days, a number of cases involving hate speech, insult, and defamation on social media were resolved through dialogical mechanisms that placed the restoration of social relations as the primary objective. This approach was employed to reaffirm the role of the police as an institution that not only enforces the law, but also educates the public regarding the responsible use of digital media.

The settlement of cases arising from violations of the Electronic Information and Transactions Law frequently encounters obstacles rooted in the psychological condition of the parties. Tensions typically intensify when cases involve public figures for whom reputation is an especially sensitive concern. Such situations often generate emotional interactions that hinder constructive dialogue. Nonetheless, mediation efforts conducted by the police generally succeed in de-escalating conflict and encouraging the achievement of amicable settlements (Santosa, 2022). The success of these mediations constitutes empirical evidence that the application of restorative justice principles can improve relations between disputing parties and position law as an instrument of resolution that is more humane, proportionate, and just.

From a normative perspective, the application of Article 27 paragraph (3) of the Electronic Information and Transactions Law cannot be understood in isolation from the provisions of the Indonesian Criminal Code concerning insult and defamation. Constitutional Court Decision Number 50/PUU-VI/2008 affirms that the term "insult" in this provision must be interpreted harmoniously with Articles 310 and 311 of the Criminal Code. Arifyadi (2022) notes that this norm is constitutional insofar as

it is applied in a manner consistent with general criminal provisions. Accordingly, the material elements of the offense continue to refer to the Criminal Code, whereas the penal threat is governed by Article 27 paragraph (3) of the Electronic Information and Transactions Law as a *lex specialis* that regulates sanctions in a more specific manner (Chazawi & Ferdian, 2011). Thus, the provision does not possess autonomous applicability, but must be interpreted within the framework of an integrated criminal law system.

In classical criminal law doctrine, the distinction between acts of insult and criticism in the public interest has been examined comprehensively, including through the 1899 decision of the Hoge Raad. That judgment established that even if a statement contains factual truth, it may still be regarded as an insult when it is conveyed with the intention of degrading the dignity of another person. This principle indicates that the perpetrator's motive plays a crucial role in determining the defamatory character of an act under criminal law.

In cases arising from social media activity, the role of the police is not confined to the enforcement of formal law, but also encompasses that of mediator who facilitates the attainment of mutual understanding between the parties. Law enforcement officers strive to promote resolution through deliberation in order to produce outcomes that are not only legally valid, but also attentive to values of kinship and social restoration. This approach is consistent with the directives of Police General Listyo Sigit Prabowo, who emphasizes prudence in the application of the Electronic Information and Transactions Law, as well as the need to take into account humanitarian considerations and prospects for reconciliation before resorting to criminal prosecution. In this respect, conflict resolution mechanisms are not centered on punishment, but are directed toward fostering mutual understanding and maintaining social harmony within the digital sphere.

The mechanism for the withdrawal of complaints as part of Indonesian criminal law has a clear legal basis. Article 75 of the Criminal Code grants complainants the right to withdraw their complaint within a period of three months. Nevertheless, jurisprudence reveals a degree of flexibility. Supreme Court Decision Number 1600 K/PID/2009 holds that even where withdrawal occurs after the prescribed time limit, a settlement reached by the parties may still constitute a valid ground for terminating proceedings, on the basis that its social benefits outweigh those of continuing the

trial process (Siregar et al., 2014). This decision illustrates that the restoration of social relationships possesses significant legal value, in line with the objectives of restorative justice.

The Supreme Court has also affirmed the importance of a restorative paradigm in conceptualizing criminal offenses. In one of its decisions, the Court stated that crime should not be understood solely as an offense against the state, but also as a disruption of interpersonal relations (Sulistiani et al., 2022). Consequently, judges bear responsibility for facilitating resolutions that are satisfactory to the disputing parties, so that the decisions rendered reflect not only legal certainty, but also substantive justice oriented toward the restoration of social relationships.

The rapid evolution of digital culture has contributed to an increase in cases related to expressions made on social media. The norms contained in Article 27 paragraph (3) of the Electronic Information and Transactions Law and Articles 310 and 311 of the Criminal Code in fact provide instruments for the protection of individual honor and reputation. However, the increasingly instantaneous patterns of social communication have led many digital media users to become easily provoked and to convey statements without adequate verification (Fajrin & Triwijaya, 2020). Regulations and policies issued by the Indonesian National Police play an important role in providing protection for aggrieved parties while simultaneously offering education to perpetrators. Through these guidelines, it is expected that the digital sphere can be governed in a more orderly and ethical manner, and that it will reflect respect for the rights of every citizen.

