


## Philosophical Reconstruction of the Concept of "Restoration of the Original State" in Article 79 Paragraph (1) of Law Number 20 of 2025 concerning the Criminal Procedure Code

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### Abstract

The development of the global criminal justice system shows a paradigm shift from retributive justice to restorative justice, which places restoration as the primary orientation in resolving criminal cases. In the Indonesian context, restorative values have been alive in the tradition of customary law and the philosophy of Pancasila, but were marginalized by colonial legal formalism. Legal reform through the New Criminal Procedure Code, specifically Article 79 paragraph (1) of Law Number 20 of 2025, reintroduces the concept of "restoring the original state" as an instrument for protecting human rights and substantive justice. The problem is, without a philosophical reconstruction based on Pancasila values, the concept of restoration has the potential to be reduced to a material compensation mechanism that opens up space for the practice of "transactions of impunity" and inequality in social justice. This research uses a normative juridical method with an approach to vertical and horizontal synchronization of legal norms and is reinforced by scenario planning within a foresight method framework

to project the implications of the application of norms in a reductive manner. The research findings indicate that restoration to the original state must be interpreted as a multidimensional process encompassing the restoration of human dignity, social relational balance, and the state's responsibility to protect citizens' rights. A Pancasila-based philosophical reconstruction is necessary for the concept of restoration to function as an authentic instrument of restorative justice in the modern Indonesian criminal justice system.

### Keywords

*Philosophical Reconstruction, Restoration of the Original State, Article 79 Paragraph (1) of Law Number 20 of 2025.*

### Introduction

The world of law and global law enforcement is undergoing a fundamental metamorphosis, a tectonic shift that is shaking the foundations of classical thinking on crime and punishment. For centuries, the modern criminal justice system has been dominated by the hegemony of the Retributive Justice paradigm. In this retributive mindset, crimes are narrowly constructed as crimes against the state. The state "steals" conflicts from their original owners, the victims and communities, and transforms them into bureaucratic procedures for proving guilt and inflicting suffering/hardship (criminal punishment). The primary focus is "who is at fault?", "what law was violated?", and "what punishment is appropriate?". This paradigm, rooted in *lex talionis* (an eye for an eye), has proven ineffective in addressing the moral void and social wounds left by crime. Prison overcrowding, high recidivism rates, and victims' alienation from the justice process are empirical evidence of this approach's failure.<sup>1</sup>

The resonance of this paradigm shift did not occur in a vacuum. History records that before the concept of Restorative Justice (RJ) became a popular terminology in Western legal literature, the

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<sup>1</sup> Indrajaya, N. (2026). Keadilan restoratif sebagai pergeseran paradigma dalam sistem hukum pidana Indonesia. *Jurnal Konstitusi*, 19(3), 589–605.

Indonesian nation already possessed the values of deliberation-based dispute resolution rooted in customary law and the Pancasila philosophy. However, colonialism, through the *Wetboek van Strafrecht* (WvS) and *Herziene Inlandsch Reglement* (HIR), drowned this wisdom under the rigid formalism of positive law. After independence, Indonesia undertook a legal revolution with the enactment of Law No. 8 of 1981 concerning Criminal Procedure (KUHAP). This law is often referred to as a "Magnum Opus" because it successfully replaced the discriminatory HIR and upheld human dignity by protecting the human rights of suspects and defendants.<sup>2</sup>

Over the past decade, the pressing need to address the stagnant criminal justice system—particularly the problem of overcrowding in correctional institutions, which has reached a humanitarian nadir—has led to the emergence of accommodative legal policies regarding Restorative Justice. Initially, Restorative Justice developed fragmentarily through sectoral regulations within law enforcement institutions. The Indonesian National Police issued National Police Chief Regulation (Perkap) No. 6 of 2019, which was later refined into Police Regulation (Perpol) No. 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice. The Attorney General's Office made a progressive breakthrough through Prosecutor's Regulation (Perja) No. 15 of 2020 concerning the Termination of Prosecutions Based on Restorative Justice. The Supreme Court also responded with a Decree from the Director General of Criminal Investigation Agency (Badilum) regarding the implementation of Restorative Justice in general courts.<sup>3</sup>

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<sup>2</sup> Destri Tsurayya Istiqamah. "Konsep Keadilan Restoratif dalam Hukum Adat Indonesia dan Penerapannya di Indonesia." *Veritas et Justitia*, Vol. 4 No. 1 (2018).

<sup>3</sup> Maryanto. (2017). Overcrowding di lembaga pemasyarakatan sebagai dampak sistem pemidanaan di Indonesia. *Jurnal Legislasi Indonesia*, 14(3), 321–334.

