

Restorative Justice in Bullying Cases Leading to Suicide: Balancing Criminal Accountability and Victim Recovery

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ABSTRACT: The realms of law and public health currently face a cross-border threat in the form of bullying and cyberbullying, which significantly increase suicidal ideation among victims. This study examines the legal dilemma regarding the application of restorative justice in bullying cases that lead to suicide, focusing on the tension between strict retributive law enforcement and victim recovery. Using a normative juridical research method with statute and conceptual approaches, this study analyzes how the new paradigm of the Indonesian National Criminal Code (Law No. 1 of 20 23) addresses this issue. The findings reveal that for fatal offenses such as bullying leading to suicide, the absolute application of a judicial pardon (*rechterlijk pardon*) under Article 54 paragraph (2) must be rejected to prevent impunity and avoid sending a misleading sociological signal. Alternatively, this study proposes an integrative legal construction leveraging Article 462 in conjunction with Articles 51, 52, and 54 paragraph (1) of Law No. 1 of 2023. This model modifies criminal liability by imposing mandatory restitution to fund the psychological recovery of the victim's family, combined with rehabilitative sanctions such as supervisory or community service probation. This synthesis demonstrates that restorative justice in fatal offenses does not compromise accountability but rather operationalizes penal deterrence and psychosocial recovery simultaneously.

KEYWORDS: Bullying; Cyberbullying; Fatal Offenses; Law No. 1 of 2023; Restorative Justice.

I. INTRODUCTION

The fields of law and public health are increasingly confronted with the transnational challenge of bullying, both in its conventional form and through the digital sphere (cyberbullying). According to periodic reports published by UNESCO, approximately one in three students worldwide has experienced bullying within the previous month, while cyberbullying affects nearly ten percent of the global child population.¹ From the standpoint of criminal law, these statistics are particularly significant because empirical evidence demonstrates that victims are twice as likely to suffer from sleep disturbances, severe loneliness, and suicidal ideation. Such findings challenge the perception that bullying constitutes only a temporary manifestation of juvenile misconduct. Instead, they establish bullying as a serious risk factor that endangers the fundamental human right to life and therefore warrants appropriate legal intervention.

In Indonesia, the growing severity of this psychosocial crisis is evident in the sharp increase in reported cases. Consolidated records from the Indonesian Education Monitoring Network (JPPI) and the Indonesian Child Protection Commission (KPAI) demonstrate a substantial rise in violence within educational settings, with reported incidents increasing from 91 cases in 2020 to 573 cases in 2024. Notably, bullying represented 31 percent of all recorded incidents, highlighting its prominence among the various forms of violence occurring in schools.² Moreover, statistic released by the Southeast Asia Freedom of Expression Network (SAFEnet) show that reported cyberbullying cases increased by more than 100 percent in the first quarter of 2024 compared to the same period the previous year.³ The most devastating consequence of this situation is the recurring incidence of child suicides reported annually by KPAI, with prolonged bullying identified as major contributing factor. The tragic death of a 14-year-old female student in Sukabumi Regency in late October 2025 serves as a grim precedent that underscores the urgency of this issue. In the note she left behind, the victim apologized to her parents and explicitly stated that the sustained mistreatment she had endured was the principal reason for her decision to end her life. These tragic incidents demonstrate that the effects of bullying extend far beyond

¹ UNESCO, *Data Berkala Prevalensi Global Kasus Bullying*, 2024.

² Jaringan Pemantau Pendidikan Indonesia (JPPI) dan Komisi Perlindungan Anak Indonesia (KPAI), *Data Konsolidasi Angka Kekerasan*, 2024, hlm. 12.

³ Southeast Asia Freedom of Expression Network (SAFEnet), *Laporan Kuartal I Cyberbullying*, 2024.

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psychological harm, resulting in fatal consequences and underscoring that bullying constitutes a serious offense with the potential to deprive victims of their lives.

The consequences of bullying that result in a victim's suicide extend well beyond the individual who loses their life. The surviving family members, including parents and siblings, should also be regarded as indirect victims, as they often experience profound and complicated grief arising from a death that was preventable and directly attributable to the harmful conduct of other.⁴ However, efforts to support recovery for these "secondary victims" frequently encounter obstacles within Indonesia's conventional criminal justice system. The country's substantive criminal law, which is rooted in the retributive principles of the *Wetboek van Strafrecht* (WvS/Old Criminal Code), primarily emphasizes the punishment of offenders as a manifestation of the state's retributive authority. As a result, the victim's family is frequently assigned a passive role within criminal proceedings, serving mainly as complainants or witnesses, while receiving limited opportunities to exercise their rights to psychological, social and economic recovery.

