

# Restorative Justice at The Investigation Stage of Victimless Crimes

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## Article history:

Received 2025-02-23

Resived 2025-03-10

Accepted 2025-04-01

## Keywords:

Victimless; Crimes;  
Cybercrime; Restorative  
justice.

## DOI:

[doi.org/10.26905/idjch.v16i1.15120](https://doi.org/10.26905/idjch.v16i1.15120).

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**Abstract:** Victimless crime is a crime that places the perpetrator of the crime as a victim, so that in efforts to overcome crime, the term restorative justice is used, namely a model for resolving criminal acts that prioritizes victim recovery. The problem that occurs is the basis of norms in law enforcement officers using restorative justice in efforts to overcome victimless crime, pornography crimes are one type of cybercrime. In the current era of globalization, Indonesia is facing the problem of pornography because the rampant spread of pornography on the internet has had an impact on the social life of society and is still considered normal by some people. The method used in this study is the socio-legal research method. Where this study looks at how the police use a restorative approach in efforts to overcome crime, especially victimless crime. There are several types of victimless crime that are highlighted in this study, including gambling crimes, drug abuse crimes and pornography crimes. The results of this study indicate that investigators have not been optimal in using restorative justice in handling victimless crime crimes.

## 1. Introduction

Retributive justice, which focuses on retaliation against the perpetrators of criminal acts, tends to be used in the criminal justice system in Indonesia. The interests of victims, which include the loss and suffering they have experienced as a result of the crime committed, are often overlooked in Indonesian criminal justice practices. Victims of crime are unable to fight for their rights because they are only considered as witnesses, or evidence.<sup>1</sup> However, there is currently a breakthrough that has become an alternative option that can be used by victims, perpetrators, law enforcers, to resolve criminal cases outside of criminal justice, which is commonly referred to as restorative justice or restorative justice.

Restorative justice adheres to different principles from court hearings. In the context of the Indonesian criminal justice system, the provisions regarding openness have been very firmly and clearly regulated in the Criminal Procedure Code, which is derived from the principle of court

<sup>1</sup> Josephin Mareta, "Penerapan Restorative Justice Melalui Pemenuhan Restitusi Pada Korban Tindak Pidana Anak," *Jurnal Legislasi Indonesia* 15, no. 4 (2018), DOI: <https://doi.org/10.54629/jli.v15i4.260>.

hearings open to the public.<sup>2</sup> In line with the breath of criminal law reform, in handling criminal cases by promoting the concept of restorative justice can provide a different approach and view to understanding a criminal settlement. From the perspective of restorative justice, the meaning of a criminal offense actually has the same meaning as the approach of criminal law in general, which means an attack on the public or on a private person.<sup>3</sup>

Restorative justice as an alternative to solving criminal cases in the mechanism of criminal justice procedures, focuses on punishment which is changed into a dialogue and mediation process involving the perpetrator, victim, family of the perpetrator/victim, and other related parties.<sup>4</sup> The application of Restorative justice is a breath of fresh air in case settlement in Indonesia, so that the recovery of victims' rights can be fulfilled by the perpetrators of criminal acts. The restorative justice approach is not only applied to criminal offenses that have an impact on victims but also to victimless crimes.<sup>5</sup>

Crime is defined as an act that breaks the law, or violates the law, which can harm society materially and morally from the perspective of decency, modesty, and public order. The number of crimes that occur each year is incalculable, and millions of people have been convicted of their offenses. In addition to losing money, crime victims also lose honor and distress.<sup>6</sup> Victimless crimes are a category of crimes that unwittingly disturb society. This type of crime does not appear to have a victim or property. The term victimless crime in positive criminal law in Indonesia is only found in one law, namely Law No. 11/2012 on Juvenile Criminal Justice System (hereinafter referred to as SPPA Law). Although the law contains the term victimless crime, it does not provide a definition of what is meant by victimless crime.<sup>7</sup>