The emphasis on resolving cases through approaches that uphold humanitarian values demonstrates that criminal law cannot be understood solely as an instrument for punishing offenders. Law must function to maintain social equilibrium by upholding a conception of justice that is capable of restoring social relations disrupted by legal violations. Within this framework, restorative justice operates as a mechanism that aligns the interests of victims, perpetrators, and society within a single overarching objective, namely the restoration of damaged social conditions. This principle rejects the narrow view that law enforcement is complete once a sanction has been imposed, and instead requires the realization of sustainable social reconciliation. Through this approach, law enforcement is directed toward reestablishing a balance between the rigor of legal norms and the sense of humanity inherent in every individual. A

restorative legal process enables conflict resolution without prolonging the suffering of victims or generating new forms of social resentment. Such an approach is consistent with the values of Pancasila, which position humanity and justice as the highest moral foundations of the national legal system. Restorative justice also creates room for perpetrators to assume moral and social responsibility, and not merely legal accountability, thereby revitalizing ethical awareness in legal practice. More broadly, the application of this principle strengthens the legitimacy of law, since society perceives law as operating in a humane and just manner rather than merely instilling fear. In the long term, this model of dispute resolution has the potential to reduce recidivism rates and to increase public trust in judicial institutions. Furthermore, the integration of humanitarian values into the criminal justice system creates a balance between social order and the moral regeneration of society, while affirming that the ultimate purpose of law is not merely retribution, but the construction of a just and civilized social order.

In a rapidly evolving digital environment, the role of law enforcement agencies has become increasingly complex. Their responsibilities extend beyond ensuring the correct application of criminal norms to encouraging the public to understand ethical boundaries when engaging in virtual interactions. Police actions that create space for dialogue, facilitate reconciliation, and prioritize persuasive forms of dispute resolution demonstrate that law can function as a vehicle for public education. In this way, law enforcement in the digital sphere no longer possesses a single dimension, but instead reflects a synergy between legal certainty, justice, and social values.

Consistency in harmonizing the provisions of the Electronic Information and Transactions Law with the principles of general criminal law underscores the need for a legal system that upholds legal certainty without neglecting humanitarian values. Such harmonization is essential to ensure that the application of criminal law in digital spaces remains aligned with the principles of proportionality and the protection of human rights. The recognition that digital conflicts can be resolved through deliberation and apologies affirms that a purely retributive approach is not always effective in fostering social justice. Excessive penalization risks producing negative social effects, such as public polarization or a decline in trust in legal institutions. For this reason, resolution mechanisms oriented toward restoration constitute a more rational alternative for creating a balance between legal certainty and social harmony. In the long term, a

restorative approach is expected to reinforce the character of national law as adaptable to changes in social structure brought about by digitalization. The principles of restorative justice applied in digital cases provide space for law enforcement officials to affirm the values of empathy, education, and moral responsibility. This approach also nurtures public awareness that legal disputes can be resolved without resorting to harsh punitive measures. Consequently, national law functions not only as an instrument of control, but also as a means of social guidance that embodies substantive justice. The integration of humanitarian values into the digital legal framework will strengthen public confidence in legal institutions and enhance the quality of social interaction in digital spaces. The consistent application of these principles will contribute to the development of a legal ecosystem that maintains an appropriate balance between the enforcement of norms and the protection of human dignity, while ensuring that technological progress remains within the boundaries of ethics and social responsibility.

CONCLUSION

This study reaffirms the constitutional mandate that the state must protect the dignity, reputation, and freedom of expression of its citizens in a balanced manner. The harmonization of article 27 paragraph (3) of the electronic information and transactions law with articles 310 and 311 of the criminal code, in accordance with constitutional court decision number 50/puu-vi/2008, provides a clear doctrinal reference for law enforcement officials when handling expressions in the digital sphere. Police discretion, when directed by the principle of *ultimum remedium* and managed through the chief of police circular se/2/ii/2021 and judicial policy (decree of the director general of the general courts agency number 1691/dju/sk/ps.00/12/2020), has proven effective in promoting restorative justice, de-escalating conflict, and restoring social relations. Jurisprudence on the withdrawal of complaints and classical doctrine on the motive of insult further strengthen a restorative orientation while simultaneously preventing unnecessary criminalization.