Without a deep alignment with Pancasila values, the concept of restitution in the New Criminal Procedure Code risks becoming a "retributive cover" for restorative claims. This could legalize the practice of "transactions of impunity," where perpetrators with capital power can "buy" their freedom through compensation payments, while poor perpetrators are still subject to corporal punishment due to their inability to pay. This transparently violates the Fifth Principle of Pancasila, Social Justice for All Indonesians. Furthermore, if restitution is only interpreted as a material transaction, then the dimensions of moral-spiritual repentance (First Principle: Belief in the One and Only God) and the restoration of just human dignity (Second Principle: Just and Civilized Humanity) disappear from the radar of our criminal law.<sup>4</sup>

This reconstruction is necessary to restore the essence of recovery as an effort to address relational wounds and restore societal balance, as mandated by the restorative justice perspective, which emphasizes deliberation and mediation. Such an approach aligns with the demands of teleological interpretation, which makes restorative justice the primary orientation of the Indonesian criminal justice system to realize substantive justice. In this context, the fifth principle of Pancasila offers a foundation of values through social justice that positions all parties equally in restorative deliberation, thereby restoring relational harmony neglected by conventional retributive approaches.<sup>5</sup>

## Method

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<sup>4</sup> Lasmadi, S. (2020). Keadilan restoratif sebagai alternatif penyelesaian perkara pidana dalam sistem peradilan pidana di Indonesia. *Jurnal Ilmu Hukum*, 11(2), 215–226.

<sup>5</sup> Taquiddin, H. U., & Risdiana, R. (2022). Penerapan keadilan restoratif dalam praktik ketatanegaraan. *Jurnal Ilmu Sosial dan Pendidikan (JISIP)*, 6(1).

This research is a normative legal research (doctrinal legal research) that focuses on the vertical and horizontal synchronization of legal norms related to restorative justice. This research is expanded with a foresight method approach. The foresight method approach chosen is Scenario Planning. The argument is to anticipate sociological and legal risks if Article 79 paragraph (1) of Law No. 20 of 2025 continues to be applied in a reductive-materialistic manner. Through this scenario, the research can project the transformation of the criminal justice system that integrates transcendental values so as not to be trapped in the "impunity market".

## **Result And Discussion**

### **1. Philosophical Basis of the Concept of “Restoration of the Original State” in the Criminal Procedure Law System**

The concept of restoring the original state in the criminal procedural law system has a strong philosophical basis because it is based on the principle that every state action in the law enforcement process must be placed within the framework of respect for human dignity as a legal subject. Criminal procedural law does grant law enforcement officials the authority to carry out coercive actions such as arrest, detention, search, confiscation, and restrictions on certain rights of individuals, but this authority is not absolute because it must be exercised within the limits determined by law and the principles of justice. Therefore, when such actions are carried out illegally or exceed the authority granted by statutory regulations, the state is obliged to restore the individual to a legal position equal to the condition before the action occurred as a form of normative and moral

responsibility to protect the rights of citizens.<sup>6</sup>

The idea of restoring the original state is closely related to the concept of humans as rights holders, which are inseparable from their existence as independent and dignified legal subjects. From the perspective of modern legal philosophy, law functions not only as an instrument of social control but also as a means of protecting individual freedom from the potential arbitrariness of state power. Restoring the original state is a logical consequence of the recognition of human values that place individuals at the center of attention in the criminal justice system. Recognition of human dignity implies that any violation of individual rights must be followed by concrete and effective corrective action so that the balance between the interests of the state and the interests of citizens can be maintained fairly.<sup>7</sup>

The principle of a state based on the rule of law demands that every government action be based on law and be legally and ethically accountable. Within the framework of a state based on the rule of law, power cannot be exercised arbitrarily, as the law is intended to limit the use of state authority and ensure it remains within constitutional boundaries. Restoring the original state is a crucial instrument to ensure that procedural irregularities in the criminal justice process do not result in permanent harm to individuals subject to legal action. Therefore, the existence of a

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<sup>6</sup> Asshiddiqie, J. (2012). Penegakan hukum dan perlindungan hak asasi manusia dalam negara hukum Indonesia. *Jurnal Konstitusi*, 9(4), 1–22.

<sup>7</sup> Atmasasmita, R. (2014). Sistem peradilan pidana kontemporer dan perlindungan hak asasi manusia. *Jurnal Hukum & Pembangunan*, 44(2), 145–160.

restoration mechanism reflects an internal oversight system for the implementation of state authority in the field of criminal law enforcement.<sup>8</sup>

Restoration of the original state is related to the concept of corrective justice, which emphasizes efforts to correct imbalances arising from unlawful actions. Corrective justice positions the relationship between individuals and the state as one that must be balanced to prevent unilateral domination by those in power. When the actions of law enforcement officers cause harm to an individual without a valid legal basis, justice demands a mechanism capable of restoring the individual's position to the state it was in before the harmful action occurred. In this context, restoration of the original state serves as a means of reconstructing justice, aiming to eliminate the negative impact of procedural errors in the criminal justice process. From a justice perspective, the restoration mechanism ensures that individuals do not suffer unnecessary consequences arising from unlawful state actions. From a legal certainty perspective, the existence of a restoration mechanism guarantees that any procedural violation will have clear and measurable legal consequences, thus encouraging law enforcement officers to act in accordance with statutory provisions.<sup>9</sup>

Restoration of the original state is also closely related to the principle of human rights protection, which is the main

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<sup>8</sup> Manan, B. (2009). Negara hukum dan konstitusi. *Jurnal Konstitusi*, 6(2), 1–16.

<sup>9</sup> Suteki. (2013). Rekonstruksi politik hukum tentang hak menguasai negara atas sumber daya air berbasis nilai keadilan sosial. *Jurnal Konstitusi*, 10(2), 295–314.

foundation of the modern criminal justice system. The right to personal liberty, the right to honor and a good name, and the right to protection from arbitrary treatment are fundamental rights that must be guaranteed by the state at every stage of the criminal justice process. When these rights are violated due to unlawful acts, the state has an obligation to restore them as a form of respect for human rights principles. Therefore, restoration of the original state is not only an administrative obligation but also a constitutional obligation inherent in the state's responsibility to protect its citizens.

In the development of the contemporary criminal justice system, restoration of the original state is also understood as part of the effort to humanize the law, placing the individual at the center of legal protection. This approach emphasizes that the primary objective of criminal procedural law is not merely to ensure the effectiveness of law enforcement, but also to ensure that the law enforcement process is conducted fairly and proportionally. Restoration of the original state serves as a means to balance the state's need to enforce the law with its obligation to protect the rights of individuals who come into contact with the criminal justice system. Thus, the existence of a restoration mechanism reflects a paradigm shift in criminal procedural law, from a repressive approach to one more oriented toward protecting individuals. The state cannot abdicate its responsibility for losses arising from actions by law enforcement officials that violate procedures or contradict statutory provisions.

Therefore, restoration of the original state represents a form of state accountability to individuals harmed by the criminal justice process. This principle demonstrates that state power is not only limited by law but must also be accompanied by an effective correction mechanism in the event of deviations in its implementation.<sup>10</sup>

In the reform of criminal procedure law in Indonesia, the concept of restoration of the original state reflects a commitment to adapt the national criminal justice system to developments in modern legal principles that emphasize the importance of protecting human rights and controlling the use of state authority. This reform demonstrates that criminal procedure law is no longer viewed solely as a technical tool for enforcing substantive criminal law, but also as a means to ensure the protection of individuals who come into contact with the criminal justice system. Thus, restoration of the original state is an integral part of the transformation of the legal system toward one that is more responsive to the needs of substantive justice in society.

The philosophical basis for restoring the original state demonstrates that the existence of this mechanism is a logical consequence of the principles of the rule of law, protection of human rights, corrective justice, and accountability of state power in the administration of criminal justice. Restoring the original state serves not only as an administrative means to correct procedural errors, but also as a normative instrument

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<sup>10</sup> Zulfa, E. A. (2011). Pergeseran paradigma pemidanaan. *Jurnal Hukum & Pembangunan*, 41(2), 189–205.

affirming the state's commitment to respect for human dignity and substantive justice in the modern criminal procedural system.<sup>11</sup>

## **2. Philosophical Reconstruction of the Concept of “Restoration of the Original State” as an Instrument for the Protection of Human Rights and Restorative Justice**

The philosophical reconstruction of the concept of restoration of the original state in criminal procedural law needs to be placed within the framework of human rights protection as the main orientation of the modern criminal justice system that positions individuals as legal subjects who must be protected from the potential arbitrariness of state power. In the practice of criminal law enforcement, state coercive actions such as arrest, detention, searches, confiscation, and other restrictions on freedom carry the risk of violating the fundamental rights of citizens, so that the existence of a restoration mechanism becomes a corrective instrument that is not only procedural but also substantive. The philosophical reconstruction of this concept aims to emphasize that restoration of the original state should not be understood narrowly as a mere return to administrative status, but must reflect a comprehensive effort to restore the individual's position to a just, dignified, and equal condition before the detrimental state action occurred.

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<sup>11</sup> Zaidan, M. A. (2016). Pembaruan hukum pidana dan perlindungan hak asasi manusia dalam sistem peradilan pidana Indonesia. *Jurnal Rechts Vinding*, 5(2), 275–290.

The philosophical reconstruction of the concept of restoration of the original state in criminal procedural law needs to be placed within the framework of human rights protection as the main orientation of the modern criminal justice system that positions individuals as legal subjects who must be protected from the potential arbitrariness of state power. In the practice of criminal law enforcement, state coercive actions such as arrest, detention, search, confiscation, and other restrictions on freedom carry the risk of violating the fundamental rights of citizens, so that the existence of a restoration mechanism becomes a corrective instrument that is not only procedural but also substantive. The philosophical reconstruction of this concept aims to emphasize that restoration of the original state should not be understood narrowly as a mere return to administrative status, but must reflect a comprehensive effort to restore the individual's position to a just, recognized, and equal condition before the detrimental state action occurred.<sup>12</sup>

As a human rights protection instrument, restoration of the original state also has strong relevance to the restorative justice approach developing in the contemporary criminal justice system. Restorative justice emphasizes the importance of restoring social relationships disrupted by legal actions that cause harm to individuals and communities, so that the orientation of case resolution focuses not only on punishment, but also on restoring social balance and the dignity of affected parties. In this context, restoration of the original state can be understood as an

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<sup>12</sup> Yuliantini, N. P. R. (2015). Kedudukan korban kejahatan dalam sistem peradilan pidana Indonesia berdasarkan KUHAP. *Jurnal Komunikasi Hukum*, 1(1), 15–27.

instrument that functions to eliminate the negative impact of illegitimate criminal justice processes while simultaneously restoring individual trust in the legal system as a means of protecting justice. A philosophical reconstruction of this concept emphasizes that restoration must include social and psychological dimensions that have often been neglected in the practice of criminal procedural law, which tends to be oriented solely on formal aspects.<sup>13</sup>

The philosophical reconstruction of the restoration of the original state also requires an expansion of the meaning of restoration from merely eliminating legal consequences to a comprehensive rehabilitation process for individuals harmed by illegitimate law enforcement actions. Rehabilitation in this context includes the restoration of good reputation, restoration of social standing, restoration of access to economic rights and employment, and psychological recovery from the stigma that arose during the criminal justice process. Therefore, restoration of the original state must be understood as a multidimensional process that is not only oriented towards legal aspects but also encompasses social and humanitarian aspects as a whole. This approach is in line with the development of the modern legal paradigm that places humans at the center of legal protection (human-centered justice).

The concept of restoring the original state is also closely related to the principle of state responsibility in the use of criminal law authority as an instrument of social control. The

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<sup>13</sup> Marlina. (2009). Peradilan pidana anak di Indonesia: Pengembangan konsep diversi dan restorative justice. *Jurnal Equality*, 14(2), 65–78.

state, as the holder of the monopoly on repressive power, is obliged to ensure that every use of this authority is carried out legally, proportionally, and responsibly. If there is a deviation in the exercise of this authority, the state has an obligation to restore it as a form of accountability to the injured individual. In this context, restoring the original state is not merely an administrative consequence of procedural errors, but rather a form of state recognition of the importance of maintaining a balance between law enforcement authority and the protection of citizens' rights.

The restorative approach to the concept of restoring the original state also emphasizes the importance of the active participation of the injured individual in the state's restoration process. Restoration should not be carried out unilaterally by law enforcement institutions without considering the real needs of individuals who have suffered losses due to unlawful legal actions. Therefore, restoration mechanisms must be designed responsive to the needs of victims of procedural errors, including the need for recognition, reputation restoration, and assurance that similar violations will not recur in the future. This approach strengthens the substantive justice dimension in the criminal procedural law system which is not only oriented towards compliance with formal procedures, but also towards fulfilling the sense of justice that exists in society.

Restoration of the original state demonstrates that the existence of this mechanism is not only related to efforts to correct procedural errors in the criminal justice process, but also reflects the state's commitment to upholding restorative justice as a new paradigm in the modern legal system. Through an

approach that positions restoration as part of the protection of human rights and the restoration of social balance, the concept of restoration of the original state can serve as a strategic instrument in realizing a criminal justice system that is just, dignified, and oriented towards respect for human values.

## Conclusion

The philosophical reconstruction of the concept of restoration of the original state in criminal procedural law must be understood as a normative instrument that functions to protect human rights while strengthening the restorative justice orientation in the modern criminal justice system. This concept can no longer be interpreted limitedly as the restoration of formal legal status due to procedural errors by law enforcement officials, but must encompass the comprehensive restoration of the dignity, social reputation, legal standing, and economic and psychological rights of individuals affected by illegitimate criminal justice processes. Thus, restoration of the original state becomes a concrete manifestation of the state's responsibility in ensuring a balance between law enforcement authority and the protection of citizens' freedoms. The reconstruction of the concept of restoration of the original state shows that this mechanism is an integral part of the paradigm transformation of criminal procedural law towards a system that is humanistic, accountable, and oriented towards individual protection. Through a restorative justice approach, restoration not only functions to eliminate detrimental legal consequences but also restores social relations and public trust in the criminal justice system. Therefore, restoration of the original state must be positioned as a strategic instrument in realizing substantive justice

that affirms the rule of law's commitment to respecting human dignity and protecting the human rights of every citizen.

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