Victimless crime is a type of crime that is quite troubling to society without realizing it. It can be seen that this type of crime does not have a specific victim or property. Mardjono Reksodiputro defines crime without victims or what can be referred to as crime without victims must mean the existence of society or public morals as victims.<sup>8</sup> For example, gambling is a type of crime that usually involves other victims, such as drunkenness, voluntary unlawful sex, drug use, prostitution, abortion, and homelessness. In Indonesian criminal law, victimless crimes include only a few crimes, such as gambling, drug abuse, and prostitution, where the guilty party is the victim because he or she is also the perpetrator. Victimless crimes can also be understood as a type of crime that does not bring victims, but the community will consider the actions committed by the

<sup>2</sup> Muhaimin, "Restoratif Justice Dalam Penyelesaian Tindak Pidana Ringan," *Jurnal Penelitian Hukum De Jure* 19, no. 2 (2019), <https://doi.org/10.30641/dejure.2019.v19.185-206>.

<sup>3</sup> AA Ngurah Bagus Khrisna Wirajaya, Anak Agung Sagung Laksmi Dewi, and Ni Made Sukaryati Karma, "Tindak Pidana Ringan Melalui Restorative Justice Sebagai Bentuk Upaya Pembaharuan Hukum Pidana," *Jurnal Konstruksi Hukum* 3, no. 3 (2022): <https://doi.org/10.55637/jkh.3.3.5345.545-550>.

<sup>4</sup> Taufiq Yulianto, "Keadilan Restoratif (Restorative Justice) Sebagai Alternatif Penyelesaian Perkara Tindak Pidana," *Orbith* 19, no. 2 (2023), DOI: <https://doi.org/10.32497/orbith.v19i2.4999>.

<sup>5</sup> Maidina Rahmawati et al., "Peluang dan Tantangan Penerapan Restorative Justice dalam Sistem Peradilan Pidana di Indonesia," ed. Miko Susanto Ginting, Institute for Criminal Justice Reform (Institute for Criminal Justice Reform, 2022). <https://ijrs.or.id/publikasi-ijrs/peluang-dan-tantangan-penerapan-restorative-justice-dalam-sistem-peradilan-pidana-di-indonesia>.

<sup>6</sup> Adri Pribadi Harapan, "Analisis Kriminologis Terhadap Kejahatan Tanpa Korban (Victimless Crime) (Studi Kasus Di Kota Makassar Tahun 2011-2014)," Universitas Hasanuddin Makassar, (2016).

<sup>7</sup> Duwi Handoko, "Tindak Pidana Tanpa Korban Di Indonesia Pengaturan dan Problematikanya," *MENARA Ilmu* XII, no. 3 (2018): h. 34. DOI: <https://doi.org/10.33559/mi.v12i3.707>.

<sup>8</sup> Duwi Handoko, "Tindak Pidana Tanpa Korban Di Indonesia Pengaturan dan Problematikanya." *nd*.

perpetrator as an act of reproach to society in general.<sup>9</sup> Victimless crimes such as gambling, drug abuse and pornography also occur in the jurisdiction of Central Maluku Police. Gambling is a form of community disease, a form of social pathology. Gambling can be an obstacle to national development in the material-spiritual aspect and educate people to earn a living improperly and form a lazy character for the perpetrators.<sup>10</sup>

Narcotics abuse is the behavior of using narcotic drugs, psychotropic drugs and addictive substances that are misused by irresponsible people. Drug abuse is a national threat that needs to be considered from various perspectives, both micro (family) and macro (national). However, drug dependence is a mental and behavioral disorder that affects the person's mental condition and causes various social problems to criminal acts. Moreover, drug abuse has now entered various levels of society, the dangers of drugs have grown rapidly and are troubling the community.<sup>11</sup>

The crime of pornography is one of cybercrime. In the current era of globalization, Indonesia faces the problem of pornography because the widespread distribution of pornography on the internet has had an impact on people's social lives and is still considered normal by some people. With the help of information and communication technology, the act, dissemination, and use of pornography has increased, which has a negative impact on morals.<sup>12</sup> The settlement of victimless crimes is quite interesting to examine, especially now that Indonesia is developing an alternative to case settlement through restorative justice, so the author is interested in researching the Implementation of Restorative Justice at the Investigation Stage of Victimless Crimes.