There is a need for detailed standard operating procedures for social media based cases, including criteria for the suitability of mediation, procedures for assessing harm, formats for settlement agreements, and indicators for successful recovery for victims as well as accountability for perpetrators. The capacity of investigators must be enhanced with regard to human rights issues, digital evidence, and the facilitation of multiparty dialogue. Collaboration with platform

providers needs to be reinforced to support virtual alerts, the removal of harmful content, and the preservation of digital evidence. Public digital literacy programs should be expanded so that citizens understand the boundaries of expression, methods of information verification, and the legal consequences of their actions. Tiered supervision, case audits, and the publication of restorative justice statistics should be instituted to ensure uniform practice and performance transparency.

Theoretically, these findings confirm the perspective of law as a tool of social engineering (pound), in the sense that social engineering requires law that is adaptive to the digital ecosystem. At the policy level, the harmonization of the *lex generalis* of the criminal code and the *lex specialis* of the electronic information and transactions law provides legal certainty while also creating proportionate space for restoration. At the institutional level, the implementation of restorative justice has the potential to reduce case burdens, curb over-criminalization, and strengthen public trust, provided that it is accompanied by stringent oversight so that its application is even, measurable, and oriented toward the protection of human dignity.

REFERENCES

- Alelxaender, A. (2023). Peran Masyarakat Dalam Penegakan Hukum di Indonesia. *IJOLARES: Indonesian Journal of Law Research*, 1(1), 11-15.
- Andriati, S. L. (2018). *A Novelty of Impact of Social Media from the Legal Perspective*. <https://doi.org/10.23917/JURISPRUDENCE.V8I1.5987>
- Arifin, R. (2020). *Legal Reform Discourse in Indonesia and Global Context: How Does The Law Respond to Crime*. <https://doi.org/10.15294/JLLR.V1I2.37057>
- Asmara, R., & Iskandar, H. (2021). Penerapan Restorative Justice Terhadap Anak Yang Berhadapan Dengan Hukum. *Jurnal Hukum Samudra Keadilan*, 16(2), 320-332.
- Asshiddiqie, J. (2005). *Konstitusi dan Konstitusionalisme Indonesia*, Jakarta: Konstitusi Press
- Barton, C. K. (2003). *Restorative Justice: The Empowerment Model*. Hawkins Press.
- Bawono, B. T. (2019). Reformation of Law Enforcement of Cyber Crime in Indonesia. *Jurnal Pembaharuan Hukum*, 6(3), 332-349
- Braithwaite, J. (2002). *Restorative Justice & Responsive Regulation*. New York: Oxford University Press.

