

The Framework of KRKB: Governing Consent in Indonesia's New Criminal Procedure

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Abstract

This article examined how five consensus-related mechanisms in Indonesia's reformed criminal process—guilty pleas, courtroom settlements, restorative case disposition, deferred prosecution agreements for corporations, and judicial pardon—should be distinguished and governed. The study employed doctrinal legal research supported by conceptual analysis of criminal law theory and a limited functional comparison with international scholarship on plea bargaining, restorative processes, and corporate settlements. It developed the framework of Keadilan Restoratif Konsensual Berketuhanan (KRKB) as a consent-accountability architecture grounded in Pancasila values. The article found that these mechanisms could not be treated as interchangeable forms of restorative justice because they produced different legal consequences and therefore required distinct standards of proof, voluntariness, restoration, proportionality, and judicial oversight. Its novelty lay in translating KRKB into four sequential decision gates: legal availability; informed consent and non-domination; proportionate restoration or individualization; and auditable completion. The framework provided a doctrinally disciplined approach to preventing a guilty plea from replacing proof, a settlement from concealing coercion, a corporate agreement from resulting in impunity, or a judicial pardon from becoming unreasoned leniency. It also proposed a data and audit agenda to support accountable implementation.

INTRODUCTION

The reform of Indonesian criminal law has expanded the space between conviction and conventional punishment. The 2023 Criminal Code directs sentencing toward prevention, rehabilitation, conflict resolution, restoration of balance, and remorse; it also prohibits punishments that degrade human dignity and requires courts to consider justice in concrete cases (Nasyi'ah et al., 2025). The 2025 Criminal Procedure Code then provides several procedural pathways through which an admitted offense, repaired harm, corporate remediation plan, or exceptional individual circumstance can influence the course and outcome of a criminal case. These pathways include guilty-plea procedures, courtroom settlements, restorative justice mechanisms, deferred prosecution agreements (DPAs) for corporations, and judicial pardon (Parker & Dodge, 2023).

It would constitute a serious doctrinal error to describe these pathways as five forms of restorative justice. A guilty plea remains a mechanism leading to a judgment of guilt and is primarily concerned with the waiver of rights and the sufficiency of evidence. A courtroom

settlement may mitigate punishment or support probation without necessarily terminating the criminal case. A statutory restorative justice mechanism may result in case discontinuance only after a legally valid agreement has been fully performed. A DPA postpones prosecution of a corporation and subjects it to court-approved conditions; it may result in discontinuance or renewed prosecution depending on compliance. Judicial pardon, finally, involves a finding of guilt without the imposition of a sentence or other legal measure. Therefore, their objectives, procedural stages, protected interests, and legal consequences differ. Treating them as a single category merely because they may involve agreement, restoration, or leniency obscures the safeguards required for each mechanism.

The practical problem is equally significant. A signed agreement may appear voluntary while being influenced by pre-trial detention, economic dependency, unequal access to legal advice, corporate information asymmetry, fear of community stigma, or a victim's understandable desire to avoid a burdensome proceeding. A payment may appear restorative while failing to address psychological harm, safety concerns, or continuing power relationships. A corporate compliance program may appear corrective while failing to identify the organizational causes of misconduct or make remediation measurable. A compassionate judgment may appear humane while failing to explain why a proven offense, its impact on victims, and the public interest do not require a penal response. These risks do not demonstrate that Indonesian mechanisms will fail; the legislation remains too recent to support empirical conclusions regarding implementation. However, they demonstrate the need for a doctrinal framework that distinguishes agreement from legitimate consent and case closure from accountable restoration (Farzulla, 2025).

This article addressed two related questions. First, how should the five statutory mechanisms be differentiated and interpreted within the integrated value structure of the 2023 Criminal Code, the 2025 Criminal Procedure Code, and the 2026 Penal Adjustment Law? Second, what common but differentiated safeguards are required to prevent consensual criminal justice from becoming coerced waiver, privatized impunity, or unreviewable discretion? Its thesis was that a Pancasila-grounded framework of *Keadilan Restoratif Konsensual Berketuhanan* (KRKB) provided a more discriminating approach than an administrative interpretation of individual provisions. KRKB did not advocate settlement for every case. Instead, it required every legally authorized consensual pathway to pass four gates: legal availability, informed and non-dominated participation, proportionate repair or individualization, and accountable completion.

This argument has international significance. Research on guilty pleas has examined decision-making under sentencing differentials, uncertainty, and legal representation (Zottoli et al., 2023). Research on restorative justice has focused on values, safety, victim experiences, program design, and measured outcomes (Kimbrell et al., 2023). Research on DPAs has examined corporate remediation, prosecutorial discretion, judicial supervision, and rule-of-law concerns (Tekdogan, 2026). These bodies of literature provide essential but separate insights. They rarely address a legal code that places all of these mechanisms, together with judicial pardon, within a coordinated criminal procedure framework connected to a constitutional legal philosophy. Indonesia therefore offers more than a domestic legislative development; it provides a context for examining the proposition that negotiated criminal justice should be governed as public law rather than treated as a collection of private agreements.

Existing scholarship has developed in several directions. Restorative justice theory shifted the understanding of crime from a focus on violated rules and deserved punishment

toward harmed persons, needs, obligations, and relationships (Bhadana, 2025). More recent studies have made this perspective operational. A restorative practice framework connects values, principles, knowledge assumptions, and concrete practices, while people-centered approaches to risk emphasize that safety assessment should be co-produced and context-sensitive rather than reduced to generalized actuarial analysis. Victim-centered research similarly demonstrates that participation, information, recognition, and control are important, while systematic reviews warn that power imbalances, retraumatization, and inadequate facilitator competence may undermine the objectives of restorative processes (Hudson & Berger, 2026).

