JUDEX JOURNAL of JUDICIAL STUDIES
Published by PT. ANDALAS BORNEO JUSTICE
Volume x Issue x, December 2026 ISSN (Online) XXXX-XXXX
Journal Homepage: https://journal.aisholarborneo.org/index.php/jjjs

Plea Bargaining Compared with Restorative Justice through Compensation or Restitution for Victims

Plea Bargain Dibandingkan Keadilan Restoratif melalui Ganti Rugi atau Restitusi Korban

Surya Nita[1]
[1] Police Science Studies, Universitas Indonesia, Indonesia

Article Info

Corresponding Author:
Surya Nita
suryanita.sksgui@gmail.com

History:
Submitted: September 1, 2026
Revised: September 29, 2026
Accepted: Oktober 5, 2026

Keyword:
Compensation; Defendant; Mechanism; Plea Bargaining; Restorative Justice.

Kata Kunci:
Ganti Rugi; Keadilan Restoratif; Mekanisme; *Plea Bargain*; Terdakwa.

Copyright © 2026 by JJJS.

All writings published in this journal are personal views of the authors and do not represent the views of Judex Journal of Judicial Studies.

https://doi.org/10.68374/jjjs

Abstract

The new Criminal Procedure Code (KUHAP), enacted in 2025, regulates in Article 78 the guilty plea (plea bargain) together with its requirements and mechanism. A plea bargain is resolved within court proceedings, whereas restorative justice settles a case outside the court, so the two differ fundamentally in how criminal cases are disposed of. This study asks how the plea bargain mechanism based on the defendant's guilty plea compares with restorative justice through compensation or restitution for victims. Using normative juridical research, it analyses Article 78 of the KUHAP and the restorative justice provisions of Article 79. The findings show that the guilty plea operates within the judicial process, whereas restorative justice is an out-of-court mechanism. The guilty plea applies only to first-time offenders, to offences punishable by a maximum of five years' imprisonment or a Category V fine, and/or where the defendant is willing to pay compensation or restitution.

Abstrak

Pengesahan KUHAP pada tahun 2025 melalui Pasal 78 mengatur pengakuan bersalah atau *plea bargain* beserta persyaratan dan mekanismenya. *Plea bargain* merupakan mekanisme yang diselesaikan dalam persidangan, berbeda dengan keadilan restoratif yang menyelesaikan perkara di luar pengadilan, sehingga keduanya berbeda secara mendasar. Penelitian ini mengkaji bagaimana mekanisme *plea bargain* berdasarkan pengakuan bersalah terdakwa dibandingkan dengan keadilan restoratif melalui ganti rugi atau restitusi bagi korban. Penelitian ini menggunakan metode yuridis normatif terhadap Pasal 78 KUHAP dan keadilan restoratif sebagaimana diatur dalam Pasal 79 KUHAP. Hasil penelitian menunjukkan bahwa pengakuan bersalah berdasarkan Pasal 78 KUHAP berlangsung dalam proses peradilan, sedangkan keadilan restoratif berdasarkan Pasal 79 merupakan mekanisme di luar pengadilan. Pengakuan bersalah hanya dapat diterapkan terhadap pelaku yang baru pertama kali melakukan tindak pidana, terhadap tindak pidana yang diancam pidana penjara paling lama 5 tahun atau pidana denda paling banyak kategori V, dan/atau apabila terdakwa bersedia membayar ganti rugi atau restitusi.

A. INTRODUCTION

1. Background

Article 78 of the Criminal Procedure Code (*Kitab Undang-Undang Hukum Acara Pidana*, hereinafter KUHAP) sets out the requirements and mechanism for the guilty plea (plea bargaining).[1] Plea bargaining is a legal mechanism resolved within court proceedings, whereas restorative justice resolves a case outside the court.[2]

The enactment of Law Number 20 of 2025, which entered into force on 2 January 2026 together with the National Criminal Code (Law Number 1 of 2023), marks the most far-reaching reform of Indonesian criminal procedure since Law Number 8 of 1981.[3] The previous code recognised neither a guilty plea mechanism nor restorative justice, so both institutions had developed only through sectoral regulations and academic debate. The new KUHAP now regulates both explicitly. Article 1 point 16 defines the guilty plea as a legal mechanism by which a defendant admits guilt for an offence and cooperates in the examination by presenting evidence that supports the admission in exchange for a reduced sentence, while Article 1 point 21 defines restorative justice as an approach to handling criminal cases that involves the victim, the suspect or defendant, their families, and other relevant parties with the aim of restoring the original situation.[4]

Both reforms respond to persistent structural problems. Indonesian criminal justice has long been criticised for lengthy proceedings, high costs, case backlogs, and prison overcrowding, all of which sit uneasily with the principle that justice must be administered simply, quickly, and at low cost.[5] Plea bargaining and restorative justice offer two different answers to these problems. The former accelerates adjudication by relying on the defendant's admission, a technique that has spread from the United States

---

1 Law of the Republic of Indonesia Number 20 of 2025 concerning the Criminal Procedure Code, https://peraturan.bpk.go.id/Details/337302/uu-no-20-tahun-2025, accessed October 6, 2026.

2 Máximo Langer, "From Legal Transplants to Legal Translations: The Globalization of Plea Bargaining and the Americanization Thesis in Criminal Procedure," *Harvard International Law Journal* 45, no. 1 (2004): 1–64; Albert W. Alschuler, "Plea Bargaining and Its History," *Columbia Law Review* 79, no. 1 (1979): 1–43, https://doi.org/10.2307/1122051.

3 Law of the Republic of Indonesia Number 8 of 1981 concerning the Criminal Procedure Code (State Gazette of 1981 Number 76, Supplement to the State Gazette Number 3209); Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code (State Gazette of 2023 Number 1, Supplement to the State Gazette Number 6842).

4 Law Number 20 of 2025, art. 1 points 16 and 21.

5 Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power, art. 2 para. (4); Nabilla Callosa Husin and Naylla Shabilla Callistha Husin, "Plea Bargaining as a Reform in Criminal Procedure Law: An Analysis of Article 199 of the Draft Criminal Procedure Code," *Ius Poenale* 5, no. 1 (2024): 31–42, https://doi.org/10.25041/ip.v5i1.3486; Syafrina et al., "Model Pengaturan Plea Bargaining," 361–62.

to many other legal systems.[6] The latter shifts the focus from punishing the offender to repairing the harm suffered by the victim and the community, returning to the parties a conflict that, in Christie's well-known phrase, modern criminal justice has taken from them as "property".[7]

Plea bargaining is governed by Article 78 of the KUHAP, which regulates only the mechanism of the guilty plea (*pengakuan bersalah*).[8] Under this mechanism, the defendant admits guilt during the prosecution stage, and the admission is recorded in an official report (*berita acara*) drawn up with the assistance of an advocate. The public prosecutor then submits the official report of the guilty plea to the judge. The case therefore continues to be resolved through the judicial process, namely through a summary procedure before a single judge.[9] Restorative justice (RJ) differs markedly from the guilty plea: under Article 79, it is an out-of-court mechanism concluded by a court determination (*penetapan pengadilan*) and may be pursued during the inquiry, investigation, prosecution, and trial stages.[10]

When RJ is applied at the investigation stage, the termination of the investigation is notified to the public prosecutor and subsequently confirmed by a judicial determination as an administrative step in the out-of-court settlement of the case. The use of RJ is limited by Article 82 of the KUHAP, which excludes offences against state security; offences against friendly states, their heads of state, and their representatives; offences against public order and offences against decency; terrorism; corruption; sexual violence; offences punishable by imprisonment of five years or more, except those committed through negligence; offences against life; offences carrying a special minimum penalty; certain offences that are highly dangerous or harmful to society; and

---

6 Langer, "From Legal Transplants to Legal Translations," 1–64; Jay Gormley, "The Inefficiency of Plea Bargaining," *Journal of Law and Society* 49, no. 2 (2022): 277–78, https://doi.org/10.1111/jols.12360.

