

Reconciliation in Modern Penal Policy: a Strategy for Removing Guilt and Criminal Responsibility

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Abstract

The Indonesian Criminal Code (KUHP), enacted on December 6, 2022, establishes the principles of guilt and criminal responsibility in Article 36, while simultaneously expanding the scope of criminal liability beyond the requirement of the offender's fault. This provision opens the possibility of imposing criminal liability without fault (strict liability). In relation to the termination of prosecution, the KUHP also accommodates the settlement of disputes outside the court through a reconciliation mechanism. The inclusion of this provision has encouraged the researcher to examine the fundamental idea of out-of-court dispute resolution through reconciliation, and to conceptualize the ideal mechanism of reconciliation as a penal policy for eliminating guilt and criminal responsibility within the framework of modern penal policy. This study employs a normative juridical approach. The findings indicate, first, that the fundamental idea of out-of-court dispute resolution through reconciliation lies in



harmonization, the protection of victims, and the avoidance of the negative impacts of imprisonment. Second, the reconciliation mechanism must be carefully considered, and this research proposes a categorization of out-of-court dispute resolution in order to provide legal certainty.

Keywords

Reconciliation, Penal Policy, Guilt, Criminal Responsibility.

Introduction

In criminal law, we discuss acts defined in criminal regulations, along with their requirements, offenses, criminal guilt, responsibilities, and punishment as the sanction threatened against the perpetrator who commits an offense. The punishment will only be imposed on the perpetrator if they meet objective conditions, such as committing an act defined in the criminal regulations, unlawfulness, being threatened with punishment, and lack of justification. On the other hand, the perpetrator has blameworthiness in his mind, as a fault conditioned for punishment, as a subjective condition. So that the principle of No punishment without fault or no punishment without blameworthiness or *Gein Straft Zonder Schuld* applied well, this principle requires blameworthiness or fault as a condition for imposing punishment and is also known as the principle of humanity in the sentencing system.

In criminal law, the element of fault is the most complicated element to analyze and discuss, especially because it is related to the perpetrator's state of mind and its explanation, objective assessment in seeing the existence of fault, the meaning of fault in various perspectives, especially from an ethical, moral and normative perspective and its relation to criminal responsibility. This means that for criminal responsibility to exist, fault is required. How to assess that the perpetrator in his mind has fault and criminal responsibility at the same time? Even though it is very complicated, fault must be present in the punishment. Idhema said that

fault is the heart of criminal law, in the sense that criminal law will not be meaningful without fault. That is also why Moeljatno, in his dualistic teachings, separates fault from the deed, none other than to clarify the position of fault and criminal responsibility in an offense.

In the development of criminal law adopted by several modern countries, it is known that the granting of release from punishment by the state to the perpetrator is not because there is a justification for his offense (justification) or a reason for forgiveness attached to the perpetrator's mind (excuses), but because the victim grants forgiveness to the perpetrator voluntarily based on the perpetrator's confession and apology to the victim, which is known as reconciliation or taking a middle path in resolving conflicts in this case between the perpetrator and the victim.

In resolving criminal acts through reconciliation, forgiveness from the victim to the perpetrator usually takes the form of reparations for the losses suffered, though some victims simply forgive without demanding such reparations. In resolving criminal acts through reconciliation, the perpetrator's responsibility to the victim is considered complete either if the perpetrator fulfills the victim's demands to repair his losses, or if the victim does not demand repairs. With the victim's forgiveness, the perpetrator's responsibility in the criminal case is considered complete. In this reconciliation, the retributive element can also be satisfied by repairing the losses suffered by the victim as a result of the perpetrator's actions, without involving the state in the perpetrator's punishment.

Pardon does not currently have a place in criminal law; the mechanism of pardon is generally applied in the resolution of civil disputes by bringing the parties together to seek an amicable settlement, which commonly results in the payment of compensation to the aggrieved party. Such a pattern of settlement is naturally unknown in criminal law, as criminal law is accompanied by a set of sanctions, including capital punishment, imprisonment, confinement, or fines. In civil law, this model of resolution is relevant since its primary purpose is to protect private

rights, whereas criminal law is intended to impose deterrent and moral effects upon the perpetrator of a criminal offense; instead, it has a main place in restorative justice, which gives a special place to forgiveness and reconciliation. In forgiveness, the need to forgive is equally great for the injured party and the perpetrator; forgiveness is a process in which the injured party allows the perpetrator to be free and to be forgiven.¹

Within the framework of modern penal policy, conflict resolution is one of the primary objectives of the administration of criminal justice: to address conflicts arising from criminal acts, restore balance, and foster a sense of security and peace in society. This orientation signifies a paradigm shift in punishment from a purely repressive approach toward a more restorative model.

In line with the paradigm shift in punishment, reconciliation within modern penal policy is no longer understood merely as an alternative mechanism for resolving conflicts between offenders and victims. Rather, it is conceived as a normative strategy for removing guilt and criminal responsibility through the restoration of social relationships, acknowledgment of wrongdoing, and the victim's voluntary forgiveness. Reconciliation prioritizes the values of humanity, restoration, and substantive justice, thereby creating space to remove penal consequences without undermining the protection of public interests.

Nevertheless, although reconciliation has gained normative recognition in various modern criminal law instruments, the theoretical foundations and juridical boundaries of reconciliation as a basis for removing guilt and criminal responsibility have not yet been comprehensively articulated. This lack of clarity gives rise to fundamental issues, particularly concerning the normative justification of reconciliation within a criminal justice system that traditionally rests upon the principle of fault (*nulla poena sine culpa*), as well as the criteria and scope of criminal

¹ Eugene R. Milhizer, "Justification And Excuse : What They Were, What They Are, And What They Ought To Be," *St. John's Law Review* 78, no. 3 (2004): 251.

cases that may legitimately be resolved through reconciliation without undermining the principles of legal certainty and equality before the law.

Based on these issues, this study is formulated to address several key research questions, namely:

1. What is the basis for making reconciliation, removing guilt and criminal responsibility in modern penal policy?
2. What are the weaknesses of reconciliation as a strategy for removing guilt and criminal responsibility in modern penal policy?
3. How should the types of criminal offenses that may be resolved through reconciliation be regulated as a basis for terminating prosecution?