The plea literature begins from a different concern. A plea is not reliable merely because it is formally submitted before a court. Decision-making may be influenced by uncertainty, anticipated trial sentences, perceived probabilities of conviction, quality of legal advice, and the meaning attributed to confession evidence (Curley et al., 2022). Experimental research cannot determine how Indonesian defendants will behave, but it demonstrates why procedural systems should examine the conditions under which trial rights are waived rather than treating an affirmative response as conclusive. Recent studies also show that the quality and perceived empathy of defense representation may influence willingness to accept a plea offer (Suiter & Metcalfe, 2024).

The DPA literature highlights a third challenge. Corporate settlements may correct governance failures and prevent collateral harm to employees and innocent third parties; however, they may also permit prosecutor-imposed obligations beyond transparent legal standards or create the perception that resource-rich corporations can purchase preferential treatment. The legal issue is not whether remediation has value. Rather, it concerns whether remedial obligations are connected to the offense and its associated risks, proportionate to the harm and benefits involved, subject to meaningful judicial review, and transparently monitored.

Indonesian scholarship and the referenced doctoral research have established an important philosophical foundation: Pancasila should not be reduced to ceremonial language in criminal law reform, and the concept of “restoration of the original condition” cannot reasonably mean denying that a harmful event occurred. However, existing literature has not adequately provided a unified doctrinal instrument for comparing the evidentiary, voluntariness, temporal, and accountability requirements of all five new mechanisms. It is insufficient to conclude that each mechanism expresses balance, humanity, or consensus. The unresolved issue concerns how the law should determine when an agreement has legal validity, what information must be understood before approval, how restoration differs from compensation, and how public institutions retain accountability after a consensual disposition.

Table 1 maps this research gap. The table does not claim to provide an exhaustive systematic review of all publications in each field. Instead, it identifies relevant scholarly streams and the more specific questions that remain unresolved when these perspectives are considered together.

Table 1. Existing scholarship, limitations, and the research gap.

Scholarly stream	Main contribution	Limitation for the current problem	Contribution of this article
Restorative theory and programme design	Explains harm, needs, responsibility, safety, participation, and process quality.	Usually does not distinguish plea waivers, corporate deferral, and judicial pardon as legally different consequences.	Uses KRKB to identify the distinct public-law function of each mechanism.
Plea decision research	Explains incentive, evidence, counsel, detention, and trial-penalty risks in guilty-plea decisions.	Centres defendant decision-making; it does not supply a model for victim repair or corporate accountability.	Separates proof of guilt from proof of valid waiver and restoration.
Corporate DPA scholarship	Identifies compliance, judicial control, monitoring, and rule-of-law concerns.	Normally studies corporate settlement in isolation from restorative and sentencing mechanisms.	Requires a causal matrix between offence, harm, remedial duties, monitoring, and breach.
Pancasila-grounded Indonesian reform	Supplies a constitutional ethics of dignity, deliberation, and social justice.	Has not yet provided one cross-mechanism test for consent, proof, time, and accountability.	Develops a four-gate consent-accountability architecture.

Source: doctrinal synthesis based on the cited materials.

The article's novelty was therefore not merely the assertion that Pancasila is compatible with restorative justice or the claim that Indonesia has introduced alternatives to imprisonment. Instead, it developed a consent-accountability architecture that integrated Pancasila values, restorative justice theory, discourse ethics, and public law safeguards into an operational legal framework. The architecture advanced a differentiated claim: the greater the departure from ordinary adjudication or punishment, the stronger the required demonstration of legally valid consent, adequate information, protection of affected parties, and reviewable completion. It also treated the 2026 Penal Adjustment Law as more than a technical amendment. By harmonizing legal categories, penalties, and corporate responses, the statute influenced the eligibility thresholds through which the 2025 procedural mechanisms operated.

METHOD

This study employed doctrinal legal research with conceptual and limited functional-comparative approaches. The primary legal materials consisted of Law No. 1 of 2023 on the Criminal Code, Law No. 20 of 2025 on the Criminal Procedure Code, and Law No. 1 of 2026 on Penal Adjustment. The analysis examined Articles 51–54 of the Criminal Code concerning sentencing objectives, human dignity, justice, and judicial pardon, along with procedural provisions governing guilty pleas, settlements, restorative justice mechanisms, deferred prosecution agreements (DPAs), and judicial pardon. The study applied textual interpretation to statutory provisions, systemic interpretation to the relationship among substantive,

procedural, and adjustment rules, and purposive interpretation to the legal commitment to humane, proportionate, and accountable criminal justice.

The conceptual analysis used KRKB as the central framework. KRKB was positioned within three complementary theoretical perspectives rather than as a replacement for them. Zehr's approach provided a relational understanding of harm and responsibility. Habermas's (1996) theory helped identify the conditions under which agreements could be considered communicatively valid rather than strategically compelled. Pancasila, interpreted through Notonagoro's account of its hierarchical and integrated character, provided the constitutional-ethical foundation for dignity, deliberation, social justice, unity, and accountable public action. These perspectives served distinct analytical functions: Zehr's framework identified needs and responsibility; Habermas's (1996) framework examined non-domination and mutual intelligibility; and Pancasila guided the reconciliation of legal values within the state's criminal justice system. This approach avoided theoretical accumulation without analytical purpose and rejected the assumption that universal restorative justice concepts could be directly applied without considering constitutional context.