7 Nils Christie, "Conflicts as Property," *British Journal of Criminology* 17, no. 1 (1977): 1–15, https://doi.org/10.1093/oxfordjournals.bjc.a046783.

8 Law Number 20 of 2025, art. 78.

9 Henin Dyah Syafrina et al., "Model Pengaturan *Plea Bargaining* dalam Pembaharuan Hukum Acara Pidana Indonesia," *Jurnal USM Law Review* 9, no. 1 (2026): 370–71, https://doi.org/10.26623/julr.v9i1.13391.

10 Law Number 20 of 2025, arts. 79–80. Prior to the new KUHAP, restorative justice rested on sectoral regulations: Indonesian National Police Regulation Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice; Prosecutor's Office Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice; and Supreme Court Regulation Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice.

narcotics offences, except those involving persons with the status of users or abusers.[11]

The term "restorative justice" serves as an umbrella for a variety of programmes that view crime and respond to it from a restorative perspective.[12] Its focus is to repair the harm caused by crime, involve the victim, secure the accountability of the offender, and prevent similar harm in the future.[13] Mediation, as one form of restorative justice, does not necessarily result in compensation; its outcome may be anything that the victim and the offender substantively agree upon.[14]

Earlier studies examined plea bargaining in Indonesia mainly in connection with the "special track" (*jalur khusus*) of the draft KUHAP, comparing it with practice in the United States and other jurisdictions,[15] while more recent work has characterised the guilty plea under the 2025 KUHAP as a "plea without bargain" in which the judge plays an active role.[16] Research on restorative justice has, in turn, concentrated on its conceptual foundations and its application at different stages of the criminal process.[17] The present article departs from these studies by directly comparing the guilty plea under Article 78 with restorative justice under Articles 79 to 88 of the new KUHAP, with particular attention to compensation and restitution for victims. In brief, it finds that the guilty plea remains a judicial mechanism conducted through a summary procedure,

---

[11] Law Number 20 of 2025, art. 82.

[12] Howard Zehr, *The Little Book of Restorative Justice: Revised and Updated* (New York: Good Books, 2015); United Nations Office on Drugs and Crime, *Handbook on Restorative Justice Programmes*, 2nd ed., Criminal Justice Handbook Series (Vienna: United Nations, 2020).

[13] John Braithwaite, *Restorative Justice and Responsive Regulation* (New York: Oxford University Press, 2002).

[14] Nefa Claudia Meliala, "Pendekatan Keadilan Restoratif: Upaya Melibatkan Partisipasi Korban dan Pelaku secara Langsung dalam Penyelesaian Perkara Pidana," *Veritas et Justitia* 1, no. 1 (2015): 111–34, https://doi.org/10.25123/vej.1419.

[15] Aby Maulana, "Konsep Pengakuan Bersalah Terdakwa pada 'Jalur Khusus' menurut RUU KUHAP dan Perbandingannya dengan Praktek *Plea Bargaining* di Beberapa Negara," *Jurnal Cita Hukum* 3, no. 1 (2015): 39, https://doi.org/10.15408/jch.v2i1.1840; Nella Octaviany Siregar, "*Plea Bargaining* dalam Sistem Peradilan Pidana di Beberapa Negara," *Wajah Hukum* 3, no. 1 (2019), https://doi.org/10.33087/wjh.v3i1.46; Ruchoyah, "Urgensi *Plea Bargaining System* dalam Pembaruan Sistem Peradilan Pidana di Indonesia: Studi Perbandingan *Plea Bargaining System* di Amerika Serikat," *Jurnal Hukum Ius Quia Iustum* 27, no. 2 (2020): 388–409, https://doi.org/10.20885/iustum.vol27.iss2.art9; Haeranah et al., "The Concept of Plea Bargain in the Criminal Process System in Indonesia," *Law Reform* 21, no. 1 (2025): 1–16, https://doi.org/10.14710/lr.v21i1.66764.

[16] Syafrina et al., "Model Pengaturan *Plea Bargaining*," 361–62; Mawar Sapanah and Kayus Kayowuan Lewoleba, "Plea Bargaining and Indonesia's Special Track under the New KUHAP: A Comparative Study with United States," *Al-Risalah: Jurnal Ilmu Syariah dan Hukum* 26, no. 1 (2026), https://doi.org/10.24252/al-risalah.vi.64931.

[17] Melva Noya, Elsa Rina Maya Toule, and Carolina Tuhumury, "Penerapan Proses *Restorative Justice* melalui Pendekatan *Restorative Conferencing Initiatives* di Indonesia," *TATOHI: Jurnal Ilmu Hukum* 1, no. 4 (2021): 312–18, https://doi.org/10.47268/tatohi.v1i4.608; Meliala, "Pendekatan Keadilan Restoratif," 111–34.

whereas restorative justice is an out-of-court mechanism that nevertheless requires a court determination.

This comparison matters in practice. Both mechanisms now make the payment of compensation or restitution relevant to the outcome of a criminal case, yet they do so through different institutional channels and with different consequences for the defendant and the victim. If law enforcement officials treat the guilty plea as merely another form of restorative settlement, or vice versa, the safeguards attached to each mechanism may be bypassed. A clear doctrinal distinction is therefore needed to ensure that efficiency gains do not come at the expense of legal certainty, the rights of the defendant, or the interests of the victim.[18]

2. Research Questions

The research question of this study is as follows: how does the plea bargain mechanism based on the defendant's guilty plea compare with restorative justice through compensation or restitution for victims?

3. Research Methods

This study employs normative juridical research, analysing Article 78 of the KUHAP on the guilty plea and the restorative justice provisions set out in Article 79 of the KUHAP.[19] The analysis is qualitative and descriptive and is based on a literature review of the provisions of the new KUHAP.

The study combines three approaches. The statutory approach examines the provisions of Law Number 20 of 2025 on the guilty plea (Article 78) and on restorative justice (Articles 79 to 88), read together with the 2023 Criminal Code, the law on the protection of witnesses and victims, and the implementing regulations of the Supreme Court, the Attorney General's Office, and the National Police. The conceptual approach draws on the doctrines of plea bargaining and restorative justice developed in the legal literature, while the comparative approach situates the Indonesian model against plea bargaining as practised in common law systems, particularly in the United States.[20]

---

[18] Cut Nangrie Sari Abuthalib, Dian Ekawaty Ismail, and Ahmad, "Plea Bargaining dalam Bayang-Bayang Keadilan: Antara Efisiensi Penegakan Hukum dan Degradasi Nilai Kepastian Hukum," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 4, no. 1 (2026): 1130–46, https://doi.org/10.61104/alz.v4i1.3201.

[19] Peter Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi* (Jakarta: Kencana, 2019).

[20] On the statutory, conceptual, and comparative approaches in normative legal research, see Marzuki, *Penelitian Hukum*.

The legal materials consist of primary legal materials, namely statutes and regulations, and secondary legal materials, namely books, journal articles, and expert opinions on plea bargaining and restorative justice. These materials were collected through library research, classified according to the research question, and analysed qualitatively using systematic and teleological interpretation. The analysis is prescriptive in character: it not only describes the two mechanisms but also identifies normative inconsistencies between them and proposes how they should be interpreted and refined.

