

## **The Role of Police-Led Restorative Justice in Civil Enforcement: Reconsidering Fiduciary Guarantee Execution within the Framework of the Rule of Law**

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The enforcement of fiduciary guarantees in Indonesia has increasingly generated legal tension at the intersection of civil law, criminal procedure, and police authority, particularly following the Constitutional Court's reinterpretation of parate executie in fiduciary arrangements. In practice, police involvement in fiduciary guarantee execution has often been contested, as it risks blurring the doctrinal boundaries between private law enforcement and public coercive power. This article examines the relevance and legitimacy of police-led restorative justice as an alternative framework for civil enforcement, focusing specifically on fiduciary guarantee execution within the rule of law paradigm. Employing a normative juridical method complemented by a conceptual and statutory approach, the study analyzes fiduciary law, restorative justice policies within the Indonesian National Police, and core principles of the rule of law, including legality, proportionality, legal certainty, and protection of fundamental rights. The article argues that police-led restorative justice can function as a legitimate mediating mechanism in fiduciary disputes when positioned not as an instrument of coercive execution, but as a structured facilitation of consensual dispute resolution between creditors and debtors. Such an approach reduces the potential for criminalization of civil disputes, prevents abuse of authority, and enhances substantive justice without undermining civil law doctrine. The findings demonstrate that restorative justice, when institutionally confined by clear legal standards and procedural safeguards, aligns with the rule of law by reinforcing accountability, preventing arbitrariness, and ensuring balanced protection of private rights. This study contributes to contemporary debates on civil enforcement reform by proposing a recalibrated model of police involvement that bridges civil law enforcement and restorative justice principles in a manner consistent with constitutionalism and legal certainty.

**Keywords:** Police-Led Restorative Justice, Fiduciary Guarantee Enforcement, Civil Law Dispute Resolution, Rule of Law, Legal Certainty.

## INTRODUCTION

### Background

The concept of restorative justice has its intellectual roots in critical responses to retributive criminal justice systems that prioritize punishment over harm repair. Early formulations conceptualize restorative justice as a process that actively involves victims, offenders, and affected communities in resolving the consequences of wrongdoing through dialogue, accountability, and consensus. This paradigm challenges adversarial justice by emphasizing relational repair, social harmony, and participatory legitimacy, values that resonate strongly with broader rule-of-law ideals concerned with fairness and proportionality rather than coercion alone.<sup>1</sup>

John Braithwaite significantly advanced restorative justice theory by situating it within the broader framework of responsive regulation and governance. He argues that legal systems function most effectively when they combine persuasion, dialogue, and reintegration before resorting to coercive sanctions. This theoretical contribution is particularly relevant for civil enforcement contexts, where the overuse of coercive power often escalates disputes and undermines long-term compliance. Restorative justice a normative approach to lawful governance.<sup>2</sup>

Restorative justice emerged within criminal justice reform, contemporary legal scholarship increasingly recognizes its applicability to civil and administrative disputes. Civil conflicts, particularly those involving debt enforcement and security interests, frequently generate social and psychological harm comparable to criminal cases. As a result, scholars have questioned the rigid doctrinal separation between criminal and civil justice, especially where state authority and coercive.<sup>3</sup>

Fiduciary guarantees in civil law systems operate as security mechanisms that protect creditor interests while allowing debtors to retain possession of collateral. In Indonesia, fiduciary guarantees are regulated under Law No. 42 of 1999, which grants creditors executorial rights. However, empirical practice demonstrates that fiduciary execution frequently leads to disputes, resistance, and allegations of abuse, particularly when carried out without adequate procedural safeguards.<sup>4</sup>

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<sup>1</sup> Marshall, T. F. (1999). *Restorative justice: An overview*. London: Home Office. <https://www.gov.uk/government/publications/restorative-justice-an-overview>

<sup>2</sup> Braithwaite, J. (2002). *Restorative justice and responsive regulation*. Oxford: Oxford University Press. <https://global.oup.com/academic/product/restorative-justice-and-responsive-regulation-9780199253888>