RESULTS AND DISCUSSION

KRKB as a public-law theory of consensual criminal justice

1. From relational harm to legally disciplined consent

Restorative justice begins with an indispensable correction. Crime is not exhausted by a violation of a state rule. It can produce material loss, fear, psychological injury, damaged relationships, social distrust, and institutional harm. The victim is not merely an evidentiary witness, and the offender is not merely an object to be processed (Zehr, 2015; United Nations Office on Drugs and Crime, 2020). KRKB accepts this relational insight, but it rejects an inference sometimes drawn from it: that a victim-offender agreement itself settles the public meaning of crime. The state retains duties of legality, equality, safety, and protection of the public. A process can be relational without becoming private; it can be restorative without becoming a marketplace of exit.

The relevant question is therefore not "Did the parties agree?" but "What kind of legal decision is this agreement asked to support?" The answer changes the required safeguards. When a guilty plea supports waiver of the right to ordinary trial, the law must be concerned with independent proof, legal advice, and voluntariness. When a restorative agreement supports termination of a case, the law must additionally assess harm, safety, eligibility, performance, and the public interest. When a DPA defers corporate prosecution, the law must analyse organisational causation, victim and social impact, proportional remediation, and continuing monitoring. When judicial pardon removes the ordinary penal consequence after guilt is established, the court must give a reasoned account of why punishment or a measure is disproportionate despite the proven offence.

KRKB describes this as a difference between formal consent and legally valid consensus. Formal consent may be a signature, statement, or payment receipt. Legally valid consensus requires that people have sufficient information, a meaningful opportunity to refuse or choose an alternative process, protection from domination, and an outcome that is neither unlawful nor incompatible with the dignity of those affected. This is close to Habermas's (1996) distinction between communication oriented towards mutual understanding and strategically induced agreement, but it is translated into legal safeguards rather than metaphysical certainty. Courts cannot discover a person's inner freedom perfectly. They can require conditions that make coercion visible and challengeable: private consultation, understandable information, separate safety assessment, advice independent of the stronger party, written reasons, and records that may be audited.

2. Pancasila and the meaning of “Berketuhanan”

The word Berketuhanan must be handled with special care. It cannot mean that a criminal process imposes a religious identity, requires a victim to forgive, or empowers officials to moralise a defendant into submission. Such a reading would conflict with freedom of conscience, equality, and due process. In KRKB, the first sila operates as a public ethic of non-instrumental human worth and moral accountability. It prevents the reduction of a victim into a means of case closure, an accused person into a statistic, a corporation into a wallet, or a community into a rhetorical prop for institutional efficiency.

This understanding becomes concrete through the other sila. Humanity requires that no person be humiliated, coerced, deceived, or treated as disposable. Unity requires attention to social trust and the public effects of a criminal disposition. Deliberative democracy requires a process in which voice is meaningful rather than ritualised. Social justice prevents wealth, status, gender, detention, employment, or kinship from deciding who can obtain a beneficial negotiated result. Notonagoro's integrated reading of Pancasila is useful here because it resists a menu-like use of values; public institutions must seek coherence rather than select the convenient value of the day (Notonagoro, 1987).

This also explains why forgiveness cannot be mandatory. A victim may choose forgiveness, may decline it, may be undecided, or may seek non-contact repair. None of these positions is a test of moral quality. A defendant's apology may have value only if it is accompanied by responsibility and actual repair. A public official must not treat a religious vocabulary, family pressure, or community ceremony as proof that the conditions of legal consent have been met. KRKB is thus deliberately pluralist: it permits a moral-spiritual dimension where it is wanted, safe, and appropriate, but it makes dignity and freedom of conscience threshold conditions rather than benefits granted by the majority.

3. Four gates and five dimensions

The framework has five dimensions of harm and repair: material, psychological, relational, moral-spiritual where relevant and freely chosen, and social. It does not insist that every case produce an identical bundle of remedies. “Cumulative” means that decision-makers must consider the dimensions before selecting a response; “proportionate” means that the response must fit the harm, the offender's real capacity, the safety of the parties, and the public interest. A quick payment can be adequate for a simple property loss, inadequate for a continuing safety risk, and wholly irrelevant to a corporate governance failure.

The five dimensions are governed by four gates. The first is legal availability: is the mechanism authorised for this offender, offence, stage, and circumstance, and do statutory exclusions or a strong public interest preclude it? The second is epistemic and procedural

validity: is there sufficient information about the offence, harm, rights, capacity, and relevant risks, and did the decision occur without domination? The third is substantive proportionality: do obligations, repair, leniency, or non-punishment fit the wrongdoing, needs, and capacities at stake? The fourth is temporal and institutional accountability: can performance be verified, are the consequences of breach clear, and can a court or another accountable institution give reasons for acceptance, rejection, or completion?

The gates are sequential. Efficiency, reconciliation, or cost-saving cannot cure a failure at an earlier gate. An otherwise eligible offence cannot go through restorative justice if the victim is unsafe. A willing plea cannot justify conviction if the evidentiary foundation is inadequate. A coherent corporate programme cannot justify DPA if it is unrelated to the violation or shields accountable individuals. A sympathetic defendant cannot receive judicial pardon if the judgment does not consider the victim impact and articulate why a sentence is disproportionate. This ordering makes KRKB a theory of disciplined discretion, not a demand for blanket decriminalisation.

4. Epistemic separation and the evidentiary record.

The framework requires a separation that criminal procedure often obscures. Knowledge that an offence occurred is different from knowledge about the harm caused by it, and both differ from knowledge that an agreement is voluntary or that a remedial undertaking has been completed. A guilty plea may require an evidentiary basis for guilt and a reliable account of waived rights. A restorative disposition needs an account of needs, safety, capacity, and performance. A DPA needs information about organisational risk, corporate resources, affected interests, and compliance indicators. Judicial pardon needs a sentencing record capable of explaining why a non-punitive outcome is proportionate. No single document can perform all those functions merely because it is signed by a party.