B. DISCUSSION/ ANALYSIS

This section analyses Article 78 of the KUHAP on the guilty plea and the restorative justice provisions of Article 79 of the KUHAP. The analysis shows that the guilty plea mechanism applies only under specific conditions: the defendant must be a first-time offender, the offence must carry a maximum penalty of five years' imprisonment or a Category V fine, and the defendant must be willing to pay compensation or restitution.[21]

1. Conceptual Foundations of Plea Bargaining and Restorative Justice

Plea bargaining is not a new phenomenon. Alschuler's historical study shows that it was rare for much of the history of the common law and became a routine means of disposing of criminal cases in the United States only during the nineteenth century.[22] In its classic form, plea bargaining is a negotiation between the prosecutor and the defendant in which the defendant pleads guilty in exchange for concessions, such as a reduced charge, the dismissal of some counts, or a more lenient sentencing recommendation. Scott and Stuntz analysed such arrangements as contracts between the State and the defendant, whereas Bibas argued that their outcomes are shaped not only by the expected result at trial but also by structural and psychological factors, including agency costs, unequal resources, and the cognitive biases of the parties.[23]

The spread of plea bargaining beyond the United States has not produced uniform copies. Langer describes the process as one of "legal translation" rather than "legal transplant": receiving jurisdictions adapt the American model to their own procedural

---

[21] Dheny Wahyudhi et al., "Prinsip Plea Bargaining dalam Penyelesaian Perkara Pidana secara Cepat Sederhana dan Biaya Ringan dalam Pembaharuan Hukum Acara Pidana," *Jurnal Sains Sosio Humaniora* 6, no. 2 (2022): 52, https://doi.org/10.22437/jssh.v6i2.22592.

[22] Alschuler, "Plea Bargaining and Its History," 1–43.

[23] Robert E. Scott and William J. Stuntz, "Plea Bargaining as Contract," *Yale Law Journal* 101, no. 8 (1992): 1909–68, https://doi.org/10.2307/796952; Stephanos Bibas, "Plea Bargaining outside the Shadow of Trial," *Harvard Law Review* 117, no. 8 (2004): 2463–2547, https://doi.org/10.2307/4093404.

traditions, so that consensual procedures in civil law countries often preserve a stronger role for the judge.[24] In the Netherlands and France, for example, the idea inspired forms of mediation and settlement known as *transactie*.[25] Proponents justify plea bargaining mainly on grounds of efficiency, but Gormley's empirical work shows that it can generate its own inefficiencies, including "game-playing" cultures that undermine both cost-effectiveness and fairness, and that it may even hinder the rehabilitation and reintegration of offenders.[26]

In Indonesia, the debate on plea bargaining began with the "special track" (*jalur khusus*) contained in successive drafts of the KUHAP. Article 199 of the draft allowed a defendant who admitted guilt for an offence punishable by no more than seven years' imprisonment to have the case transferred to a short examination procedure.[27] Commentators noted that, unlike American plea bargaining, the special track did not allow the prosecutor, the defence counsel, and the defendant to negotiate and agree on the charges and penalties, because the admission was made before the judge after the indictment had been read.[28] The 2025 KUHAP lowered the threshold to five years and moved the plea to a specific hearing held before the trial on the merits, while retaining the central role of the judge. Syafrina and her co-authors therefore characterise it as a "plea without bargain" model, although Article 78(7)(d) does contemplate a negotiation over the grounds for reducing the sentence.[29]

Restorative justice emerged from a different critique of the criminal process. Christie argued that modern criminal justice takes conflicts away from the persons directly involved and hands them over to professionals, leaving the victim as a marginal figure.[30] Zehr developed this insight into a framework that views crime primarily as a

---

24 Langer, "From Legal Transplants to Legal Translations," 1–64.
25 Siregar, "Plea Bargaining dalam Sistem Peradilan Pidana," 1–9.
26 Gormley, "The Inefficiency of Plea Bargaining," 277–93; Jay Gormley, "The Gravest Inefficiency of Plea Bargaining and the Consequences for Rehabilitation and Reintegration," *Journal of Law and Society* 52, no. 2 (2025): 249–68, https://doi.org/10.1111/jols.12531.
27 Husin and Husin, "Plea Bargaining as a Reform in Criminal Procedure Law," 31–42; Vita Mahardhika et al., "Challenges in the Implementation of the 'Jalur Khusus' Concept in the Draft Indonesian Criminal Procedure Code," *SHS Web of Conferences* 149 (2022): 02006, https://doi.org/10.1051/shsconf/202214902006.
28 Lade Sirjon, La Ode Muhamad Sulihin, and Yan Fathahillah Purnama, "Perbandingan Mekanisme Pengakuan Bersalah pada Jalur Khusus dalam RUU KUHAP dan Konsep Plea Bargaining Ditinjau dari Asas Non-Self Incrimination," *Halu Oleo Law Review* 7, no. 2 (2023): 225–27, https://doi.org/10.33561/holrev.v7i2.29; Maulana, "Konsep Pengakuan Bersalah Terdakwa," 39–66.
29 Syafrina et al., "Model Pengaturan Plea Bargaining," 361–62; Law Number 20 of 2025, art. 78 para. (7) letter d.
30 Christie, "Conflicts as Property," 1–15.

violation of people and relationships, which creates an obligation to put things right.[31] Braithwaite linked restorative justice with responsive regulation, arguing that dialogue-based processes should be the first response to wrongdoing, with more punitive interventions held in reserve.[32] The UNODC Handbook similarly describes a restorative process as one in which the victim, the offender, and, where appropriate, other members of the community affected by a crime participate together actively in resolving the matters arising from it, generally with the help of a facilitator.[33]

In Indonesian scholarship, restorative justice is often associated with customary dispute resolution through deliberation (*musyawarah*). Noya, Toule, and Tuhumury observe that restorative conferencing practices existed among indigenous communities long before Indonesian independence.[34] Meliala emphasises that the approach opens up direct participation by victims and offenders, compensating for the shortcomings of a system that treats crime solely as a conflict between the offender and the State.[35] Before the new KUHAP, these ideas were implemented through separate regulations issued by the National Police, the Attorney General's Office, and the Supreme Court, each applying its own criteria and procedures.[36] The KUHAP now provides a single statutory basis for restorative justice at every stage of the criminal process.

These conceptual differences explain why the two mechanisms should not be conflated. Plea bargaining is oriented towards procedural efficiency and the disposal of cases through an admission of guilt, whereas restorative justice is oriented towards the restoration of the victim and of the relationships damaged by the offence. Both, however, may involve a payment to the victim, and it is precisely at this point that the KUHAP brings them into contact. The following subsections first place the Indonesian model in comparative perspective and then examine each mechanism in turn before comparing them directly.

2. Plea Bargaining and Consensual Procedures in Comparative Perspective

In the United States, the great majority of criminal convictions are obtained through guilty pleas rather than through trials. Negotiations there may concern the

31 Zehr, *The Little Book of Restorative Justice*.
32 Braithwaite, *Restorative Justice and Responsive Regulation*.
33 United Nations Office on Drugs and Crime, *Handbook on Restorative Justice Programmes*, 2nd ed..
34 Noya, Toule, and Tuhumury, "Penerapan Proses Restorative Justice," 312–18.
35 Meliala, "Pendekatan Keadilan Restoratif," 111–34.
36 Indonesian National Police Regulation Number 8 of 2021; Prosecutor's Office Regulation Number 15 of 2020; Supreme Court Regulation Number 1 of 2024.

charge, the number of counts, or the sentence, and the prosecutor enjoys broad discretion over each of these matters. The judge generally does not take part in the negotiations and reviews only whether the plea is knowing, voluntary, and supported by a factual basis.[37] Indonesian commentators who examined the American system during the drafting of the KUHAP regarded it as a useful model for reducing case backlogs, but also noted that its reliance on prosecutorial bargaining sits uneasily with the inquisitorial tradition of Indonesian criminal procedure.[38]

Civil law jurisdictions have adopted consensual procedures more cautiously. Langer shows that Italy introduced the *patteggiamento*, an agreement on the sentence between the prosecutor and the defendant, in its 1988 Code of Criminal Procedure; that German courts developed negotiated agreements (*Absprachen*) in judicial practice; that Argentina adopted an abbreviated trial (*juicio abreviado*); and that France introduced a procedure based on the prior admission of guilt. In each case, the American model was translated rather than transplanted: the matters open to negotiation were narrower, the eligible offences were limited, and the judge retained both the power and the duty to verify the factual basis of the conviction.[39]

The Indonesian model belongs to this civil law family. Like the Italian and German procedures, it limits the plea to less serious offences, requires judicial approval, and maintains the evidentiary requirement of at least two valid pieces of evidence. Unlike the American model, it does not permit bargaining over the charge, and the victim is not a party to the negotiation. Alimuddin and his co-authors observe that countries such as Germany and France have implemented similar systems using various models and techniques, but that the Indonesian draft treated plea bargaining mainly as a means of lightening charges and accelerating trials.[40] The final text of the KUHAP confirms this orientation, while adding the requirement of compensation or restitution as a distinctively victim-oriented element.