This research is novel compared to previous studies. For example, article The research conducted by Rusjdi Ali Muhammad, entitled Efforts of Reconciliation for the Settlement of Criminal Cases: Reactualization of Local Wisdom in Indonesian Criminal Law, published in *Legitimasi: Journal of Criminal Law and Legal Politics*, Volume 10 Number 2 of 2021,² explains that the mechanism of dispute resolution through reconciliation, particularly by utilizing customary law institutions, carries various advantages as well as values of local wisdom rooted in the community's legal awareness. Such principles of reconciliation are not only relevant for resolving civil disputes but should also be considered within the criminal law context. Consequently, the doctrine asserting that the criminal nature of a case remains inherent despite a reconciliation agreement ought to be reconsidered. Nevertheless, it must be emphasized that not all criminal acts are eligible for settlement through reconciliation. Serious crimes, such as premeditated murder and rape, must be excluded from the possibility of settlement by way of reconciliation. Although the study by Rusjdi Ali Muhammad has made an important contribution to

² Ali Muhammad Rusjdi, "Upaya Perdamaian Untuk Penyelesaian Perkara Pidana: Reaktualisasi Kearifan Lokal Dalam Hukum Pidana Indonesia," *Legitimasi: Jurnal Hukum Pidana Dan Politik Hukum* 10, no. 2 (2021), <https://doi.org/10.22373/legitimasi.v10i2.11339>.

examining reconciliation as a mechanism for resolving criminal cases based on local wisdom and customary law institutions, it still leaves several research gaps. First, Rusjdi Ali Muhammad's analysis primarily focuses on reconciliation as a conflict-resolution mechanism and as a means of reactualizing local wisdom, without providing an in-depth examination of reconciliation's position within the framework of national criminal law policy and the doctrine of modern criminal responsibility. Consequently, the relationship between reconciliation and the elimination of guilt and criminal responsibility has not been systematically analyzed. Second, the study does not fully elaborate on the philosophical foundations and normative justifications necessary to explain how reconciliation may be positioned not merely as an alternative dispute-resolution mechanism, but as a normative basis for eliminating guilt and criminal responsibility within a criminal justice system grounded in the principle of *nulla poena sine culpa*. In this regard, reconciliation is still understood mainly as a socio-cultural instrument rather than as an integral component of a modern penal paradigm oriented toward restorative justice. Third, although Rusjdi Ali Muhammad emphasizes that not all criminal offenses are eligible for settlement through reconciliation, the study does not formulate clear normative criteria and juridical limitations concerning the types of criminal offenses that may legitimately be resolved through reconciliation, nor does it examine the implications of such settlements for the termination of prosecution or the abolition of punishment within the framework of positive law. In light of these gaps, the present study seeks to go beyond previous research by conceptualizing reconciliation not merely as a conflict resolution mechanism rooted in local wisdom, but as a modern penal policy strategy with the potential to eliminate guilt and criminal responsibility, particularly within the context of national criminal law reform as embodied in Law Number 1 of 2023. The study conducted

by Naomi Renata Manihuruk,³ published on the official website of the Sumedang District Court in 2020 under the title *The Position of Reconciliation in the Criminal Justice System*. First, it examines how peace agreements are currently used to resolve criminal cases. Second, it analyzes the perspective on the application of peace agreements in criminal courts. Third, it explores how peace mechanisms are accommodated in the reform of the national criminal law system. Another study, conducted by Naomi Renata Manihuruk, was published on the official website of the Sumedang District Court in 2020, titled "The Position of Reconciliation in the Criminal Justice System." The study addresses three main issues. First, it examines how peace agreements are currently used to resolve criminal cases. Second, it analyzes the perspective on the application of peace agreements in criminal courts. Third, it explores how peace mechanisms are accommodated in the reform of the national criminal law system. According to Naomi Renata Manihuruk, peace within the positive legal system (before the enactment of Law Number 1 of 2023) had already been recognized in criminal case settlements. However, peace involving the victim, the offender, and the community remained limited in scope and was generally carried out outside the court. Second, the application of peace-through-reconciliation mechanisms in criminal proceedings does not eliminate the offender's guilt but merely serves as a mitigating factor in sentencing. Third, Naomi Renata Manihuruk proposes that, in the future development of positive criminal law, reconciliation in the settlement of criminal cases should not only function as a mitigating factor but also be capable of eliminating the offender's guilt. Although the study conducted by Naomi Renata Manihuruk has made an important contribution to explaining the position of reconciliation within the criminal justice system, it still leaves several conceptual and normative gaps. First, the study primarily offers a descriptive account of the practice

³ Renata Manihuruk Naomi, "Kedudukan Perdamaian Dalam Sistem Peradilan Pidana," 2020, https://pn-sumedang.go.id/file_lama/Paper 2 Perdamaian dlm pidana Naomi.pdf.

and recognition of reconciliation within positive law before the enactment of Law Number 1 of 2023, without providing an in-depth analysis of the paradigm shift in penal policy introduced by the new National Criminal Code. Second, although Naomi Renata Manihuruk proposes that reconciliation in the future may eliminate the offender's guilt, the study does not elaborate on the philosophical foundations, theories of criminal responsibility, and normative justifications necessary to explain how and why reconciliation can function as a basis for eliminating guilt and criminal responsibility within the framework of the principle of *nulla poena sine culpa*. Third, the study fails to formulate clear criteria, limitations, and the scope of criminal offenses that may, normatively, be resolved through reconciliation, with implications for the elimination of guilt. As a result, applying such a concept without well-defined parameters may lead to legal uncertainty if implemented broadly. Another article by Budi Suhariyanto,⁴ published in *Jurnal Rechtsvinding Media Pembinaan Hukum Nasional* Volume 6, Number 1, 2017, entitled *Peace Agreement Position in Dismissing Penalty Imposition*, essentially concludes that, normatively, a peace agreement between the perpetrator and the victim cannot serve as a basis for extinguishing criminal charges. Nevertheless, in judicial practice, some court decisions have employed evidence of reconciliation as grounds for releasing the defendant from criminal charges, a principle subsequently established as jurisprudence by the Supreme Court. Such jurisprudence is regarded as significant reference material in restoring the national philosophy of punishment grounded in the values of Pancasila, wherein reconciliation is positioned as one of the foundations for eliminating punishment within the Draft Criminal Code. The distinction of this study lies in its focus on criminal law policy as formulated in Law Number 1 of 2023, as well as its effort to re-

⁴ Suhariyanto Budi, "Kedudukan Perdamaian Sebagai Penghapus Pemidanaan Guna Mewujudkan Keadilan Dalam Pembaruan Hukum Pidana," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 6, no. 1 (2017), <https://dx.doi.org/10.33331/rechtsvinding.v6i1.127>.