<sup>3</sup> Zehr, H. (2015). *The little book of restorative justice* (Revised ed.). New York: Good Books. <https://www.goodbooks.com/products/the-little-book-of-restorative-justice>

<sup>4</sup> Butt, S., & Lindsey, T. (2018). *Indonesian law* (2nd ed.). Oxford: Oxford University Press. <https://doi.org/10.1093/he/9780198734234.001.0001>

The Constitutional Court of Indonesia addressed these tensions through Decision No. 18/PUU-XVII/2019, which fundamentally reinterpreted the executorial nature of fiduciary guarantees. The Court emphasized that unilateral execution without debtor consent or judicial supervision violates constitutional guarantees of due process and legal protection. This decision repositioned fiduciary enforcement firmly within the rule-of-law framework, requiring procedural fairness and limiting arbitrary coercion.<sup>5</sup>

Following this decision, uncertainty emerged regarding the role of law enforcement, particularly the police, in fiduciary guarantee execution. While police involvement has often been justified on the grounds of maintaining public order, critics argue that such involvement risks transforming civil disputes into quasi-criminal processes. This phenomenon contributes to the criminalization of civil disputes and undermines legal certainty, a core element of the rule of law.<sup>6</sup>

Police-led restorative justice emerges as a potential alternative that redefines police authority from coercive enforcement to facilitated mediation. Under this model, police act as neutral facilitators who assist creditors and debtors in reaching consensual resolutions rather than executing fiduciary guarantees. This shift aligns with modern policing theories that emphasize legitimacy, accountability, and public trust as foundations of lawful authority.<sup>7</sup> Empirical studies on procedural justice demonstrate that individuals are more likely to comply with legal outcomes when they perceive decision-making processes as fair, transparent, and participatory. Police-facilitated mediation, when conducted properly, enhances perceptions of legitimacy and reduces resistance, making restorative justice particularly relevant for fiduciary disputes characterized by imbalance of power and social vulnerability.<sup>8</sup>

In Indonesia, restorative justice has been formally institutionalized within police policies, reflecting a broader shift toward substantive justice. Although initially developed for minor criminal cases, these policies demonstrate the normative openness of Indonesian policing to dialogical and consensual dispute resolution mechanisms. This institutional development provides a legal and practical foundation for extending restorative justice into civil enforcement contexts.<sup>9</sup> Nevertheless, the expansion of police-led restorative justice into civil

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<sup>5</sup> Mahkamah Konstitusi Republik Indonesia. (2019). *Putusan Nomor 18/PUU-XVII/2019*. <https://www.mkri.id/index.php?page=web.Putusan&id=17613>

<sup>6</sup> Pompe, S. (2005). *The Indonesian Supreme Court: A study of institutional collapse*. Ithaca: Cornell Southeast Asia Program. <https://ecommons.cornell.edu/handle/1813/55672>

<sup>7</sup> Tyler, T. R. (2006). *Why people obey the law*. Princeton: Princeton University Press. <https://press.princeton.edu/books/paperback/9780691126739/why-people-obey-the-law>

<sup>8</sup> Mazerolle, L., Bennett, S., Davis, J., Sargeant, E., & Manning, M. (2013). Procedural justice and police legitimacy: A systematic review. *Journal of Experimental Criminology*, 9(3), 245–274. <https://doi.org/10.1007/s11292-013-9175-2>

<sup>9</sup> Institute for Criminal Justice Reform. (2023). *Assessment of restorative justice implementation in Indonesian law enforcement*. <https://ijrs.or.id/en/publikasi/>

enforcement raises significant rule-of-law concerns. Restorative justice must therefore be carefully confined to non-coercive facilitation, ensuring voluntariness, neutrality, and accountability.<sup>10</sup>