The limitations of criminal sentencing become more evident when examining suicide cases precipitated by bullying. From a doctrinal perspective, the immediate act resulting in death is carried out by the victim, while the psychological abuse that contributes to the victim's decision is typically perpetrated by a child or adolescent categorized as a *Child in Conflict with the Law* (*Anak yang Berhadapan dengan Hukum*—ABH). This creates significant legal and epistemological challenges for a retributive justice framework, which must establish a causal connection between the bullying and the subsequent suicide while also determining an appropriate and proportionate sanction for a juvenile offender. As a consequence, the victim's family often receives neither adequate recognition nor meaningful guarantees of rehabilitation and non-recurrence, reflecting the limitations of a sentencing model that does not sufficiently accommodate their interests. These circumstances raise a fundamental theoretical question: does restorative justice, with its emphasis on repairing social relationships and addressing the needs of all affected parties, provide a sufficiently sound philosophical and doctrinal foundation for application in fatal cases involving loss of life, or would its implementation instead weaken the deterrent function of criminal law and dilute the offender's criminal responsibility?

Based on the aforementioned legal issues, this study addresses two principal research questions: 1) How can the philosophical and juridical legitimacy of the restorative justice doctrine be justified when applied to offenses resulting in fatal consequences, specifically regarding the phenomenon of suicide triggered by bullying? 2) How does Indonesia's positive legal framework establish an ideal balance between imposing fair criminal sanctions on perpetrators of bullying and ensuring the protection and restitution of rights for the victim's family in their capacity as secondary victims?

II. THEORETICAL REVIEW

A. Restorative Justice Theory

The contemporary concept of restorative justice is inseparable from the ideas of Howard Zehr. In his seminal 1990 work, **Changing Lenses: A New Focus for Crime and Justice**, the American criminologist often hailed as the "grandfather of restorative justice" introduced a paradigm shift in the analysis of criminal offenses.⁵ While orthodox retributive doctrine defines a crime purely as an act of defiance against state authority and abstract legal norms, Zehr conceptualizes it instead as an assault on human dignity and the fabric of social relationships. This perspective consequently establishes a moral and legal obligation for offenders to repair the harm resulting from their actions. At the core of Zehr's theory is the proposition that crime causes human suffering and generates corresponding obligations; therefore, the pursuit of justice should be fundamentally oriented toward restoring the harm inflicted rather than merely imposing punishment.

Building upon this philosophical foundation, Zehr developed three fundamental questions that distinguish restorative justice from the conventional retributive model: who has been harmed, what needs have arisen as a result of that harm, and who is responsible for repairing it. By contrast, the traditional retributive approach focuses primarily on identifying which legal norm has been violated, determining the offender, and deciding the appropriate criminal sanction. This reorientation—from emphasizing the violation of legal rules to prioritizing the restoration of harm and the fulfillment of victims' needs—redefines the role of the victim's family as a central legal stakeholder in the resolution process, rather than relegating them to a peripheral position dominated by the interests of the offender and the state.

B. Victimology Theory and Victim Restitution

The epistemology of modern victimology, shaped by the ideas of Hans von Hentig and Benjamin Mendelsohn, positions the interaction between victim and offender as an integral unit of analysis, rather than reducing the victim to a passive object or static evidence. Domestically, the body of victimological knowledge has been significantly enriched by the insights of Arif Gosita. He emphasized that the fulfillment of the rights of crime victims, including child victims, must be viewed as a manifestation of human

⁴ Chaplin, J.P. (2010) *Kamus Psikologi*. (penerjemah : Kartono). Jakarta : PT. Raja Grafindo Persada.

⁵ Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice*, (United States: Herald Press, 1990), hlm. 181

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rights enforcement orchestrated as a national movement, rather than merely a sectoral policy that is ad hoc and temporary in nature.⁶ This doctrinal framework reinforces the view that victim restitution should not be understood as an act of compassion or a discretionary state policy, but as a legal consequence of the state's obligation, under the rule of law, to uphold and protect human dignity.