The record should accordingly be sufficient, not maximal. It should contain only information necessary to justify the result, use privacy-preserving summaries where sensitive material is involved, and distinguish an assessment from proof of healing. Victim-centred research is useful here because it rejects the assumption that participation is synonymous with disclosure or confrontation (Wemmers et al., 2023). The choice of direct meeting, facilitated indirect communication, no-contact repair, or withdrawal from a process may itself be a meaningful expression of agency. A law that demands a victim's emotional exposure as the price of repair defeats its own protective rationale.

5. The hierarchy of values.

KRKB does not place restoration above all other criminal-law values. Its hierarchy is deliberately conservative where human vulnerability is at stake. First come dignity and the prohibition of coercion, violence, deceit, humiliation, and discrimination. Second come the safety of affected persons and the public interest attached to the character of the offence. Third come legality, reliable fact-finding, and the procedural rights that make state power answerable. Only after those thresholds are satisfied may the system pursue repair, reconciliation, efficiency, reduced penal severity, or institutional economy.

This ordering answers a recurrent objection to consensual justice: that it may transform criminal law into a competition between retribution and compassion. The relevant opposition is not punishment versus kindness. It is unreasoned state power versus legally justified responses that recognise harm, responsibility, and the limits of punishment. A non-custodial or negotiated outcome may be more demanding of an offender than a short conventional penalty if it includes repayment, acknowledgement, behavioural change,

compliance reform, and credible monitoring. Conversely, an apparently merciful outcome may be unjust if it ignores a victim's continued insecurity or a community's exposure to repeated harm. The hierarchy prevents the label “restorative” from doing argumentative work that the evidence has not earned.

Counter-position: does a values framework over-legalise restoration?

A serious objection is that KRKB risks turning a flexible restorative process into a bureaucratic checklist. Restorative justice has value precisely because it can respond to needs that courtroom formality ignores. Victims may not want written assessments, formal reasons, or judicial involvement; practitioners may fear that proceduralisation returns the state to the centre of a process meant to decentralise it. The objection has force. Documentation can intrude, generate delay, and translate human repair into institutional paperwork.

The answer is not to deny the risk but to distinguish internal process from the legal consequence sought. A private conversation, apology, or community practice may remain informal when it carries no decision to terminate prosecution, waive rights, or bind a corporation through state power. The moment an agreement is invoked to obtain a public legal consequence, the state is already involved. It must then be able to explain why it has exercised coercive power differently. The KRKB record is therefore not a demand to standardise emotion or fabricate a confession of healing. It is a minimum audit trail: what was decided, which rights and risks were considered, which obligations were undertaken, and how performance or refusal will be handled. This is the condition of legitimate flexibility rather than its enemy.

Mechanism-specific requirements

1. Guilty pleas: efficiency cannot replace proof

The guilty-plea mechanism in the 2025 Criminal Procedure Code is not a simple import of adversarial plea bargaining. Article 78 is limited by offence and offender criteria, requires counsel, a written agreement, judicial approval, and a hearing before the main trial. The agreement must identify the consequences of the admission, the rights waived, the charge, the proposed sentencing consequence, and the basis for reduction. The judge must be satisfied that the admission is voluntary and informed, and the case must be supported by lawful evidence (Republic of Indonesia, 2025). Articles 205 and 234 provide related but distinct routes into a summary procedure. Article 205 requires the judge to revisit the quality of earlier investigation and the absence of pressure after a failed attempt at courtroom settlement. Article 234 allows a different route after the indictment where the accused admits the charge and the statutory conditions are met (Republic of Indonesia, 2025).

The doctrinal point is not semantic. An initial admission obtained by an investigator cannot be treated as a final waiver of trial rights merely because another provision allows an investigator to receive an admission in coordination with a prosecutor. The final legal effect must be confined to the pathway that carries counsel, judicial scrutiny, and the safeguards stipulated for it. Otherwise, an early encounter with state authority may predetermine a result that the later hearing only ratifies. The right not to incriminate oneself and the right to counsel would then be reduced to a formality.

The empirical literature explains why the court's inquiry cannot be a recital. Helm's (2024) review identifies decision pressures arising from the calculus of risk, uncertainty, and offered incentives. Wilford, Wells, and Frazier (2021) show experimentally that guilt status, perceived likelihood of conviction, and a trial penalty can interact in plea decisions. DiFava and colleagues (2024) further show that confession evidence can influence both true and false guilty pleas more powerfully than eyewitness evidence in a simulated setting.

These studies do not prove false pleas in Indonesia. Their relevance is normative: a person who has been detained, who lacks time with counsel, who faces opaque evidence, or who believes a contested trial is unattainable may make a strategically rational decision that is not a reliable expression of guilt.

KRKB therefore requires a plea colloquy with substance. The judge should ask, in language the accused can understand, what evidence has been disclosed; whether counsel has been consulted privately and with adequate time; whether there are promises or threats outside the written agreement; whether detention, health, language, disability, or family pressure affects the choice; and whether the accused understands that refusing a plea cannot itself be treated as proof of guilt. The answers should be recorded in a form that permits later review. Counsel should be present as an active adviser, not a ceremonial witness. The importance of legal representation is supported by research showing that perceived lawyer experience and empathy can alter plea acceptance (Suiter & Metcalfe, 2024).

The framework also prevents a conceptual mistake concerning victims. Article 78 may link a plea to restitution or compensation, and that can be valuable. But the victim is not the principal party to the plea agreement in the way that the accused and prosecutor are. A plea that includes reparation is not thereby a full restorative process. It cannot promise victim voice, relational repair, or a needs assessment that the procedure does not provide. Keeping this distinction clear protects victims from disappointed expectations and protects the accused from a covert expansion of plea conditions.

Finally, the agreement's distributive dimension matters. Restitution should respond to legally assessed harm and the defendant's capacity. It must not become an entry price that allows wealthier defendants to access a lower-exposure procedure while poorer defendants are excluded. Conversely, the victim's loss cannot be ignored merely because the defendant lacks resources. A court should distinguish acknowledgement of responsibility, a realistic payment plan, and the penal concession that follows. Social justice in this setting does not mean equal monetary outcomes; it means that economic status does not silently decide the availability or fairness of a procedural right.

2. Three paths, one non-negotiable evidentiary floor.

Articles 78, 205, and 234 should be treated as related procedures rather than interchangeable exits from a full trial. Article 78 is a structured plea arrangement before the main trial. Article 205 is a judicially supervised shift after a failed courtroom-settlement opportunity and requires scrutiny of the earlier investigative process. Article 234 permits a further summary path when the indictment has been read and the accused admits the relevant conduct under its statutory conditions. Their different entry points matter because information, pressure, and opportunities for correction change over time.

Article 205 is especially important for the theory of valid consent. It directs the court's attention backwards, not merely to the words spoken in the hearing. The judge must be able to examine whether the accused was properly informed, assisted by counsel, and free from physical or psychological pressure during investigation. This reflects a basic insight from plea-decision research: a later formal admission may crystallise a path-dependent choice rather than independently confirm it. The Code's design should therefore be read as rejecting the idea that procedural reliability begins only when the judge enters the courtroom.

The statutory requirement of lawful evidence must likewise have independent force. It is not a decorative confirmation of an admission. A guilty plea does not make the criminal

process epistemically self-validating. The court should identify the minimum evidence that supports the charge, test whether that evidence is intelligible to the accused through counsel, and refuse an arrangement where the admission appears to supply the missing case. Research concerning interactive plea simulations distinguishes the effect of actual guilt from the strategic pressure generated by procedural incentives; that distinction is precisely why proof and voluntariness must be recorded separately (Wilford, Sutherland, et al., 2021).

3. Courtroom settlement and restorative justice: repair is not the price of discontinuance

Article 204 and Articles 79-88 must be kept apart. Courtroom settlement under Article 204 occurs after the case enters court. It requires, among other matters, a first-time offender, restoration of the original condition, and the absence of an unequal power relationship; its principal legal effect is mitigation or consideration of probation, not discontinuance (Republic of Indonesia, 2025). The restorative-justice mechanism, by contrast, can operate at investigation, prosecution, or trial stages. Article 79 lists possible forms of repair: forgiveness, return of property, medical or psychological costs, compensation for other loss, repair of damage, or compensation. Agreement must be performed, ordinarily within the statutory timeframe, before the case may be discontinued with judicial involvement. Article 81 prohibits pressure, threats, violence, torture, deceit, and treatment that violates human dignity, while Article 82 excludes specified serious or high-risk offences (Republic of Indonesia, 2025)

This structure has two virtues. First, it recognises a range of harms beyond a bare payment. Secondly, it avoids an empty promise of peace by linking discontinuance to completed performance. Yet the drafting also creates a danger. The disjunctive list of remedies may encourage officials to choose the easiest provable item, normally money or a signature, rather than the response that addresses the victim's most serious need. The timeframe can similarly privilege simple, low-cost agreements and exclude victims who require time, psychological support, safety planning, or a non-contact process. A statutory goal of restoration may then become a technology for closing files quickly.

KRKB reframes “restoration of the original condition” as a realistic and forward-looking form of repair. After violence, betrayal, or humiliation, the pre-offence condition may not be recoverable. The law should not ask victims to certify that their life has returned to normal. Instead, decision-makers should assess what can be restored or repaired: property, treatment costs, safety, a change in conduct, separation or non-contact arrangements, relational acknowledgement, or community repair. The assessment is cumulative-proportionate, not all-or-nothing. It must identify needs across the five dimensions and explain why the selected obligations are sufficient for the legal outcome sought.

The distinction matters especially where power is uneven. Article 204 expressly refers to the absence of a power imbalance; Article 81's anti-coercion language supplies an important but less specific safeguard for the restorative route. The systematic reading should extend the non-domination requirement across all consensual pathways, rather than reserve it for courtroom settlement. Power imbalance can arise from intimate partnership, employment, economic dependence, debt, migration status, family hierarchy, community status, disability, or the physical and psychological effects of an alleged offence. The fact that a victim says “yes” in the presence of an official is not decisive if the cost of saying “no” is loss of housing, safety, income, or family membership.

International research confirms the need for this caution without dictating the Indonesian result. Fulham et al., (2025) find that restorative programmes have stronger support for outcomes other than overall recidivism and that programme features moderate effects. Research with victims of sexual violence emphasises recognition, control, and confidence, while systematic reviews of restorative processes in intimate-partner or sexual-violence contexts identify power imbalance, retraumatisation, and lack of adequately skilled facilitation as persistent risks (Wemmers et al., 2023; Hudson & Berger, 2026; Kettrey & Reynolds, 2026). The proper inference is not that restoration is inappropriate in all difficult cases; the Code itself contains exclusions and eligibility limits. The inference is that safety, informed choice, and competent process are substantive conditions, not postscript safeguards.

