



The Effectiveness of Investigator Discretion in the Application of Restorative Justice to Criminal Cases at the People's Island Police Reviewed from Legal Certainty and Substantive Justice

Aminan^{1*}, Muhammad Syukran Yamin Lubis²

Master of Law, University of Muhammadiyah North Sumatra

Corresponding Author: Aminan: aminanaminanda@gmail.com

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ABSTRACT

This study aims to analyze the effectiveness of investigators' discretion in the application of *restorative justice* in the settlement of criminal cases at the People's Island Police from the perspective of legal certainty and substantive justice. The research uses normative legal methods with a statutory approach, a conceptual approach, and a case approach. Legal materials were obtained through literature studies that include primary, secondary, and tertiary legal materials, then analyzed qualitatively by prescriptive analysis methods. The results of the study show that the discretion of investigators is a legitimate authority based on Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia and the National Police Regulation of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice. The effectiveness of the application of discretion is influenced by the clarity of legal arrangements, the professionalism of investigators, compliance with procedures, supervisory mechanisms, and the participation of parties in the peace process. This study also found that legal certainty and substantive justice are two complementary principles in the implementation of *restorative justice*. Legal certainty provides normative limits on the use of discretion, while substantive justice ensures that the settlement of cases is able to restore victims' rights, foster perpetrators' responsibility, and create social harmony. Therefore, the use of investigators' discretion must be carried out in a professional, proportionate, transparent, and accountable manner so that the goal of fair law enforcement can be realized.

INTRODUCTION

Criminal law enforcement in essence not only aims to impose penalties on the perpetrators of criminal acts, but also to realize the protection of the legal interests of the community, provide legal certainty, and present justice that can be felt by the parties. This paradigm has undergone significant developments in line with the increasing criticism of the conventional criminal justice system, which has so far focused more on a retributive justice approach. This approach is considered not to be fully able to resolve social conflicts arising from criminal acts, especially in cases that have a low level of seriousness, involve limited losses, and still allow the achievement of peace between perpetrators and victims. This condition encourages the development of the concept *restorative justice* As an approach to resolving criminal cases that prioritizes redress, conflict resolution, restoration of social relations, and the fulfillment of the interests of victims, perpetrators, and the community in a balanced manner (Moh. Riziq, 2025).

Application *restorative justice* has experienced quite rapid development in recent years. The National Police of the Republic of Indonesia as an institution that is at the forefront of the criminal justice system is given space to implement case resolution through a restorative approach through the National Police Regulation of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice. The regulation provides a normative basis for investigators to use discretionary authority in determining whether a case is worthy of being resolved through a mechanism *restorative justice* or continue to be processed through criminal justice channels. The arrangement shows a change in the orientation of law enforcement that no longer focuses solely on punishment, but also considers the benefits of law, peace, and the restoration of social relations (Hendry Noya, Fendi M.P. Hutahaeon, 2025).

Investigator discretion is a logical consequence of the characteristics of police duties which require the ability to make decisions quickly in dealing with various concrete situations that cannot be regulated in detail by laws and regulations. Discretion provides space for investigators to determine the most appropriate legal steps based on legal provisions, public interests, and the values of justice that live in society. However, the use of discretion in the application of *restorative justice* also raises various juridical problems. The breadth of assessment space owned by investigators has the potential to cause differences in the application of cases that have similar characteristics, so that it can give rise to legal uncertainty, inconsistency in law enforcement, and even abuse of authority if it is not accompanied by clear parameters and effective supervision mechanisms.

These problems are becoming increasingly important because of the concept *restorative justice* basically brings together two legal goals that are often in a position to face each other, namely legal certainty (*Legal Certainty*) and substantive justice (*Substantive Justice*). Legal certainty requires that every case be processed based on clear, consistent, and predictable legal provisions. On the other hand, substantive justice requires that every case settlement consider the concrete conditions of the parties, the proportionality of the loss, social relations,

and the benefits of settlement for the community. In practice, investigators are often faced with a dilemma between carrying out legal procedures formally and providing a settlement space that better reflects the community's sense of justice. Therefore, the effectiveness of the use of discretion is not only measured by the success of realizing peace, but also by its ability to maintain a balance between legal certainty, justice, and protection of the rights of the parties (Johan Rofi, Fauzie Yusuf Hasibuan, 2025)..

