

APPLICATION ON PROCEDURAL JUSTICE VIS A VIS SUBSTANTIVE JUSTICE IN LAW ENFORCEMENT

By Jonaedi Effendi



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Abstract

This study examines the application of procedural and substantive justice in law enforcement. The research method used in this study is mixed, normative, and sociological legal research. Normative legal research uses a conceptual approach and a case approach, while sociological research uses a socio-legal approach because the concept of law enforcement will be analyzed from the perspective of legal culture. The research discussion indicates that the application of procedural justice vis a vis substantive justice in law enforcement still needs to be simultaneously implemented; in certain circumstances, procedural justice is better, while in other circumstances, substantive justice is better. Procedural justice is closely related to the propriety and transparency of the decision-making process. Meanwhile, substantive justice focuses on internal aspects, which contain elements in the law about "truth" and "guilt." However, both justices need to remain grounded in existing legal norms. Based on the results of this study, it can be concluded that there has been a discourse on the application of procedural justice vis a vis substantive justice in law enforcement. The author divides this discourse into three stages, namely the investigation stage, the prosecution stage, and the decision stage.

Key words: *Procedural justice vis a vis substantive justice, Law Enforcement, Judge's decision*

Abstrak

Penelitian ini bertujuan untuk mengkaji penerapan keadilan prosedural dan keadilan substantif dalam penegakan hukum. Metode penelitian yang digunakan dalam artikel ini adalah mix method ini penelitian hukum normatif dan sosiologis. Penelitian hukum normatif menggunakan pendekatan konseptual (*conceptual approach*) dan pendekatan kasus (*case approach*), sedangkan penelitian hukum sosiologis menggunakan pendekatan *socio legal* karena konsep penegakan hukum ini akan dianalisis dari perspektif budaya hukum. Pembahasan penelitian menunjukkan bahwa penerapan keadilan prosedural vis a vis keadilan substantif dalam ranah penegakan hukum seringkali tidak dapat berjalan secara simultan, dalam keadaan tertentu keadilan procedural lebih diutamakan, namun dalam keadaan yang lain keadilan substantif lebih didahulukan. Keadilan prosedural berkaitan erat dengan kepatutan dan transparansi proses pengambilan keputusan. Sedangkan keadilan substantif menitikberatkan pada aspek internal, yang mengandung unsur-unsur dalam hukum tentang "kebenaran" dan "kesalahan". Meskipun demikian keduanya harus tetap berpijak pada norma hukum yang ada. Berdasarkan hasil penelitian ini dapat disimpulkan bahwa telah terjadi diskursus penerapan keadilan prosedural vis a vis keadilan substantif dalam penegakan hukum. Diskursus ini penulis bagi menjadi tiga tahap, yaitu tahap penyidikan, tahap penuntutan, dan tahap putusan.

Kata kunci: Keadilan prosedural vis a vis keadilan substantif, Penegakan Hukum, Putusan Hakim

Background

Law enforcement is one of the benchmarks for the success on the rule of law.¹ Law enforcement related to the ability to comprehend, interpret, and enforce laws as a part of an active state legal system. The value of law and the accomplishment of justice in community also related to the law enforcement. A legal system that serves interests of community, country, and state cannot be isolated from the process of law enforcement. Besides, it is underlined that humans are not created by the law. It is an activity to implement law according to legal rules or norms against any violation or legal deviation. Law enforcement essentially boils down to justice and the institution that appointed to carry out justice is court, since the legal revolution that gave establish modern law role and function of judiciary has changed, the procedures and administration of law have also fundamentally changed.²

Law enforcement as a country's main instrument and indicator can be referred as state law. Reflection on law enforcement at the end of 2021 experienced many dynamics against controversial cases. These have become public spotlight and massive public attention. The community response on law enforcement should become attention and

'warning' because ideally, the development of law should be related to the development of society. it is also in line with progressive law which stated that law exist for society not society exist for law.³

Law enforcement process cannot be separated from judiciary as an institution which include as a part of judiciary law enforcement. As the last way of seeking justice, the court needs improvements, both from administrative and judicial systems. Because, in reality, courts are institutions that feared by society. People are afraid of the justice, as according to the public view, justice has an image of media to judge people. Moreover, justice becomes a gathering place for legal mafia who are willing to pawn the law for personal satisfaction. The grim portrait of law in Indonesia is heading to its lowest point. Law enforcement officers, as the law's main pillar, play a major role in the 'legal mafia'. The decreasing public trust in law enforcement institutions in Indonesia 2021 can be illustrate in the figure below:

¹ Maria Silvy E. Wangga, R. Bondan Agung Kardono, and Aditya Wirawan, "Penegakan Hukum Korupsi Politik," *Kanun Jurnal Ilmu Hukum* 21, no. 1 (May 2019), pp. 39–60, <https://doi.org/10.24815/kanun.v21i1.12862>.

² Siti Merida Hutagalung, "Penegakan Hukum Di Indonesia: Apakah Indonesia Negara Hukum?," *Sociae Polites*, October 2017, pp. 109–26, <https://doi.org/10.33541/sp.v1i1.465>.

³ Liky Faizal, "Problematika Hukum Progressif Di Indonesia," *Ijtima 'iyya: Jurnal Pengembangan Masyarakat Islam* 9, no. 2 (2016), <https://doi.org/10.24042/ijpmi.v9i2.947>.

Figure 1. Condition of Law Enforcement in Indonesia National Survey of Indonesia in 2021



Source: National Survey 2021

Based on the Indonesian national survey above, it shows that respondents who states that Indonesian law enforcement is outstanding at 2.7%. Enforcement parameters Indonesian law is in a good predicate based on the survey results of 49.5%. A predicate with poor rank has a result at 42.8%. However, there is a lowest result on 4.5%. Data above must be an evaluation for law enforcement and law government in the future that continue to provide guarantees of certainty, benefit, and justice related to the legal ideals.