---

37 Bibas, "Plea Bargaining outside the Shadow of Trial," 2463–2547; Alschuler, "Plea Bargaining and Its History," 1–43.

38 Ruchoyah, "Urgensi Plea Bargaining System," 388–409; Maulana, "Konsep Pengakuan Bersalah Terdakwa," 39–66.

39 Langer, "From Legal Transplants to Legal Translations," 1–64.

40 Alimuddin et al., "Plea Bargaining dalam Rancangan Kitab Undang-Undang Hukum Acara Pidana Negara Indonesia," *Legal Standing: Jurnal Ilmu Hukum* 8, no. 2 (2024): 418–30, https://doi.org/10.24269/ls.v8i2.9213; see also Haeranah et al., "The Concept of Plea Bargain," 1–16.

Comparative experience also shows that restorative justice and consensual procedures can interact. The UNODC Handbook notes that restorative programmes may be used at all stages of the criminal justice process, including after a finding or admission of guilt and at the sentencing stage, so that the offender's acceptance of responsibility becomes the starting point for dialogue with the victim.[41] This suggests that the Indonesian guilty plea could, in the future, be linked to restorative processes so that the victim's voice is heard before a plea agreement is approved. Such a linkage would not merge the two mechanisms but would allow the efficiency of the guilty plea to be combined with the participatory values of restorative justice.

3. The Guilty Plea Mechanism under Article 78 of the KUHAP

Under Article 78 paragraph (2), the public prosecutor asks the defendant, who is accompanied by legal counsel, whether or not the defendant pleads guilty. Paragraph (3) provides that a defendant who pleads guilty must be accompanied by an advocate and that the plea is stated in an official report. The guilty plea is submitted at a specific hearing held before the trial on the merits begins, and this hearing is conducted by a single judge.[42]

Where the guilty plea is agreed upon, a written agreement is concluded between the public prosecutor and the defendant with the approval of the judge. The agreement must state that the defendant understands the consequences of the guilty plea, including the waiver of the right to remain silent and of the right to be tried under the ordinary procedure;[43] that the plea is made voluntarily; the article charged and the penalty to be demanded against the defendant before the plea is entered; the outcome of the negotiation between the public prosecutor, the defendant, and the advocate, including the grounds for reducing the defendant's sentence; a statement that the guilty plea agreement binds the parties who approve it and applies to them as law; and evidence that the defendant committed the offence, so as to ensure that the defendant did in fact commit it.[44]

The judge is obliged to assess whether the guilty plea was made voluntarily,

---

41 United Nations Office on Drugs and Crime, *Handbook on Restorative Justice Programmes*, 2nd ed.
42 Law Number 20 of 2025, art. 78 paras. (2)–(4).
43 On the relationship between the guilty plea and the privilege against self-incrimination, see Sirjon, Sulihin, and Purnama, "Perbandingan Mekanisme Pengakuan Bersalah," 224–35.
44 Law Number 20 of 2025, art. 78 paras. (5)–(7). On the contractual character of plea agreements, see Scott and Stuntz, "Plea Bargaining as Contract," 1909–68.

without coercion, and with the defendant's full understanding. If the judge accepts the guilty plea, the hearing proceeds under the summary procedure; if the judge rejects it, the case continues under the ordinary examination procedure. Every guilty plea must be recorded in an official report that becomes part of the case file. Where the judge is convinced that the guilty plea was made in accordance with the statutory requirements and is supported by two valid pieces of evidence, the judge renders a judgment in accordance with the agreement set out in the official report.[45]

The principle underlying the defendant's guilty plea is that the case is settled through the court under a summary procedure before a single judge, since the defendant has already admitted guilt.[46] Under Article 78, the case is still settled through a trial, and the provision describes the mechanism whereby the defendant and the public prosecutor, assisted by an advocate, conclude a joint agreement that is recorded in an official report. The official report of the defendant's guilty plea is brought before the court for the judge's approval.[47] Plea bargaining is therefore not an out-of-court settlement; it differs from restorative justice, in which reconciliation with the victim is pursued as a means of settling the case outside the court.[48]

Three features of Article 78 deserve emphasis. First, the requirements in paragraph (1) are formulated cumulatively and alternatively ("and/or"): the defendant must be a first-time offender, the offence must be punishable by no more than five years' imprisonment or by a fine not exceeding Category V, and/or the defendant must be willing to pay compensation or restitution. Under the 2023 Criminal Code, a Category V fine amounts to a maximum of IDR 500 million.[49] Second, the safeguards in paragraphs (8) and (12) ensure that the admission alone cannot ground a conviction: the judge must be satisfied that the plea was made voluntarily and must be convinced that it is supported by at least two valid pieces of evidence. This preserves the search for material truth that characterises Indonesian criminal procedure. Third, the plea does not bind the court; if the judge rejects it, the case reverts to the ordinary examination procedure.[50]

---

45 Law Number 20 of 2025, art. 78 paras. (8)–(12); Alimuddin et al., "Plea Bargaining dalam Rancangan Kitab Undang-Undang Hukum Acara Pidana," 418.
46 Sapanah and Lewoleba, "Plea Bargaining and Indonesia's Special Track."
47 Compare Bibas, "Plea Bargaining outside the Shadow of Trial," 2463–2547; Gormley, "The Inefficiency of Plea Bargaining," 277–93.
48 Abuthalib, Ismail, and Ahmad, "Plea Bargaining dalam Bayang-Bayang Keadilan," 1133.
49 Law Number 1 of 2023, art. 79 para. (1).
50 Law Number 20 of 2025, art. 78 paras. (1), (8), (10), and (12).

The KUHAP does not confine the guilty plea to the pre-trial hearing under Article 78. A defendant may also plead guilty after an attempt at restorative justice between the defendant and the victim has failed, and a defendant who admits all the acts charged once the indictment has been read may be examined under the summary procedure.[51] To ensure uniform application, the Supreme Court has issued Circular Letter Number 1 of 2026, which provides guidance to judges on implementing the new procedural institutions, including the role of the single judge in guilty plea hearings.[52]

From the defendant's perspective, the guilty plea raises concerns about the privilege against self-incrimination and the right to remain silent. Article 78(7)(a) addresses these concerns by requiring the written agreement to state that the defendant understands the consequences of the plea, including the waiver of the right to remain silent and of the right to be tried under the ordinary procedure. Nevertheless, Sirjon, Sulihin, and Purnama warn that an admission that is later rejected may still prejudice the defendant, because the judge has already heard the defendant concede the act.[53] Sapanah and Lewoleba likewise caution that, without clear technical rules and strict judicial oversight, the mechanism risks putting pressure on defendants and eroding their right to a fair trial.[54] The mandatory presence of an advocate and the judicial assessment of voluntariness are therefore not mere formalities; they are the core safeguards of the mechanism.

Notably, the victim has no formal role in the guilty plea procedure. Article 78 involves only the public prosecutor, the defendant, the advocate, and the judge. The victim's interests enter the process only indirectly, through the requirement in paragraph (1)(c) that the defendant be willing to pay compensation or restitution. The guilty plea is thus a bilateral arrangement between the State and the defendant, subject to judicial approval, rather than a tripartite settlement among the offender, the victim, and the community. As the next subsection shows, this is the most fundamental point of difference from restorative justice.