The rule of law requires that all exercises of public authority be grounded in legality, proportionality, and transparency. Police involvement in fiduciary disputes is compatible with the rule of law only when it avoids coercive execution and functions as a consensual mechanism that supplements judicial processes rather than replacing them. In this sense, restorative justice strengthens rather than weakens constitutional governance.<sup>11</sup>

Comparative legal experiences demonstrate that civil law jurisdictions increasingly integrate mediation and restorative mechanisms into enforcement systems to balance efficiency and justice. European studies show that consensual enforcement reduces litigation costs and enhances compliance, particularly in debt-related disputes, reinforcing the compatibility of restorative justice with civil law traditions.<sup>12</sup>

From a socio-legal perspective, fiduciary enforcement disputes often reflect structural inequalities between creditors and debtors. Restorative justice addresses these asymmetries by ensuring participation, voice, and recognition of socio-economic vulnerability, aligning closely with access-to-justice principles that emphasize substantive rather than merely formal equality.<sup>13</sup>

Ultimately, police-led restorative justice in fiduciary guarantee execution should be understood as a governance mechanism that harmonizes civil law enforcement with social justice imperatives. Its relevance lies in its capacity to prevent conflict escalation, protect constitutional rights, and reinforce legal legitimacy within the framework of the rule of law.<sup>14</sup>

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<sup>10</sup> Fuller, L. L. (1969). *The morality of law* (Revised ed.). New Haven: Yale University Press. <https://yalebooks.yale.edu/book/9780300104997/the-morality-of-law/>

<sup>11</sup> Dicey, A. V. (1982). *Introduction to the study of the law of the constitution* (10th ed.). London: Macmillan. <https://oll.libertyfund.org/title/dicey-introduction-to-the-study-of-the-law-of-the-constitution-1f-ed>

<sup>12</sup> European Commission for the Efficiency of Justice. (2018). *European judicial systems efficiency and quality of justice*. <https://www.coe.int/en/web/cepej>

<sup>13</sup> Cappelletti, M., & Garth, B. (1978). Access to justice: The newest wave in the worldwide movement. *Buffalo Law Review*, 27, 181–292. <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol27/iss2/6/>

<sup>14</sup> Braithwaite, J. (2016). Restorative justice and responsive regulation in a globalized world. *Regulation & Governance*, 10(2), 107–115. <https://doi.org/10.1111/rego.12104>

## Problem Statement and Research Question

Despite the growing normative acceptance of restorative justice as a legitimate justice paradigm, its application within civil law enforcement—particularly in fiduciary guarantee execution—remains conceptually ambiguous and institutionally underdeveloped. Civil enforcement mechanisms continue to rely predominantly on coercive legal instruments that prioritize efficiency and creditor rights, often at the expense of procedural fairness and substantive justice for debtors. This condition creates a structural gap between the normative ideals of the rule of law, which demand legality, proportionality, and protection of fundamental rights, and the empirical reality of fiduciary enforcement practices that frequently generate conflict, resistance, and allegations of abuse of authority.<sup>15</sup>

The involvement of police institutions in fiduciary guarantee execution further intensifies this problem. Although police participation is often justified as a measure to maintain public order and prevent violence during enforcement, in practice it risks blurring the doctrinal boundary between civil and criminal law. Such involvement may unintentionally transform private civil disputes into quasi-criminal processes, leading to the criminalization of civil conflicts and undermining legal certainty. This phenomenon contradicts foundational civil law principles that assign dispute resolution authority primarily to judicial institutions rather than law enforcement agencies.<sup>16</sup>

The Constitutional Court's Decision No. 18/PUU-XVII/2019 sought to restore constitutional balance by limiting unilateral fiduciary execution and emphasizing due process protections. However, the decision did not comprehensively address the operational role of police in post-decision fiduciary disputes, leaving significant interpretive uncertainty at the enforcement level. As a result, divergent practices persist across jurisdictions, with some police units continuing to engage in enforcement activities without clear legal parameters, thereby perpetuating inconsistency and potential arbitrariness.<sup>17</sup>