The implementation of *restorative justice* at the level of the police sector still shows various dynamics. Differences in community characteristics, local legal culture, level of understanding of law enforcement officials, and variations in the types of cases cause the implementation of discretion by investigators not always resulting in uniform practices. On the one hand, case resolution through *restorative justice* can reduce the burden of cases in court, accelerate victim recovery, avoid stigmatization of perpetrators, and maintain social harmony in society. However, on the other hand, there are still concerns that the application of discretion that is too broad can lead to perceptions of injustice, different treatment of similar cases, and intervention of certain interests in the case resolution process.

This condition can also be observed in the practice of handling criminal cases at the Pulau Rakyat Police Station. As a police institution that interacts directly with the community, the Pulau Rakyat Police faces various criminal cases that under certain conditions meet the requirements for settlement through an approach *restorative justice*. The exercise of discretionary authority by investigators in determining the feasibility of a case to be resolved restoratively is an aspect that greatly determines the success of the implementation of the policy. The effectiveness of discretion is not only reflected in the number of cases that have been successfully resolved through peace, but also in its conformity with legal provisions, protection of victims' rights, accountability of the investigation process, and the ability to realize substantive justice for all parties involved (Shawn O'Neill, 2026).

Much research on *restorative justice* has been conducted, but most of it still focuses on the effectiveness of policies in general, normative analysis of Police Regulation Number 8 of 2021, or the implementation of *restorative justice* at the police level nationally. Research that specifically examines the effectiveness of investigators' discretion at the sector police level using the perspective of legal certainty and substantive justice is still relatively limited. In fact, it is at this level that discretionary decisions are first taken and directly determine the direction of the settlement of a criminal case. Thus, there is still room for research to analyze how discretionary authority is exercised in practice, the factors that affect its effectiveness, and the extent to which its application is able to balance legal certainty with substantive justice.

Based on this description, this study aims to analyze the effectiveness of investigators' discretion in the application of *restorative justice* to criminal cases at the Pulau Rakyat Police by reviewing its implementation from the perspective of legal certainty and substantive justice. This research is expected to contribute to the development of criminal procedural law, especially in formulating

parameters for the use of investigators' discretion that is more accountable, consistent, and oriented towards the realization of a fair criminal justice system.

THEORETICAL REVIEW

Theory of Discretion

Discretion is the authority given by law to public officials to make decisions or actions based on professional considerations when laws and regulations do not regulate in detail a concrete situation or when the rigid application of rules has the potential to hinder the achievement of legal objectives. In the criminal law enforcement system, discretion is an integral part of the police function because investigators are faced with various factual situations that require fast, proportional, and public interest-oriented decisions. Therefore, the use of discretion is not interpreted as unlimited freedom, but as a permanent authority that must be exercised based on the principles of legality, proportionality, accountability, and respect for human rights (Davis, 1969).

Discretion is the freedom of an administrative or law enforcement official to choose between several alternative actions that are equally legally permissible (*the power to make a choice among valid alternatives*). Discretion is necessary because it is impossible for the law to regulate all events that develop in society in detail. Therefore, officials who are given authority must use professional judgment (*Professional judgment*) to determine the most appropriate course of action in achieving legal objectives (Elizabeth Ruth Turner, 2024).

In the context of the police, the theory of discretion explains that investigators have the authority to determine whether a case is suitable for resolution through *the restorative justice* mechanism or proceeded to the criminal justice process. The use of this authority must consider formal and material requirements as stipulated in the National Police Regulation of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice. Thus, the effectiveness of investigators' discretion is not only measured by the success of resolving cases through peace, but also by compliance with legal procedures, objectivity of decision-making, and the ability to prevent abuse of authority.

The theory of discretion is used in this study to analyze how the investigators of the People's Island Police use their authority in determining the application of *restorative justice*, including the factors that affect the effectiveness of the use of this authority.