For the criminal justice system as a whole, the expected benefits of the guilty plea are considerable. By shortening the examination of uncontested cases, it frees judicial

---

51 Law Number 20 of 2025, arts. 205 para. (1) and 234 para. (1).
52 Supreme Court Circular Letter Number 1 of 2026 concerning Guidelines for the Implementation of the 2023 Criminal Code and the 2025 Criminal Procedure Code, January 2, 2026.
53 Sirjon, Sulihin, and Purnama, "Perbandingan Mekanisme Pengakuan Bersalah," 224–35.
54 Sapanah and Lewoleba, "Plea Bargaining and Indonesia's Special Track."

and prosecutorial resources for contested and more serious cases, and the reduced sentence may help to ease the overcrowding of correctional institutions. Syafrina and her co-authors link the introduction of the mechanism directly to the inefficiency of the former retributive procedure and to prison overcrowding,[55] while Wahyudhi and his co-authors see it as a concrete expression of the principle of fast, simple, and low-cost justice.[56] Whether these benefits materialise, however, will depend on how frequently defendants choose the mechanism and on whether judges apply the safeguards consistently.

4. Restorative Justice and Victim Recovery through Compensation or Restitution

Restorative justice is regulated in Articles 79 to 88 of the KUHAP, which govern its mechanism. Article 79 paragraph (1) provides for restoring the original situation in the form of forgiveness from the victim and/or the victim's family; the return to the victim of property obtained from the offence; reimbursement of medical and/or psychological treatment costs; compensation for other losses suffered by the victim as a result of the offence; repair of the damage caused by the offence; or payment of compensation for the harm resulting from the offence.[57]

This provision makes clear that the restorative justice mechanism looks to the condition of the victim and seeks to restore the original situation through compensation.[58] The restoration of the original situation is set out in an agreement, which must be performed within seven days. The report or complaint may be withdrawn only after the offender has fulfilled the entire agreement. Once the agreement has been fully performed, the case must be discontinued and a court determination must be requested.[59]

According to Eddy O.S. Hiariej, restorative justice is an approach to settling cases under criminal law that involves the offender, the victim, the families of the victim or the offender, and other relevant parties in seeking a just settlement that emphasises

---

55 Syafrina et al., "Model Pengaturan Plea Bargaining," 361–62.
56 Wahyudhi et al., "Prinsip Plea Bargaining," 46–58.
57 Law Number 20 of 2025, art. 79 para. (1).
58 On the concept of restitution as compensation paid to the victim or the victim's family by the offender or a third party, see Law of the Republic of Indonesia Number 31 of 2014 concerning Amendment to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, art. 7A; Supreme Court Regulation Number 1 of 2022 concerning Procedures for Settling Applications for and Granting Restitution and Compensation to Victims of Criminal Acts, art. 1 point 1.
59 Law Number 20 of 2025, art. 79 paras. (2)–(5).

restoration to the original situation rather than retribution.[60]

In the view of Mahfud MD, restorative justice is an approach to criminal law enforcement that seeks a peaceful settlement by making law an instrument for building harmony. It is not merely about winning and losing or about punishing the offender; its purpose is to create conditions of justice and balance among the offender, the victim, and society.[61]

Indriyanto Seno Adji argues that legal problems may also be resolved outside the court through the Economic Analysis of Law (EAL), whose ultimate aim is to increase measurable benefits for social welfare maximisation.[62] Accordingly, the removal of punishment through the active authority of investigators, understood as "other action" in the context of an out-of-court settlement in accordance with the principle of restorative justice, constitutes a legally justified act of expediency (*doelmatigheid*).[63]

If the offender fails to perform the agreement, the investigator must draw up an official report on the implementation of the restorative justice mechanism containing the identities of the parties, the content of the agreement, evidence of the performance of the agreement, and the reasons for the offender's failure to fulfil it. This report becomes part of the case file and serves as the basis for continuing the judicial process. The restorative justice mechanism may be carried out at the inquiry, investigation, prosecution, and trial stages.[64]

Under Article 80, the restorative justice mechanism may be applied to offences that are punishable only by a fine not exceeding Category III or by imprisonment for a maximum of five years, that are committed for the first time, and/or that do not constitute repeat offences, except for offences resulting in a fine or offences committed

---

60 Eddy O.S. Hiariej, *Prinsip-Prinsip Hukum Pidana*, rev. ed. (Yogyakarta: Cahaya Atma Pustaka, 2016); see also Noya, Toule, and Tuhumury, "Penerapan Proses *Restorative Justice*," 313.

61 "Di Depan Kabareskrim, Mahfud MD Sebut Pentingnya Pendekatan *Restorative Justice*," *Sindonews*, April 5, 2021, https://nasional.sindonews.com/read/387374/13/di-depan-kabareskrim-mahfud-md-sebut-pentingnya-pendekatan-restorative-justice-1617620686.

62 On the economic analysis of law generally, see Richard A. Posner, *Economic Analysis of Law*, 9th ed. (New York: Wolters Kluwer Law & Business, 2014); on its link with efficient case settlement in Indonesia, see Muhamad Aksan Akbar, La Ode Awal Sakti, and Faisal Herisetiawan Jafar, "Penerapan *Restorative Justice* dalam Perkara Korupsi sebagai Wujud Peradilan Sederhana, Cepat, dan Biaya Ringan," *Jurnal Ius Constituendum* 8, no. 2 (2023): 241, https://doi.org/10.26623/jic.v8i2.6822.

63 Indriyanto Seno Adji, "Sistem Hukum Pidana & Keadilan Restoratif" (paper presented at a Focus Group Discussion of the National Law Development Agency/BPHN, Jakarta, December 1, 2016), https://bphn.go.id/data/documents/fgd_dphn_prof._indriyanto_seno_aji.pdf.

64 Law Number 20 of 2025, art. 79 paras. (6)–(8).

through negligence.[65] Based on the victim's report, the restorative justice mechanism at the inquiry stage takes the form of an agreement between the offender and the victim.[66]

Article 81 provides that the restorative justice mechanism may be initiated at the request of the offender, suspect, defendant, or their family, and/or the victim or the victim's family; restorative justice may also be offered by the inquirer, investigator, public prosecutor, or judge to the victim and to the offender, suspect, or defendant. Under Article 81 paragraph (2) of the KUHAP, the mechanism must be conducted without coercion, intimidation, torture, or any act that degrades the human dignity of the suspect, defendant, victim, and/or their families.[67]

The victim protection framework clarifies the content of these obligations. Under Law Number 31 of 2014, victims of criminal acts are entitled to restitution in the form of compensation for the loss of wealth or income, compensation for suffering directly related to the offence, and reimbursement of medical and/or psychological treatment costs.[68] Supreme Court Regulation Number 1 of 2022 then sets out the procedure by which victims may apply to the court for restitution and compensation.[69] The forms of restoration listed in Article 79(1) of the KUHAP closely mirror these heads of loss. This indicates that restorative justice under the new code is designed, among other things, as a channel through which the victim's right to restitution can be realised without a full trial.

At the same time, restorative justice under the KUHAP is not reducible to the payment of money. Forgiveness from the victim or the victim's family is listed as a form of restoration in its own right, and the agreement must be reached voluntarily. This reflects the restorative premise that the process itself, in which the offender acknowledges the harm and the victim is heard, has value independently of its material outcome. Mediation, as Zehr notes, is only one of many restorative encounters, and its result may be an apology, a commitment to change, or a material reparation, depending on what the parties consider just.[70]

5. Objectives, Exclusions, and Judicial Determination of Restorative Justice

[65] The fine categories are laid down in Law Number 1 of 2023, art. 79.
[66] Law Number 20 of 2025, art. 80.
[67] Law Number 20 of 2025, art. 81.
[68] Law Number 31 of 2014, art. 7A para. (1).
[69] Supreme Court Regulation Number 1 of 2022, arts. 1–2.
[70] Zehr, *The Little Book of Restorative Justice*; United Nations Office on Drugs and Crime, *Handbook on Restorative Justice Programmes*, 2nd ed.