One of the most significant conceptual contribution of victimology doctrine to this study is the categorization distinguishing between direct and indirect victims. The latter term refers to entities that do not physically suffer harm from the criminal act itself but must bear the destructive psychological, sociological, and economic consequences resulting from the suffering endured by the direct victim. In cases of suicide resulting from bullying, the victim's immediate family—particularly parents and siblings—falls within this category of indirect victims. Although they are not the direct targets of the bullying, they must endure profound traumatic grief, disruptions to family functioning, and the social stigma that frequently follows the victim's death.

C. The Theory of Causation in Criminal Law

Criminal law recognizes two pillars of classical doctrine regarding the theory of causation. The first is the **conditio sine qua non** doctrine, which is genealogically rooted in the thought of von Buri. Under this doctrine, any circumstance whose absence would prevent the result from occurring (the "but-for" test) must be regarded as a cause of that result, without distinguishing between the relative weight of each condition's contribution. A major limitation of this doctrine is its tendency to generate an unlimited chain of causation. When applied without appropriate legal constraints, it may extend the chain of causation to absurd legal lengths such as categorizing the perpetrator's own birth as a "condition" that gave rise to a future criminal act.⁷

The second doctrine is the doctrine of adequacy, developed from the theories of von Kries. Unlike the *condition sine qua non*, this doctrine limits the concept of "cause" to only those preconditions which, based on human empirical experience and an objective assessment of probability, can be logically predicted to produce the legal consequence in question. Under this analytical framework, not every fact preceding a consequence qualifies as a legally relevant cause; rather, the term is restricted to conditions that could reasonably and typically be expected to possess the capacity to bring about that consequence.

The application of these two doctrines of causation to bullying-related suicide cases presents distinct doctrinal difficulties. Unlike offenses involving physical violence, where the causal relationship between the conduct and its consequences is generally more direct, verbal and psychological bullying typically develops through prolonged, repetitive, and cumulative acts committed over time, often involving multiple perpetrators before the victim ultimately decides to take their own life. This final act—the victim's autonomous decision to commit suicide—is viewed by some criminal law scholars as an intervening event that interrupts the causal chain linking the perpetrator's conduct to the resulting death. From a formal legal perspective, the act that immediately causes death is carried out by the victim rather than by the individual responsible for the bullying.

III. RESEARCH METHODS

A. Types of research

This study adopts a normative legal research approach, which examines the law as written norms representing **das Sollen** (what ought to be) rather than as an empirical social phenomenon analyzed through the observation of societal behavior (**das Sein**).⁸ This methodology was selected because the conceptual and philosophical issues involved require doctrinal reasoning rather than hypothesis testing based on field data. The study does not aim to generate primary data through interviews, surveys, or field observations; instead, it seeks to formulate legal prescriptions through deductive reasoning applied to existing legal materials.

B. Research approach

This study adopts two complementary approaches commonly used in normative legal research in Indonesia; the statutory approach and the conceptual approach. The statutory approach is employed to examine all regulations relevant to restorative justice and the reparation of crime victims. Meanwhile, the conceptual approach is applied to aspects of the study that are not explicitly or comprehensively regulated by legislation, requiring legal reasoning to rely on doctrines, legal principles, and expert views within the field of legal science.⁹

C. Sources of legal materials

The primary legal materials in this study consist of binding laws and regulations, including: the 1945 Constitution of the Republic of Indonesia, specifically Article 28G paragraph (1); Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code), specifically the provisions regarding the objectives of sentencing and Article 462 concerning encouraging, assisting, or advising another person to commit suicide; the Criminal Procedure Code; Law Number 39 of 1999 concerning Human Rights; etc.

⁶ Huda, M. N. (2022). "Korban Dalam Perspektif Viktimologi". *Voice Justia : Jurnal Hukum Dan Keadilan*.

⁷ Ahmad Sofian. 2018. *Ajaran Kausalitas Hukum Pidana*. Edisi Kedua. Jakarta: Kencana.

⁸ Zainuddin Ali. 2021. *Metode Penelitian Hukum Normatif dan Empiris*. Jakarta: Prenada Media.

⁹ Sugiyono. (2019). *Metode Penelitian Kuantitatif, Kualitatif, dan R&D*. Bandung: Alfabeta.

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Secondary legal materials encompass all publications that provide explanations regarding primary legal materials, consisting of: textbooks and monographs on criminal law, victimology, and restorative justice; and nationally or internationally accredited legal scholarly journals addressing restorative justice, causation in criminal law, and victim protection.

Tertiary legal materials consist of legal dictionaries, encyclopedias, and glossaries of criminal law and victimology terms, used to provide explanations and definitions for technical terms found in primary and secondary legal materials.

D. Data analysis techniques

The qualitative analysis in this study was conducted using three methods of legal interpretation, applied in a phased and complementary manner, as follows;

First, grammatical interpretation was employed to ascertain the meaning of statutory provisions by examining the ordinary meaning of the words and the grammatical structure of the text as expressed in primary legal sources. It is used primarily to literally interpret the elements of the offense under Article 462 of Law No. 1/2023, to determine the scope of verbal and psychological bullying acts that fall within the definition of that offense.

Second, systematic interpretation was applied by construing a legal provision within the broader framework of the legislative system and in relation to other relevant statutory provisions. This method was used to examine the relationship between the sentencing objectives prescribed in the National Criminal Code and the provisions governing restitution and psychological rehabilitation under Law No. 31 of 2014.

Third, teleological interpretation, was employed to examine legal norms in light of the objectives and underlying purposes for which they were enacted. This method was applied to identify the criminal law policy reflected in the transition from a predominantly retributive model toward a justice paradigm that emphasizes correction, rehabilitation, and restorative principles.

IV. RESULTS OF THE DISCUSSION

A. Regulatory Impasse Regarding Quantitative Thresholds and Categorical Exclusions in Perja 15/2020 and Perpol 8/2021

The implementation of restorative justice during the pre-adjudication phase (investigation and prosecution) in Indonesia has thus far relied on two primary legal instruments: Perja No. 15 of 2020 and Perpol No. 8 of 2021. Under these regulations, the application of restorative justice is subject to cumulative substantive requirements imposed on the suspect, namely that the individual has no prior criminal record, is charged with an offense punishable only by a fine or imprisonment of less than five years, and has caused material losses not exceeding IDR 2,500,000.00 (two million five hundred thousand rupiah).¹⁰ These quantitative limits were specifically formulated to screen for low-severity offenses involving material impacts that can be precisely calculated, such as minor assault, simple fraud, petty theft, or traffic offenses lacking any element of intent.

However, the closure of the restorative justice pathway for suicide cases triggered by bullying stems not merely from the aforementioned quantitative limits, but also from an accompanying barrier of categorical exclusion.¹¹ National Police Regulation No. 8 of 2021 strictly prohibits restorative resolution for the category of "criminal acts against human life." This category is placed on par with corruption, crimes against state security, and terrorism. On the other hand, Attorney General Regulation No. 15 of 2020 does provide an exception to the IDR 2,500,000 loss threshold for crimes targeting the body, the person, life, and liberty. Nevertheless, the Prosecutor's Office maintains an absolute requirement that the offense carry a penalty of less than five years. This normative threshold is, in practice, virtually unattainable in cases involving fatalities, as both the Indonesian Criminal Code (KUHP) and various special criminal statutes generally prescribe imprisonment exceeding five years for offenses resulting in death. This restrictive approach is further reflected in the Circular Letter of the Junior Attorney General for General Crimes (SE JAM PIDUM) No. 01/E/EJP/02/2022. Although the circular provides a limited exception for offenses carrying penalties of more than five years that result in death, its application is confined exclusively to cases in which the fatal outcome arises from the offender's negligence (*culpa*) rather than intentional conduct (*dolus*).

The destructive impact of this regulation is tangibly felt in the dynamics of law enforcement in Indonesia. For instance, the Indragiri Hilir District Attorney's Office recorded a case where a request to halt prosecution via the restorative justice mechanism was flatly rejected by the Junior Attorney General for General Crimes (SE JAM PIDUM) solely due to the victim's death despite a sincere peace agreement having been signed by the perpetrator and the victim's family.¹² The case ultimately proceeded to trial, where the offender was sentenced to four months' imprisonment. This outcome highlights two significant shortcomings. First, the victim's death effectively precluded the victim's family from accessing restorative justice, despite their clear preference for a restorative resolution in their capacity as secondary victims. Second, requiring cases involving secondary victims to proceed

¹⁰ Peraturan Kejaksaan Republik Indonesia Nomor 15 Tahun 2020 tentang *Penghentian Penuntutan Berdasarkan Keadilan Restoratif*, Pasal 5.

¹¹ Mansari, 2018, *Restorative Justice: Pergeseran Orientasi Keadilan dalam Penanganan Kasus Anak*, Zahir Publishing, Yogyakarta.

¹² Surat Edaran Jaksa Agung Muda Tindak Pidana Umum Nomor 01/E/EJP/02/2022.

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exclusively through the conventional retributive process may produce outcomes that fail to achieve substantive justice for all parties. In such circumstances, the state is unable to fulfill its role in facilitating restoration, while the offender receives a relatively lenient custodial sentence that offers little practical distinction from the result that could have been achieved through a properly structured restorative justice process.

A key issue that emerges in this analysis is the distortion of values occurring between the theoretical foundations of restorative justice and the design of its operational regulations in Indonesia. Drawing on Howard Zehr's postulates, the premise that confines restorative justice solely to minor offenses is firmly rejected; indeed, restorative processes are believed to yield the most profound impact when implemented in cases involving the most serious crimes. However, the framework established by Perja No. 15/2020 and Perpol No. 8/2021 creates an inverse relationship: the more irreversible and severe the harm resulting from an offense, the more restricted the victim's access to restorative remedies becomes. Yet, when viewed through the lens of victimology, it is precisely at this peak level of severity that the victim's family has the most urgent need for state acknowledgment of their suffering.

B. Opportunities in Articles 51, 52, and 54 of the National Criminal Code: A Paradigm Shift toward the Sentencing Stage

A solution to resolve the aforementioned regulatory impasse will not be found by amending Perja No. 15 of 2020 or Perpol No. 8 of 2021. This is because both are merely implementing regulations at the pre-adjudication stage that textually continue to bar the possibility of reconciliation for offenses involving the loss of human life. Instead, the provisions regarding sentencing objectives and guidelines enshrined in the overarching legislation itself provide a way forward: the National Criminal Code (Law No. 1 of 2023).¹³ Article 51 of the National Criminal Code expressly establishes four principal objectives of sentencing: preventing criminal conduct through the enforcement of legal norms; rehabilitating offenders so they may reintegrate as productive members of society; resolving conflicts arising from criminal acts by restoring social balance and promoting public security and harmony; and encouraging offenders to develop a sense of remorse while enabling them to overcome feelings of guilt. Notably, paragraph (c) explicitly incorporates restorative justice into the national philosophy of sentencing by recognizing conflict resolution, restoration of balance, and the promotion of social peace as fundamental objectives of criminal punishment. This approach aligns with Howard Zehr's postulate that a criminal act is fundamentally a violation of human relationships that demands a responsibility for restoration. This ethical principle is reinforced by Article 52, which mandates that the imposition of penal sanctions must not degrade human dignity a doctrine that positions both the offender and the victim as legal subjects whose existence must be respected, rather than merely as mechanistic objects within the machinery of the justice system.

Within the framework of this study, Article 54 provides the most operationally significant legal mechanism. Pursuant to Paragraph (1), judges are required to consider eleven non-exhaustive factors before determining an appropriate sentence. Among these are the offender's conduct and remedial efforts after the commission of the offense, together with any forgiveness extended by the victim and/or the victim's family. These statutory considerations create a legal basis for incorporating restorative elements into the sentencing process. These two variables are particularly relevant to analyzing cases of suicide resulting from bullying. Scope for restorative processes to influence the severity of criminal sanctions is provided through the assessment of the perpetrator's remorse and good faith. Furthermore, the explicit textual recognition of the element of "forgiveness from the victim's family" establishes a robust normative basis for the role of indirect victims. This provision also explicitly addresses Zehr's argument regarding the shift in the status of the primary victim to the surviving family members following the victim's death.