## 2. Method

The type of research used is socio-legal research<sup>13</sup>, which is a combination research method between doctrinal legal research methods and empirical legal research methods. Doctrinal research is intended to conduct library research by identifying laws and regulations and collecting other data related to the problem under study.

## 3. Restorative Justice in Victimless Crime

When talking about the legality of restorative justice, this concept is often found in the settlement of minor crimes, namely in the Memorandum of Understanding (Nokesber) of the Chief Justice of the Supreme Court, Minister of Law and Human Rights, Attorney General and Chief of Police of the Republic of Indonesia regarding the Implementation of the Adjustment of Criminal Limitations and the amount of fines, Rapid Examination Procedures, and the Application of Restorative Justice. This Memorandum of Understanding (Nokesber) is an implementation of Supreme

<sup>9</sup> Ibnu Mardiyanto, "Tinjauan Viktimologi Terhadap Kejahatan Bunuh Diri (Victimless Crime)," *Jurnal Hukum Non Diskriminatif* 1, no. 2 (2023), <https://doi.org/10.56854/jhdn.v1i2.137>.

<sup>10</sup> Said Munawar, "Kebijakan Penegakan Hukum Pidana Terhadap Tindak Pidana Perjudian," *Widya Pranata Hukum : Jurnal Kajian Dan Penelitian Hukum* 1, no. 1 (2019): 1-18, <https://doi.org/10.37631/widyapranata.v1i1.253>.

<sup>11</sup> Nurdin Bakri and Barmawi, "Efektifitas Rehabilitasi Pecandu Narkotika Melalui Terapi Islami Di Badan Narkotika Nasional (BNN) Banda Aceh," *Psikoislamedia : Jurnal Psikologi* 2, no. 1 (2017), <https://doi.org/10.22373/psikoislamedia.v2i1.1827>.

<sup>12</sup> Suratman and Andri Winjaya Laksana, "Analisis Yuridis Penyidikan Tindak Pidana Pornografi Berdasarkan Undang-Undang Nomor 44 Tahun 2008 Di Era Digitalisasi," *Jurnal Pembaharuan Hukum* 1, no. 2 (2014), <http://jurnal.unissula.ac.id/index.php/PH/article/view/1473/1141>.

<sup>13</sup> Sulistyowati Irianto, *Memperkenalkan Studi Sosiolegal dan Implementasi Metodologinya*, dalam Sulistyowaty dan Sidharta (eds), *Metode Penelitian Hukum Konstelasi dan Refleksi*, hlm 177. Lihat juga dalam Sulistyowati Irianto dalam buku yang sama, *Praktik Hukum: Perspektif Sosiolegal*, Yayasan Obor, Jakarta, 2009, h. 308.

Court Regulation (PERMA) No. 2/2012 on the Adjustment of the Limitation of Minor Crimes and the Amount of Fines in the Criminal Code.<sup>14</sup>

Restorative justice emphasizes the importance of the role of victims and community members to encourage perpetrators to take responsibility for victims, restore victims' emotional and material losses, encourage dialogue or negotiations to resolve problems that have occurred so as to save the community from prolonged conflict.<sup>15</sup> Restorative Justice also known as "restorative justice" is an approach to justice that focuses on the needs of victims and offenders and their role in society. This approach differs from simply fulfilling laws or imposing criminal penalties, but also involves both victims and offenders. Offenders are also held accountable for their actions.<sup>16</sup>

The handling of criminal offenses based on restorative justice at the level of investigation and investigation in the police refers to the Regulation of the Indonesian National Police No. 8 of 2021 concerning Handling Criminal Offenses Based on Restorative Justice. In this Perkap, it is explained that the Indonesian National Police needs to realize the resolution of criminal acts by prioritizing restorative justice which emphasizes restoring to the original state and balancing protection and interests and perpetrators of criminal acts that are not oriented towards punishment is a legal need of the community.