This leads to a differentiated procedural design. Before an agreement capable of discontinuing a case is approved, there should be a brief but real needs-and-safety assessment. It should ask whether the victim prefers direct contact, indirect communication, or no contact; whether independent support is needed; whether the proposed terms respond to material, psychological, relational, and safety needs; whether the offender has the capacity to perform; and whether a confidential complaint route exists if performance or safety deteriorates. Evidence of completion should fit the obligation. A payment receipt may verify a payment, but it cannot prove emotional recovery. A victim must never be required to expose clinical records merely to show that a restoration programme “worked.”

The state has a distinct role here. It neither owns the victim's account of harm nor relinquishes its protective function to a private agreement. It must refuse a process where the offence is excluded, where public protection is imperilled, where proof is insufficient for the legal consequence, or where non-domination cannot be assured. It must also explain why it accepts a discontinuance. A short reasoned order is not hostility to peace; it is evidence that peace was not purchased by silence.

Choice, risk, and the limits of victim-centredness.

“Victim-centred” can be a misleading formula when it is detached from institutional power. It may imply that a victim's expressed preference determines the legal outcome, or that any process a victim chooses must be accepted as safe and just. Neither inference is sound. The victim's voice is indispensable because criminal justice has historically marginalised victims' needs and knowledge. Yet a victim may ask for a process under conditions of dependency, fear, or scarce alternatives; the state may also owe duties to other victims and to the public. The task is not to replace state paternalism with privatisation. It is to create conditions in which choice is real and in which the state can justify a decision to recognise that choice legally.

This requires differentiating participation from attendance. Direct dialogue may be meaningful for some people but unwanted, unsafe, or traumatic for others. Indirect communication, shuttle mediation, written acknowledgement, practical reparations, or no-contact arrangements can be more appropriate. Research on the secure forensic estate finds that restorative interventions are most effective when wider systemic conditions support them, rather than when the intervention is treated as a self-contained encounter (Rowse et al., 2024). Scholarship on sexual and family violence likewise reports that a lack of attention to power can convert a purportedly restorative setting into a repetition of the original dominance (Gang et al., 2024; Kim, 2021). The Code's exclusion rules and its prohibition of coercion should be applied in that spirit.

The screening decision must therefore be independent of the possibility of a favourable legal outcome. A victim should be told that declining a process will not be treated as lack of cooperation, that declining direct contact does not foreclose non-contact repair, and that a request for time or advice can be respected. An accused person should be told that accepting a restorative proposal does not require an untruthful confession and that a failure to reach agreement cannot itself prove culpability. These assurances are neither sentimental nor merely ethical. They prevent the process from manufacturing consent through the threat of worse treatment in ordinary procedure.

1. The scope of a non-domination inquiry.

Non-domination is not an invitation to stereotype victims or offenders. It does not presume that a person in a family relationship, an employment relationship, or a disadvantaged economic position is incapable of deciding. It requires a focused inquiry into whether a specific relationship or condition makes refusal costly, unsafe, unintelligible, or practically impossible. Relevant questions may include who controls access to money or housing; whether there have been threats, surveillance, or prior violence; whether the parties share children, work, religious communities, or migration dependencies; whether language or disability affects understanding; and whether an independent adviser or indirect process could mitigate the risk.

The inquiry should be conducted separately from the stronger party and should permit a pause or withdrawal without adverse inference. Its purpose is not to diagnose a victim's psychology or force the disclosure of intimate history. It is to test the legal reliability of consent. A well-designed assessment may conclude that direct engagement is safe and wanted, that only indirect repair is appropriate, or that the case should proceed ordinarily. Each outcome is legitimate when it follows from a reasoned examination rather than an institutional preference for closing a case.

2. Measurement without victim burden.

The new framework should also resist an outcome metric that treats the number of discontinued cases as its measure of restorative success. Empirical studies of restorative programmes provide reasons to examine multiple outcomes, including reparation, participant satisfaction, perceived fairness, and subsequent conduct; they do not support an uncomplicated claim that every restorative intervention uniformly reduces recidivism (Kimbrell et al., 2023; Fulham et al., 2025). Studies of state-level policies and survivor well-being add a further caution: the presence of a policy is not the same as its accessible, safe, and effective implementation (Sharpless et al., 2022).

3. Time, performance, and the seven-day rule

The relationship between the statutory performance period and the quality of restoration requires particular care. A strict short period may promote certainty and prevent a vague promise of future peace from becoming a means of evading criminal process. That is a legitimate value. At the same time, an inflexible reading risks favouring cases in which harm can be monetised immediately and excluding victims whose needs involve counselling, repair over time, safe relocation, education, or carefully managed non-contact commitments.

The article does not assume that administrators may simply rewrite a statutory deadline through a form. The proper approach is first interpretive: distinguish the moment at which the legal agreement is made from the evidentiary proof of completed obligations, and identify the limited scope for a lawful schedule or staged performance if the Code

permits it. If no such scope exists, the solution is legislative or regulatory clarification, not an artificial document that represents incomplete repair as completed. This is a useful example of why legal certainty and substantive justice must be held together. The alternative is not “strict law” versus “kindness”; it is transparent legal reform versus informal evasion.

4. Deferred prosecution agreements: corporate remediation must be causally connected

Article 328 introduces a DPA for corporate crime. Its stated purposes are legal compliance, restoration of loss caused by crime, and efficiency in criminal justice. The corporation may apply before the case is transferred to court; the prosecutor may accept or reject the request in light of justice, victims, and compliance; and the court must hold a hearing to assess legality and fitness. The statutory conditions may include compensation or restitution, compliance programmes or anti-corruption governance reform, reporting and cooperation, and other corrective measures. The court considers proportionality, the corporation's capacity, and effects on victims, the public, the environment, the national economy, and the criminal-justice system (Republic of Indonesia, 2025)

The first KRKB requirement is an organisational diagnosis. Corporate crime often involves incentives, supervision failures, information asymmetries, ownership structures, reporting channels, or a business model that externalises risk. A generic compliance programme cannot repair every type of failure. The agreement should identify the harm, the likely organisational mechanism that enabled it, the persons and groups affected, the required change, the evidence of implementation, and the indicator by which the change will be assessed. A duty to train staff may be appropriate in one case and cosmetic in another; a donation may be socially useful yet have no causal relation to a governance failure.

The second requirement is individual accountability. A DPA for the legal person must not become immunity for directors, managers, beneficial owners, or other individuals whose conduct requires separate investigation. The purpose of corporate remediation is to correct organisation-level risk and repair collective harm, not to move personal blame into the corporate entity. This distinction is central to the difference between structural restoration and structural impunity.

The third requirement is transparent proportionality. Arlen's rule-of-law critique of prosecutor-imposed corporate mandates remains instructive: even when a corporation agrees, the state must not exercise unbounded authority to impose obligations without legal standards and review (Arlen, 2016). Parker and Dodge (2023) likewise identify the possibility that DPAs can permit structural change and protect innocent stakeholders while producing inequality of access, monitoring problems, and scepticism about preferential treatment. Indonesia's judicial review is therefore a major safeguard, but it cannot be merely notarial. The court should require a matrix linking the offence and harm to each obligation, its cost and timetable, the evidence of performance, the status of victims' claims, and the consequence of partial or complete breach.

The fourth requirement is participation calibrated to impact. Article 328's references to victims, society, the environment, and the economy mean that a court cannot evaluate a DPA solely through corporate and prosecutorial submissions. Participation need not disclose trade secrets or expose sensitive evidence. It can take the form of a victim statement, an affected-community submission, a specialist report, or a public summary of the obligations and progress. Where access is limited, the court should state why. Public

reasons and a redacted compliance register make it harder for a DPA to look like a private purchase of leniency.

The 2026 Penal Adjustment Law reinforces this reading. Its harmonisation of penalty categories and corporate responses affects procedural thresholds, but it also recognises responses such as restoration, fulfilment of neglected obligations, recovery of illicit gain, public notice, and licence consequences (Republic of Indonesia, 2026). The value is not simply a larger or smaller fine; it is an intelligible relationship between offence, benefit, harm, reform, and oversight. A DPA is legitimate only when it supplies that relationship in a form a court and the public can examine.

5. Judicial pardon: humanity requires reasons, not sentiment

Judicial pardon is doctrinally distinct from acquittal, dismissal, settlement, and restorative discontinuance. Article 54(2) of the 2023 Criminal Code allows a court not to impose punishment or a measure, having regard to the triviality of the act, the offender's personal circumstances, and circumstances at and after the offence, while Article 246 of the 2025 Criminal Procedure Code recognises a distinct judgment of judicial pardon. The defendant is found guilty; the legal consequence is not erased; the court concludes that punishment or a measure is not warranted (Republic of Indonesia, 2023; Republic of Indonesia, 2025).

The institution gives procedural form to individualisation, humanity, and proportionality. It accepts that a culpable act can be proved while the ordinary imposition of punishment would add no justified protection, rehabilitation, repair, or moral communication. This is consistent with a sentencing code that rejects humiliation and treats conflict resolution, restoration, and remorse as legitimate purposes. But judicial pardon is not sentimental acquittal. Nor is it a reward for the socially privileged defendant who can display impressive references or make a rapid payment.

The required reasoning must be more demanding than the label “minor offence.” The court should identify the nature and degree of culpability, motive, planning, circumstances before and after the offence, efforts to repair actual harm, likely impact on the victim, social and economic circumstances, prior record, and why another option such as probation, community service, compensation, or a limited sentence would be less proportionate. The victim's forgiveness or a settlement may be relevant evidence of changed circumstances, but it is neither a veto nor an automatic passport to pardon. The legal responsibility to explain the result remains with the judge.

Victim impact should be heard without being instrumentalised. A systematic review of victim-impact statements across jurisdictions cautions against assuming that a victim's account has a uniform or mechanically predictable effect on legal outcomes (Kunst et al., 2021). In judicial pardon, the point is not to convert the victim's voice into a sentencing formula. It is to ensure that an outcome justified by the offender's circumstances does not erase the lived consequences of the offence. A reasoned judgment should therefore identify how victim impact was considered, while preserving the court's responsibility for the final legal assessment.

Comparative scholarship on clemency and restoration of rights does not directly settle the Indonesian issue, but it supports the broader proposition that leniency deriving from public authority needs legal articulation and reviewable criteria (Murray, 2021). In Indonesia, transparent reasons are especially important because judicial pardon may otherwise generate regional disparity and selective access. Courts should develop a non-

binding reasons rubric rather than a tariff. It would preserve discretion while making unlike treatment visible and contestable.

6. A common matrix without false uniformity

Table 2. Mechanism-specific requirements under the consent-accountability architecture.

Mechanism	Decision and legal effect	Irreducible safeguard	Minimum record and future data
Guilty plea (Arts. 78, 205, 234)	Summary procedure and conviction after a legally valid admission.	Independent evidence, informed waiver, active legal advice, and judicial voluntariness review.	Facts and evidence; rights waived; counsel; detention status; proportional sentencing reason; restitution terms.
Courtroom settlement (Art. 204)	Mitigation or probation consideration, not automatic discontinuance.	Actual restoration and absence of power imbalance.	Terms; separate non-domination inquiry; actual repair; reason for mitigation.
Restorative mechanism (Arts. 79-88)	Possible discontinuance after full performance and legal review.	Eligibility, safety, needs assessment, voluntary participation, and verified completion.	Needs and risk assessment; chosen mode of contact; terms; completion evidence; complaints and breach.
Corporate DPA (Art. 328)	Deferred prosecution followed by discontinuance on compliance or resumed prosecution on breach.	Causal remediation, judicial proportionality review, public-interest consideration, and monitoring.	Harm and risk map; obligations; timetable; monitor; public summary; breach record.
Judicial pardon (Art. 246; CC Art. 54)	Finding of guilt without punishment or measure.	Reasoned individualisation that addresses culpability, victim impact, and proportionality.	Reasons rubric; alternatives considered; appeal and consistency data.

Source: doctrinal synthesis based on the cited materials.

The preceding analysis yields a pattern. The five mechanisms share a concern with a less destructive response to crime, but they do not share the same legal task. Table 2 therefore distinguishes the required knowledge, central protection, and minimum record for each pathway.

Consent-accountability architecture

1. A four-gate protocol for decision-makers

Table 3. Four-gate protocol for consensual criminal justice.

Gate	Operational question	Decision-specific material	Record and consequence
1. Legal availability	Is the mechanism authorised for this offence, actor, and procedural stage?	Penalty threshold; exclusions; special minimum; repeat-offender rule; public-interest constraint.	Record eligibility; reject or redirect when unavailable.
2. Valid knowledge and non-domination	Do parties understand material facts, rights, risks, and alternatives, and can they refuse meaningfully?	Plea: evidence and counsel. Restoration: safety, choice, support. DPA: information asymmetry. Pardon: sentencing facts.	Separate inquiry; reasons; pause, adapt, or reject if the threshold fails.
3. Proportionate restoration or individualisation	Does the response fit harm, culpability, capacity, and legitimate public purpose?	Needs across material, psychological, relational, moral-spiritual if chosen, and social dimensions.	Specify obligations or reasons; avoid payment-only or status-based outcomes.
4. Accountable completion	Can performance, breach, and the public legal decision be verified?	Completion evidence; complaint route; monitor; judicial reasons; confidentiality safeguards.	Audit trail; continuation, discontinuance, prosecution, or appeal as law requires.

Source: proposed analytical framework.

The architecture can be converted into a practical sequence for investigators, prosecutors, judges, facilitators, and corporate-compliance actors. It does not decide cases mechanically. It establishes the questions that must be answered before a consensual result changes criminal process or punishment.

The protocol calls for a record proportionate to legal consequence. Eligibility must be stated; valid knowledge and non-domination must be tested; reparative obligations must match harm and capacity; and completion, breach, and review must be traceable. The objective is not to standardise outcomes, but to make the legal basis for each outcome reviewable.

2. Counter-position: is ordinary legality enough?

A contrary view is that the statutory safeguards are already sufficient. The architecture adds no discretionary power; it supplies an interpretive discipline for coercion, restoration, proportionality, and public interest. It requires decision-makers to make the existing statutory criteria visible and reasoned in records proportionate to the legal effect.

3. Implementation and evidence agenda

The first implementation priority is common data definitions, not case-disposal targets. For each mechanism, institutions should separately record applications, admissions,

refusals, approvals, completed obligations, breaches, discontinuances, resumed prosecutions, and pardon judgments along with whether counsel was available, why a process was refused, whether non-domination and safety were assessed, and the legal grounds for each decision. A high volume of agreements is not proof of success: it may reflect genuine access, or equally, hidden pressure and indiscriminate referral.

4. International contribution

The framework is not offered as an Indonesian exception that should be exported unchanged. Its portable proposition is more modest: negotiated criminal justice must be analysed through the legal consequence of the agreement and the public authority that gives it effect. Each jurisdiction will allocate authority differently. But every jurisdiction must confront the same basic problem: an agreement made in the shadow of criminal power has a legitimacy deficit unless law establishes what must be known, who must be protected, which remedy is proportionate, and how performance remains visible. Indonesia contributes a vocabulary of relational responsibility and constitutional plurality to that shared problem.

CONCLUSION

Indonesia's five new criminal procedure mechanisms—guilty pleas, courtroom settlements, restorative justice mechanisms, deferred prosecution agreements (DPAs), and judicial pardon—should not be treated as a single generic “alternative justice” category. Each mechanism has a distinct legal consequence and requires a distinct basis of justification: guilty pleas require sufficient proof and a genuine waiver of rights; settlements recognize repair without necessarily terminating prosecution; restorative justice mechanisms require a safe, proportionate, and completed resolution before case discontinuance; DPAs require public law oversight of corporate remediation; and judicial pardon requires a reasoned determination that imposing punishment would be disproportionate despite a finding of guilt.

KRKB integrates these distinctions through four gates—legal availability, non-dominated informed participation, proportionate restoration, and auditable completion—which are applied differently to each mechanism. The framework prevents consent, payment, or apology from being treated as substitutes for legal legitimacy.

As an *ex ante* doctrinal study, this article made no claims regarding implementation outcomes. Future research should examine disaggregated data, process audits, and trauma-informed evaluations before attributing reductions in recidivism or improvements in efficiency to any mechanism. Success should be assessed not merely by the number of cases resolved, but by the state's ability to demonstrate that outcomes were based on informed participation, absence of domination, proportionality, and accountability.

Conflict of Interest. The author developed KRKB, which is disclosed as the article's normative position and was examined against statutory limitations and contrary evidence concerning coercion, safety, and accountability.

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