conceptualize reconciliation within the Indonesian Criminal Code. Although the study by Budi Suhariyanto makes an important normative and empirical contribution by highlighting the tension between positive criminal law doctrine and judicial practice concerning peace agreements in criminal cases, several research gaps remain. First, the study primarily emphasizes the dichotomy between normative criminal law doctrine, which rejects peace agreements as a basis for extinguishing criminal liability, and judicial practice, in which courts have used reconciliation as a ground for releasing defendants from criminal charges. However, it does not sufficiently explore the theoretical reconstruction needed to bridge this gap within a coherent framework of modern criminal law policy. Second, while Budi Suhariyanto acknowledges Supreme Court jurisprudence that treats reconciliation as a basis for eliminating punishment and positions it within the philosophical values of Pancasila, the study does not elaborate a systematic theoretical foundation explaining how reconciliation can operate as a legitimate mechanism for eliminating guilt and criminal responsibility, particularly in relation to the principle of *nulla poena sine culpa*. As a result, reconciliation is discussed more as a judicial phenomenon and policy aspiration rather than as a fully articulated doctrinal concept in criminal law. Third, the study does not analyze reconciliation within the context of subsequent developments in national criminal law reform, particularly following the enactment of Law Number 1 of 2023 on the National Criminal Code. Consequently, the implications of reconciliation as an integral element of modern penal policy—especially its normative position, limitations, and criteria as a ground for terminating prosecution or abolishing punishment—remain insufficiently examined. Based on these gaps, the present study seeks to advance the discourse by focusing on criminal law policy as formulated in Law Number 1 of 2023, while ideally re-conceptualizing reconciliation as a normative strategy within the Indonesian Criminal Code for removing guilt and criminal

responsibility in accordance with restorative justice principles and the philosophical foundations of Pancasila.

Therefore, this study seeks to fill the gap in the discourse on modern penal policy by analyzing reconciliation as an alternative mechanism to remove guilt and criminal responsibility, emphasizing its alignment with restorative justice principles.

Method

In this research, the author employs a normative juridical or doctrinal approach. According to Soerjono Soekanto, normative legal research—also referred to as library-based legal research—is a type of legal study that examines library materials or secondary data as the primary sources of analysis. This approach involves tracing and analyzing statutes and legal literature relevant to the legal issues under examination.⁵ Meanwhile, according to Abdul Qadir Muhammad, normative legal research is theoretical legal research or dogmatic legal research, as it does not examine the application or implementation of law in practice.⁶ This research employs several approaches, including statutory, case, conceptual, and comparative.

This study employs a descriptive-analytical legal research method to present factual data and realities in the field. Subsequently, it analyzes them using primary, secondary, and tertiary legal materials obtained through library research. The specification of this research is intended to analyze the concept of reconciliation from the perspective of modern penal policy.

⁵ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)* (Jakarta: Rajawali Press, 2006).

⁶ Abdulkadir Muhammad, *Hukum Dan Penelitian Hukum* (Bandung: Citra Aditya Bakti, 2004), 102.

The statutory regulations used in this research include Law Number 1 of 2023 on the Criminal Code, Law Number 11 of 2012 on the Juvenile Criminal Justice System, Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution, Supreme Court Regulation Number 1 of 2024 on Guidelines for Adjudicating Criminal Cases Based on Restorative Justice, Attorney General Regulation Number 15 of 2020 on the Termination of Prosecution Based on Restorative Justice, and Regulation of the Chief of the Indonesian National Police Number 8 of 2021 on the Handling of Criminal Offenses Based on Restorative Justice.

The data collection techniques employed in this research consist of library and document studies that examine primary, secondary, and tertiary legal materials related to reconciliation from the perspective of modern penal policy.

Result and Discussion

A. The Basis for Making Reconciliation, Removing Guilt and Criminal Responsibility in Modern Penal Policy

Reconciliation is a process aimed at establishing an agreement or achieving reconciliation between parties engaged in a conflict or dispute. The reconciliation process often involves negotiation, mediation, or various diplomatic efforts to achieve a resolution that is beneficial and satisfactory to all parties involved.⁷

The concept of reconciliation, which, in essence, constitutes an agreement to restore and harmonize relationships within civil law, is closely aligned with the notion of peace. The establishment of peace primarily serves to resolve disputes and eliminate any remaining issues between the parties concerned. Over time, the use of peace mechanisms

⁷ Yuni Priskila Ginting, "Penyelesaian Perkara Pidana Di Luar Pengadilan Berdasarkan Asas Ultimum Remedium," *The Prosecutor Law Review* 02, no. 1 (2024): 78.

has led to a significant increase in the resolution of criminal cases in Indonesia. This process is applied not only in cases involving juvenile offenders but also incorporated into the juvenile justice system through diversion mechanisms. Furthermore, a similar approach has been employed in the settlement of minor criminal offenses committed by adults.

Restorative justice, on the other hand, has emerged as a response to criminal behavior, focusing on offender restitution and the resolution of issues arising from crime. This approach brings together victims, offenders, their families, and the community to facilitate a process of restoration. The mechanisms involved include direct mediation and conflict resolution between the parties; nevertheless, from a regulatory standpoint.

The key differences between mediation/settlement in civil law and criminal law can be seen from several aspects:

1. Case Focus

In civil law, mediation or settlement generally deals with disputes between individuals, companies, or organizations, such as those concerning contracts, property rights, or similar matters. Meanwhile, in criminal law, mediation is used to resolve disputes arising from criminal acts between the offender and the victim, with the primary aim of restoring relationships or achieving reconciliation.

2. Parties Involved

In civil mediation, the parties involved are usually limited to those directly engaged in the dispute, such as parties to a contract or agreement. In criminal mediation, however, the participants include the offender, the victim, and sometimes the community or third parties affected by the crime.

3. Resolution Goals

The purpose of civil mediation is to find a fair and mutually beneficial solution, often through compromise or a middle ground. In contrast,

criminal mediation is oriented toward compensating the victim, reconciling the parties, and rehabilitating the offender.

4. Legal Regulation

Mediation in civil law tends to be more flexible and less rigid in terms of procedures and regulations. On the other hand, mediation in criminal law is governed more strictly due to the serious legal consequences of criminal acts.

5. Legal Consequences

Agreements reached in civil mediation are usually formalized into legally binding contracts that can be enforced in court. By contrast, criminal mediation focuses more on restoring relationships and rehabilitation rather than imposing formal legal consequences.

In conclusion, although civil and criminal mediation differ in nature, both share the common goal of providing a satisfactory resolution for the parties involved, whether in disputes or criminal cases.

Reconciliation is considered the most appropriate means of resolving disputes, as conflicts between parties generally create tension or, at the very least, disrupt harmony in their relationship. If left unresolved, such disharmony may intensify over time, leading to deep hostility and hatred, thereby destroying good relations and familial bonds. To restore a harmonious relationship between the disputing parties, both sides' wishes must be accommodated so that each party feels satisfied and mutual harmony can be reestablished. The satisfaction referred to is not limited only to the substance (material) of the dispute but also includes psychological satisfaction. This can be achieved through the peaceful resolution of disputes.

The institution of reconciliation within the national legal system has long been established, particularly in the settlement of civil cases. The application of reconciliation mechanisms (*dading*) is stipulated in Article 130 of the HIR/Article 154 of the RBg and in Law Number 30 of 1999

on Arbitration and Alternative Dispute Resolution. This law has created a special space for alternative dispute resolution mechanisms outside the litigation process.