Substantive Justice Theory

Substantive justice is a concept of justice that focuses on the achievement of real justice in society, not just the formal application of the rule of law. This approach is of the view that the success of law enforcement is not only measured by compliance with procedures, but also by the extent to which decisions or legal actions are able to resolve conflicts fairly, recover victims' losses, protect the rights of perpetrators, and maintain a balance of public interests. Thus, substantive justice prioritizes the value of utility, proportionality, and conflict resolution rather than just punishment (Thomas Procter-Legg, Jonathan Hobson, 2024).

According to Roscoe Pound, law must be seen as *a tool of social engineering* that aims to create a balance of various interests in society. Good law enforcement not only enforces norms textually, but also produces solutions that provide social benefits. In line with that, Satjipto Rahardjo through the concept of progressive law states that the law must be devoted to humans, so that law enforcement officials are given space to find fairer solutions as long as they do not conflict with the values of law and justice.

In the application of *restorative justice*, the theory of substantive justice is the basis for assessing whether the use of investigators' discretion really results in a settlement that provides a sense of justice to the victim, the perpetrator, and the community. The settlement of cases through peace is not enough to be judged by the agreement of the parties, but must also ensure that the rights of victims are restored, perpetrators are held accountable for their actions, and sustainable social order is created. Therefore, the success of *restorative justice* is not only measured by the termination of the criminal process, but also by the quality of the recovery produced.

In this study, the theory of substantive justice is used to evaluate whether the implementation of investigator discretion at the People's Island Police has been able to realize the settlement of cases that provide real justice, without ignoring legal certainty and protection of the rights of the parties.

METHODOLOGY

This study uses normative legal research methods (*Normative Legal Research*) by placing the law as a system of norms that are studied based on laws and regulations, legal principles, doctrines, and court decisions related to the discretion of investigators in the application *restorative justice*. The normative approach was chosen because this study aims to analyze the effectiveness of legal arrangements regarding the discretionary authority of investigators in resolving criminal acts through *restorative justice*, as well as assessing its conformity with the principles of legal certainty and substantive justice (Terry Hutchinson, 2012) (Terry Hutchinson, 2012).

The research approaches used include the statute *approach*, the conceptual *approach*, and the *case approach*. The legislative approach is carried out by examining various legal provisions that regulate the discretionary authority of the police and the application of *restorative justice*, including Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia, Law Number 1 of 2023 concerning the Criminal Code, Law Number 8 of 1981 concerning the Criminal Procedure Code, National Police Regulation of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice, and other relevant laws and regulations. The conceptual approach is used to examine the concepts of discretion, *restorative justice*, legal certainty, and substantive justice based on the views of legal experts. Furthermore, the case approach is carried out through an analysis of court decisions and relevant *restorative justice* practices to obtain an overview of the implementation of investigators' discretion in resolving criminal cases.

RESULTS AND DISCUSSION

The Effectiveness of Investigator Discretion in Restorative Justice in Criminal Case Resolution at the People's Island Police Station

Discretion is one of the legal instruments given to investigators to determine the most appropriate action in dealing with a legal event that cannot be entirely resolved through the application of norms mechanically. In the context of criminal investigation, this authority gains legitimacy through Article 18 of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia which provides space for members of the National Police to act according to their own judgment in the public interest while still paying attention to the provisions of laws and regulations, legal norms, and professional codes of ethics. This authority is then affirmed through the National Police Regulation of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice which regulates material requirements, formal requirements, and mechanisms for resolving criminal cases through the *restorative justice*. This regulation shows a change in the paradigm of criminal law enforcement from a purely punishment-oriented approach to an approach that prioritizes the restoration of relationships between perpetrators, victims, and society (Alfano Ramadhan, 2021).

In the perspective of the theory of discretion put forward by Kenneth Culp Davis, discretion is the freedom of public officials to choose alternative actions that are equally legally permissible in order to effectively achieve legal goals. Thus, investigators do not only act as implementers of norms textually, but also as decision-makers who must consider legal, social, moral, and utility aspects. Discretion cannot be interpreted as unlimited authority, but must be exercised based on the principles of legality, proportionality, accountability, and human rights protection. Therefore, the effectiveness of discretion is not only measured by the number of cases resolved through *restorative justice*, but also by the suitability of its implementation with the purpose of establishing Police Regulation Number 8 of 2021.