In parallel, restorative justice has been formally institutionalized within policing policies, particularly as part of broader criminal justice reform initiatives. These policies encourage police officers to prioritize dialogue, consensus, and harm repair over punitive measures. Nevertheless, restorative justice frameworks have been primarily designed for minor criminal cases, not for civil enforcement contexts involving property rights and security interests. This mismatch raises

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<sup>15</sup> Fuller, L. L. (1969). *The morality of law* (Revised ed.). New Haven: Yale University Press. <https://yalebooks.yale.edu/book/9780300104997/the-morality-of-law/>

<sup>16</sup> Pompe, S. (2005). *The Indonesian Supreme Court: A study of institutional collapse*. Ithaca: Cornell Southeast Asia Program. <https://ecommons.cornell.edu/handle/1813/55672>

<sup>17</sup> Mahkamah Konstitusi Republik Indonesia. (2019). *Putusan Nomor 18/PUU-XVII/2019*. <https://www.mkri.id/index.php?page=web.Putusan&id=17613>

critical questions regarding the legal basis, scope, and limits of police-led restorative justice when applied to fiduciary guarantee disputes.<sup>18</sup>

The absence of a clear doctrinal framework governing police-led restorative justice in civil enforcement creates risks on multiple levels. From a legal perspective, it threatens the principle of legality by enabling discretionary practices unsupported by explicit statutory authorization. From an institutional perspective, it risks role confusion between judicial and executive functions. From a rights-based perspective, it may expose debtors to informal pressure or unequal bargaining positions under the guise of mediation. These risks highlight the need for a principled analysis grounded in the rule of law.<sup>19</sup>

At the same time, the outright exclusion of police from any role in fiduciary disputes is neither empirically realistic nor normatively desirable. Empirical studies on procedural justice demonstrate that police-facilitated dialogue can enhance perceptions of fairness, reduce conflict escalation, and promote voluntary compliance when conducted transparently and non-coercively. This creates a normative tension between the risks of overreach and the potential benefits of restorative facilitation, which current legal frameworks have yet to reconcile adequately.<sup>20</sup>

Furthermore, fiduciary guarantee disputes often reflect broader socio-economic asymmetries between creditors and debtors, particularly in consumer finance contexts. Traditional enforcement models tend to privilege formal contractual rights while overlooking substantive inequalities and social harm. Restorative justice offers a normative corrective by emphasizing participation, voice, and mutual recognition, yet its integration into civil enforcement remains conceptually under-theorized and practically inconsistent.<sup>21</sup>

Comparative legal scholarship indicates that civil law jurisdictions are increasingly experimenting with mediation and restorative mechanisms to humanize enforcement and enhance compliance. However, these mechanisms are typically embedded within judicial or quasi-judicial structures rather than law enforcement agencies. The Indonesian experience therefore presents a distinctive legal problem: how to conceptualize police involvement in restorative civil

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<sup>18</sup> Institute for Criminal Justice Reform. (2023). *Assessment of restorative justice implementation in Indonesian law enforcement*. <https://ijrs.or.id/en/publikasi/>

<sup>19</sup> Dicey, A. V. (1982). *Introduction to the study of the law of the constitution* (10th ed.). London: Macmillan. <https://oll.libertyfund.org/title/dicey-introduction-to-the-study-of-the-law-of-the-constitution-lf-ed>

<sup>20</sup> Mazerolle, L., Bennett, S., Davis, J., Sargeant, E., & Manning, M. (2013). Procedural justice and police legitimacy: A systematic review. *Journal of Experimental Criminology*, 9(3), 245–274. <https://doi.org/10.1007/s11292-013-9175-2>

<sup>21</sup> Cappelletti, M., & Garth, B. (1978). Access to justice: The newest wave in the worldwide movement. *Buffalo Law Review*, 27, 181–292. <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol27/iss2/6/>

enforcement without undermining civil law doctrine or constitutional governance.<sup>22</sup> Given these unresolved tensions, there is a clear need for a systematic legal analysis that reassesses the relevance and legitimacy of police-led restorative justice in fiduciary guarantee execution.<sup>23</sup>

### Research Questions

1. How can police-led restorative justice be legitimately integrated into civil law enforcement, particularly in the execution of fiduciary guarantees, within the framework of the rule of law?
2. To what extent does police-led restorative justice contribute to legal certainty and procedural fairness in fiduciary guarantee execution compared to coercive civil enforcement mechanisms?