Based on the rule of law index released by the World Justice Project (WJP) 2021, Indonesia, on a global scale, is ranked at 68th. There is a decrease compared to last year, on 2020 Indonesia ranked at 59th. Furthermore, compared to other Southeast Asian countries, Indonesia is far below Singapore, which occupies 17, and Malaysia at 54. Eight factors that affect WJP regarding

the rule of law index, 1) Constraints of Corruption, 2) Absence of Corruption, 3) Open Government, 4) Fundamental Rights, 5) Regulatory Enforcement, 6) Order and Security, 7) Civil Justice, and 8) Criminal Justice. In principle, Law enforcement process discuss procedural matters or the process of resolving cases (as stated in procedural law or formal law) as a guide in carrying out law enforcement process. Besides, it discusses the rules of substantive law (as contained in material law) as a reference to determine what actions can be punished.

The concept of procedural and substantive justice is a very similar concept important for law enforcement that needs to be enforced to ensure legal certainty and justice for society because it discusses material law and formal law, which needs to go hand in hand. Thus, it is very interesting to discuss the applying concepts of procedural and substantive justice in law enforcement through a legal sociology approach. Applying procedural and substantive justice in law enforcement, it usually affects the judge's decision, where the judge's decision is a legal culture that needs to be adhered by the judge in handling a case.

Research by David Lewis Schaefer discussed about procedural justice versus substantive justice set by John Rawls and Robert Nozick. This research concluded that the areas of agreement between Rawls and Nozick are more significant than their disagreements.

Another research on substantive justice of

procedural justice that was done by Boella and der Torre explained that the social order established by regulative norms, such as obligations and permissions, and constitutive norms, such as counts-as obligations, is what procedural norms seek to achieve. Legislators, attorneys, and police officers are among the legal practitioners who procedural norms are addressed to.⁴

Meanwhile Simanjuntak on his research stated about Procedural Justice and Substantive Justice based on Constitutional Court Decision Number: 91/Puu/Xviii/2020⁵, it is said that the formal condition is procedural justice while the strategic objective is substantive justice.

Based on the explanation and the research that has been done before which conclude that there is no study discussed about the concept of procedural justice and substantive justice in law enforcement yet. Thus, this research aims to Examine how procedural and substantive justice are applied in court decisions from the standpoint of legal culture.

This research uses normative and sociological legal research methods. This normative legal research method uses a

conceptual approach, namely an approach that refers to views or doctrines that develop in law and uses a case approach, by examining cases related to the legal issue at hand and has become a court decision that has permanent legal force⁶. Meanwhile, the sociological legal research method used to see the application of law by judges in ensuring justice, which is obtained when the author provides expert testimony in court. The researcher uses a mixed method because the research problem will be analyzed from a legal culture perspective.

The technique of collecting materials was indept interview. Meanwhile, as for the determination of samples and respondents who have been selected based on certain criteria. The object of this research is the East Jawa Police Discrimination Investigator, Prosecutors at the Tanjung Perak District Attorney's Office, and Judges at the Surabaya District Court.

Based on the description above, this study examines the application of procedural and substantive justice in legal decisions. It is based on the perspective of legal culture, and in the realm of law enforcement where this research differs from the previous research discussed only procedural justice or substantive justice.⁷ Moreover, no scientific research discusses it from the perspective of legal culture.

⁴ Guido Boella and Leendert van der Torre, "Substantive and Procedural Norms in Normative Multiagent Systems," *Journal of Applied Logic* 6, no. 2 (June 2008), pp. 152–71, <https://doi.org/10.1016/j.jal.2007.06.006>.

⁵ Samuel Hamonangan Simanjuntak and Lita Tyesta A.L.W., "Procedural Justice or Substantive Justice: Review of Constitutional Court Decision Number: 91/Puu/Xviii/2020," *Jurnal Ilmiah Kebijakan Hukum* 16, no. 2 (July 2022), p. 341, <https://doi.org/10.30641/kebijakan.2022.V16.341-362>.

⁶ Jonaedi Efendi, *Metode Penelitian Hukum: Normatif Dan Empiris*, 5th ed. (Jakarta: Prenadamedia Group, 2022).

⁷ David Lewis Schaefer, "Procedural Versus Substantive Justice: Rawls And Nozick," *Social Philosophy and Policy* 24, no. 1 (January 2007): 164–86, <https://doi.org/10.1017/S0265052507070070>.

Discussion

A. Concept of Procedural Justice Vis a Vis Substantive Justice

²⁰ The process of law enforcement is different from the application of rules. People comes to court is not about finding who wins and who loses, yet to seek justice for legal issues concerning their rights. Justice is a feeling that you want to be manifested in law enforcement process.

Meanwhile, law enforcement itself is the implementation of ¹⁹ law-by-law enforcement officers and by everyone who has their respective authorities according to the applicable laws.

The condition of Law Enforcement in Indonesia is still formalistic and adheres to the existence of laws, where legal certainty is the front line compared to substantive justice. Thus, justice is hardly felt by the public.⁸

Lawrence M. Friedman argues that whether or not the enforcement of a law is effective to achieve justice can be influenced by 3 elements, namely:

First, Legal Structure. The authority possessed by law enforcement agencies has been guaranteed by law, therefore ²¹ in carrying out its duties and obligations, it is independent off the influence of government power and intervention from other powers.

Second, Legal Substances. The legal substance is a product produced in the legal system, which includes decisions and rules that have been formed. This legal substance also includes laws that live in a society (Civil Law). Therefore, it is not only in form of laws and regulations.

Third, Legal Culture. Legal Culture is a human attitude towards law and the legal system, beliefs, values, thoughts, and expectations. Legal Culture can be interpreted as an atmosphere of social thought and social forces that determine how the law is applied, whether it should be used, avoided, or abused. Therefore, legal Culture ³⁷ is closely related to public legal awareness. The higher public awareness, the better mindset of the community in understanding the law. Thus, justice is a goal of the law that can be realized, especially its application in the trial process in court.⁹

²³ Article 24, paragraph (1) of the 1945 Constitution stated, "Judicial power is an independent power to administering the judiciary in order to uphold law and justice." It means our constitution wants to enforce the law and justice because enforcing it has yet to uphold justice certainly. Hence, to reflect certainty, a legal product must also provide values of justice in formulating legislation.

Law and justice are two things that are interrelated like two sides of a coin that cannot be separated. The law aims to realize justice.

⁸ Siti Kasiyati, "Law Enforcement in Indonesia in Perspective of Transcendental Legal Justice Paradigm," *Journal of Transcendental Law* 2, no. 2 (December 15, 2020): 100–114,

<https://doi.org/10.23917/jtl.v2i2.11855>.

⁹ Lawrence M. Friedman, *Sistem Hukum Perspektif Ilmu*

Fairness without law is meaningless. To get justice, justice seekers must go through procedures which is unfair. The law becomes scary for the community. The law does not exist to make society happy but instead to make it miserable. The law often considered not successful in providing justice to society. The rule of law has been announced only as a sign without meaning. Legal texts are just a language game that tends to deceive and disappoint. In the context of law enforcement, procedural and substantive justice are important concepts. To better understand the two concepts, they can be looked at the definitions. The notion of procedural justice stated as:

"Refers to fairness in the processes that resolve disputes and allocate resources. One aspect of procedural justice is related to the administration of justice and legal proceedings discussion. This sense of procedural justice is connected to due process (U.S.), fundamental justice (Canada), procedural fairness (Australia), and natural justice (other Common law jurisdictions). However, procedural justice can also be applied to non-legal contexts where some process is employed to resolve conflict or divide benefits or burdens. Procedural justice concerns the fairness and the transparency of the processes by

which decisions are made. It may be contrasted with distributive justice (fairness in the distribution of rights or resources), and retributive justice (fairness in rectifying wrongs). Hearing all parties before a decision is made is one step that would be considered appropriate to be taken. Thus, a process may be characterized as procedurally fair. Some theories of procedural justice hold fair procedure that leads to equitable outcomes, even if the requirements of distributive or corrective justice are not met.¹⁰

The definition above can simply be defined that procedural justice is based on the idea or notion of justice in the process of resolving cases and allocating resources. One aspect of procedural justice relates to discussing how to provide justice in the legal process. The meaning of procedural justice can be associated with proper judicial processes, which generally occur in the United States; other names are fundamental justice in Canada, procedural justice (Australia), and natural justice (other Common Law countries). However, this notion of procedural justice can also be applied to non-legal contexts where processes are used to resolve conflicts or to share benefits or burdens.

Based on the definition above, procedural

Sosial (Bandung: Nusa Media, 2011).

¹⁰ Amitabh Mehta, *Organisation Development: Principles, Process & Performance* (New Delhi: Global

justice is closely related to the propriety and transparency of decision-making processes. The concept of procedural justice can be distinguished from the concepts of distributive justice (justice in the distribution of rights or resources) and retributive justice (justice in correcting mistakes). One step before making a decision is listening to every parties. This step is considered appropriate to be taken, thus a process can be considered procedurally fair. Several theories of procedural justice hold a fair procedure will lead to a fair result, even if the conditions for distributive justice or corrective justice are not met.

An evidence-based approach, also known as procedural justice, is consistently linked to higher compliance and greater satisfaction with decisions made by authorities. National judicial organizations are increasingly emphasizing the need to encourage procedural fairness. Procedural justice views just procedures as being a result of how well people and authority will get along.¹¹

This is in contrast to substantive justice. Substantive justice interpreted as “Justice fairly administered based on the rules of substantive law, regardless of any procedural errors not affecting the litigant's substantive rights.” Substantive justice may derive from

India Publications, 2009).

¹¹ Christian Schnaudt, Caroline Hahn, and Elias Heppner, “Distributive and Procedural Justice and Political Trust in Europe,” *Frontiers in Political Science* 3 (May 2021), <https://doi.org/10.3389/fpos.2021.642232>.

7 the common law, statutes, or a constitution. For example, a claim to recover for breach of contract or negligence or fraud would be a common law of substantive right.¹² procedural justice tried to meet the demands of substantive justice coveted by society.¹³

The definition above can be understood as substantive justice or justice provided based on the rules of substantive law, without regard to procedural errors that do not affect the substantive rights of the Plaintiff/Petitioner.

Substantive justice is often expressed in terms of various ways in contemporary field.¹⁴ First, it means as the regulation order of public relations. The law has the nature and character to regulate behavior according to the existing order. Second, it is as means of realizing social justice. In this case, the law is expected to provide justice, and able to punish someone. Third, the function of law is as to build a development. In this case, the law as a tool to bring people to more forward direction.¹⁵ Fourth, it is as the critical legal function. In this case, legal power is not solely supervising the

¹² Wex Definitions Team, “Substantive Law,” Cornell Law School, 2021, https://www.law.cornell.edu/wex/substantive_law#:~:text=Law which governs the original,a common law substantive right.

¹³ Ade Mahmud et al., “Keadilan Substantif Dalam Proses Asset Recovery Hasil Tindak Pidana Korupsi,” *Jurnal Suara Hukum* 3, no. 2 (2021), <https://doi.org/https://doi.org/10.26740/jsh.v3n2.p.227-250>.

¹⁴ R. Soeroso, *Pengantar Ilmu Hukum* (Jakarta: Sinar Grafika, 2004).

¹⁵ Nazaruddin Lathif, “Teori Hukum Sebagai Sarana Alat Untuk Memperbaharui Atau Merekayasa Masyarakat,” *Palar / Pakuan Law Review* 3, no. 1 (January 2017), <https://doi.org/10.33751/palar.v3i1.402>.

government apparatus includes as law enforcement officials.

Procedural law is a mechanism by which people can choose law or legal institutions used to resolve disputes based on state and applicable community regulations. Meanwhile, *Lawrence Freidman* mentions five functions of the legal system; a control system, the legal system is concerned with behavior that has control; the function of law as a dispute settlement; the legal system is a conflict and a dispute resolution agent; the redistribution function or social engineering function, directs the use of law to bring social change determined by the government; the law functions as social maintenance; the law functions to supervise the regulation.¹⁶

Regarding law substantively and procedurally, these two things cannot be separated from the concept of law and justice as the main goals of law. For instance, *John Rawls* is well known with the theory of procedural justice, because justice is understood as the result of agreement through certain procedures. At this level, Rawls goes through the procedure of selecting the principles of justice based on the principles of equality and freedom. Justice must substantively refer to measure of equality and freedom, namely:

First, the principle of the greatest equal liberty which stated that “*Each person is to*

¹⁶ Lawrence Friedman, *American Law an Introduction*, ed. Wishnu Basuki (Jakarta: Tata Nusa, 2001).

7 have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all” According to this principle, everyone has the same rights over the entire system that is composed of liberties and compatible with those liberties.¹⁷Second, equality of opportunity. The core principle of equality of opportunity refers to those who have the opportunity to achieve the prospect of welfare, income and authority. To create equality, the difference principle is needed, social and economic differences must be managed to provide the greatest benefit for those who have bad fate.

Basic difference between substantive justice and procedural justice lies in: question explanation. Substantive justice answers the question of “What?” substantive justice defines which behavior is criminal and what prosecutor has to prove to punish the accused. Meanwhile, Procedural Justice answers the question of “How?” procedural law discusses how the investigation process and how prosecutors can prove the substantive elements of the case.¹⁸ Substantive Justice is part of Procedural Justice. Shortly, substantive justice concerns substance, while procedural justice concerns procedures.¹⁹ Moreover, Substantive Justice is

¹⁷ John Rawls, *A Theory of Justice* (London: Oxford University Press, 1973).

¹⁸ Daniel A. Nolan, “Substantive versus Procedural Criminal Law,” in *The Encyclopedia of Criminology and Criminal Justice* (Oxford, UK: Blackwell Publishing Ltd, 2013), pp. 1–5, <https://doi.org/10.1002/9781118517383.wbecj467>.

¹⁹ Kenneth M. Ehrenberg, “Procedural Justice and Information in Conflict-Resolving Institutions,” *Albany*

an internal aspect law, the elements contained in law are representations of the "truth" and "error". Procedural Justice is an external aspect of law. Procedural justice can be realized if substantive justice has been achieved.²⁰

Moreover, Substantive Justice is an internal aspect law, the elements contained in the law are representations of the "truth" and "error". Procedural Justice is an external aspect of law. Procedural justice can be realized if the substantive justice has been achieved. As for example, it can be seen in the decision of Yogyakarta District Court Number 74/PDT.G/2009/PNYK on Civil cases in its elaboration of parameters of substantive justice and procedural justice as following below:

Table 1. Parameters of Substantive and Procedural Justice²¹

Substantive Justice	Procedural Justice
<ul style="list-style-type: none"> Basic assumptions: Substantive justice is justice related to the judge's decision in examining, adjudicating, and 	<ul style="list-style-type: none"> Basic assumptions: Procedural justice is related to the legal rights protection

Law Review 67 (2004), pp. 167–209.

²⁰ JM. Muslimin and Yulia Fatma, "The Actualization of Justice in the Settlement of Joint Assets Due to Divorce: Comparative Analysis of Decisions of the Religious Courts," *Journal de Jure* 12, no. 2 (December 2020), pp. 176–90, <https://doi.org/10.18860/j-fsh.v12i2.9064>.

²¹ Adopted from Term of Reference The research of Judicial committee Judge's decision RI 2012, with simplification as needed based on the theories of procedural and substantive justice.

<p>deciding a case that must be made based on considerations of rationality, honesty, objectivity, impartiality, without discrimination and based on conscience (the judge's belief).</p> <ul style="list-style-type: none"> Measurement results: If the measurement result is positive, then it is considered to meet substantive justice, otherwise if the measurement result is negative, there is no substantive justice 	<p>of the plaintiffs/defendants/interested parties) in every stage of the proceedings in court.</p> <ul style="list-style-type: none"> Measurement results: If the measurement result is positive, then it is considered that there is procedural justice, otherwise if the measurement result is negative, then there is no procedural justice
<p>The Explanation</p> <ol style="list-style-type: none"> Do judges use jurisprudence as a basis for judgment? Do judges use legal sources in form of doctrine as a basis for 	<p>The Explanation</p> <ol style="list-style-type: none"> Does the judge's decision contain things that must be included in a court decision as stipulated in Article 2 paragraph (1) of

<p>consideration?</p> <p>3. Do the judge's decision use sources in form of legal values that live in society, in form of customary law, local law, and/or custom?</p> <p>4. Is the judge's decision has logical conclusion related to facts and law?</p> <p>5. Is the conclusion in judge's decision coherent and systematic, supported by considerations of facts and law, therefore no conclusions are forced?</p> <p>6. In determining the decision, has it identified any consideration of non-juridical factors (psychological, social, economic, educational, environmental,</p>	<p>Law number 48/2009 and Article 184 HIR/195 RBG?</p> <p>2. Does the judge's decision content need to include in a court decision as stipulated in Article 2 paragraph (1) of Law no. 48 of 2009 and Article 184 HIR/195 RBG?</p> <p>3. Is the application of law of evidence related to the agreement/law, doctrine and/or jurisprudence?</p> <p>4. Has the judge included proportionally the arguments of plaintiff and defendant on judges considerations?</p>	<table border="1" data-bbox="797 254 1305 300"> <tr> <td data-bbox="797 254 1068 300">religious)?</td> <td data-bbox="1068 254 1305 300"></td> </tr> </table> <p>Source: The Decision of Yogyakarta District Court Number 74/PDT.G/2009/PNYK</p> <p>The decision of Yogyakarta District Court Number 74/PDT.G/2009/PNYK already reflects procedural justice, because all the parameters set have been met by the panel of judges.</p> <p>B. The Application of Procedural Justice Via a Vis Substantive Justice in the Context of Enforcement</p> <p>In the perspective of national law, law and justice cannot be separated from the cultural of Indonesia. A nation that is ideologically based on the philosophy of Pancasila. Sudjito asserts that a national law will favor justice if it is supported by holistic law that refers to Pancasila. Law enforcement practices in Indonesia always use a formal/procedural approach, it means that law enforcement officers always look at cases from the point of view of process, the program or the text contained in legal norms of the article. It tends to be more prioritize law enforcement with procedural justice, not substantive justice. For example, the performance of the police is increasingly questioned when there is one sufficient case that seized the public's attention, there is an example of a case as a wife who was</p>	religious)?	
religious)?				

sued for scolding her husband who likes to get drunk on the basis of psychological domestic violence. It is supposed to bring in the level of investigation (early stage). The police can assess objectively, not prioritizing procedural justice thus ignoring substantive justice. However, after this case went viral and caused a commotion, the husband was released. Hence, a narrative and stigma emerged first viral on social media, then there will be action. There was indeed a discourse between Procedural Justice and Substantive Justice in the Context of Law Enforcement.

The application of Procedural Justice Vis a Vis Substantive Justice in law enforcement can first be seen from the division of public law and private law. Criminal law is a part of public law that aims to examine criminal cases. It is known as material truth. The author divided the implementation of Procedural Justice Vis a Vis Substantive Justice into three stages: the investigation stage, the prosecution stage, and the persecution. All of these stages reflect that there is a discourse between them. Although it must be remembered that the two concepts, both procedural justice and substantive justice, remain based on the existing legal norms.

First, at the investigation stage, The Head of the Criminal Investigation Department, Komjen Agus Andrianto, said: From 2021 to March 2022, the Indonesian National Police have completed 15,039 with Restorative

Justice. Agus said the number increased by 28.3 percent compared to the previous period. Restorative Justice has been applied to 1,052 Polsek in 343. The police are no longer conducting the investigation process. Restorative Justice has become a priority of the police in resolving cases. POLRI must position itself as an institution that provides a sense of Justice to the community. The explanation above is as stated in Article 5 of Perpol 8/2021. The regulation states that the cases that can be resolved through Restorative Justice must meet material requirements because Restorative Justice is an alternative to the conventional, punitive approach to discipline.²² As for crimes that cannot be resolved by Restorative Justice, such as terrorism, crimes against national security, corruption, and cases that endanger people's lives, and do not cause anxiety or rejection from society, has no impact on social conflict, has no potential division, not a case of radicalism and separatism and not behavior that repeat based on the Court's decision.²³

POLRES Satreskrim Trenggalek Police deal with cases of Violence in the household (domestic Violence) through restorative justice. The complainant agreed to make peace and withdraw the report to the police. Head of the Trenggalek Police Criminal Investigation Unit,

²² Jo Lauren Weaver and Jacqueline M. Swank, "A Case Study of the Implementation of Restorative Justice in a Middle School," *RMLE Online* 43, no. 4 (April 2020), pp. 1–9, <https://doi.org/10.1080/19404476.2020.1733912>.

²³ Setyo Aji Harjanto, "Polisi Selesaikan 15.039 Perkara Dengan Pendekatan Restorative Justice," *Bisnis.com*, 2022.

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 AKP Arief Rizky Wicaksana said, the termination of the investigation was carried out on cases of violence by SYO (48) against his own wife BOH (49), a resident of Munjungan District, Trenggalek. This problem based on the Regulation of the Republic Indonesia Police Regulation Number 8/2021 concerning on the Handling of Crimes Based on Restorative Justice, also Circular Letter of the Chief Police Number 43 SE/7/VII/2018 concerning on the Termination of Investigation.

Based on the data above, relevant to the empirical reality that researchers encountered when researchers provided expert testimony at the investigation level, there was a polarization of investigators' thoughts regarding the use of articles or applications in concrete cases. This polarization reflects 2 (two) paradigms of the justice model to be applied, whether the investigator will follow all existing procedures or see the substantiality of the case.

This polarization is divided into 2 (two) terms. First, investigators will follow the procedures established in the investigation process. For example, investigators will apply material or formal law to a case without considering the substance of the case itself. A concrete example is a report of persecution. In this report, the investigator will apply Article 351 of the Criminal Code without considering the consequences of the persecution itself. Second, the investigator

looks more at the substance of the reported criminal act. This pattern makes an impact on the investigation process.

For example, if the reported act did not cause severe suffering or loss to the victim. Then the investigator will try to make peace efforts by applying the concept of Restorative Justice. These two polarizations clearly describe the different patterns for investigators to provide justice for the community. Based on the in-depth interview result with one of the investigators in the East Java Police Discrimum, the following findings were obtained:

1. Basically the police (investigators) are always guided by the Laws and Regulations, starting from the Criminal Procedure Code, Police Regulations and Technical Guidelines. Discretion can be exercised by the investigator if the perpetrator's actions, for example in a minor theft case with a small loss where the perpetrator is very forced to commit his actions to support his family, then the investigator can resolve the case by means of restorative justice.
2. In handling cases, Investigators are always and obliged to pay attention to the actions committed by the perpetrator before determining the perpetrator as a suspect, a case title is carried out first.
- 25
 3. To provide a sense of justice for the community, the investigator, in addition to being able to reveal the perpetrator, for example a motorized vehicle theft case, is

also ²² expected to be able to successfully confiscate and ²² return evidence to the victim and process the perpetrator until the court session. For this reason, at every stage of the investigation, investigators are required to provide SP2HP to the victim.

4. The legal process reported by the reporter / victim against the perpetrator, of course, must be carried out according to the procedure and the transparency of the investigator is highly expected by the community in order to restore public confidence in the Police (Investigator), and we ourselves have the principle of enforcing the law with our sincere.

Second, at the prosecution stage. Happened as the Attorney General's Office (AGO) terminate ²¹ prosecution based on restorative justice for 6 cases crimes such as domestic violence to theft. The case was terminated due to peace ²⁶ between the victim and the suspect. The termination was carried out ²⁶ based on a joint case title with the AGO. The case was held online and attended by Jampidum Fadil Zumhana, Director of Crimes Against People and Property Agnes Triani, Coordinator to the Deputy Attorney General for General Crimes, ³⁸ the Head of the High Prosecutor's Office, the Head of The District Attorney who submitted ⁵² the application for restorative justice as well as the Head of Sub-Directorate and Head of Section Areas in the Directorate of TP

Oharda. There are 6 (six) ¹ case files which prosecution was terminated on the basis of restorative justice, such as: The suspect Theodorus Gregorius Manteiro alias Sinyo from the ¹³ Bantul District Attorney who suspected of ¹³ violating Article 44 paragraph (1) of the Republic of Indonesia Law No. 23 of 2004 concerning Elimination Domestic violence, Suspect ⁸ Budi from the Pesisir Selatan District Attorney who is suspected of violating Article 480 paragraph (1) of the Criminal Code regarding the detention, The suspect Andika Yance from the Bukit Tinggi District Attorney who is suspected of violating ¹³ Article 44 paragraphs (1), (4) of Law No. 23 of 2004 concerning the Elimination of Domestic Violence Ladder, Suspect I Made Eka Susila ⁸ from the Badung District Prosecutor's Office who is suspected of violating Article 335 of the Criminal Code on Threats, Suspect I Komang Duwi Antara ¹ from the Jembrana District Attorney who was suspected violates Article 362 of the Criminal Code concerning theft, suspect I Wayan Suarsa ⁸ from the Tabanan District Prosecutor's Office who is suspected of violating Article 362 of the Criminal Code on Theft.

The granting of claims based on this restorative justice, is given to the suspect for several reasons, include ²⁰ this is the first time he has committed an act criminal or has never been convicted; ³ the threat of a fine or imprisonment of not more than ³ 5 years. "The peace process has taken place, the suspect has

apologized and the victim gave Apologies, the suspect has promised not to repeat his actions, process peace takes place voluntarily, through deliberation without pressure, coercion and intimidation," said Ketut. In addition, another reason for granting a termination of prosecution is based on restorative justice.

General Attorney of Indonesian, ST Burhanuddin, advised in every restorative justice decision, the Victim's initiative to apologize for the actions committed by the suspect is the main point; thus, the realization of peace, which arises from the conscience of the Victim, is related to the compensation, restitution, and rehabilitation is the decision of the Victim.

Jampidum Fadil also said that the advantages of resolving cases through Restorative Justice do not prioritize punishment. It is related to the interests of the victim. Without a request for apologize and peace from the victim, it is impossible to file a case with the concept of mediation criminal justice (solving cases out of court) or restorative justice.

Furthermore, Jampidum Fadil ordered the Head of the District Attorney to issue a Decision on Termination of Prosecution (SKP2) based on Restorative Justice under the Attorney General's Regulation Number 15 of 2020 and the JAM Circular Letter Pidum Number: 01/E/EJP/02/2022 dated February 10, 2022, regarding the Implementation of

Termination Prosecution Based on Restorative Justice as a form of legal certainty.

In empirical facts in the prosecution process, prosecutors are more likely to use Procedural Justice. Given that the prosecutor only receives a submission from the investigator, the existing procedures provide little space for the prosecutor to exercise discretion. However, in the contemporary context, the Attorney General's Office has issued a regulation related to Restorative Justice.

As for the results of an in-depth interview with one of the prosecutors at the Tanjung Perak District Attorney's Office, the following findings were obtained as below:

1. Tanjung Perak District Attorney's Office carries out each prosecution related to the applicable regulations such as the Law and the Attorney General's Regulation. Thus, prosecution procedures are based on established procedures.
2. If a case is found that requires discretionary action, they refer to the regulations of the Attorney General's Office, such as restorative justice.
3. in carrying out its duties and functions by reflecting on applicable regulations with the principle of conscience. Formal and material prosecution is carried out on the basis of statutory regulations.

Third, in the judge's decision stage. Certain regulation that becomes guidelines for judges when adjudicating cases is that judges must not

only read the text of legal norms contained in the law. However, the judge needs to explore the values of justice that come from non-legal written sources. Therefore, law enforcement is not the same as law enforcement which always relies on written law, while proper law enforcement is enforcing the law and enforcing unwritten laws because, in truth, the law and the law are different; the concept of the living law (the law that lives in society) must be explored by a judge. Back to the law, the law can be in the form of written law or unwritten law.

According to Ronald Beiner, the judge's decision is a "... mental activity that is not bound to" rules....". The rule or legal principle of how judges decide which has the "right" solution in their mind. A proposition about legal actors like judges inevitably relies on assumptions about the type and extent of knowledge researchers can acquire of social reality.²⁴ The legal culture of judges is the basis for judges to decide a case. Judicial decision-making culture is the cornerstone of the justice system – few officials and the rest of the public have a judge's power and influence. In short, in Legal culture, the judge is the embodiment of the judge's thoughts or views.²⁵ Charles G. Haines said that judicial

12 decisions are affected by the judge's view of public policy and the personality of a particular judge rendering the decision.

Court decisions are influenced by judges' views on public policy and judges' personalities regarding certain decisions.²⁶ Court decision refers to a court's judgment or ruling based on the facts in the evidence and how the law was applied to certain evidence. Judges are not only guided by the law but also must consider the rules in society and the legal principles whose status has higher standards, such as the precautionary, defensive, and strict liability principles.²⁷

Law enforcement efforts based on forming legal culture based on justice must be put forward during "chaotic" law in the country. Law enforcement as an effort to uphold justice can also be a means of criticism or criticism correction of positive law. Justice is the main basis for the rule of positive law and measures of human behavior. In that case, law enforcement efforts can be carried out within the framework to achieve a balance of life between humans to create justice, peace, order, and the general good in society. Several examples of legal cases that have been corrected in their decisions as a form of justice, one of them is the Baiq Nuril Maknun case in the ITE Crime, where Baiq Nuril which was

²⁴ Wessel Wijnvliet, "Judicial Decision-Making," in *An Analytic Framework for Research on Judicial Decision-Making* (Springer, 2022), 123–57.

²⁵ Rochmani, Safik Faozi, and Adi Suliantoro, "Budaya Hukum Hakim Dalam Penyelesaian Perkara Lingkungan Hidup Di Pengadilan," in *Seminar Nasional Multi Disiplin Ilmu Unisbank*, 2016.

²⁶ Ioulia Koublitskaia, "The Relationship between Legal and Extra-Legal Factors: How Judges Come to Make Their Decisions in Domestic Violence Cases" (University of New Orleans, 2012).

²⁷ Absori, "Penegakan Hukum Lingkungan Pada Era Reformasi," *Jurnal Ilmu Hukum* 8, no. 2 (2005).

initially acquitted turned into a sentence of 6 (six) months and a fine. Pinangki Prosecutor Sirna Malasari in a criminal act of corruption, in which the prison sentence is 10 (ten) years was changed to a prison sentence of 4 (four) years. As well as other examples of cases described in the table below:

Table 2. Examples of Legal Decision Correction Cases

No	Case	Decision Number	Verdict
1	ITE Baiq Nuril Maknun in ITE Crime	574 K/Pid.Sus/2018	Canceling the Mataram District Court Decision No. 265/Pid.Sus/2017/P.N.Mtr which ruled acquittal (vrijspraak) Become - imprisonment for 6 (six) months and - a fine of Rp. 500,000,000.00 (five hundred million rupiah) provided that if the fine is not paid, it is replaced with imprisonment for 3 (three) months
2	Pinangki Attorney Sirna Malasari in criminal acts of Corruption, Money Laundering, and evil conspiracy	10/PID.SUS-TPK/2021/PT DKI	Amend the Corruption Court Decision at the Jakarta District Court Number 38/Pid.Sus-TPK/2020/P.N. which sentenced the Defendant with Become: - imprisonment for 4 (four) years and - a fine of Rp. 600,000,000 (six hundred million rupiah), provided that if the fine is not paid, it is replaced with imprisonment for 6 (six) months
3	Anas Paningrum in criminal acts of corruption that are carried out continuously and money laundering which is carried out repeatedly	246 PK/Pid.Sus/2018	Cancel the Supreme Court Decision Number 461 K/Pid.Sus/2015 which sentenced the defendant with - imprisonment for 14 (fourteen) years - a fine of Rp.5,000,000,000.00 (five billion rupiah) provided that if the fine is not paid, it is replaced with imprisonment for 1 (one) year 4 (four) months - pay compensation in the amount of Rp57,592,330,580.00 (fifty-seven billion five hundred ninety-two million three hundred thirty

			<p>thousand five hundred eighty rupiah) and USD 5,261,070 (five million two hundred sixty-one thousand and seventy U.S. Dollars) provided that if the Defendant has not paid the replacement money within 1 (one) month after the Court's decision has permanent legal force, then his assets are confiscated and auctioned off to cover the replacement money, whereas if his assets are not sufficient to pay the replacement money, then sentenced to imprisonment for 4³⁶ur) years</p> <ul style="list-style-type: none"> - revocation of the right to be elected in public office <p>Become:</p> <ul style="list-style-type: none"> - imprisonment for 8 (eight) years - pinalty¹⁶ payment of Rp.300,000,000.00 (three hundred million rupiah) with the provision that if the fine is not paid, the convict is subject to a penalty in lieu of a fine in the form of imprisonment for 3 (three) months - pay compensation for state loss¹⁸ in the amount of Rp.57,592,330,580.00 and USD 5,261,070 provided that if the convict does not pay the¹mpensation at the latest within 1 (one) month after the court's decision has obtained permanent legal force, then his property can be confiscated by the Prosecutor and auctioned off to cover the replacement money and in the event that the convict does not have sufficient assets to pay the replacement money, he shall be sentenced to imprisonment for 2 (two) years.²⁹ - revocation of the right to be elected in public office for 5 (five) years from the time the convict finishes s¹ving his main sentence
4	Idrus Marham in criminal acts of corruption that are carried out	3681 K/Pid.Sus/2019	Canceling the Corruption Court Decision at the DKI Jakarta High Court Number 16/PID.SUS-TPK/2019/P.T.DKI which sentenced

	jointly and continuously		<p>6 the defendant with</p> <ul style="list-style-type: none"> - imprisonment for 5 (five) years and - a fine of Rp. 200,000,000.00 (two hundred million rupiah) provided that if the fine is not paid, it is replaced with imprisonment for 3 (three) months <p>Became:</p> <ul style="list-style-type: none"> - imprisonment for 2 (two) years and - a fine of Rp. 50,000,000.00 (fifty million rupiah) provided that if the fine is not paid, it is replaced with imprisonment for 3 (three) months
5	Edhy Prabowo in the Corruption Crime which was carried out together	942 K/Pid.Sus/2022	<p>Amends Decision Number 30/Pid.Sus-TPK/2021/P.T.DKI which punishes the defendant by: 9</p> <ul style="list-style-type: none"> - imprisonment for 9 (nine) years and a fine of Rp. 400,000,000,- (Four Hundred Million Rupiah) provided that if the fine is not paid it will be replaced with imprisonment for 6 (Six) months - pay a replacement amount of Rp. 9,687,447,219,- (Nine Billion Six Hundred Eighty Seven Million Four Hundred Forty Seven Thousand Two Hundred Nineteen Rupiah) and a total of USD 77,000 (Seventy Seven Thousand U.S. Dollars) taking into account the money that has been returned by the Defendant, if the Defendant does not pay the replacement money within 1 (one) month after the Court's decision has permanent legal force, the assets are confiscated by the Prosecutor and auctioned off to cover the replacement money, in the event that the Defendant does not have sufficient assets to pay the replacement money, he is sentenced to imprisonment for 3 (three) years - Revocation of the right to be elected to public office for 3 (three) years after the Defendant has finished serving his main sentence.

			<p>Become:</p> <ul style="list-style-type: none"> - imprisonment for 5 (five) years and a fine of Rp. 400,000,000,- (Four Hundred Million Rupiah) provided that if the fine is not paid, it will be replaced with imprisonment for 6 (Six) months - pay a replacement amount of Rp. 9,687,447,219,- (Nine Billion Six Hundred Eighty Seven Million Four Hundred Forty Seven Thousand Two Hundred Nineteen Rupiah) and a total of USD 77,000 (Seventy Seven Thousand U.S. Dollars) taking into account the money that has been returned by the Defendant, if the Defendant does not pay the replacement money within 1 (one) month after the Court's decision has permanent legal force, the assets are confiscated by the Prosecutor and auctioned off to cover the replacement money, in the event that the Defendant does not have sufficient assets to pay the replacement money, he is sentenced to imprisonment for 3 (three) years - Revocation of the right to be elected to public office for 2 (two) years since the Defendant has finished serving his main sentence.
6	Herry Wirawan	86/PID.SUS/2022/PT BDG	<p>Improving the decision of Bandung District Court Number: 989/Pid.Sus/2021/P.N.Bdg. who punished the defendant with:</p> <ul style="list-style-type: none"> - Life imprisonment - Imposition of Restitution fees on victims - <p>Become:</p> <ul style="list-style-type: none"> - Death Penalty Imposition of Restitution fees on victims

Source: Judge's decision

According to the table above, several cases change the original punishment based on the applied regulation to substitute regulation based

on the situation and condition. Due to certain condition and justice, a correction need to be done. In some cases, the decision becomes easier. But in another case, it could be worse than before.

Judges have full authority in conducting free legal discovery based on the description above. Moreover, Article 5 of the Law on the Principles of Judicial Power states that judges and constitutional court judges must explore legal values that live and grow in society. Thus, the legal culture of judges provides remarkable space for realizing justice.

Throughout the author's observation, there are 2 (two) models of judges' legal culture: positivistic judge culture and progressive judge culture. In the positivistic judge culture, judges interpret and decide following the evidence at trial based on the applicable laws and regulations. Whereas judges with a progressive legal culture, judges examine evidence by the law. The judge will also consider the legal values found in the trial. Thus, the application of procedural and substantive justice can be elaborated in one decision. However, this depends on the case.

Furthermore, based on an in-depth interview with one of the judges at the Surabaya District Court, the following findings were obtained: First, judges in deciding a case are still guided by the rule of law, both formal and material law. In addition to these two legal instruments, judges are also guided by the rules made by the Supreme Court because, after all, the panel of judges is the Supreme Court.

However, these two tools do not affect the independence of judges in

deciding cases. Secondly, judges must still explore the legal values that live and grow in society to provide a just decision. It is very important as a judge's effort to make legal discoveries.

In a criminal case, the judge must be active in obtaining the facts of the trial and examine all of the evidence presented either by the public prosecutor or by the defendant or his legal counsel.

Conclusion

Based on the results and discussion above, it can be concluded that definitive procedural justice is closely related to the propriety and transparency of processes' decision-making. It contrasts substantive justice, interpreted as "Justice fairly administered according to rules."

In applying Procedural Justice Via a Vis Substantive Justice in law enforcement, the author divides it into three stages: the investigation, prosecution, and decision. At the investigation stage, there are 2 (two) polarization of investigators' thoughts regarding the use of articles or the application in concrete cases; the investigator will follow the procedures that have been determined in the investigation process, or, on the contrary, the investigator looks more at the substance of the reported criminal act.

At the prosecution stage, as an empirical fact, prosecutors are more likely to use Procedural Justice. Prosecutor only receives a delegation from the investigator;

the existing procedures do not allow the prosecutor to exercise discretion. Meanwhile, judges have full authority to make legal discoveries at the decision stage.

Thus, judges' legal culture provides a remarkable space for realizing justice. And this research classifies 2 (two) models of judges' legal culture in upholding justice, namely the positivistic

judge culture model (following applicable legislation) and the progressive judge culture (in addition to legislation also considering legal values found in the trial). All of these stages reflect that, there is a discussion between the two. However, it must be remembered that both **Procedural Justice and Substantive Justice** concepts are still applied based on applicable legal norms.

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