The author has conducted research at one of the Polres in the Maluku region, namely Central Maluku Polres. Central Maluku region is one of the regencies in Maluku Province, the capital of which is located in Masohi. Central Maluku is the oldest district in the Maluku Islands. The jurisdiction of the Central Maluku District Police consists of nine police stations spread across the Central Maluku Region, including Masohi City Police, Amahai Police, Wahai Police, Pasane Police, Tehoru Police, Waipia Police, Teluk Elpaputih Police, Banda Police, and Telutih Police. The phenomenon of victimless crimes that occur in the Central Maluku Region, including gambling, drug abuse and pornography. The following is an explanation of the handling of gambling, drug abuse and pornography cases:

### 3.1 Gambling Crime

Gambling is an act that violates religious, ethical, moral and legal norms, and is very dangerous for the life of the community, nation and state. Various forms of gambling are now often carried out by people around us, both secretly and openly. This is due to the assumption of people who consider gambling as a common thing. Gambling can cause several problems, such as some people becoming addicted and unable to stop gambling, causing them to lose a lot of money and property.<sup>17</sup>

When viewed from a moral perspective, gambling that is hit or miss can not only disrupt work creativity but can also disrupt family and community morality. Due to excessive speculation,

<sup>14</sup> Wirajaya, Dewi, and Karma, "Tindak Pidana Ringan Melalui Restorative Justice Sebagai Bentuk Upaya Pembaharuan Hukum Pidana," h. 546.

<sup>15</sup> Hariman Satria, "Restorative Justice: Paradigma Baru Peradilan Pidana," *Jurnal Media Hukum* 25, no. 1 (2018), <https://doi.org/10.18196/jmh.2018.0107.111-123>.

<sup>16</sup> Hanadi Arief and Ningrum Ambarsari, "Penerapan Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia," *Al'asid* x, no. 2 (2018): h. 178. DOI: [10.31602/al-adl.v10i2.1362](https://doi.org/10.31602/al-adl.v10i2.1362).

<sup>17</sup> Eddy Santoso, Sri Endah Wahyuningsih, and Umar Ma'ruf, "Peran Kepolisian Dalam Sistem Peradilan Pidana Terpadu Terhadap Penanggulangan Tindak Pidana Perjudian," *Jurnal Daulat Hukum* 1, no. 1 (2018) DOI: <http://dx.doi.org/10.30659/jdh.v1i1.2632>.

while an irrational way of thinking will nourish a mystical culture, something that leads to polytheism, while development requires a progressive mentality, so people who lack education often become victims of this gambling ferocity.<sup>18</sup>

In the current era of globalization, technological developments are growing rapidly, especially in the field of information technology. This development has a major impact on people's behavior, as they can easily receive and disseminate information. A new type of crime that is currently rife in the community is online gambling. Online gambling is categorized as cybercrime because online gambling uses computers and the internet as a medium to commit the crime of gambling. Gambling is basically contrary to the norms of religion, decency, and Pancasila morals and endangers the survival of society, nation and state.

Gambling is considered a violation of social culture in Indonesia. With the advancement of modern technology, gambling has also developed into internet-based gambling.<sup>19</sup>

The phenomenon of online gambling crime has now become widespread in Indonesian society during this pandemic. A crime that occurs is basically triggered or caused by the factors that cause it. This is also stated by Edwin Sutherland that crime is the result of diverse and various factors and the factors that determine now and henceforth cannot be arranged according to a generally applicable provision without any exceptions.

Often gambling is considered a minor crime, but referring to Article 1 number 1 of the Regulation of the Head of the Security Maintenance Agency of the Indonesian National Police No. 6 of 2011 concerning Handling of Minor Crimes (Yipiring), the definition of a minor crime is a case punishable by imprisonment or confinement for a maximum of 3 months and/or a fine of up to Rp. 7,500, - and minor insults except traffic violations. Looking at the definition of minor criminal offense, it can be explained that gambling is not a minor criminal offense. Indonesia has legally regulated gambling in several laws and regulations, such as those regulated in Article 303 and Article 303 bis of the Criminal Code.

Article 303 paragraph 1 of the Criminal Code explains the criminal punishment for gambling, namely imprisonment for a maximum of ten years or a maximum fine of twenty-five million rupiahs, whoever without obtaining a license: 1 intentionally offers or provides an opportunity for games of chance and makes it a profession, or intentionally participates in an enterprise for that purpose, 2 intentionally offers or provides an opportunity to the public to play gambling or intentionally participates in an enterprise for that purpose, regardless of whether for the use of the opportunity there is a condition or the fulfillment of a procedure, 3 makes participation in gambling games a profession. Article 303 bis paragraph 1 of the Criminal Code reads that he shall be punished with a maximum imprisonment of 4 years or a maximum fine of ten million rupiahs: 1. any person who uses an opportunity to play gambling, which is held in violation of the provisions of Article 303; 2. any person who participates in gambling games which are held on a public road or on its side or in a place accessible to the general public, unless a license is obtained from the competent authority for the purpose.

<sup>18</sup> Munawar, "Kebijakan Penegakan Hukum Pidana Terhadap Tindak Pidana Perjudian." *Widya Pranata Hukum : Jurnal Kajian Dan Penelitian Hukum* 1, no. 1 (2019): 1-18. <https://doi.org/10.37631/widyapranata.v1i1.253>.

<sup>19</sup> Isyatur Rodhiyah, Ifahda Pratama Hapsari, and Hardian Iskandar, "Pertanggung Jawaban Pelaku Tindak Pidana Perjudian Online Di Indonesia," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 4, no. 2 (2022), <https://doi.org/10.37680/almanhaj.v4i2.2007>.



Along with the development of technology, gambling crimes have also shifted, gambling offenders who used to do conventionally are now shifting to online gambling which is more easily accessible and carried out by gambling offenders. The legal umbrella for this online gambling offense has been regulated in Law Number 11 of 2008 concerning Electronic Information and Transactions.

The provisions of Article 27 paragraph (2) of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as the ITE Law) explain that every person intentionally and without the right to distribute and/or transmit and/or make accessible electronic information or documents that have gambling content is included as a prohibited act. Furthermore, the Explanation of Article 27 paragraph (2) of the ITE Law explains that this provision refers to the provisions of gambling in terms of offering or providing opportunities to play gambling, making it a livelihood, offering or providing opportunities to the public to play gambling, and participating in companies for that.

It should be noted that the law of online gambling is regulated in Article 45 paragraph (3) of the ITE Law which explains the provisions that every person who intentionally and without the right to distribute, transmit and/or make accessible electronic information and/or electronic documents that have gambling content is sentenced to a maximum imprisonment of 10 years and/or a maximum fine of IDR 10 billion. So, if you look at the explanation above, it can be interpreted that the crime of gambling is not part of a minor crime, which has a much lighter threat than the crime of gambling.

In the jurisdiction of the Central Maluku District Police, this gambling crime is not spared, the following is statistical data on gambling crimes:

**Table 1.** Annual Case Data of Gambling Crime Case Handling Period 2022-2024

No	Year	Cases
1	2022	4
2	2023	2
3	January- September 2024	-

\*Source of Malteng Police Statistics

The Central Maluku Police jurisdiction handled gambling cases, namely in 2022 there were 4 cases, in 2023 there were 2 cases, January-September 2024 there were no gambling cases handled by the Central Maluku Police. The settlement of gambling cases in Central Maluku still uses criminal law instruments, so that if there is an online gambling case, it is not resolved through a restorative justice approach, because the case file has been submitted to the Prosecutor's Office. The perpetrators of this gambling are players/online number installers, as well as those who collect these online gambling slots.<sup>20</sup>

In addition, according to the investigator's explanation, the crime of gambling is an ordinary offense. Ordinary offense is an offense that can be processed directly by the investigator without the consent of the victim or the injured party. In other words, without a complaint or even if the victim has withdrawn the report, the investigator still has the obligation to continue the case pro-

<sup>20</sup> Interview, "Satreskrim Polres Maluku Tengah," n.d.

cess. Therefore, the opportunity to resolve gambling crimes through a restorative justice approach cannot be applied in the Central Maluku jurisdiction.

### 3.2. The Crime of Narcotics Abuse

Narcotics abuse is a crime because the act violates the law by using narcotics without the benefit of treatment for the cure of the disease, health services or science. Drug abuse results in maladaptive behavior (excessive anxiety or fear) and is no longer able to function reasonably in society. This condition requires serious attention. This responsibility includes the implementation of the law alone but also the moral responsibility of society as the forerunner of a person's growth, from children to adults, to maintain ethical moral values as a barometer for what is reasonable and unreasonable in life.<sup>21</sup> In the jurisdiction of the Central Maluku Police, there are also criminal acts of narcotics abuse, the following data is related to the handling of criminal acts of narcotics abuse in the jurisdiction of the Central Maluku Police.

**Table 2.** Annual case data for handling drug abuse cases for the period 2022-2024.

No	Year	Cases
1	2022	11
2	2023	9
3	January- September 2024	7

\* Source of Malteng Police Statistics

The table above shows that there were 10 cases of drug abuse from 2022 to September 2024. Of all these cases, none have been enforced through restorative justice.<sup>22</sup> So that all cases of drug abuse at Maltes Police Station are investigated according to the legal process, and all have been submitted to the next stage.

Regulation of the Indonesian National Police No. 8 of 2021 concerning Handling Crimes Based on Restorative Justice outlines that the handling of cases resolved through a restorative justice approach has special requirements which are additional requirements for drug crimes, this is explained in Article 9 paragraph 1 which explains the special requirements for drug crimes include:

- a. Drug addicts and victims of drug abuse who apply for rehabilitation
- b. When caught red-handed:
  1. evidence of drug use is found for 1 day with the classification of narcotics and psychotropic drugs in accordance with the provisions of laws and regulations
  2. no evidence of drug crime is found, but the urine test result shows positive for drugs
- c. Not involved in a network of drug crimes, dealers and/or distributors.
- d. An assessment has been conducted by the integrated assessment team and the perpetrator is willing to cooperate with the Police investigators to conduct further investigations.

<sup>21</sup> Ranu Mahesti, "Pendampingan Rehabilitasi Bagi Pecandu Dan Korban Penyalahgunaan Narkotika," *Jurnal Pengembangan Masyarakat Islam* 4, no. 1 (2018): hal. 57, <https://jurnal.uinbanten.ac.id/index.php/lbrmasy/article/view/4294>.

<sup>22</sup> "Data Dari Polres Maluku Tengah," n.d.

In relation to the provisions that contain dualism in the concept of drug addicts as victims or perpetrators of drug crimes, it is necessary to conduct a thorough research. This can provide an overview of the purpose and intent of the makers of Law No. 35/2009 on Narcotics (hereinafter referred to as the Narcotics Law), as well as the expected results of the formulation that positions drug addicts as perpetrators of drug crimes as well as victims of their own actions. In relation to the problem of drug addicts and the choice of appropriate legal policy to deal with the many problems of drug addicts, the main issues under consideration are how the Narcotics Law regulates drug addicts from a criminal law perspective and how the principle of restorative justice is applied to drug addicts from a criminal law perspective.

If examined in the regulations of the Narcotics Law, it clearly outlines the legal basis for the possibility of drug users not being convicted, as stipulated in Article 128 paragraphs (2) and (3) of the Narcotics Law, which provides a guarantee of not being prosecuted with the following criteria.

- a. Narcotics addicts who are not of legal age and have been reported by their parents or guardians as referred to in Article 55 paragraph (1) shall not be prosecuted.
- b. Narcotics addicts who are of legal age as referred to in Article 55 paragraph (2) who are under-going medical rehabilitation 2 (two) times the period of doctor's treatment in hospitals and/or medical rehabilitation institutions appointed by the government shall not be prosecuted.

The Narcotics Law also provides protection and fulfillment of the rights of victims of crime, including the right to obtain medical rehabilitation and social rehabilitation for everyone who experiences narcotics dependence, also known as narcotics addicts. A narcotics addict is anyone who uses narcotics for personal use and is dependent on them.

So that drug addicts cannot be prosecuted, drug addicts are highly expected to get medical treatment both in hospitals and medical rehabilitation institutions appointed by the government. Drug users should be rehabilitated and not criminally prosecuted because rehabilitation can help individuals to recover and overcome dependence. Rehabilitation programs can also help drug users to return to society. In addition, rehabilitation is considered more cost-effective than the criminal justice system. Drug users are also entitled to protection and care, and the rehabilitation approach is more in line with human rights principles.

The application of restorative justice principles to drug addicts is a legal advancement that must be taken into account as progress in solving the problems faced by drug addicts. Law Number 35 Year 2009 places drug addicts as victims themselves, avoids overcapacity in correctional institutions and reduces the state's responsibility for rehabilitation.

### 3.3 Crime of Pornography

Pornography is included in the category of criminal offenses against decency listed in Articles 282-283 of the Criminal Code which focuses on the prohibition of the production, distribution, or distribution of material that violates the form of decency. The crime of pornography in Indonesia is also regulated in Law of the Republic of Indonesia Number 44 of 2008 concerning Pornography in articles, especially in Article 32 Jo Article 6 which states that every person who plays, shows, utilizes, owns, or stores pornographic products as referred to in Article 6 shall be punished with a maximum imprisonment of 4 (four) years and / or a maximum fine of Rp 2,000,000,000, - (two billion rupiah) This law aims to protect the public, especially children, from content that is considered harmful and not in accordance with the norms of decency.



The law defines pornography as any form of images, sounds, writings, and/or other forms that can trigger sexual appetite, which is contrary to the norms of decency. Prohibited acts include the production, distribution, and dissemination of pornographic content. It also covers the storage and possession of pornographic materials.

Violations of this law may be subject to criminal sanctions, which may include imprisonment or fines, depending on the type and extent of the offense. For example, production and dissemination may be subject to more severe penalties. There is a special emphasis on protecting children from pornographic content, including the prohibition of sexual exploitation of children in any form. Enforcement of pornography-related laws involves various agencies, including the police and other authorized government institutions.

Pornographers see advances in information technology as a very profitable business opportunity. The production of pornography with high-quality products has become easier and cheaper. Pornography was conventionally distributed through leaflets. Nowadays, posters can be downloaded and uploaded through various social media platforms, such as YouTube, Instagram, Path, the web, and blogs, so that they can be widely spread and enjoyed by everyone.<sup>23</sup>

The spread of pornography in society has also led to the criminal offense of pornography, which damages the morals of the younger generation. Human rights are beginning to be recognized in the era of globalization. Human rights are a unique issue for Indonesia, which is currently experiencing an era of reform. Individual values are taking over previous social values. The issue of pornography in Indonesia is often a matter of public debate, related to freedom of expression, social norms, and individual protection, so the implementation and enforcement of the law is often controversial. In addition to the Criminal Code and the Pornography Law, the dissemination of pornographic content is also regulated in Law No. 19/2016 on Electronic Information and Transactions (ITE Law), which regulates the dissemination of electronic information containing elements of decency. Article 27 paragraph (1) of the ITE Law states that “every person is prohibited from distributing, transmitting, or making accessible electronic information that violates decency”.

The Indonesian National Police Regulation No. 8 of 2021 concerning Handling Crimes Based on Restorative Justice, also regulates criminal offenses related to electronic information and transactions. The Perkap outlines that special requirements as additional requirements for criminal acts of information and electronic transactions are as stipulated in Article 8 paragraph 1 of the Perkap on Handling Criminal Acts Based on Restorative Justice, including perpetrators of criminal acts of information and electronic transactions who disseminate illegal content, perpetrators are willing to delete the uploaded content, perpetrators apologize through videos uploaded on social media accompanied by a request to delete the content that has been uploaded and perpetrators are willing to cooperate with Police investigators to conduct further investigations.

**Tabel 3.** Annual case data of pornography case handling for the period 2022-2024

No	Year	Cases
1	2022	3
2	2023	-
3	January- September 2024	2

\* Source of Malteng Police Statistics

<sup>23</sup> Martini Martini, “Pengaturan Tindak Pidana Pornografi Dalam Sistem Hukum Indonesia,” *Solusi* 19, no. 2 (2021), <https://doi.org/10.36546/solusi.v19i2.366>.

Crime of pornography, in the jurisdiction of Central Maluku District Police. In 2021 there were zero cases, in 2022 there were 3 cases continuing in the second stage, in 2023 there were zero cases, and in 2024 there were 2 cases.

In this case, it can be said that restorative justice did not work, because in the opinion of the police, the victim and the perpetrator had discussed resolving the case through family means, which then did not involve law enforcement. Therefore, the police did not receive information regarding the agreement made by the victim and perpetrator. The police regretted this, because if the police were involved and a restorative justice approach was taken. In addition, the police have provided an understanding to the victim regarding the restorative justice settlement model, but the victim chose to continue the legal process for the case.

#### 4. Obstacles Faced in Resolving Restorative Justice Against Victimless Crimes

The sense of justice expected from law enforcement has not been enjoyed by the people in this country. Moreover, it is known that the criminal justice system in Indonesia does not regulate victims much. Thus, sometimes the existence of victims tends to be ignored or “forgotten”, considering that this system focuses more on the perpetrators of crimes. The protection of victims’ rights is essentially part of the protection of human rights.<sup>24</sup> Law enforcement is the government’s effort to uphold justice in society. However, its current implementation often contradicts the basic principles of effective law enforcement. Individuals who should get legal protection instead feel oppression. Law enforcement is influenced by several factors, namely statutory factors, law enforcement factors, facilities and facilities factors, community factors and cultural factors.

The statutory factor focuses on legal products must be able to accommodate the needs of a developing society, and for that, the law must be designed systematically, clearly, and easily understood. The law enforcement factor focuses on the success of law enforcement which depends on the ability of law enforcement officials who must be role models for the community. They must be able to translate the norms in the law in accordance with public legal awareness. Weaknesses in law enforcement are often caused by limited human resources, especially in terms of technological knowledge. The lack of facilities has an impact on the law enforcement process, so the completeness of facilities and facilities must be adequate. Public legal awareness greatly affects the level of compliance with legal norms. This compliance is an indicator of the function of law in society itself. Values in culture greatly influence individual behavior and must be learned through the socialization process, so this can also affect the law enforcement process in society.

The application of the restorative justice approach in solving victimless crimes faces several obstacles, including: 1. Many parties, including law enforcement and the community, do not fully understand the concept of restorative justice, making it difficult to implement it effectively. 2. This approach requires resources, both human and financial, for training, facilitation, and support programs so that these limitations can hinder the implementation of restorative justice. 3. It is difficult to ensure the involvement of all parties, including victims, perpetrators and the families of victims and perpetrators, especially if there is trauma on the part of the victim. 4. The lack of a good evaluation system to assess the effectiveness of restorative programs can make it difficult to improve and develop the approach.

<sup>24</sup> Renita Dharma Pratiwi, Moch Ardi, and Rosiana, “Kendala Penerapan Prinsip Restorative Justice Dalam Perkara Tindak Pidana Anak,” *Jurnal Lex Suprema* I, no. II (2019): 1–19, <https://ejournal.undip.ac.id/index.php/phpidana/article/view/25036>.

## 5. Conclusion

A victimless crime does not mean there is no victim; rather, it means that the perpetrator becomes a victim of his or her own actions. There are victimless crimes in Central Maluku District Police, namely gambling, drug abuse, and pornography. The use of restorative justice has yet to be fully applied to victimless crimes. The restorative justice approach should be able to help reduce the stigma against offenders, so that they have the opportunity to change and reintegrate into society and restorative justice can reduce the risk of offenders committing crimes in the future, as well as strengthen legal awareness in society. The application of restorative justice approaches in the resolution of victimless crimes faces several obstacles in the community, which may not fully understand the concept of restorative justice. The approach requires resources, both human and financial, for training, facilitation, and support programs. Some communities, where traditional, more punitive approaches still dominate. This cultural change takes time and effort, it is difficult to ensure the involvement of all parties, existing legal policies may not support restorative practices.

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