### Objectives of the Study

This study aims to examine the evolving role of police-led restorative justice within civil law enforcement, with particular emphasis on the execution of fiduciary guarantees. The first objective is to conceptually and doctrinally analyze the legitimacy of police involvement in restorative justice processes in civil enforcement, assessing its compatibility with fundamental civil law principles and the normative requirements of the rule of law.<sup>24</sup>

The second objective is to evaluate whether and how police-led restorative justice can enhance legal certainty and procedural fairness in fiduciary guarantee execution when compared to coercive enforcement mechanisms. This objective focuses on assessing restorative justice as a facilitative, non-coercive process capable of reducing conflict escalation, preventing the criminalization of civil disputes, and promoting voluntary compliance within constitutionally bounded enforcement practices.<sup>25</sup>

The final objective is to formulate a principled analytical framework that delineates the proper scope, limits, and safeguards of police-led restorative justice in fiduciary disputes. By integrating restorative justice theory with civil law doctrine and rule-of-law standards, this study seeks to contribute to the development of a legally coherent and institutionally accountable model of civil enforcement that balances efficiency, justice, and constitutional legitimacy.

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<sup>22</sup> European Commission for the Efficiency of Justice. (2018). *European judicial systems efficiency and quality of justice*. <https://www.coe.int/en/web/cepej>

<sup>23</sup> Braithwaite, J. (2016). Restorative justice and responsive regulation in a globalized world. *Regulation & Governance*, 10(2), 107–115. <https://doi.org/10.1111/rego.12104>

<sup>24</sup> Dicey, A. V. (1982). *Introduction to the study of the law of the constitution* (10th ed.). London: Macmillan. <https://oll.libertyfund.org/title/dicey-introduction-to-the-study-of-the-law-of-the-constitution-1f-ed>

<sup>25</sup> Tyler, T. R. (2006). *Why people obey the law*. Princeton: Princeton University Press. <https://press.princeton.edu/books/paperback/9780691126739/why-people-obey-the-law>

## Conceptual Framework

The conceptual framework of this study is grounded in the intersection between restorative justice theory, civil law enforcement doctrine, and the normative requirements of the rule of law. This framework departs from a traditional dichotomy that rigidly separates criminal justice mechanisms from civil enforcement, and instead adopts an integrated analytical approach that views fiduciary guarantee execution as a legal process capable of generating social harm, power imbalance, and rights-based concerns.<sup>26</sup>

Restorative justice is understood not merely as an alternative dispute resolution mechanism, but as a justice philosophy that prioritizes consensual outcomes and relational balance. In the context of fiduciary guarantee disputes, restorative justice reframes enforcement from unilateral execution toward negotiated compliance, thereby addressing both material loss and relational harm between creditors and debtors.<sup>27</sup>

The second pillar of the framework is civil law enforcement doctrine, particularly the legal nature of fiduciary guarantees as security interests that confer preferential rights upon creditors. Civil law doctrine traditionally emphasizes legal certainty, executorial power, and efficiency in enforcement. However, post-constitutional jurisprudence demonstrates that these doctrines are not absolute and must be balanced against procedural fairness and due process protections. The framework therefore treats fiduciary execution as a legally constrained process rather than an unfettered private right.<sup>28</sup>