The objectives of restorative justice are, first, to restore order and peace in society and to repair damaged relationships; second, to denounce criminal behaviour as unacceptable and to reaffirm community values; third, to support victims, give them a voice, encourage their participation, and address their needs; fourth, to encourage all parties concerned, particularly offenders, to take responsibility; fifth, to identify restorative, forward-looking outcomes; and sixth, to prevent recidivism by encouraging change in individual offenders and facilitating their reintegration into society.[71] These objectives underpin the restorative justice process.[72]

The restorative justice mechanism is subject to the exclusions laid down in Article 82 of the KUHAP, namely offences against state security; offences against friendly states, their heads of state, and their representatives; offences against public order and offences against decency; terrorism; corruption; sexual violence; offences punishable by imprisonment of five years or more, except those committed through negligence; offences against life; offences carrying a special minimum penalty; certain offences that are highly dangerous or harmful to society; and narcotics offences, except those involving persons with the status of users or abusers.[73]

Article 83 provides that the restorative justice mechanism at the inquiry and investigation stages is carried out through an agreement to settle the case before the inquirer or investigator. In this process, the inquirer or investigator acts only as a facilitator of the parties' negotiation, so that the suspect and the victim reach a peaceful agreement to restore the original situation, under which the victim is compensated for the losses suffered as a result of the offence.[74] The agreement is set out in a case settlement agreement signed by the offender, the victim, and the inquirer or investigator. On the basis of this case settlement agreement, the investigator issues a decision to terminate the investigation.[75]

Article 84 of the KUHAP provides that the investigator notifies the termination of the investigation to the public prosecutor and requests a determination from the chief judge of the district court within a maximum of five days. Although the settlement takes place outside the judicial process, the procedure and mechanism of RJ still require a

[71] United Nations Office on Drugs and Crime, *Handbook on Restorative Justice Programmes*, 2nd ed.
[72] Braithwaite, *Restorative Justice and Responsive Regulation*; Zehr, *The Little Book of Restorative Justice*.
[73] Law Number 20 of 2025, art. 82.
[74] Noya, Toule, and Tuhumury, "Penerapan Proses *Restorative Justice*," 312–18.
[75] Law Number 20 of 2025, art. 83.

court determination.[76]

Articles 83 to 86 integrate the mechanism into each formal stage of the criminal process, from the inquiry and investigation to the prosecution and trial.[77] The requirement of a judicial determination, even for settlements reached before the investigator, serves an important supervisory function. It subjects the discretion of investigators and prosecutors to judicial review and reduces the risk that restorative justice will be misused as a means of "buying" the termination of a case. In this respect, the court determination in restorative justice performs a role comparable to the judge's approval of the guilty plea agreement: in both mechanisms, the judiciary acts as the final guarantor of legality.

The exclusions in Article 82 also reveal the limits that the legislature has placed on private settlement in criminal matters. Offences that threaten the State, public order, or the life and sexual integrity of persons, as well as corruption, terrorism, and narcotics trafficking, are deemed to involve public interests that cannot be waived by agreement between the offender and the victim. As Mahfud MD has emphasised, not every criminal case can be settled through restorative justice.[78] The public dimension of crime therefore remains, even within an approach that seeks to return the conflict to the parties.

6. A Comparative Analysis of the Guilty Plea and Restorative Justice

The preceding analysis makes it possible to compare the two mechanisms systematically. Table 1 summarises the main points of comparison under the 2025 KUHAP, based on the provisions examined above.[79]

Table 1. Comparison of the Guilty Plea and Restorative Justice under the 2025 KUHAP

Aspect	Guilty Plea (Article 78)	Restorative Justice (Articles 79–88)
Legal basis	Article 1 point 16; Article 78; see also Articles 205 and 234	Article 1 point 21; Articles 79–88
Nature	Judicial mechanism within court proceedings	Out-of-court settlement concluded by a court determination
Stage	Prosecution stage, at a specific hearing before the trial on the merits	Inquiry, investigation, prosecution, and trial
Parties	Public prosecutor, defendant, advocate (mandatory), and a single judge	Offender, suspect or defendant, victim, their families, and other relevant parties; officials act as facilitators

[76] Law Number 20 of 2025, art. 84.
[77] Law Number 20 of 2025, arts. 83–86.
[78] Law Number 20 of 2025, art. 82; "Di Depan Kabareskrim, Mahfud MD Sebut Pentingnya Pendekatan Restorative Justice."
[79] Compiled by the author from Law Number 20 of 2025, arts. 1 points 16 and 21, 78–88, 205, and 234.

Aspect	Guilty Plea (Article 78)	Restorative Justice (Articles 79–88)
Eligibility	First offence; imprisonment of up to five years or a fine not exceeding Category V; and/or willingness to pay compensation or restitution	Fine not exceeding Category III or imprisonment of up to five years; first offence; and/or not a repeat offence; subject to the exclusions in Article 82
Role of the victim	No formal role; the victim's interests are reflected only indirectly through compensation or restitution	Central; forgiveness and restoration of the victim are the substance of the settlement
Compensation or restitution	One of the requirements for the plea	Core content of the restorative agreement (Article 79(1))
Outcome	Judgment under the summary procedure, with a reduced sentence	Termination of the case and a court determination, without a conviction
Effect of failure	If the judge rejects the plea, the case proceeds under the ordinary procedure	If the offender fails to perform the agreement, the judicial process continues
Main safeguards	Assessment of voluntariness, mandatory advocate, and two valid pieces of evidence	Prohibition of coercion, intimidation, and degrading treatment (Article 81(2)); court determination
Primary objective	Procedural efficiency and sentence reduction	Restoration of the original situation and of social relationships

Source: compiled from the 2025 KUHAP.

Table 1 shows, first, that the two mechanisms differ in their forum and legal character. The guilty plea is a form of adjudication: it shortens the trial but still ends in a judgment of conviction, albeit with a reduced sentence. Restorative justice is a form of diversion: when it succeeds, the case is terminated and no conviction is entered, and the court's role is limited to confirming the legality of the settlement through a determination. The guilty plea therefore remains part of the retributive structure of criminal procedure, whereas restorative justice offers an exit from it.

Second, the mechanisms differ in their treatment of the victim. In restorative justice, the victim is a party whose forgiveness and restoration form the substance of the settlement. In the guilty plea, by contrast, the victim is not a party at all, and the defendant's willingness to pay compensation or restitution operates only as a condition of eligibility. This creates an asymmetry: the mechanism that confers the greater procedural benefit on the defendant, namely a summary trial and a reduced sentence, does not require the participation of the victim, while the more demanding restorative mechanism places the victim at its centre. International standards on restorative justice stress that victims should be informed, heard, and able to participate in processes that

affect them,[80] and these standards argue for giving victims at least a consultative role in guilty plea agreements.

Third, the eligibility thresholds are not aligned. Both mechanisms refer to offences punishable by no more than five years' imprisonment, but the fine ceiling for restorative justice is Category III (IDR 50 million),[81] whereas the guilty plea extends to Category V (IDR 500 million). Moreover, Article 80 admits offences punishable by imprisonment of up to five years, while Article 82 excludes offences punishable by five years or more, so that, in effect, restorative justice is available only for offences carrying a maximum penalty below five years, except for offences committed through negligence.[82] Syafrina and her co-authors identify such disparities in sentencing thresholds as one of the normative inconsistencies of the new code.[83]

Fourth, the two mechanisms are not mutually exclusive but may operate sequentially. Because a guilty plea may be submitted after an attempt at restorative justice has failed, the parties can first seek restoration and, if that fails, the defendant may still obtain the benefit of a summary procedure by pleading guilty.[84] This sequencing reflects the priority that the new code gives to restoring the victim over procedural speed: the out-of-court path is offered first, and the accelerated judicial path remains available as a fallback.

Fifth, the role of law enforcement officials differs. In the guilty plea, the public prosecutor is an active party who negotiates with the defendant and the advocate and proposes the sentence to be demanded, while the judge acts as the final authority who approves or rejects the agreement. In restorative justice, the inquirer, investigator, prosecutor, or judge acts mainly as a facilitator who brings the parties together and ensures that the agreement is reached voluntarily; the substance of the settlement belongs to the offender and the victim. This difference corresponds to the distinction between a negotiated form of State justice and a participatory form of community justice, and it should be reflected in the training and supervision[85] of the officials concerned.