- Chazawi, A., & Ferdian, A. (2010). *Tindak Pidana Informasi dan Transaksi Elektronik*. Malang: Bayu Media Publishing.
- Djarmiko, R. G. H. (2023). *Transformasi Kebijakan Administrasi Publik Menuju Era Society 5.0*. Penerbit Adab.
- Fajrin, Y. A., & Triwijaya, Ach. F. (2020). *The concept of penal mediation for defamation delict in the indonesia ite law as a manifestation of restorative justice*.
<https://doi.org/10.20961/YUSTISIA.V9I3.36167>
- Febriansyah, F. I., & Prasetyo, Y. (2020). *Konsep Keadilan Pancasila*. Unmuh Ponorogo Press.
- Felisiano, I., & Paripurna, A. (2010). Profesionalisme Polri Dalam Penerapan Wewenang Diskresi Dalam Kasus Tindak Pidana Pencurian (Studi Kasus Pencurian Kakao, Pencurian Biji Kapuk, Dan Pencurian Semangka). *Yuridika*, 25(3), 245-258.
- Fuady, M. (2013). *Teori-Teori Besar (Grand Theory) Dalam Hukum*. Jakarta: Prenadamedia Grup.
- Hadi, S. (2010). *Kriminalisasi Anak*. Jakarta, PT Gramedia Pustaka Utama.
- Hartanto, & Dewi., A. (2021). Posisi Hukum Korban Perzinahan yang dilaporkan atas Tindak Pidana Kesusilaan Berdasar Undang-Undang Nomor 19 Tahun 2016 tentang Informasi dan Transaksi Elektronik. *Jurnal Hukum: To-Ra*, 6(3), 199-207
- Hartanto, H., & Sudarmono, A. (n.d). *Omnibus Law Between Justice And Benefits*. In The 1st Proceeding, The 6th Proceeding International Conference And Call Paper, Universitas Islam Sultan Agung.
- Hartanto, H., Budiarto, D., & Rhiti, H. (2022). *Penerapan restorative justice kepolisian terhadap pencemaran nama baik dalam dunia digital*.
<https://doi.org/10.30588/jhcj.v2i2.1100>
- Hasibuan, L. R. (2014). Restorative Justice sebagai Pembaharuan Sistem Peradilan Pidana Berdasarkan Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak. *USU Law Journal*, 3(3), 64-71
- Hawalia, M., & Darusman, C. (2022). Implementation of restorative justice based on decree of the directorate general of general justice agency of the supreme court number 1691/dju/sk/ps.00/12/2020 concerning implementation of guidelines for implementation of restorative justice in general. *Jurnal Ilmu Hukum*.
<https://doi.org/10.58471/justi.v12i2.651>
- Hiariej, E. O. (2016). *Prinsip-Prinsip Hukum Pidana*. Yogyakarta: Cahaya Atma Pustaka
- Iskandar, J. D. H. (2018). Kedudukan Kepolisian Negara Republik Indonesia Dalam Sistem Ketatanegaraan Indonesia. *Lex Administratum*, 6(4), 46-55.
- Istiqamah, D. T. (2018). Analisis Nilai Keadilan Restoratif pada Penerapan Hukum Adat di Indonesia. *Veritas et Justitia*, 4(1), 201-226.
- Jannah, M., & Hakim, A. B. (2023). Defamation and Insult Through Information and Communication Technology Media According to Law No. 19 of 2016 Concerning Amendments to Law No. 11 of 2008 Concerning Electronic Transaction Information. *Journal of Social Research*.
<https://doi.org/10.55324/josr.v2i4.824>
- Kaban, A. P., Hamdan, M., Ginting, B. S., & Mulyadi, M. (2022). *Analisis Hukum Tentang Kepentingan Umum Menurut Pasal 310 Ayat (3) KUHP di Indonesia sebagai Alasan Penghapusan Pidana dalam Kegiatan Pers*.
<https://doi.org/10.32734/mah.v1i2.8754>
- Lamintang, P. A. F., & Djisman, S. (1990). *Hukum Pidana Indonesia*. Bandung: Sinar Baru.
- Limbong, B., & Riswadi, R. (2022, January 1). Authority Of Polri Investigators In The Criminal Justice System in Indonesia. *Proceedings of the 2nd International Conference on Law, Social Science, Economics, and Education, ICLSSEE 2022, 16 April 2022, Semarang, Indonesia*.
<https://doi.org/10.4108/eai.16-4-2022.2319756>
- Lokadata.id. "Kapolri Keluarkan Surat Edaran Penanganan kasus UU ITE".
- Maharani, T., & Krisiandi. (2021, March 2). Kabareskrim: Kasus Guru Laporkan Siswa dengan UU ITE di NTT Berakhir Damai. *Kompas.com*.
- Maulana, I., & Agusta, M. (2021). Konsep Dan Implementasi Restorative Justice Di Indonesia. *Datin law jurnal*, 2(11), 46-70.
- Natsif, F. A. (2019). Perlindungan Hak Asasi Manusia Dalam Perspektif Negara Hukum Indonesia (Human Rights Protection In Perspective Indonesian State Law). *Al-Risalah*, 19(1), 148-158.
- Negara, D. S., D. Darmawan, & P. Saktiawan. (2022). Privacy Violations on Social Media and Interpersonal Trust Among Young Generations, *Journal of Social Science Studies*, 2(2), 151 - 156.
- Pinem, S. (2023). Alternative Criminal Punishments for Completion of Misdemeanor Crimes with Social Justice. *Journal of Education, Humaniora and Social Sciences*.
<https://doi.org/10.34007/jehss.v5i4.1672>