Mediation is also recognized in criminal cases; however, its application to resolving criminal matters through reconciliation involving the victim, the offender, and the community remains limited and is generally conducted outside the court process. In this context, it is referred to as penal mediation. The basis for penal mediation In criminal matters, Barda Nawawi Arief has proposed mediation as part of legal reform, which includes, among others, the idea of victim protection, the idea of harmonization, the idea of restorative justice, the idea of overcoming rigidity or formalism in the existing system, and the idea of avoiding the negative effects of the current criminal justice and sentencing system, particularly in seeking alternatives to imprisonment (alternative to imprisonment/alternative to custody). In addition, it also aims to reduce case backlogs and simplify judicial processes.⁸ The existence and implementation of penal mediation take place outside the judicial process.

The concept of reconciliation as part of restorative justice had, in fact, obtained a normative foundation even before the enactment of Law Number 1 of 2023 on the National Criminal Code. At the investigative stage, Regulation of the Indonesian National Police Number 8 of 2021 on the Handling of Criminal Offenses Based on Restorative Justice grants investigators the authority to resolve criminal cases outside the court through a reconciliation mechanism between the offender and the victim, subject to certain conditions. These conditions include voluntary agreement, restoration of the victim's losses, and the absence of public objection.¹ This regulation explicitly allows for the termination of investigations in the interest of restorative justice, thereby positioning

⁸ Zaidan M Ali, "Dari Rehabilitasi Menuju Rekonsiliasi (Kasus Kelompok Rentan Berhadapan Dengan Hukum)," *Doctrinal* 1, no. 2 (2016): 16, <https://jurnal.um-palembang.ac.id/doktrinal/article/view/379>.

reconciliation not merely as a sociological consideration but as a juridical basis for halting the criminal process.

Furthermore, at the prosecution stage, Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 on the Termination of Prosecution Based on Restorative Justice affirms the authority of public prosecutors to discontinue prosecution when reconciliation has been achieved between the suspect and the victim and specific criteria are met. These criteria include the relatively minor nature of the offense, the absence of recidivism, and the restoration of the original condition. The existence of this Prosecutorial Regulation demonstrates a shift in prosecutorial policy from a retributive paradigm to a restorative one, in which reconciliation is regarded as capable of restoring social relations and eliminating the need for formal punishment.

Both regulations constitute an important foundation for the emergence of modern penal policy, which was subsequently codified more systematically in Law Number 1 of 2023. Through provisions permitting the termination of prosecution based on an out-of-court settlement, the National Criminal Code affirms reconciliation as a legitimate instrument of penal policy, albeit subject to specific limitations and criteria. Accordingly, the Police and Prosecutorial Regulations function not merely as sectoral regulations, but also as a normative bridge toward the reconstruction of the concepts of guilt and criminal responsibility within the framework of modern penal policy oriented toward restorative justice.

In criminal court practice before the enactment of Law Number 1 of 2023 on the Indonesian Criminal Code, reconciliation between the victim and the offender was generally regarded by most judges as a mitigating factor in rendering their verdicts. However, such reconciliation did not automatically eliminate criminal liability or negate the acts committed by the defendant, even though the offender had made a joint statement and the victim essentially declared that the victim had forgiven the defendant and would not pursue charges against the defendant for the offense, and

even requested the authorities to release the defendant from punishment. The reasons in judicial practice why reconciliation between the victim and the offender cannot eliminate punishment, according to Alef Musyahadah, include the following:⁹

- a. The case in question is not a complaint-based offense, thus reconciliation cannot eliminate criminal liability;
- b. Reconciliation between the victim and the offender serves merely as a humanitarian consideration in sentencing, such as when the offender is young, pregnant, or the breadwinner of the family; and
- c. In criminal cases, reconciliation is still possible at the investigation stage. In contrast, once the case has reached the court stage and is being examined at trial, the judge will proceed based on the indictment submitted by the public prosecutor.

In judicial practice, reconciliation that results in the victim's forgiveness is generally regarded by judges as a mitigating factor in sentencing. Nevertheless, beyond such common practice, the North-East Jakarta District Court Decision Number 46/Pid/78/UT/Wanita constitutes an exception: the defendant was acquitted of all criminal charges based on reconciliation. At the judicial level, the case was directed to be resolved through an amicable settlement between the victim and the defendant. Once both parties reached a reconciliation agreement, the court ruled that the defendant was released from all legal charges.

Considering that the court therefore took into account the agreement between the parties regarding an amicable settlement, even though the defendant, by her own confession as well as other supporting evidence, was proven to have committed the alleged acts—whether the primary, subsidiary, or further subsidiary charges—of which the primary charge was deemed attributable to the defendant. Furthermore, the witness, Devy,

⁹ R Alef Musyahadah, "Kedudukan Perdamaian Antara Korban Dengan Pelaku Tindak Pidana Dalam Sistem Pemidanaan" (University Diponegoro, 2005), 142–43.

was advised to extend an apology to the defendant, which the latter accepted, thereby indicating that the matter between them had been resolved.

Considering that such a statement is worthy of attention, insofar as there has not yet been jurisprudence on the matter, it is nonetheless neither excluded nor prohibited for the court to take such a settlement into account. Accordingly, the court, on this occasion, shall consider the following:¹⁰

- a) That the essence of judicial proceedings and the delivery of justice is to restore the “imbalance” or disruption of relationships among members of society, whether in a general or specific sense, caused by an individual’s act;
- b) That in this case, as reflected in the statement and acceptance of an apology, as well as the agreement or willingness to provide compensation between the parties, the harm caused by the act has been remedied. Therefore, the court finds no fundamental reason to apply the law literally to the proven act, as the imposition of punishment would in fact create—or at the very least leave behind—psychological harm that need not persist between the parties;
- c) That in the resolution of disputes through familial or amicable means, whether before or during trial, the court is justified in considering such a settlement, pursuant to Article 14 paragraph (1) of Law Number 14 of 1970. Acting as a prudent judge, and in light of the restored relationship between the parties, the proven act may thus no longer be deemed one that warrants criminal punishment.

The ruling, given the aforementioned legal considerations, is noteworthy because the reconciliation between the offender and the victim

¹⁰ Sudirman Antonius, *Hati Nurani Hakim Dan Putusannya: Suatu Pendekatan Dari Perspektif Ilmu Hukum Perilaku (Behavioral Jurisprudence) Kasus Hakim Bismar Siregar* (Bandung: Citra Aditya Bakti, 2007), 202.

formed the basis for the defendant's release from all legal charges. The panel of judges found no fundamental reason to impose criminal punishment for the act and therefore declared the defendant free from all legal charges.

Under the current penal policy, the Indonesian National Criminal Code provides for dispute resolution outside the court through a reconciliation process as grounds for the termination of prosecutorial authority, as stipulated in Article 132 of the Indonesian National Criminal Code. The formulation of the article is as follows.

Article 132

- (1) The authority to prosecute shall be declared null and void if:*
- a. There is a court decision that has obtained permanent legal force against any person for the same case;*
 - b. the suspect or defendant passes away;*
 - c. the statute of limitations has expired;*
 - d. the maximum fine penalty is paid voluntarily for a criminal offense punishable solely by a fine of up to Category II;*
 - e. the maximum Category IV fine is paid voluntarily for a criminal offense punishable by imprisonment of up to one (1) year or by a fine of up to Category III;*
 - f. the complaint is withdrawn in the case of a complaint-based offense;*
 - g. a settlement has been reached outside the judicial process as regulated by law; or*
 - h. an amnesty or abolition has been granted.*
- (2) Provisions concerning the expiration of the authority to prosecute in relation to corporations shall take into account the provisions referred to in Article 121.*

This provision indicates that the state recognizes reconciliation as a lawful ground for terminating criminal proceedings, while at the same

time negating the offender's criminal liability even though the elements of the criminal offense have been fulfilled.

From the perspective of modern penal policy, the removing of guilt and criminal liability through reconciliation can be legally justified. Cavadino and Dignan argue that punishment is appropriate only when it yields greater social benefits than non-penal alternatives. Where the objectives of restoration, prevention, and community protection can be achieved through reconciliation mechanisms, the use of imprisonment or other formal criminal sanctions becomes disproportionate.¹¹

Accordingly, reconciliation serves as a rational basis for negating criminal-law consequences. The recognition of reconciliation as grounds for the elimination of criminal liability is also evident in modern penal policies across various countries. Many contemporary legal systems acknowledge that, in certain cases—particularly minor offenses or personal offenses—out-of-court settlement through restorative mechanisms is more effective than formal litigation. This approach not only reduces the burden on the criminal justice system but also enhances victim satisfaction and encourages offenders' moral accountability.¹²

The idea of reconciliation in the reform of the Indonesian National Criminal Code cannot be separated from the modern punishment paradigm, namely the restorative approach. The restorative approach emphasizes that punishment is an effective means of securing the interests claimed to justify penal sanctions. Not only as an explanation of the adherents of rehabilitation, that things that can reduce offense rates can be achieved more effectively, through social and economic policies, and the improvement of the rights (power and benefits) of victims can be protected more effectively through compensation or reparation. As stated by Braithwaite and Petit, and by Cavadino and Dignan, with the same general

¹¹ Michael Cavadino and James Dignan, *The Penal System: An Introduction*, 4th ed. (London: Sage Publications, 2007), 44–46.

¹² Tony F. Marshall, *Restorative Justice: An Overview* (London: Home Office, 1999), 7–9. https://www.antoniocasella.eu/restorative/Marshall_1999-b.pdf

perspective, urge that, in dealing with cases, the first choice in responding to an offense must be the opportunity for the perpetrator to voluntarily offer restitution or compensation to the victim. If it is not possible (the perpetrator does not have the money to replace the victim's property), then the victim must receive compensation from the state and repairs from the perpetrator.¹³ Imprisonment and detention are used only when it can be shown that there is a need for community protection, and non-custodial sentences, such as probation or community service, are imposed only when the perpetrator is unwilling to make improvements.

Restorative justice emphasizes “right relationships” rather than “right rules”. The important task of justice here is to restore the balance of relationships that have been damaged by crime (victim-offender; victim-offender-community; offender-community; offender-family) rather than ensuring that the rule of law has been followed, interpreted, and applied correctly.¹⁴ The restorative justice paradigm has emerged as a more humane and effective solution within the modern penal system.¹⁵

This aligns with the essence of the purpose of punishment in the context of Pancasila, as put forward by Muladi, namely that what must first be internalized is a fundamental, multidimensional approach to the impacts of crime. Thus, the objective of punishment is to repair the damage, both individual and social, caused by criminal acts.¹⁶

In principle, deliberation (as embodied in the fourth principle of Pancasila), which serves as a means of reconciliation leading to forgiveness between the offender and the victim, as well as their families and the broader community concerned, constitutes a central element of dispute

¹³ Hudson Barbara A., *Understanding Justice An Introduction to Ideas, Perspectives and Controversies in Modern Penal Theory* (Philadelphia: Open University Press, 1996), 72.

¹⁴ Hudson Barbara A., *Ibid*, 78.

¹⁵ Pramita Salsabila Ayu, “Penerapan Restorative Justice Dalam Penologi Modern: Alternatif Pemidanaan Di Era Reformasi Hukum,” *Jurnal Kajian Hukum Dan Kebijakan Publik* 2, no. 2 (2025): 906, <https://doi.org/10.62379/dj83v892>.

¹⁶ Eko Soponyono, “Kebijakan Perumusan Sistem Pemidanaan Yang Berorientasi Pada Korban,” *Masalah-Masalah Hukum* 41, no. 1 (2012): 40, <https://doi.org/10.14710/mmh.41.1.2012.29-41>.

resolution patterns that have historically and sociologically existed across various communities in Indonesia.¹⁷ Since the pre-colonial era, it was later eroded during the colonial period, which demanded the application of positivism and legal codification.¹⁸ characterized by individualism.

Although reconciliation is regarded as a progressive breakthrough in modern criminal law and a manifestation of the restorative justice paradigm, its implementation in practice is not without weaknesses that may affect both its effectiveness and legitimacy. These weaknesses must be critically examined to ensure that reconciliation does not instead give rise to new forms of injustice within the criminal justice system.¹⁹

First, the effectiveness of reconciliation is highly dependent on the active and voluntary participation of the parties involved, namely the victim, the offender, and their respective families. The state or law enforcement authorities cannot impose reconciliation, as its essence lies in the parties' willingness and good faith to engage in dialogue and reach a mutual agreement. Where one party—particularly the victim—refuses to participate, the reconciliation process becomes difficult to carry out and may even fail. This situation frequently arises in criminal cases involving intense emotional dimensions, such as violent crimes or sexual offenses, where victims are often not psychologically prepared to confront the offender.²⁰

Second, reconciliation conducted without sufficient caution may result in injustice, particularly for victims. In practice, victims often occupy a weaker position, whether socially, economically, or psychologically, such that their consent to reconciliation does not always stem from genuine free will. Victims may feel “compelled” to forgive the

¹⁷ Surbakti Natangsa, *Peradilan Restoratif: Dalam Bingkai Empiris, Teori Dan Kebijakan* (Yogyakarta: Genta Publishing, 2015), 295.

¹⁸ Huijbers Theo, *Filsafat Hukum Dalam Lintasan Sejarah* (Yogyakarta: Kanisius, 1982), 119.

¹⁹ Muladi, *Kapita Selekt Sistem Peradilan Pidana* (Semarang: Badan Penerbit Universitas Diponegoro, 1995).

²⁰ Howard Zehr, *The Little Book of Restorative Justice* (New York: Good Books, 2002), 25.

offender to achieve a peaceful settlement or to terminate criminal proceedings, despite being psychologically unready. Such circumstances may lead to re-victimization, whereby the victim experiences renewed suffering as a result of the dispute-resolution mechanism itself.²¹

Third, the excessive orientation toward offender rehabilitation constitutes another significant weakness of reconciliation. In many cases, the attention of law enforcement officials and society is more heavily directed toward rehabilitating the offender and facilitating their rapid reintegration. At the same time, offender rehabilitation is indeed an important element of restorative justice; its dominance risks marginalizing the interests of victims. Within the restorative justice framework, victims should be positioned as central subjects whose rights and interests must be restored. An imbalance of this nature may generate frustration among victims and ultimately erode public trust in the criminal justice system.²²

Fourth, the reconciliation process also entails the risk of causing additional trauma to victims. Reconciliation typically requires direct interaction between the victim and the offender, whether through mediation or restorative dialogue. For victims who have suffered deep psychological harm, such encounters may aggravate trauma and prolong emotional distress. In the absence of adequate legal safeguards and proper psychological assistance, reconciliation may paradoxically produce outcomes contrary to its intended restorative objectives.²³

Fifth, in practice, reconciliation tends to be narrowly focused on material compensation. This approach raises concerns because the harm suffered by victims of crime is not always material in nature. Non-material losses—such as emotional suffering, loss of personal security, psychological

²¹ joanna Shapland et Al, "Situating Restorative Justice within Criminal Justice," *Theoretical Criminology* 10, no. 4 (2006): 505–32, <https://doi.org/10.1177/1362480606068876>.

²² Andrew Ashworth, *Sentencing and Criminal Justice* (Cambridge: Cambridge University Press, 2010), 85.

²³ John Braithwaite, *Crime, Shame and Reintegration* (Cambridge: Cambridge University Press, 1989), 55.

trauma, and damage to social reputation—are often difficult or impossible to remedy through financial compensation alone. When these non-material dimensions are overlooked, reconciliation loses its substantive meaning as a comprehensive mechanism of recovery.²⁴

Sixth, reconciliation in criminal law also encounters both structural and cultural barriers to implementation. Structural obstacles include limited resources for law enforcement agencies, the absence of comprehensive, uniform guidelines, and inadequate facilities to support reconciliation processes. Cultural barriers, on the other hand, relate to social and economic conditions, cultural backgrounds, and public perceptions that continue to view punishment as the primary manifestation of justice. In societies where a culture of retribution remains strong, reconciliation is often perceived as unjust or as a sign of state weakness in enforcing criminal law.²⁵

Accordingly, while reconciliation possesses significant potential as an instrument for eliminating fault and criminal liability within modern penal policy, its application must be accompanied by clear limitations, procedures, and safeguards. Without careful regulation, reconciliation risks deviating from the core objectives of restorative justice and may ultimately undermine victim protection and the legitimacy of the criminal justice system itself.²⁶

B. The Ideal Conceptualization of Reconciliation for Removing Guilt and Criminal Responsibility in Modern Penal Policy

Within the framework of modern penal policy, the concept of reconciliation as a basis for resolving criminal cases outside the court

²⁴ Antony Duff, *Penal Theory and Practice: Tradition and Innovation in Criminal Justice* (Oxford: Manchester University Press, 1994), 147.

²⁵ Barda Nawari Arief .Op.Cit. 112- 114

²⁶ Cavadino, Michael, and James Dignan, *The Penal System: An Introduction*, 5th ed. (London: Sage Publications, 2013), 36–38.

process is not novel. Several countries with well-established legal traditions, such as Germany, the Netherlands, and Japan, have long integrated reconciliation mechanisms into their criminal justice systems. These three countries are particularly relevant as comparative models for Indonesia because, despite differences in their legal traditions and system characteristics, they all position reconciliation as a strategic instrument within penal policy that is oriented toward restoration and the repair of social relations.

a. Comparison with Other Countries

1. Germany

Germany regulates reconciliation in criminal law through the concept of Täter-Opfer-Ausgleich (TOA), or victim–offender mediation. This mechanism is normatively recognized in §46a of the German Criminal Code (Strafgesetzbuch/StGB) and §153a of the German Criminal Procedure Code (Strafprozessordnung/StPO). Pursuant to these provisions, reconciliation may serve as a basis for sentence mitigation, suspension of prosecution, or even termination of proceedings, provided that the offender voluntarily undertakes restorative measures toward the victim.

The German approach emphasizes that punishment is not solely aimed at retribution, but also at restoring the social balance disrupted by criminal conduct. Reconciliation is thus viewed as a means of eliminating or at least reducing guilt and criminal responsibility, particularly in cases of a personal nature that do not pose a serious threat to the public interest. This model demonstrates that reconciliation can serve as a rational justification for the negation of formal criminal law consequences.

In the German criminal justice system, however, the application of reconciliation through the Täter-Opfer-Ausgleich (TOA) mechanism is not absolute. Rather, it is subject to several normative

and substantive criteria intended to balance the interests of the victim, the offender, and the public.

First, reconciliation must be carried out based on the voluntary participation of both the victim and the offender, without coercion or pressure from law enforcement authorities or other parties. This principle of voluntariness constitutes a fundamental prerequisite for ensuring the legitimacy of the reconciliation process and for preventing the misuse of restorative mechanisms in criminal law.²⁷

Second, reconciliation requires the offender's acknowledgment of wrongdoing regarding the criminal act committed. Within the TOA framework, such acknowledgment is not merely a formality but reflects the offender's moral awareness and personal responsibility for the consequences of the offense. In the absence of such acknowledgment, reconciliation loses its ethical and juridical foundation as an instrument for eliminating or reducing guilt and criminal liability.²⁸

Third, the offender is required to undertake concrete restorative efforts toward the victim, whether in the form of material compensation, non-material restoration, an apology, or other forms of reparation agreed upon by the parties. These restorative measures serve as indicators that the social imbalance caused by the criminal act has been substantively remedied. In this context, restoration is regarded as more significant than the mere imposition of formal punishment.²⁹

Fourth, reconciliation in German criminal law is generally applied to cases of a personal nature that do not pose a serious threat to the public interest. Accordingly, the TOA mechanism is more

²⁷ Barda Nawawi Arief, *Mediasi Penal: Penyelesaian Perkara Pidana Di Luar Pengadilan* (Semarang: Pusaka Magister, 2010), 45–46.

²⁸ Claus Roxin, *Criminal Law: General Part, Vol. I* (Oxford: Oxford University Press, 2006), 88–90.

²⁹ John Braithwaite, *Restorative Justice and Responsive Regulation* (Oxford: Oxford University Press, 2002), 55–57.

relevant to minor to medium-level offenses involving direct relationships between the offender and the victim, rather than to serious crimes that have a broad impact on public order and societal security.

Fifth, the outcome of reconciliation must be consistent with the interests of justice and the protection of society, such that its application remains subject to the supervision and assessment of law enforcement authorities, particularly prosecutors and judges. Although reconciliation may serve as a basis for sentence mitigation, suspension of prosecution, or termination of proceedings, the final decision must still take into account proportionality, legal certainty, and the public interest as a whole.³⁰

When these criteria are fulfilled, reconciliation in German criminal law functions not merely as a mechanism for resolving conflicts between offenders and victims, but also as a rational justification within modern penal policy for eliminating or reducing guilt and criminal responsibility, without disregarding the principles of justice and the protection of society.

2. Japan

Japan has developed the concept of reconciliation in criminal law primarily through law-enforcement practices and a legal culture that emphasizes social harmony (*wa*). Within the Japanese criminal justice system, reconciliation is not formally codified as an independent legal institution; rather, it is reflected through a combination of apology, compensation, and the exercise of prosecutorial discretion.³¹

Apology occupies a particularly significant position in Japanese legal culture. It is not understood merely as a symbolic formality, but

³⁰ §46a German Criminal Code (Strafgesetzbuch) dan §153a German Criminal Procedure Code (Strafprozessordnung).

³¹ David T. Johnson, *The Japanese Way of Justice: Prosecuting Crime in Japan* (Oxford: Oxford University Press, 2002), 37–40.

as an expression of the offender's moral responsibility toward the victim and society. A sincere apology, usually accompanied by profound remorse, often serves as a key indicator for law enforcement authorities when assessing the offender's seriousness in rectifying the wrongdoing. In many criminal cases—especially those of a personal nature that do not have a broad impact on the public interest— an authentic apology may influence the prosecutor's decision to discontinue prosecution.³²

In addition to an apology, compensation provided to the victim constitutes a central element of criminal reconciliation practices in Japan. Compensation is not viewed solely as reimbursement for material losses, but also as a means of restoring the victim's dignity, sense of security, and trust. This practice reflects the view that substantive justice can be achieved when victims feel that their suffering has been acknowledged and remedied, even in the absence of a formal criminal trial.³³

A key role in this mechanism is played by prosecutorial discretion. Japanese prosecutors possess broad authority to apply suspension of prosecution by taking into account various factors, including the nature and seriousness of the offense, the offender's background, the offender's conduct after the commission of the crime, the existence of an apology and compensation to the victim, and the likelihood that the offender will not reoffend. In this context, reconciliation serves as a factual and moral basis for extinguishing formal criminal liability, even though the elements of the criminal offense have been satisfied.³⁴

³² Daniel H. Foote, "The Benevolent Paternalism of Japanese Criminal Justice," *California Law Review* 80, no. 2 (1992): 323–72, <https://doi.org/10.15779/Z38GQ7Q>.

³³ John O. Haley, *Authority without Power: Law and the Japanese Paradox* (New York: Oxford University Press, 1991), 170–73.

³⁴ David T. Johson, "Japan's Prosecution System," *Crime and Justice* 41, no. 1 (2012): 35–74, <https://doi.org/10.1086/665409>.

The Japanese approach demonstrates that eliminating guilt and criminal responsibility does not always require detailed normative regulation in statutory law. Still, it may instead be constructed through consistent legal practice and socially embedded values. This model affirms that reconciliation can serve as an effective instrument of modern penal policy, particularly in cases emphasizing the restoration of personal relationships, social stability, and the prevention of recidivism.

b. The Ideal Conceptualization of Reconciliation for Removing Guilt and Criminal Responsibility in Modern Penal Policy

The concept of reconciliation in modern criminal law develops differently across countries, depending on legal traditions, prosecutorial policies, and prevailing social values. Germany and Japan represent two jurisdictions that both recognize the importance of reconciliation, yet position it within distinct normative and practical frameworks. This comparative analysis is relevant to understanding the conceptual foundation of Article 132, letter (g), of the National Criminal Code, which provides for the elimination of punishment in favor of restoration and settlement.

In Germany, reconciliation is accommodated in an explicit and normative manner within criminal law through the mechanism of Täter-Opfer-Ausgleich (TOA), or offender–victim mediation. TOA is regulated in the German Criminal Code (Strafgesetzbuch) and the German Code of Criminal Procedure (Strafprozessordnung), and serves as a legal basis for judges or prosecutors to discontinue prosecution or mitigate punishment where the offender voluntarily acknowledges guilt, apologizes, and restores the harm suffered by the victim. In this context, reconciliation is positioned as an instrument of penal policy aimed at reducing social conflict, restoring relationships between offenders and victims, and achieving restorative justice without

necessarily imposing formal punishment. Consequently, the elimination or reduction of criminal responsibility in the German system is legal-positivistic, as it is expressly regulated by statutory law.

In contrast, Japan develops reconciliation primarily through law enforcement practices and legal culture, rather than through detailed normative formulation in statutory provisions. In the Japanese criminal justice system, reconciliation is reflected through a combination of apology, compensation, and the exercise of prosecutorial discretion. A sincere apology and compensation to the victim carry significant weight in Japan's legal culture, which strongly emphasizes social harmony (*wa*). These factors frequently become decisive considerations for prosecutors when applying a suspension of prosecution, resulting in the discontinuation of criminal proceedings even though the elements of the offense have been satisfied. Accordingly, reconciliation in Japan is both cultural and practical, relying on prosecutorial discretion and deeply rooted social values.

Despite these different approaches, both Germany and Japan share a common view of reconciliation as a means of achieving justice oriented toward victim restoration and social stability, rather than mere retribution through punishment. This shared orientation is reflected in Article 132, letter (g), of the National Criminal Code, which allows judges not to impose punishment when restoration to the original condition and reconciliation between the offender and the victim have been achieved.

Article 132 letter (g) of the National Criminal Code may therefore be understood as a synthesis of the German and Japanese models. From Germany, the National Criminal Code adopts the idea that reconciliation may serve as a normative basis for eliminating punishment. From Japan, it reflects recognition of the importance of non-formal elements such as apology, restitution, and the harmonization of social relations as indicators that substantive justice

has been achieved. Accordingly, this provision affirms the direction of modern Indonesian penal policy, which no longer positions punishment as the sole response to criminal conduct, but instead opens space for reconciliation as a rational basis for removing guilt and criminal responsibility.