---

80 United Nations Office on Drugs and Crime, *Handbook on Restorative Justice Programmes*, 2nd ed.
81 Law Number 1 of 2023, art. 79 para. (1).
82 Law Number 20 of 2025, arts. 80 para. (1) and 82 letter e.
83 Syafrina et al., "Model Pengaturan Plea Bargaining," 361–62.
84 Law Number 20 of 2025, art. 205 para. (1).
85 Law Number 20 of 2025, arts. 78 paras. (6)–(7), 81, and 83; see also Braithwaite, *Restorative Justice and Responsive Regulation*.

7. Compensation and Restitution as the Point of Convergence: Implications and Challenges

Compensation and restitution are the only elements that appear in both mechanisms. In restorative justice, they are the substance of the settlement; in the guilty plea, they are a condition that makes the plea available. Their inclusion in both mechanisms reflects a broader shift in Indonesian criminal policy towards the recovery of losses. Wahyudhi and his co-authors argue that plea bargaining principles can serve the constitutional and statutory commitment to fast, simple, and low-cost justice,[86] while Akbar and his co-authors show that restorative approaches can be justified by the recovery of losses and by savings in public resources that would otherwise be spent on lengthy prosecutions.[87]

From the perspective of the economic analysis of law, both mechanisms can be understood as ways of reducing the transaction costs of resolving criminal cases. A trial consumes the time of judges, prosecutors, and advocates, and imposes costs on the victim, the defendant, and the State. A negotiated or restorative outcome that the parties accept as fair can achieve the goals of criminal law at a lower social cost. Efficiency, however, is not a value in itself; it is justified only to the extent that it serves social welfare and does not sacrifice the legitimacy of the outcome. This is why the KUHAP subjects both mechanisms to judicial control.[88]

The monetisation of criminal justice nevertheless carries risks. If the willingness to pay becomes decisive, offenders with greater financial means may obtain more lenient treatment, while indigent offenders may be excluded from both mechanisms. Abuthalib, Ismail, and Ahmad warn that, without strict supervision and procedural transparency, plea bargaining may lead to the abuse of prosecutorial discretion, the coercion of vulnerable defendants, and inconsistent decisions that undermine legal certainty.[89] Similar concerns apply to restorative justice if the victim's consent is obtained through pressure or if the amount of compensation bears no reasonable relationship to the harm suffered.

Several measures could mitigate these risks. First, implementing regulations should clarify how the amount of compensation or restitution is determined in guilty

86 Wahyudhi et al., "Prinsip Plea Bargaining," 52.
87 Akbar, Sakti, and Jafar, "Penerapan Restorative Justice dalam Perkara Korupsi," 241.
88 Posner, *Economic Analysis of Law*; Seno Adji, "Sistem Hukum Pidana & Keadilan Restoratif."
89 Abuthalib, Ismail, and Ahmad, "Plea Bargaining dalam Bayang-Bayang Keadilan," 1133.

plea agreements and require that the victim be consulted before the agreement is approved. Second, the "and/or" formulation of Article 78(1) should be interpreted so that a first-time offender's inability to pay does not, by itself, bar access to the guilty plea. Third, the thresholds in Articles 78, 80, and 82 should be harmonised to avoid arbitrary differences between the two mechanisms. Fourth, the Witness and Victim Protection Agency (LPSK), which already plays a role in assessing restitution, could assist judges in evaluating[90] whether the compensation agreed in either mechanism is adequate.

Finally, both mechanisms must be read in the light of the sentencing objectives of the National Criminal Code, which has moved away from a purely retributive paradigm towards rehabilitation and restoration.[91] The guilty plea and restorative justice can each serve as procedural vehicles for this paradigm, provided that efficiency is not pursued at the expense of due process. As comparative experience shows, plea bargaining can become an instrument of pressure rather than of justice,[92] whereas restorative processes depend on genuine voluntariness. The success of the new KUHAP will therefore depend less on the text of Articles 78 and 79 than on the integrity with which prosecutors, investigators, and judges apply them.

C. CONCLUSIONS

The findings show that the guilty plea under Article 78 of the KUHAP is processed through the court under a summary procedure before a single judge, and the proceedings continue until the judge renders a judgment based on the official report of the defendant's guilty plea. Restorative justice, by contrast, is regulated in Article 79 as an out-of-court mechanism concluded by a court determination and may be applied during the inquiry, investigation, prosecution, and trial stages. The guilty plea takes place at the prosecution stage with the defendant's agreement and may be applied only to first-time offenders, to offences punishable by a maximum of five years' imprisonment or a fine not exceeding Category V, and/or where the defendant is willing to pay compensation or restitution.

The comparison further reveals several differences of principle. First, the guilty plea is a form of adjudication that ends in a conviction with a reduced sentence, whereas

90 Law Number 31 of 2014, art. 7A; Supreme Court Regulation Number 1 of 2022.
91 Law Number 1 of 2023, arts. 51–54; Syafrina et al., "Model Pengaturan Plea Bargaining," 361–62.
92 Bibas, "Plea Bargaining outside the Shadow of Trial," 2463–2547; Gormley, "The Gravest Inefficiency of Plea Bargaining," 249–68; Haeranah et al., "The Concept of Plea Bargain," 1–16.

restorative justice is a form of diversion that ends in the termination of the case without a conviction. Second, the victim is a central party in restorative justice but has no formal role in the guilty plea, in which compensation or restitution operates only as a condition of eligibility. Third, the eligibility thresholds of the two mechanisms are not aligned, particularly with regard to the fine categories and the five-year limit in Articles 80 and 82. Fourth, the two mechanisms can operate sequentially, since a guilty plea remains available after an attempt at restorative justice has failed.

Compensation and restitution are the point at which the two mechanisms converge. To prevent this convergence from turning criminal justice into a matter of the offender's ability to pay, this study recommends that implementing regulations require the victim to be consulted in guilty plea agreements, clarify the method for determining the amount of compensation or restitution, harmonise the thresholds in Articles 78, 80, and 82, and involve the Witness and Victim Protection Agency in assessing restitution. Further empirical research is needed to evaluate how investigators, prosecutors, and judges apply both mechanisms after the new KUHAP entered into force.

REFERENCES

Abuthalib, Cut Nangrie Sari, Dian Ekawaty Ismail, and Ahmad. "*Plea Bargaining* dalam Bayang-Bayang Keadilan: Antara Efisiensi Penegakan Hukum dan Degradasi Nilai Kepastian Hukum." *Al-Zayn: Jurnal Ilmu Sosial & Hukum* Volume 4, Nomor 1 (2026): 1130–1146. https://doi.org/10.61104/alz.v4i1.3201.

Akbar, Muhamad Aksan, La Ode Awal Sakti, and Faisal Herisetiawan Jafar. "Penerapan *Restorative Justice* dalam Perkara Korupsi sebagai Wujud Peradilan Sederhana, Cepat, dan Biaya Ringan." *Jurnal Ius Constituendum* Volume 8, Nomor 2 (2023): 239–258. https://doi.org/10.26623/jic.v8i2.6822.

Alimuddin, Muh Zuhud Al-Khaer Zahir, Muh Firdaus Rasyid, and Muh Fichriyadi Hastira. "*Plea Bargaining* dalam Rancangan Kitab Undang-Undang Hukum Acara Pidana Negara Indonesia." *Legal Standing: Jurnal Ilmu Hukum* Volume 8, Nomor 2 (2024): 418–430. https://doi.org/10.24269/ls.v8i2.9213.

Alschuler, Albert W. "Plea Bargaining and Its History." *Columbia Law Review* Volume 79, Nomor 1 (1979): 1–43. https://doi.org/10.2307/1122051.

Bibas, Stephanos. "Plea Bargaining outside the Shadow of Trial." *Harvard Law Review* Volume 117, Nomor 8 (2004): 2463–2547. https://doi.org/10.2307/4093404.

Braithwaite, John. *Restorative Justice and Responsive Regulation*. New York: Oxford University Press, 2002.