- Putusan Mahkamah Agung Nomor 1600 K/PID/2009 tentang Perdamaian dalam Kasus Pidana Nilainya Lebih Tinggi.
- Rijadi, P., & Priyati, S. (2017). *Reconceptualization of indonesia law substances*. <https://doi.org/10.21776/UB.BLJ.2017.004.02.03>
- Rohmana, N. Y. (2017). Prinsip-prinsip hukum tentang tindak pidana penghinaan dan pencemaran nama baik dalam perspektif perlindungan hak asasi manusia. *Yuridika*. <https://doi.org/10.20473/YDK.V32I1.4831>
- Samudra, A. H., & Simorangkir, J. (2014). Kebebasan Informasi di Dunia Siber dan Pembajakan Musik, Video dan Software. *Jurnal The Arysuta Center Series on Strategic Management*, 26.
- Santosa, R. (2022). Penyelesaian perkara tindak pidana penghinaan dan atau pencemaran nama baik sebagaimana diatur dalam undang-undang informasi dan transaksi elektronik (ite) dengan pendekatan konsep restorative justice. *Legal Spirit*. <https://doi.org/10.31328/lv.v6i1.3740>
- See, B. R. (2022). Perlindungan Hukum Bagi Nasabah dan Bank Terhadap Tindak Kejahatan Berbasis Teknologi Informasi (Cyber Crime). *Jurnal Hukum Caraka Justitia*, 2(1), 54-74.
- Sinthiya, I. A. P. A., & Ipinuwati, S. (2022). Ethics of Internet Use (Digital Netiquette) in UU ITE Perspective: Building a Courteous Digital Culture in the Era of Digital Transformation. *Journal of Image Processing and Intelligent Remote Sensing*. <https://doi.org/10.55529/jipirs.24.8.14>
- Siregar, M. Y., Ablisar, M., Mulyadi, M., & Barus, U. M. (2014). Analisis putusan hakim peradilan pidana terhadap pencabutan perkara delik aduan (studi putusan mahkamah agung no. 1600 k/pid/2009). *USU LAW JOURNAL*.
- SK Dirjen Badilum Nomor 1691/DJU/SK/PS.00/12/2020 tentang Pemberlakuan Pedoman Penerapan Keadilan Restoratif (Restorative Justice). SK ini terdiri atas Lima Halaman dengan 15 Lampiran yang ditandatangani oleh Dirjen Badilum Prim Haryadi di Jakarta pada 22 Desember 2020.
- Soekanto, S., & Mamudji, S. (1995). *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Jakarta: Rajawali Pers
- Su'udi, S. (2022). Restorative Justice As A Reason For Termination Of Investigations On Criminal Acts Of Hurt Or Destruction In The Electronic Information And Transaction Law. *International Journal of Environmental, Sustainability and Social Science*. <https://doi.org/10.38142/ijess.v3i3.259>
- Suda, I. W. J., & Suwanda, I. W. (2022). Kajian tugas dan fungsi polri dalam penegakan hukum. *Ganec Swara*. <https://doi.org/10.35327/gara.v16i1.270>
- Sulistiani, L., Kusmayanti, H., Rusmiati, E., & Fakhriah, E. L. (2022). Forgiveness and peace agreement as an implementation of living law in certain crimes in Indonesia. *International Journal of Health Sciences (IJHS)*. <https://doi.org/10.53730/ijhs.v6ns7.12715>
- Surat Edaran Kapolri Jenderal Listyo Sigit Prabowo Nomor SE/2/11/2021 tentang Kesadaran Budaya Beretika untuk Mewujudkan Ruang Digital Indonesia yang Bersih, Sehat, dan Produktif.
- Surat Edaran Kapolri Nomor 7 tahun 2018 (SE/8/VII/2018 tanggal 27 Juli 2018) tentang Penerapan Keadilan Restoratif (*Restorative Justice*).
- Surat Telegram Kabareskrim Nomor STR/583/VIII/2012 tanggal 08 Agustus 2012 tentang Penerapan *Restorative Justice*.
- Umam, A. K., Wahyuningsih, S., & Sulchan, A. (2022). The Authority of Police in Implementation of Restorative Justice in Framework of Enforcement of Criminal Actions in Indonesia. *Law Development Journal*. <https://doi.org/10.30659/ldj.4.1.9-18>
- Universal Declaration of Human Rights (UDHR) Tahun 1948 di butir 8 mengenai Perlakuan adil oleh pengadilan yang adil.
- Utami, N. A. T., Rahmah, A. M., & Wahyudi, S. (2023). *Kebijakan penerapan keadilan restoratif dalam penegakan hukum di indonesia demi terwujudnya keadilan*. <https://doi.org/10.20884/1.slr.2023.5.2.14197>
- UU Republik Indonesia Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik.
- UU Republik Indonesia Nomor 19 Tahun 2016 tentang Perubahan atas Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik.