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**Sentencing Reform and Restorative Justice: Normative Implications of  
Articles 74–83 of the New Criminal Procedure Code (KUHAP) for  
Reducing Prison Overcrowding in Banten**

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Article	Abstract
<p><i>Received: Des 02, 2025;</i> <i>Reviewed: Jan 07, 2026;</i> <i>Accepted: Feb 09, 2026;</i> <i>Published: Feb 26, 2026</i></p>	<p>This investigation tackles the ongoing challenge of inmate surplus in Indonesian correctional facilities, with a particular emphasis on Banten Province, where accommodations built for 4,642 individuals now accommodate 7,331. The paper explores the theoretical ramifications of Non-Judicial Case Resolutions, particularly the Restorative Justice (RJ) framework outlined in Articles 74–83 of the updated Indonesian Criminal Procedure Code (KUHAP), which is due to become operational on January 2, 2026. Employing a normative legal research approach, the analysis evaluates the regulatory basis for restorative settlements and the powers of investigators and prosecutors to halt legal proceedings. The primary issue revolves around evaluating whether this innovative legal tool upholds the core tenets of fairness and legal predictability. Findings indicate that integrating RJ into the revised KUHAP represents a vital advancement in tackling capacity issues. By rerouting eligible novice offenders via RJ, substantial alleviation of future burdens on Banten's prisons could be realized. Nonetheless, the efficacy of the RJ model depends on enhancing legal predictability, which has been undermined by discrepancies between the prior KUHAP and its enforcement guidelines. The study determines that bolstering restorative methods provides a viable strategy for diminishing overcrowding while safeguarding victim rights, on the condition that regulations are enforced uniformly and openly across all enforcement tiers.</p> <p><b>Keywords:</b> <i>Restorative Justice; New Criminal Procedure Code; Prison Overcapacity; Legal Certainty</i></p>

## 1. INTRODUCTION

The primary punishment framework in Indonesia has long relied on retributive justice, emphasizing penalties for offenders as recompense for their deeds (Bagaric &

Amarasekara). For many years, this sentencing philosophy has prevailed, ensuring that any crime proven beyond doubt in court leads to sanctions. Yet, applying this retributive model creates significant challenges in terms of victim rights and overall efficiency. For example, in burglary incidents, even though the culprit gets imprisoned, the affected party seldom recovers compensation for their losses, as the stolen goods are frequently irrecoverable (Hatapayo, K.S., 2023). Additionally, the approach neglects crime proportionality, as seen in the 2009 incident involving Grandma Minah, who was incarcerated for pilfering three cocoa pods, highlighting an inflexible and harmful legal enforcement (Hatapayo, K.S., 2023). A key outcome of this strict method is the persistent overcrowding in Indonesian correctional institutions, particularly severe in Banten Province. As of November 29, 2025, statistics show 7,331 inmates and detainees filling spaces meant for just 4,642 (sdppublik.ditjenpas.go.id). Should minor offenses keep going through courtroom proceedings, the likelihood of escalating prison capacity demands will only grow.

Hence, a core transformation in law enforcement strategies is essential, shifting to resolving criminal matters outside judicial settings via restorative justice (RJ) principles. Restorative justice redirects case management from conventional criminal trials to collaborative dialogues (Ariwibowo, R., 2013). It perceives wrongdoing not just as an offense against the state's abstract authority, but as a disruption to communal bonds and fairness. The focus lies in mending fractured ties and devising shared resolutions, rather than mere retribution (Zernova, M., 2016). The growth of restorative systems has surged, especially in European nations like the Netherlands from the 1990s, reaching a robust policy structure by 2012 (Wolthuis, A. et al., 2016). In Indonesia, the Police have shown dedication through Regulation No. 8 of 2021, effectively settling 15,811 cases using RJ methods from 2021 to 2022. This implementation demonstrates the model's promise in easing burdens on detention centers.

As a rule-of-law nation (*Rechtsstaat*), Indonesia mandates that all state actions must foster justice and uphold legal predictability (Wahidin, S., 2014). Although RJ holds great potential, it remains nascent and vulnerable, especially in its capacity to fully uphold these vital legal tenets. To bridge this divide, the revised Indonesian Criminal Procedure Code (KUHAP) incorporates provisions for Non-Judicial Dispute Resolution under RJ in Articles 74 to 83, effective from January 2, 2026. These rules are anticipated to offer a long-term fix for prison overcrowding. Drawing from the discussed concerns, this paper aims to examine the normative effects of Non-Judicial Case Settlements (Articles 74–83 of the New KUHAP) on inmate surplus in Banten's penitentiaries. In particular, the study addresses this query: In what ways can the enforcement of Restorative Justice, guided by the updated KUHAP and carried out by legal authorities, fulfill justice and legal certainty to alleviate Prison overcrowding?

## **2. MATERIALS AND METHODS**

### **A. Research Method and Approach**

The research method employed in this study is normative legal research, which is also known as library legal research. This approach is used to describe, explain, and critically analyze the implementation of the Restorative Justice (RJ) principle for the realization of the principles of justice and legal certainty within Indonesia's criminal justice system. As defined by Soerjono Soekanto, normative legal research is carried out by examining secondary data or library materials, which involves tracing and scrutinizing regulations and relevant literature concerning the problem under investigation (Soerjono Soekanto & Sri Mamudji, 2001).

### **B. Data Source and Materials**

This study utilizes secondary data, categorized as follows:

Primary Legal Materials): These materials consist of binding legal norms and regulations related to criminal procedure and restorative justice:

- a. The New Indonesian Criminal Procedure Code (KUHAP), specifically focusing on Articles 74–83 regarding Non-Judicial Case Settlement and Restorative Justice.
- b. The Police Regulation of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Criminal Cases Based on Restorative Justice.
- c. The Attorney General's Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice.

Secondary Legal Materials : These materials consist of legal literature that provides analysis and commentary on the primary legal materials:

- a. Legal Books and Legal Journals related to Retributive Justice, Restorative Justice theory, penal mediation, criminal procedural law, prison overcapacity, and the principles of justice and legal certainty.

Tertiary Legal Materials : These materials provide supporting information and statistics

- a. Official data related to the capacity and occupancy of correctional facilities (Lapas) in Indonesia. This includes specific numerical data on Banten Prison, which, as of November 29, 2025, showed 7,331 occupants in facilities designed for 4,642 (as sourced from <https://sdppublik.ditjenpas.go.id/>).
- b. Case examples and statistical data provided by law enforcement agencies, such as the Police Data: Between 2021 and 2022, the Indonesian National Police handled 275,500 criminal cases. Of the 170,000 resolved cases, 15,811 were successfully resolved through Restorative Justice. And Prosecution Data: Throughout 2022, the Prosecutor's Office resolved 1,454 cases using the restorative approach.

### **C. Data Analysis**

The data analysis technique used is qualitative legal analysis, applying the logical framework of legal interpretation. The primary method of analysis involves prescriptive analysis, which evaluates the coherence, relevance, and implications of the new legal norms (Articles 74– 83 of the New KUHAP) against the background problem (prison overpopulation) and the legal principles sought (justice and legal certainty).

## **3. RESULT AND DISCUSSION**

### **A. The Dominance of Retributive Theory and Its Implications on Prison Overcrowding**

For much of its history, Indonesia's criminal justice system has leaned heavily on the Retributive Theory of Punishment. This approach sees punishment as morally justified, arguing that offenders deserve it due to their actions (Aleksandar Fatic, 1995). At its heart, it assumes that individuals knowingly and willingly break the moral codes embedded in the law, turning punishment into a reflection of their ethical accountability and legal culpability. Retributivism mainly supports punishment as a form of payback. It treats crime as an unethical deed, demanding that the wrongdoer face equivalent consequences. Under this lens, sentencing stands apart from other objectives, with retribution as its only true goal (Van Bemmelen, 1997). Karel O. Christiansen outlines the key traits of this theory as follows:

- a. The core aim of punishment is fair retribution.
- b. Fair retribution serves as the end goal, not a tool for other purposes, like promoting societal well-being, which holds no real value here.
- c. Ethical wrongdoing is the sole basis for imposing penalties.
- d. The punishment must match the level of the offender's moral fault.
- e. Punishment looks backward, acting purely as condemnation without aiming to reform, rehabilitate, educate, or reintegrate the individual (M. Sholehuddin, 2004).

Implication on Overcrowding: The strict adherence to this unyielding theory plays a major role in piling up inmates. By zeroing in on "punishing" instead of "resolving," even small infractions that could be handled through community means get funneled into the formal court system, often resulting in jail time. This mindset overlooks the practical limits of our correctional institutions, exacerbating the strain on them.

### **B. Paradigm Shift: The Urgency of Restorative Justice as an Alternative Punishment**

Indonesia is striving to address the flaws in its penalty-centered, retributive justice framework by embracing Restorative Justice (RJ). Though this idea gained global traction in the 1960s (Eriyantouw Wahid, 2009), it presents a promising fresh outlook for the country. The United Nations describes it as a method to tackle criminal acts by weighing the interests of society, those harmed, and the perpetrators (New York: United Nations, 2006). Miriam Liebman points out that RJ focuses on healing victims and communities rather than merely penalizing the wrongdoer (Miriam Liebman, 2009). This resonates with Eva Achjani Zulfa's perspective, who sees RJ as a viable substitute for conventional criminal processes, stressing the active role of local groups and affected parties who are typically overlooked (Eva Achjani Zulfa, 2009). Put simply, RJ moves away from seeking revenge via severe consequences and instead aims to mend bonds and give everyone a voice. Picture face-to-face dialogues among victims, offenders, and neighbors to craft mutual agreements, instead of defaulting to jail terms. Such a method appears more compassionate and potentially better at curbing future crimes while addressing the damage caused.

To illustrate the growing adoption of RJ in Indonesia, recent figures from law enforcement highlight its practical impact. From 2021 to 2022, the Indonesian National Police managed a total of 275,500 criminal matters. Out of the 170,000 cases that reached resolution, a notable 15,811 were handled effectively through Restorative Justice approaches. This demonstrates how RJ can divert cases from traditional punitive paths, reducing the burden on overcrowded facilities and fostering community-based resolutions.

Further evidence comes from prosecutorial efforts, showing RJ's integration into official processes. In 2022 alone, the Prosecutor's Office successfully applied restorative methods to close 1,454 cases. These outcomes underscore RJ's potential to transform Indonesia's justice landscape, offering a humane alternative that prioritizes reconciliation over isolation, and aligning with global standards for more equitable outcomes.

### **C. Operational Effectiveness and Case Application of Restorative Justice**

The value and real-world impact of the Restorative Justice (RJ) approach shine through when tackling systemic challenges, especially in areas struggling with soaring inmate numbers, like Banten. Consider this actual instance of a successful case redirection: On Thursday, September 11, 2025, the Chief of the Banten High Prosecutor's Office (Kejati), Dr. Siswanto, S.H., M.H., joined by the Deputy Chief, Yuliana Sagala, S.H., M.H., and the Assistant for General Crimes, Jefri Penanging Makapedua, S.H., M.H., along with their team, took part remotely in a briefing (*exposé*) on halting a prosecution matter from the South Tangerang District Attorney (Kejari) using Restorative Justice guidelines, presented to the Deputy Attorney General for General Crimes. The matter centered on allegations under Article 44 Paragraph (1) of Law No. 23/2004 on Domestic Violence (PKDRT), carrying a top sentence of 5 years, or Article 80 Paragraph (1) of Law No. 35/2014 on Child Protection, with a maximum of 3 years and 6 months.

This instance met the standards outlined in Attorney General Regulation No. 15 of 2020 (now in line with the updated KUHAP), mainly due to:

- a. The accused had no prior offenses.
- b. The harmed parties (the suspect's spouse and child) had pardoned the suspect and agreed formally to make amends.
- c. The victims had fully healed from their injuries.
- d. The surrounding community reacted favorably to the RJ rollout.

This triumph in case diversion highlights RJ's strength: it delivers fairness via authentic reconciliation and stops another person from swelling the prison ranks unnecessarily. Optimism is high that by 2026, numerous additional matters will find closure through Restorative Justice, easing the strain on places like Banten Prison. The ongoing wins in these diversions depend on solid execution. What truly shapes the success of restorative justice initiatives is the depth of understanding and commitment from everyone involved, such as law enforcers (Kejati Banten), victims, and offenders (Susilawati et al., 2025). Tackling Banten's crisis at a deeper level relies on two key operational elements:

- a. **Expert Facilitation:** Involving skilled facilitators is crucial to promote fair discussions and steer participants to the mutual understanding needed for healing (Article 75 New KUHAP).

- b. **Collective Awareness:** Everyone must deeply understand restorative justice principles to participate willingly and meaningfully (Susilawati et al., 2025).

Thus, putting RJ into practice demands a thoughtful change, not just in legal rules but also in the skills and attitudes of those enforcing the law, to unlock its full promise as a way to ease the load on correctional centers.

#### **D. Normative Implications of Restorative Justice on Prison Overpopulation in Banten**

The rollout of Restorative Justice (RJ), especially through Articles 74–83 of the updated Criminal Procedure Code (KUHAP), plays a vital role in evaluating the situation at current correctional centers. Examining Overcrowding Figures: The push for out-of-court resolutions becomes even clearer with the ongoing issue of too many inmates in Banten Prison. Figures from the Directorate General of Corrections (Ditjenpas) as of November 29, 2025, show a stark gap:

Total Capacity: 4,642 inmates

Total Occupancy: 7,331 inmates

Excess/Overcrowding: 2,689 inmates

These numbers reveal that Banten's prisons are running at about 158% of their limit. If mechanisms for settling cases outside the courts (like RJ) weren't in place, this figure could easily climb even higher.

Effects of Current RJ Rollout: Even though the new KUHAP won't kick in until 2026, early steps via Police and Prosecutor guidelines have already proven how well this strategy works to cut down on potential new prisoners.

- a. **Police Figures:** From 2021 to 2022, the Indonesian National Police dealt with 275,500 criminal incidents. Out of the 170,000 that were closed, 15,811 were wrapped up successfully using Restorative Justice.
- b. **Prosecutor Figures:** In 2022, the Prosecutor's Office handled 1,454 cases through restorative methods.

Breaking It Down: Had those 15,811 police cases and 1,454 prosecutor ones gone to trial and led to jail time, the overcrowding problem in spots like Banten would have been disastrous. Weaving RJ into the new KUHAP (Articles 74–83) offers a firmer legal foundation to ramp up these reductions, making sure incarceration is seen as a final option (ultimum remedium) instead of the go-to solution.

#### **E. The Overcapacity Cycle: Contributing Factors and Negative Impacts**

The persistent overcrowding seen in places like Banten Prison stems from a tangled mix of physical shortcomings, flawed policies, and societal challenges, forming a vicious loop that keeps incarceration spiraling. This part pulls together the main drivers behind the crisis and their damaging effects, highlighting why Restorative Justice (RJ) is essential. The extreme

crowding, with Banten holding 7,331 inmates in a space meant for 4,642, is driven by four major elements:

- a. Insufficient physical space, where buildings simply can't handle the load, leading to cramped quarters that pack 6-8 people into rooms built for 4-5, which blatantly ignores basic standards.
- b. Harsh sentencing rules that lean toward jail for petty, non-violent crimes, often skipping options like fines or talks, so nearly every case winds up behind bars, quickly overwhelming the scarce spots.
- c. Rising crime and regional pressures, worsened by frequent offenses and the burden on central hubs like Banten to take in prisoners from wide areas, constantly pushing in more people than the system can cope with.
- d. Poor legal knowledge and repeat offenses, where low public awareness of the law boosts crime and encourages inmates to return 4-5 times, showing the current setup doesn't prevent or reform, thus keeping a steady stream of repeat offenders coming back.

This buildup of inmates brings serious downsides that weaken the whole prison framework, such as erosion of human rights from intense crowding that causes breakdowns in hygiene, air flow, and medical care, leading to degrading conditions that trample on inmates' basic rights. It also blocks social comeback, since jammed, stressful settings make it impossible to offer proper rehab, learning, or support programs, undermining the official aim of correction. Moreover, it fuels more repeat crimes, as failed rehab straight-up results in higher relapse rates, creating a cycle that amplifies overcrowding and exposes the flaws in the punishment-focused model. Finally, it poses safety threats, with rising tensions and density sparking more fights and unrest, endangering both prisoners and guards. All this proof points to the urgent need for policy changes not just to cut Banten's inmate numbers but to overhaul the justice system, putting emphasis on healing and prevention instead of expensive, useless confinement.

#### **F. The Restorative Justice Framework in the New KUHAP: Mechanisms and Normative Implications**

Picture a justice system that goes beyond mere penalties, aiming instead to repair the damage done and help everyone move forward. That's the essence of Restorative Justice (RJ) under Indonesia's updated Criminal Procedure Code (KUHAP). As outlined in Article 1 Paragraph 18, RJ focuses on resolving criminal matters by involving all key players—victims, perpetrators, their relatives, and the broader community—to collaborate and make things right again. This innovative method has real potential to alleviate the strain in overcrowded spots like Banten Prison, where many end up incarcerated for trivial offenses. RJ operates as an out-of-court resolution tool (Article 74 Paragraph 1), and it can begin early: during probes, inquiries, or even legal proceedings (Article 74 Paragraph 2). Prosecutors hold explicit powers to apply it (Article 61 letter j) and may halt charges if a just deal is secured (Article 67 Paragraph 2 letter g). This equips authorities with practical ways to sidestep needless imprisonments.

To ensure RJ is applied thoughtfully, core guidelines are in place (Article 75): the wrongdoer must be a newcomer to crime, a sincere reconciliation pact between the harmed party and offender is required, and the damage must be addressed—whether through pardon,

restitution of goods, financial amends, or repairs. On top of that, it's not suitable for all situations. RJ is excluded from grave offenses (Article 77), such as acts of terror, graft, assaults on life, crimes carrying over 5 years (except for unintentional ones), or threats to state security and public peace. This maintains equilibrium, reserving gentler handling for fitting cases.

The KUHAP streamlines the procedure for fairness and predictability. After the victim and offender sign a written accord, the investigator or prosecutor drafts a closure notice (Articles 78 and 81), which must receive judicial endorsement within 3 days (Articles 79 and 82). This defined pathway supports uniform use by enforcers, potentially slashing inmate rolls and addressing Banten's congestion issue. By emphasizing recovery over mere discipline, RJ presents a compassionate alternative for dealing with wrongdoing, benefiting those affected, the culprits, and the wider community

### **G. The Content of Restorative Justice in the New Criminal Procedure Code (KUHAP)**

The New Criminal Procedure Code (KUHAP) of Indonesia incorporates restorative justice mechanisms as an alternative approach to handling criminal cases. This sub-chapter outlines the key provisions related to restorative justice, emphasizing its role in promoting reconciliation, restitution, and community-based resolutions outside the formal court system. Restorative justice aims to restore the pre-offense state by involving victims, offenders, and relevant parties in a consensual process.

#### **Definition of Restorative Justice Mechanism**

Article 1 Paragraph 18 defines the Restorative Justice Mechanism as an approach in handling criminal cases that involves parties such as victims, victim's family, suspects, suspect's family, defendants, defendant's family, and/or other related parties, with the goal of restoring the original conditions.

#### **Authority of the Public Prosecutor**

Under Article 61, the Public Prosecutor has the authority to resolve cases through the Restorative Justice Mechanism. This includes:

- Conducting settlements via restorative justice (sub-point j).
- Issuing determinations to stop prosecution if restorative justice is achieved, as outlined in Article 67 Paragraph 2(g).

Article 67 further specifies grounds for stopping prosecution, including the achievement of case resolution through restorative justice, which must be documented in a determination letter. Notifications and copies of this letter are to be provided to the suspect, their family, advocate, detention officials, investigators, and judges.

#### **Implementation of Restorative Justice**

Article 74 states that restorative justice is implemented through out-of-court settlements at the levels of investigation, inquiry, and prosecution.

#### **Requirements for Out-of-Court Settlements (Article 75):**

- a. The offender must be a first-time offender.
- b. Restoration of the original state by the offender, suspect, defendant, or convict.
- c. Agreement for reconciliation between the victim and the offender, suspect, defendant, or convict.
- d. Restoration can include:
- e. Forgiveness from the victim and/or their family.
- f. Return of goods obtained from the crime to the victim.
- g. Compensation for victim's losses.
- h. Reimbursement of costs incurred due to the crime.
- i. Repair of damage caused by the crime.

**Procedures for Out-of-Court Settlements (Article 76):**

Initiated by request from the offender, suspect, defendant, or their family, and/or the victim or their family.

Offered by investigators, inquirers, or prosecutors to the victim and suspect.

Conducted without pressure, coercion, or intimidation.

**Exclusions from Restorative Justice (Article 77): Restorative justice does not apply to:**

- a. Crimes against national security, presidential dignity, foreign states, public order, and morality.
- b. Terrorism offenses.
- c. Corruption offenses.
- d. Victimless crimes.
- e. Crimes punishable by imprisonment of 5 years or more (except negligence).
- f. Crimes against human life.
- g. Crimes with specific minimum penalties.
- h. Certain crimes highly dangerous or harmful to society.
- i. Narcotics offenses (except for users).
- j. Out-of-Court Settlements at Investigation and Inquiry Levels

**Articles 78-80 detail settlements at these stages:**

- a. Agreements are made before investigators or inquirers, documented in a signed agreement letter.
- b. This leads to issuance of a letter to stop investigation (by investigators) or inquiry (by inquirers).
- c. The inquiry stop letter must be submitted to a judge within 3 days for approval.
- d. Further procedures are regulated by government regulations.
- e. Out-of-Court Settlements at Prosecution Level

**Articles 81-83 cover settlements at the prosecution stage:**

- a. Agreements are made before the prosecutor, documented in a signed agreement letter.
- b. This results in a prosecutor's determination to stop prosecution.
- c. The determination must be submitted to a judge within 3 days for approval.
- d. Further procedures are regulated by government regulations.
- e. Rights of Suspects or Defendants

Article 134 grants suspects or defendants the right to apply for restorative justice mechanisms (sub-point o), among other rights such as legal assistance, communication, and claims for compensation and rehabilitation.

#### 4. CONCLUSION

The persistent overcrowding in Banten Prison, where spaces built for 4,642 inmates now hold 7,331, highlights the pressing demand for sweeping changes in Indonesia's criminal justice framework. The heavy focus on retributive justice has worsened the problem by stressing penalties over solutions, resulting in needless jail time for small infractions and fueling a repeating pattern of congestion. Introducing Restorative Justice (RJ) tools in the updated Criminal Procedure Code (KUHAP), especially Articles 74–83, provides a legal avenue to tackle this challenge by allowing settlements outside the courtroom, which steer cases away from full trials and cut down on new prisoners, easing the load on detention centers.

Shifting from a punishment-driven to a restorative model is key to fixing the flaws in the old punitive system, which often neglects victim recovery or fair outcomes. RJ, as spelled out in Article 1 Paragraph 18 of the new KUHAP, stresses healing, repayment, and group participation to mend damage instead of just doling out consequences. This matches global norms and Indonesia's dedication to the rule of law, guaranteeing fairness via mutual pacts that bring back pre-crime stability, like pardons, reimbursements, and fixes for losses, while ruling out major crimes such as terrorism, bribery, and assaults on life.

Real-world proof from current RJ uses shows its practical value in easing overcrowding. Figures from police work in 2021–2022 indicate 15,811 matters settled via RJ from 170,000 total, and prosecutors wrapped up 1,454 in 2022, dodging possible court battles and lockups. A Banten example with domestic abuse demonstrates RJ's triumph in securing peace for novice offenders, relying on expert talks and shared understanding among parties. The new KUHAP's setup, mandating court sign-off in three days for closure notices, boosts clarity and openness, promoting steady use during probes, inquiries, and legal steps.

In essence, weaving RJ into the new KUHAP stands as a solid fix for Banten's congestion woes, as long as it's rolled out true to justice and legal principles. By championing restorative methods, Indonesia can lower repeat offenses, protect victim interests, and support community comeback, turning jails from packed storage into spots for reform. That said, results depend on thorough training for enforcers, solid rules, and constant checks to iron out past clashes between laws and their real-life use, opening doors to a kinder, more efficient justice setup. Looking ahead, the practical rollout of Restorative Justice is slated to pick up again in the field starting January 2, 2026, bridging the divide between ideal policies (*das sollen*) and actual on-the-ground realities (*das sein*), ensuring smoother enforcement and

greater impact on reducing prison loads.

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