Christie, Nils. "Conflicts as Property." *British Journal of Criminology* Volume 17, Nomor 1 (1977): 1–15. https://doi.org/10.1093/oxfordjournals.bjc.a046783.

"Di Depan Kabareskrim, Mahfud MD Sebut Pentingnya Pendekatan *Restorative Justice*." *Sindonews*, April 5, 2021. https://nasional.sindonews.com/read/387374/13/di-depan-kabareskrim-mahfud-md-sebut-pentingnya-pendekatan-restorative-justice-1617620686.

Gormley, Jay. "The Gravest Inefficiency of Plea Bargaining and the Consequences for Rehabilitation and Reintegration." *Journal of Law and Society* Volume 52, Nomor 2 (2025): 249–268. https://doi.org/10.1111/jols.12531.

Gormley, Jay. "The Inefficiency of Plea Bargaining." *Journal of Law and Society* Volume 49, Nomor 2 (2022): 277–293. https://doi.org/10.1111/jols.12360.

Haeranah, Hijrah Adhyanti Mirzana, Andi Muhammad Aswin Anas, Ismail Iskandar, Arnita Pratiwi Arifin, Ulil Amri, and Normiati. "The Concept of Plea Bargain in the Criminal Process System in Indonesia." *Law Reform* Volume 21, Nomor 1 (2025): 1–16. https://doi.org/10.14710/lr.v21i1.66764.

Hiariej, Eddy O.S. *Prinsip-Prinsip Hukum Pidana*. Rev. ed. Yogyakarta: Cahaya Atma Pustaka, 2016.

Husin, Nabilla Callosa, and Naylla Shabilla Callistha Husin. "Plea Bargaining as a Reform in Criminal Procedure Law: An Analysis of Article 199 of the Draft Criminal Procedure Code." *Ius Poenale* Volume 5, Nomor 1 (2024): 31–42. https://doi.org/10.25041/ip.v5i1.3486.

Indonesian National Police Regulation Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice.

Langer, Máximo. "From Legal Transplants to Legal Translations: The Globalization of Plea Bargaining and the Americanization Thesis in Criminal Procedure." *Harvard International Law Journal* Volume 45, Nomor 1 (2004): 1–64.

Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code (State Gazette of 2023 Number 1, Supplement to the State Gazette Number 6842).

Law of the Republic of Indonesia Number 20 of 2025 concerning the Criminal Procedure Code. https://peraturan.bpk.go.id/Details/337302/uu-no-20-tahun-2025.

Law of the Republic of Indonesia Number 31 of 2014 concerning Amendment to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims.

Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power (State Gazette of 2009 Number 157, Supplement to the State Gazette Number 5076).

Law of the Republic of Indonesia Number 8 of 1981 concerning the Criminal Procedure Code (State Gazette of 1981 Number 76, Supplement to the State Gazette Number 3209).

Mahardhika, Vita, Pudji Astuti, Emmilia Rusdiana, Nurul Hikmah, and Gelar Ali Ahmad. "Challenges in the Implementation of the 'Jalur Khusus' Concept in the Draft Indonesian Criminal Procedure Code." *SHS Web of Conferences* Volume 149 (2022): 02006. https://doi.org/10.1051/shsconf/202214902006.

Marzuki, Peter Mahmud. *Penelitian Hukum: Edisi Revisi*. Jakarta: Kencana, 2019.

Maulana, Aby. "Konsep Pengakuan Bersalah Terdakwa pada 'Jalur Khusus' menurut RUU KUHAP dan Perbandingannya dengan Praktek *Plea Bargaining* di Beberapa Negara." *Jurnal Cita Hukum* Volume 3, Nomor 1 (2015): 39–66. https://doi.org/10.15408/jch.v2i1.1840.

Meliala, Nefa Claudia. "Pendekatan Keadilan Restoratif: Upaya Melibatkan Partisipasi Korban dan Pelaku secara Langsung dalam Penyelesaian Perkara Pidana." *Veritas et Justitia* Volume 1, Nomor 1 (2015): 111–134. https://doi.org/10.25123/vej.1419.

Noya, Melva, Elsa Rina Maya Toule, and Carolina Tuhumury. "Penerapan Proses *Restorative Justice* melalui Pendekatan *Restorative Conferencing Initiatives* di Indonesia." *TATOHI: Jurnal Ilmu Hukum* Volume 1, Nomor 4 (2021): 312–318. https://doi.org/10.47268/tatohi.v1i4.608.

Posner, Richard A. *Economic Analysis of Law*. 9th ed. New York: Wolters Kluwer Law & Business, 2014.

Prosecutor's Office Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice.

Ruchoyah. "Urgensi *Plea Bargaining System* dalam Pembaruan Sistem Peradilan Pidana di Indonesia: Studi Perbandingan *Plea Bargaining System* di Amerika Serikat." *Jurnal Hukum Ius Quia Iustum* Volume 27, Nomor 2 (2020): 388–409. https://doi.org/10.20885/iustum.vol27.iss2.art9.

Sapanah, Mawar, and Kayus Kayowuan Lewoleba. "Plea Bargaining and Indonesia's Special Track under the New KUHAP: A Comparative Study with United States." *Al-Risalah: Jurnal Ilmu Syariah dan Hukum* Volume 26, Nomor 1 (2026). https://doi.org/10.24252/al-risalah.vi.64931.

Scott, Robert E., and William J. Stuntz. "Plea Bargaining as Contract." *Yale Law Journal* Volume 101, Nomor 8 (1992): 1909–1968. https://doi.org/10.2307/796952.

Seno Adji, Indriyanto. "Sistem Hukum Pidana & Keadilan Restoratif." Paper presented at a Focus Group Discussion of the National Law Development Agency (BPHN), Jakarta, December 1, 2016. https://bphn.go.id/data/documents/fgd_dphn_prof._indriyanto_seno_aji.pdf.

Siregar, Nella Octaviany. "*Plea Bargaining* dalam Sistem Peradilan Pidana di Beberapa Negara." *Wajah Hukum* Volume 3, Nomor 1 (2019): 1–9. https://doi.org/10.33087/wjh.v3i1.46.

Sirjon, Lade, La Ode Muhamad Sulihin, and Yan Fathahillah Purnama. "Perbandingan Mekanisme Pengakuan Bersalah pada Jalur Khusus dalam RUU KUHAP dan Konsep *Plea Bargaining* Ditinjau dari Asas *Non-Self Incrimination*." *Halu Oleo Law Review* Volume 7, Nomor 2 (2023): 224–235. https://doi.org/10.33561/holrev.v7i2.29.

Supreme Court Circular Letter Number 1 of 2026 concerning Guidelines for the Implementation of the 2023 Criminal Code and the 2025 Criminal Procedure Code.

Supreme Court Regulation Number 1 of 2022 concerning Procedures for Settling Applications for and Granting Restitution and Compensation to Victims of Criminal Acts.

Supreme Court Regulation Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice.

Syafrina, Henin Dyah, Slamet Sudi Illahi, Bintang Pramadhani Hariadi Putra, and Naura Tsurayya Hasnaa. "Model Pengaturan *Plea Bargaining* dalam Pembaharuan Hukum Acara Pidana Indonesia." *Jurnal USM Law Review* Volume 9, Nomor 1 (2026): 361–380. https://doi.org/10.26623/julr.v9i1.13391.

United Nations Office on Drugs and Crime. *Handbook on Restorative Justice Programmes*. 2nd ed. Criminal Justice Handbook Series. Vienna: United Nations, 2020.

Wahyudhi, Dheny, Sri Rahayu, Elly Sudarti, and Herry Liyus. "Prinsip *Plea Bargaining* dalam Penyelesaian Perkara Pidana secara Cepat Sederhana dan Biaya Ringan dalam Pembaharuan Hukum Acara Pidana." *Jurnal Sains Sosio Humaniora* Volume 6, Nomor 2 (2022): 46–58. https://doi.org/10.22437/jssh.v6i2.22592.

Zehr, Howard. *The Little Book of Restorative Justice: Revised and Updated*. New York: Good Books, 2015.