The most significant structural aspect of this legal framework lies in the fact that Articles 51 and 54 are codified as statutory-level norms governing the sentencing phase, rather than as sectoral implementing regulations such as Attorney General Regulation No. 15/2020 and National Police Regulation No. 8/2021 that regulate the discontinuation of prosecution. A logical consequence of this is that the categorical prohibition against "criminal offenses involving the taking of human life" which is inherent to those two implementing regulations does not automatically extend to the judicial sentencing phase. That prohibition was designed specifically for the context of early-stage case discontinuation, not for determining the type and severity of sanctions after a defendant's guilt has been proven legally and convincingly.¹⁴

Nevertheless, the need for an approach grounded in argumentative caution must be underscored in this analysis. The non-exhaustive and optional nature of the clause in Article 54 paragraph (1) indicates that utilizing this opportunity hinges entirely on the judge's courage and initiative to adopt a progressive interpretation. The provision does not impose a mandatory obligation to give substantive weight to the offender's remorse or the forgiveness extended by the victim's family, nor does it require these factors to influence the determination of the type or severity of the sentence.

C. Integrating Restorative Justice at the Sentencing Stage without Terminating Prosecution: A Hybrid Model

Under the hybrid model, restorative justice is not conceived as an alternative mechanism that replace criminal prosecution; instead, it is constructed as a framework that operates collaboratively within and through the sentencing process. The concept of the

¹³ Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana (KUHP Nasional).

¹⁴ Arafat, M. (2025). Paradigma Pemidanaan Baru dalam KUHP 2023: Alternatif Sanksi dan Transformasi Sistem Peradilan Pidana Indonesia. *Jurnal Jurisprudentie*

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term "hybrida" is derived from criminological thought that identifies fundamental weaknesses in the classical restorative justice model. Within the classical restorative justice model, restorative processes and formal criminal adjudication are commonly viewed as mutually exclusive mechanisms, requiring a choice between reconciliation and prosecution. The hybrid model offers an alternative by combining restorative measures with the formal criminal justice process, thereby accommodating the interests of victim restoration while preserving the protection of human rights and ensuring comprehensive legal certainty.

The proposed model is founded on the premise that the loss of life resulting from bullying-induced suicide represents a legal harm of such gravity that it cannot be adequately addressed through the mere discontinuation of criminal proceedings. Resolving the case at the pre-adjudication stage by terminating prosecution risks diminishing the state's recognition of the seriousness of the offense, as it prevents the issuance of a formal judicial determination of the offender's guilt. Conversely, conventional retributive systems have been empirically shown unable to redress the financial, sociological, and psychological losses suffered by secondary victims, as evidenced by an Indragiri Hilir District Court ruling that imposed a four-month prison sentence without including any provision for restitution to the heirs. Accordingly, the hybrid model is structured to ensure that criminal proceedings continue through to adjudication, including a comprehensive judicial assessment of adequate causation and the requisite element of intent under Article 462 of Law No. 1 of 2023. At the sentencing stage, however, restorative justice principles are incorporated through a progressive interpretation of Articles 51 and 54 of the National Criminal Code, allowing restorative considerations to inform the determination of an appropriate sentence without displacing the formal criminal process.¹⁵

In practice, once the defendant's guilt has been legally and convincingly established in court, the judge exercises the judicial authority granted under Article 54, paragraph (1), to weigh the forgiveness offered by the victim's family against the offender's expressions of remorse. These two variables do not serve as grounds for waiving the penalty; rather, they are utilized to determine the modification of the form and type of legal sanction. This hybrid model proposes that two mandatory, cumulative elements be incorporated into the judge's verdict, as follows;

- a. **Mandatory Restitution Obligation:** The perpetrator bears full financial responsibility for covering the costs of psychological trauma recovery for the victim's family. This measure may be implemented through a restitution claim filed via the Witness and Victim Protection Agency (LPSK) with the right to claim passing to the heirs or decreed directly by the judge as a specific condition within a supervised sentencing arrangement.
- b. **Non-Custodial Rehabilitative Sanctions:** The imposition of probationary supervision or community service is optimized as a substitute for or a complement to imprisonment. From a normative standpoint, community service is deemed appropriate for offenses carrying a penalty of less than five years of imprisonment, a quantitative threshold met by the maximum four-year prison sentence stipulated in Article 462 of Law No. 1 of 2023.