The rule of law constitutes the normative boundary within which both restorative justice and civil enforcement must operate. In this framework, the rule of law is defined by legality, legal certainty, proportionality, accountability, and the protection of fundamental rights. Police-led restorative justice is conceptually valid only insofar as it adheres to these principles and avoids discretionary coercion. The rule of law thus functions as a filtering mechanism that distinguishes legitimate facilitation from unlawful enforcement.<sup>29</sup> Within this framework, the role of the police is reconceptualized from an agent of enforcement to a facilitator of restorative processes. Police involvement is limited to maintaining procedural order, ensuring voluntariness, and safeguarding the rights of both parties during mediation. This redefinition aligns with procedural justice theory, which

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<sup>26</sup> Braithwaite, J. (2002). *Restorative justice and responsive regulation*. Oxford: Oxford University Press. <https://global.oup.com/academic/product/restorative-justice-and-responsive-regulation-9780199253888>

<sup>27</sup> Zehr, H. (2015). *The little book of restorative justice* (Revised ed.). New York: Good Books. <https://www.goodbooks.com/products/the-little-book-of-restorative-justice>

<sup>28</sup> Butt, S., & Lindsey, T. (2018). *Indonesian law* (2nd ed.). Oxford: Oxford University Press. <https://doi.org/10.1093/he/9780198734234.001.0001>

<sup>29</sup> Dicey, A. V. (1982). *Introduction to the study of the law of the constitution* (10th ed.). London: Macmillan. <https://oll.libertyfund.org/title/dicey-introduction-to-the-study-of-the-law-of-the-constitution-lf-ed>

emphasizes that legitimacy arises from fair processes rather than coercive outcomes.<sup>30</sup> The framework further incorporates procedural justice as an evaluative lens to assess the effectiveness of police-led restorative justice.

Procedural justice emphasizes voice, neutrality, respect, and trustworthy authority as determinants of compliance and legitimacy. In fiduciary disputes, this lens enables analysis of whether restorative facilitation improves perceptions of fairness and reduces resistance compared to coercive enforcement mechanisms.<sup>31</sup> Socio-legal inequality forms an important contextual dimension of the framework. Fiduciary guarantee disputes often involve asymmetrical bargaining power between institutional creditors and individual debtors. The framework integrates access-to-justice theory to highlight how restorative justice may mitigate these asymmetries by ensuring meaningful participation and protecting vulnerable parties within enforcement processes.<sup>32</sup>

The interaction between restorative justice and civil enforcement within this framework produces three analytical dimensions: legitimacy, effectiveness, and safeguards. Legitimacy is assessed through conformity with the rule of law; effectiveness through conflict reduction, voluntary compliance, and dispute resolution outcomes; and safeguards through procedural limits that prevent coercion, role confusion, and rights violations. These dimensions provide structured criteria for evaluating police-led restorative justice in fiduciary guarantee execution.<sup>33</sup> Comparative legal perspectives further inform the framework by demonstrating that civil law jurisdictions increasingly integrate mediation mechanisms within enforcement systems under judicial supervision.<sup>34</sup>

Ultimately, this conceptual framework positions police-led restorative justice as a conditional and complementary mechanism within civil law enforcement. Its relevance depends on strict adherence to rule-of-law principles, clear functional limits on police authority, and robust procedural safeguards. By integrating restorative justice theory, civil law doctrine, and constitutional norms, the framework provides a coherent analytical foundation for evaluating and reformulating fiduciary guarantee execution practices.<sup>35</sup>

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<sup>30</sup> Tyler, T. R. (2006). *Why people obey the law*. Princeton: Princeton University Press. <https://press.princeton.edu/books/paperback/9780691126739/why-people-obey-the-law>

<sup>31</sup> Mazerolle, L., Bennett, S., Davis, J., Sargeant, E., & Manning, M. (2013). Procedural justice and police legitimacy: A systematic review. *Journal of Experimental Criminology*, 9(3), 245–274. <https://doi.org/10.1007/s11292-013-9175-2>

<sup>32</sup> Cappelletti, M., & Garth, B. (1978). Access to justice: The newest wave in the worldwide movement. *Buffalo Law Review*, 27, 181–292. <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol27/iss2/6/>

<sup>33</sup> Fuller, L. L. (1969). *The morality of law* (Revised ed.). New Haven: Yale University Press. <https://yalebooks.yale.edu/book/9780300104997/the-morality-of-law/>

<sup>34</sup> European Commission for the Efficiency of Justice. (2018). *European judicial systems efficiency and quality of justice*. <https://www.coe.int/en/web/cepej>

<sup>35</sup> Braithwaite, J. (2016). Restorative justice and responsive regulation in a globalized world. *Regulation & Governance*, 10(2), 107–115. <https://doi.org/10.1111/rego.12104>

## Research Methodology

This study employs a normative legal research method with a doctrinal and conceptual orientation to analyze the relevance and legitimacy of police-led restorative justice in civil law enforcement, particularly in the execution of fiduciary guarantees. Normative legal research is appropriate for examining legal norms, principles, and doctrines governing fiduciary law, restorative justice, and the rule of law, as well as for assessing their coherence and consistency within a constitutional legal system. The methodology focuses on law as a normative system rather than as mere social behavior, emphasizing internal legal reasoning and systematic interpretation.<sup>36</sup>

The research adopts a statutory approach to examine primary legal materials governing fiduciary guarantee execution and police authority. This includes legislation on fiduciary guarantees, constitutional provisions on due process and legal protection, and regulatory instruments related to restorative justice within policing institutions. Through statutory interpretation, the study analyzes the normative limits of coercive enforcement and the legal basis for restorative facilitation, particularly in light of constitutional jurisprudence that redefines executorial power.<sup>37</sup>

In addition, a conceptual approach is employed to clarify and systematize key legal concepts such as restorative justice, civil enforcement, fiduciary guarantees, police discretion, and the rule of law. This approach is essential for resolving conceptual ambiguities surrounding police involvement in civil disputes and for distinguishing facilitative restorative practices from coercive enforcement actions.<sup>38</sup>

The study further utilizes a case-law analysis approach, focusing on constitutional and judicial decisions that shape fiduciary guarantee execution and the scope of lawful enforcement. Judicial reasoning is examined to identify evolving standards of due process, proportionality, and rights protection in civil enforcement. Case-law analysis serves as a critical tool to assess how courts mediate tensions between efficiency-oriented enforcement and constitutional legality.<sup>39</sup>

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<sup>36</sup> McConville, M., & Chui, W. H. (2017). *Research methods for law* (2nd ed.). Edinburgh: Edinburgh University Press. <https://edinburghuniversitypress.com/book-research-methods-for-law.html>

<sup>37</sup> Tushnet, M. (2010). *Constitutional law: Principles and policies* (4th ed.). New York: Oxford University Press. <https://global.oup.com/academic/product/constitutional-law-9780195387327>

<sup>38</sup> Patterson, D. (2014). *Legal reasoning*. Oxford: Oxford University Press. <https://global.oup.com/academic/product/legal-reasoning-9780198703094>

<sup>39</sup> Barak, A. (2006). *The judge in a democracy*. Princeton: Princeton University Press. <https://press.princeton.edu/books/paperback/9780691132556/the-judge-in-a-democracy>

To enrich doctrinal analysis, the research incorporates a comparative legal perspective by examining how selected civil law jurisdictions integrate mediation or restorative mechanisms into enforcement systems. Comparative analysis is not aimed at legal transplanted, but at identifying functional similarities and normative safeguards that can inform the evaluation of police-led restorative justice in Indonesia. This approach strengthens the analytical rigor by situating the Indonesian experience within broader civil law developments.<sup>40</sup>

Secondary legal materials constitute an important source of analysis in this study. Scholarly books, peer-reviewed journal articles indexed in Scopus and Google Scholar, policy reports, and academic commentaries are systematically reviewed to capture theoretical debates and empirical insights on restorative justice, policing, and civil enforcement. These materials support critical evaluation of existing practices and contribute to the development of normative arguments grounded in established legal scholarship.<sup>41</sup>