The mechanism of reconciliation or peace in conflict resolution must take into account the authority and capacity of the parties involved. This is important to ensure that the peace process can be carried out effectively and that the outcomes can be implemented by all parties concerned.³⁵ Several essential considerations must be addressed in the design of a peace mechanism that can be effectively implemented by the parties concerned, namely:

1. Active Participation

The meaningful involvement of all stakeholders in the conflict is imperative. This includes not only the disputing parties but also civil society actors, religious groups, community leaders, and other relevant stakeholders whose interests are directly or indirectly affected by the conflict.

2. Capacity and Resources:

The peace process should take into account the institutional capacity and resources available to the parties. This encompasses the ability to convene meetings, provide adequate facilities, ensure effective communication, and, where necessary, extend technical or financial support.

3. Leadership and Legitimacy

Identifying actors with sufficient authority and legitimacy to influence the process and its outcomes is critical. Strong, credible leadership, recognized by the disputing parties, can play a decisive role in guiding the peace process toward a more enduring settlement.

³⁵ Romli Atmasasmita, *Teori Hukum Integratif, Rekonstruksi Terhadap Teori Hukum Pembangunan Dan Teori Hukum Progresif* (Yogyakarta: Genta Publishing, 2012).

4. Transparency and Openness

The process of peacebuilding must be conducted transparently and inclusively. Ensuring that information regarding procedures, meetings, and outcomes is accessible to all parties fosters trust and enhances the legitimacy of the process.

5. Adaptation to Local Context

Each conflict is embedded within specific cultural, social, and political contexts. Accordingly, the peace mechanism should be tailored to the local environment and sensitive to the prevailing values, norms, and practices of the community where the conflict occurs.

Article 132 letter g of the National Criminal Code introduces reconciliation as a normative ground for waiving the imposition of punishment, reflecting the broader shift toward restorative-oriented penal policies. However, despite its progressive orientation, the provision reveals a significant normative deficiency, namely the absence of explicit criteria defining the scope and types of criminal offenses eligible for resolution through reconciliation mechanisms. The lack of such limitations creates ambiguity in interpretation and risks inconsistent application by law enforcement authorities.

This normative indeterminacy undermines legal certainty and potentially opens the door to the disproportionate or improper use of reconciliation, including in cases that, due to their seriousness or public impact, should remain within the formal criminal justice process. Consequently, reconciliation risks being transformed from a restorative instrument into a discretionary tool lacking clear safeguards. To prevent this outcome, reconciliation must be accompanied by clearly articulated substantive boundaries that align with the objectives of modern penal policy, including proportionality, victim protection, and the preservation of the public interest.

In this regard, this study proposes a set of criteria to delimit the categories of criminal offenses that are conceptually and normatively appropriate for resolution through reconciliation outside the court. These include:

- 1) complaint-based offenses, whether absolute or relative;
- 2) offenses punishable primarily by a fine, where such fine has been fully paid in accordance with Article 80 of the Criminal Code;
- 3) offenses classified as violations rather than crimes;
- 4) offenses within the sphere of administrative law, in which criminal sanctions function as an *ultimum remedium*;
- 5) minor or petty offenses subject to law enforcement discretion;
- 6) ordinary offenses discontinued by the Attorney General pursuant to his lawful authority;
- 7) customary law offenses resolved through traditional or indigenous mechanisms; and (8) offenses explicitly excluded from serious crime categories, particularly those regulated under Law Number 12 of 2022 on Sexual Violence Crimes.

The formulation of these criteria is intended to provide normative guidance for applying reconciliation under Article 132, letter g, ensuring that its implementation is both predictable and consistent with fundamental principles of criminal justice. More importantly, such limitations reaffirm reconciliation as a restorative mechanism rather than an alternative avenue for impunity.

Comparative perspectives further strengthen the necessity of these limitations. In German criminal law, reconciliation is institutionalized through the *Täter-Opfer-Ausgleich* (offender–victim mediation) mechanism, which is governed by clearly defined substantive and procedural conditions. Reconciliation is generally limited to minor and medium-level offenses, requires voluntary participation by both parties, presupposes acknowledgment of wrongdoing, and entails concrete

efforts to repair harm suffered by the victim. Serious crimes that threaten public order or fundamental legal interests are categorically excluded from this mechanism, thereby preserving the integrity of the criminal justice system.

A comparable, albeit less formally codified, approach can be observed in the Japanese criminal justice system. Reconciliation operates primarily through prosecutorial discretion and social practices emphasizing apology, compensation, and the restoration of social harmony (*wa*). In practice, prosecutorial decisions to suspend or terminate proceedings based on reconciliation are typically confined to cases of a personal nature, limited public impact, and demonstrable offender remorse. Serious offenses, particularly those involving significant violence or threats to public safety, remain outside the scope of reconciliation-based resolution.

The experiences of Germany and Japan demonstrate a shared underlying principle: reconciliation is neither universally applicable nor value-neutral. Rather, it is a conditional mechanism whose legitimacy depends on clear substantive limits, the nature of the offense, and its broader social implications. When viewed through this comparative lens, the current formulation of Article 132 letter g of the National Criminal Code appears incomplete, as it lacks the explicit criteria necessary to guide its application in line with international best practices.

Accordingly, the proposed categorization of reconcilable offenses in this study aligns with comparative developments in both German and Japanese criminal law. By confining reconciliation to minor, complaint-based, administrative, or customary offenses—and explicitly excluding serious crimes such as sexual violence—the provision may be strengthened to function as a rational, proportional, and restorative component of modern penal policy. Such refinement would enhance

legal certainty while ensuring that reconciliation serves justice, rather than undermines it.

Conclusion

In modern penal policy, reconciliation serves as an appropriate means of resolving criminal disputes, as it seeks to restore disharmonious relationships between the disputing parties. This aligns with the Indonesian national philosophy, particularly the fourth principle of Pancasila. The policy of reconciliation is accommodated in the National Criminal Code under Article 132, letter g, which provides that “a settlement has been reached outside the judicial process as regulated by law.” The underlying idea of reconciliation is to create harmonization, reduce the rigidity of formalistic criminal law, avoid the negative impacts of the penal system, and seek alternatives to imprisonment. Nevertheless, reconciliation is not without its weaknesses, including dependence on the participation of the parties, the potential for injustice, the dominance of offender rehabilitation, the risk of additional trauma for victims, limitations in the material aspect, and various implementation barriers.

To be implemented effectively, the reconciliation mechanism must take into account several important aspects, including the active participation of stakeholders, the availability of adequate resources and facilities, the conduct of the process transparently and openly, as well as the ability to adapt to local culture. In addition, within the context of policy formulation on out-of-court dispute resolution, its application must be understood within certain limitations.

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DECLARATION OF CONFLICTING INTERESTS

In this research, we declare that there is no conflict of interest in the publication of this article.

FUNDING INFORMATION

None

ACKNOWLEDGMENT

None

GENERATIVE AI STATEMENT

None

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