It is precisely at the intersection of these regulatory frameworks that the study advances its central normative synthesis. The configuration of the offense under Article 462 of Law No. 1 of 2023 serving as the sole doctrinal instrument for prosecuting perpetrators of bullying in fatal cases essentially meets the quantitative threshold established by Perja No. 15/2020, Perpol No. 8/2021, and Article 85 of the National Criminal Code regarding eligibility for community service sentencing, given that the prescribed penalty is less than five years. Consequently, the challenge preventing the victim's family from accessing restorative justice is not the severity of the potential sanction, but rather a categorical exclusion based on the classification of the act as a "crime against life." This analysis demonstrates that the proposed hybrid model does not seek to introduce a new legal norm in isolation. Rather, it reveals an internal inconsistency within Indonesia's positive legal framework, whereby the same quantitative threshold—a maximum penalty of less than five years—functions as an absolute barrier to restorative justice at the pre-adjudication stage, yet becomes a permissible basis for restorative considerations at the sentencing stage.

CONCLUSIONS

Based on the foregoing analysis, this study draws the following principal conclusions:

First, the extension of restorative justice to fatal offenses, including suicide resulting from bullying, is supported by a sound philosophical and juridical foundation. Such an approach is justifiable only through a reconceptualization of victimhood that recognizes a shift in legal subject status from the deceased primary victim to the surviving family members as indirect victims. This reconceptualization provides the normative basis for enabling the victim's family to participate meaningfully in restorative processes despite the irreversible loss of the direct victim. Viewed through Howard Zehr's philosophical lens, a criminal act is defined as an assault on human existence and social relationships, creating an obligation to redress the harm caused. Consequently, the absence of a living primary victim does not negate the fundamental question of "who has been harmed.". This approach is further supported by constitutional guarantees under Article 28G (1) of the 1945 Constitution and provisions within Law No. 39 of 1999 on Human Rights, as well as the most concrete instrument found in Article 7A of Law No. 31 of 2014, which explicitly grants heirs the right

¹⁵ Hafrida dan Usman. 2024. *Keadilan Restoratif (Restorative Justice) Dalam Sistem Peradilan Pidana*. Yogyakarta: Grup Penerbitan CV Budi Utama.

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to seek compensation and restitution when the victim is deceased. Thus, integrating restorative justice into cases involving fatal offenses is legitimate, though its implementation requires methodological caution to ensure it functions in a complementary capacity.

Second, Indonesia's positive legal framework has not yet structurally achieved an appropriate balance between victim restoration and the imposition of criminal sanctions in cases of this nature, notwithstanding the significant normative opportunities introduced by the enactment of the National Criminal Code (Law No. 1 of 2023). The two principal legal instruments governing the implementation of restorative justice during the pre-adjudication phase were designed exclusively for minor offenses and contain categorical exclusion clauses regarding crimes involving the loss of human life. This situation is exacerbated by a doctrinal gap between the evidentiary requirements for intent (*dolus*) under Article 462 of Law No. 1/2023 applicable to bullying offenders and the requirement for negligence (*culpa*), which serves as the sole avenue for restorative justice in offenses resulting in death. Because these two legal mechanisms operate within structurally separate and mutually exclusive frameworks, the victim's family is effectively deprived of access to restorative remedies at the very moment they are most needed. Nevertheless, Articles 51, 52, and 54 of the National Criminal Code create a new normative space that is not textually constrained by the same categorical exclusions, thereby providing a legal basis for incorporating restorative considerations into the sentencing process.

Third, this study proposes a normative synthesis by advancing a hybrid model as the most proportionate legal framework for reconciling the objectives of criminal deterrence with the need to provide meaningful restoration for the victim's family. The function of general deterrence, along with the state's acknowledgment of the gravity of the loss of human life, as mandated by Article 51(a) of the National Criminal Code, is preserved through the requirement to establish the perpetrator's culpability fully. Simultaneously, once a guilty verdict is rendered, judges can exercise the authority granted under Article 54(1) to modify the nature of the criminal liability. This modification is achieved by imposing a mandatory restitution obligation on the perpetrator to cover the costs of psychological trauma recovery for the victim's family, while also applying rehabilitative sanctions such as supervised release or community service as alternatives to conventional incarceration. Through this integrated framework, the objectives of criminal deterrence and psychosocial restoration are no longer treated as competing or mutually exclusive goals. Instead, they are reconciled as complementary components of a unified sentencing approach that simultaneously upholds offender accountability and addresses the needs of the victim's family.

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