The effectiveness of a rule of law is basically not only determined by the existence of norms, but also by the success of the norm being implemented in practice. Soerjono Soekanto stated that the effectiveness of law enforcement is influenced by five factors, namely legal factors, law enforcement officials, facilities and infrastructure, society, and legal culture. These five factors are interrelated and determine whether or not a legal policy is successfully implemented in people's lives. This approach is relevant to assess the effectiveness of investigators' discretion in implementation *restorative justice* Because the success of the settlement of cases depends not only on the available regulations, but also on the capacity of investigators, community support, and a developing legal culture (Anthony Bottoms, 2012).

Judging from legal factors, Police Regulation Number 8 of 2021 has provided a fairly comprehensive normative basis regarding the requirements for the implementation of *restorative justice*. The regulation stipulates that restorative settlement of cases can only be carried out for certain criminal acts that meet material and formal requirements, including peace between victims and perpetrators, recovery of losses, not causing public unrest, and obtaining the

consent of the parties. This regulation provides legal certainty for investigators in determining cases that are suitable for resolution through restorative mechanisms. However, some provisions still use general parameters, such as the phrase "does not cause social conflict" or "does not cause public rejection", thus opening up different interpretation spaces among investigators. This condition has the potential to cause variations in the application of discretion to cases that have similar characteristics.

The factor of law enforcement officials' discretionary effectiveness is greatly influenced by the investigator's competence in understanding the philosophy of *restorative justice*. Investigators are not only required to master the procedural aspects of investigations, but also have the ability to mediate, negotiate, communicate, and resolve conflicts. In practice, investigators play the role of facilitators who bring together the interests of victims, perpetrators, families of both parties, community leaders, and other relevant elements to achieve a fair settlement. The success of the process is greatly influenced by the professionalism of investigators in maintaining neutrality, avoiding pressure on the parties, and ensuring that peace agreements are born voluntarily. Therefore, the quality of human resources is a factor that determines the success of the implementation of discretion.

In the context of the People's Island Police, the effectiveness of the investigator's discretion can be seen from his ability to select cases that meet the requirements to be resolved through *restorative justice*. Not every criminal case can be resolved through this mechanism. Investigators must assess the type of criminal act, the level of harm caused, the relationship between the victim and the perpetrator, the possibility of recovering losses, and the social impact that may arise if the case is not proceeded to the judicial process. This assessment is the essence of the use of discretion because it requires professional consideration that cannot be completely replaced by formal rules.

Facilities and infrastructure factors also affect the effectiveness of the implementation *restorative justice*. Settlement of cases through restorative mechanisms requires adequate mediation space, orderly case administration, documentation of peace agreements, and an internal supervision system that ensures accountability for every decision of investigators. Without the support of these means, case settlement has the potential to cause new disputes regarding the validity of agreements and alleged abuse of authority. Therefore, success *restorative justice* not only depends on the individual capabilities of the investigator, but also on adequate institutional support (Gana Yudha Pratama, 2024).

The next aspect is the community factor. *Restorative justice* can only be effective if it obtains acceptance from the community. In many cases, the success of peaceful settlement is greatly influenced by the culture of deliberation, family relations, and the role of community leaders. In areas such as Pulau Rakyat District which have relatively close social relations, the restorative approach has the potential to be easier to implement because the community still prioritizes peaceful conflict resolution. However, public acceptance should not be used as the only basis for stopping the criminal process. Investigators must still ensure that the case

resolved meets all legal requirements so that it does not sacrifice the interests of the victim or the public interest.

The last factor is the legal culture. A legal culture that still views that every criminal act must always end in criminalization can be an obstacle in implementation *restorative justice*. On the contrary, a legal culture that prioritizes deliberation, recovery, and responsibility of the perpetrators will support the effectiveness of the policy. Therefore, the success of the implementation *restorative justice* requires a paradigm shift, both among law enforcement officials and the public, that the purpose of criminal law is not only to inflict suffering on perpetrators, but also to restore social relations that are disrupted due to the occurrence of criminal acts (Daly, 2016).

The use of discretion still contains potential risks. The freedom given to investigators can cause inconsistencies if they are not accompanied by clear parameters and effective supervision mechanisms. Cases with almost the same characteristics can receive different treatment if the investigator's assessment is not based on objective standards. In addition, non-transparent discretion has the potential to create the perception of preferential treatment, abuse of authority, and transactional practices that are contrary to the purpose of establishing *restorative justice*. Therefore, the use of discretion must always be based on the principles of professionalism, accountability, transparency, and strict internal supervision.

The effectiveness of investigators' discretion in the implementation of *restorative justice* in the People's Island Police basically cannot be measured only by the number of cases that have been successfully resolved through peace. Effectiveness must be assessed comprehensively by taking into account the appropriateness of the implementation of discretion to the provisions of Police Regulation Number 8 of 2021, the quality of investigators' legal considerations, protection of the rights of victims and perpetrators, public acceptance of the results of case resolution, and the ability of these mechanisms to realize the goals of law enforcement that include legal certainty, justice, and utility. Thus, investigator discretion is an effective legal instrument as long as it is used professionally, proportionately, accountably, and remains within the applicable legal corridor so that it is able to present criminal case resolution that is more responsive to the needs of the community without ignoring the principle of the rule of law.

Harmonization Between the Principles of Legal Certainty and Substantive Justice The Use of Investigator Discretion for Restorative Justice in Criminal Cases

Application *restorative justice* through the discretion of investigators is a form of transformation of the criminal law enforcement paradigm in Indonesia. If the conventional criminal justice system focuses more on proving the guilt of the perpetrator and imposing criminal penalties as a form of retribution, then *restorative justice* placing the restoration of the relationship between victims, perpetrators, and the community as the main goal of resolving cases. This paradigm shift has the juridical consequence that investigators no longer simply carry out repressive functions, but also play a role as a facilitator of conflict resolution who must be able to balance the demands of legal certainty with the need for justice that lives in society. Therefore, the use of discretion in the

implementation of *restorative justice* must be understood as a legal instrument that is not only oriented towards compliance with procedures, but also on the substantive achievement of legal objectives (Fadilah Agustin, 2026).

In the perspective of the theory of legal certainty put forward by Gustav Radbruch, the law must provide certainty so that every citizen receives equal treatment before *the law*. Legal certainty requires clear, predictable, and consistently applied rules by law enforcement officials. This principle is the foundation of the state of law because it prevents arbitrary actions in the use of authority by public officials. In the context of investigator discretion, legal certainty is realized through regulations that provide limits on the type of case, formal and material requirements, peace procedures, and supervision mechanisms as stipulated in the National Police Regulation of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice. Thus, discretion is not absolute freedom, but authority limited by applicable legal norms.

Legal certainty cannot be interpreted as the rigid application of rules without considering the concrete conditions of each case. Gustav Radbruch himself placed legal certainty as one of the three basic values of law that must be balanced with justice and utility. Therefore, the application of legal certainty *restorative justice* It is not enough to only meet the administrative requirements as specified in laws and regulations, but it must also be able to present a solution that truly resolves the conflict that is the root of the criminal act. In other words, legal certainty functions as a normative limit for the use of discretion, while substantive justice is the goal to be realized through the use of this authority (Sukardi, 2022).

Substantive justice is of the view that the success of law enforcement is not only measured by the fulfillment of formal procedures, but also by the ability of the law to provide a fair settlement for all parties involved. According to Satjipto Rahardjo, the law must be devoted to human beings so that its application should not be trapped in formalism that actually eliminates the sense of justice. This approach is in line with Roscoe Pound's concept of *law as a tool of social engineering*, namely the law must be able to create a balance of various interests that live in society. In the context of *restorative justice*, the settlement of criminal cases is not solely directed at the punishment of the perpetrator, but at the recovery of the victim's losses, the recognition of responsibility by the perpetrator, and the restoration of social relations disturbed by criminal acts.

The application of discretion by investigators is the meeting point between the two principles. On the one hand, investigators are obliged to comply with all legal requirements that have been set so that every decision has a clear legal basis and can be accounted for. On the other hand, investigators must also consider the concrete characteristics of the case, the relationship between the victim and the perpetrator, the level of harm caused, the possibility of achieving peace, and the social impact if the case continues to the judicial process. These considerations show that the use of discretion is a process of *legal reasoning* that integrates normative aspects with social reality, so that the decisions taken are not only legal according to the law, but also provide real benefits to society.

In the practice of resolving criminal cases at the People's Island Police, the harmonization between legal certainty and substantive justice greatly determines the quality of the implementation of *restorative justice*. It is not enough for investigators to ensure the existence of a peace letter or the fulfillment of other administrative requirements, but also to assess whether the peace is really carried out voluntarily, without pressure, intimidation, or abuse of position by one of the parties. In addition, investigators must ensure that the victim receives a proper remedy, the perpetrator admits his guilt and is willing to take responsibility for the consequences of his actions, and the community accepts the settlement as a form of justice that can be accounted for. Such an assessment reflects the orientation to substantive justice because the focus is not only on the fulfillment of procedures, but on the achievement of a settlement that truly restores legal and social relations.

The harmonization between legal certainty and substantive justice is not always easy to realize. In practice, investigators are often faced with a dilemma between maintaining consistency in the application of rules and the need to consider the specific circumstances of each case. The overly formal application of rules can hinder conflict resolution that can actually be restored through peace, while the use of overly broad discretion has the potential to lead to inconsistencies, legal uncertainty, and even abuse of authority. Therefore, objective parameters are needed in the use of discretion so that every decision has a clear, transparent, and accountable legal basis for consideration.

The harmonization of these two principles also requires an effective supervision mechanism. Supervision is not intended to limit the discretion of investigators excessively, but rather to ensure that every decision is made based on rational legal considerations, adequate evidence, and the best interests of the parties. With supervision, the use of discretion will be more consistent, reduce the potential for different treatment of similar cases, and increase public trust in the resolution of cases through *restorative justice*. From the perspective of the state of law, accountability in the use of discretion is a prerequisite so that the flexibility given to investigators does not turn into arbitrary actions.

The principles of legal certainty and substantive justice cannot be understood as a contradiction between two legal values that negate each other. The two principles actually have a complementary relationship. Legal certainty provides legitimacy and normative limits on the use of discretion, while substantive justice provides direction regarding the goals to be achieved through the use of this authority. In the application of *restorative justice* in the People's Island Police, the effectiveness of investigators' discretion will be achieved if every decision is based on clear legal provisions, carried out professionally and accountably, and is able to produce a settlement of cases that are not only legally legal, but also meet the sense of justice of the victim, the perpetrator, and the community. Therefore, the balance between legal certainty and substantive justice is the main foundation in realizing a criminal justice system that is more humane, responsive, and oriented towards sustainable conflict resolution.

CONCLUSIONS AND RECOMMENDATIONS

Based on the results of the study, it can be concluded that the use of investigator discretion in the application of *restorative justice* in the settlement of criminal cases at the Pulau Rakyat Police is an implementation of the authority granted by Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia and the Regulation of the National Police of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice. The effectiveness of the use of discretion is not only determined by the availability of legal grounds, but also influenced by the professionalism of investigators, compliance with formal and material requirements, the quality of the mediation process, community support, and internal supervision mechanisms. Discretion that is carried out objectively, proportionately, transparently, and accountably is able to realize faster case resolution, reduce the burden on the criminal justice system, recover victims' losses, and maintain harmony in social relations without neglecting the purpose of law enforcement.

The harmonization between the principles of legal certainty and substantive justice is the main foundation in the use of investigator discretion to implement *restorative justice*. Legal certainty provides normative limits so that every decision of the investigator remains within the corridor of laws and regulations, while substantive justice directs the use of discretion to achieve a settlement that truly meets the sense of justice for victims, perpetrators, and society. Therefore, the two principles are not positioned as conflicting values, but complement each other in forming a responsive and recovery-oriented law enforcement policy. Thus, the effectiveness of investigators' discretion in the implementation of *restorative justice* at the People's Island Police will be achieved if every decision is based on clear legal considerations, consistent application of procedures, respect for the rights of the parties, and assessments that prioritize a balance between legality, utility, and substantive justice.

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