Finally, the analysis is guided by normative evaluation criteria derived from the rule of law, including legality, legal certainty, proportionality, accountability, and protection of fundamental rights. These criteria function as analytical benchmarks for assessing whether police-led restorative justice in fiduciary guarantee disputes can be justified as a lawful and legitimate component of civil enforcement. By applying these standards consistently, the methodology ensures that conclusions are not merely descriptive but prescriptive and reform-oriented.<sup>42</sup>

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<sup>40</sup> Siems, M. (2014). *Comparative law* (2nd ed.). Cambridge: Cambridge University Press. <https://www.cambridge.org/core/books/comparative-law/5C7A9F9E9E5E3A7C9A9C3E8C4F2F8E6E>

<sup>41</sup> Hutchinson, T., & Duncan, N. (2012). Defining and describing what we do: Doctrinal legal research. *Deakin Law Review*, 17(1), 83–119. <https://doi.org/10.21153/dlr2012vol17no1art70>

<sup>42</sup> Bingham, T. (2010). *The rule of law*. London: Penguin Books. <https://www.penguin.co.uk/books/103/1037560/the-rule-of-law/9780141034539>

## RESEARCH RESULTS NAD DISCUSSION

### **Police-led restorative justice can be legitimately integrated into civil law enforcement in fiduciary guarantee execution**

Police-led restorative justice can be legitimately integrated into civil law enforcement in fiduciary guarantee execution only if it is positioned as a non-coercive facilitative mechanism that operates outside the logic of forced execution and inside the boundaries of constitutional due process. The rule-of-law framework requires that any police involvement in a civil dispute be grounded in legality, non-arbitrariness, and rights protection; therefore, police-led restorative justice must be framed as a structured mediation function that supports voluntary settlement, not as a substitute for judicially supervised execution or a means to pressure debtors into “consenting” to repossession.<sup>43</sup>

A first doctrinal requirement for legitimacy is that restorative police facilitation must respect the Constitutional Court’s post-2019 constitutional construction of fiduciary execution. After Decision No. 18/PUU-XVII/2019, default cannot be determined unilaterally by the creditor and execution without agreement or proper legal process creates constitutional risk; this limits any practical pathway that relies on police presence to “smooth” unilateral repossession. In rule-of-law terms, police involvement becomes legitimate only when it is used to prevent escalation and enable consensual resolution, while recognizing that contested default and contested surrender of collateral must be handled through lawful avenues rather than informal coercion.<sup>44</sup>

A second requirement is consistency with the fiduciary statute itself, which establishes fiduciary security as a civil-law mechanism designed to provide legal certainty to the parties, but does not authorize law-enforcement coercion as the default pathway for private repossession. The statutory design is that fiduciary enforcement is a legal process tied to the fiduciary certificate and execution pathways set by law; therefore, police-led restorative justice can only be integrated as a pre-execution settlement layer—for example, facilitating renegotiation, voluntary return, structured installment plans, or consensual sale—

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<sup>43</sup> The Constitutional Court of the Republic of Indonesia. (2021). *Decision Summary on Cases Number 18/PUU-XVII/2019 (Executorial Power in Fiduciary Guarantee Certificate and Default Conditions in Fiduciary Guarantee)*. Asian Constitutional Court Judges Association. [https://aacc-asia.org/content/summarydecisions/46\\_Decision%20Summary%2018-PUU-XVII-2019.pdf](https://aacc-asia.org/content/summarydecisions/46_Decision%20Summary%2018-PUU-XVII-2019.pdf) (aacc-asia.org)

<sup>44</sup> Budi, A. N. (2020). *Abolition of parate executie as a result of Constitutional Court ruling...* *Jurnal Hukum dan Peradilan*. <https://www.jurnalhukumdanperadilan.org/index.php/jurnalhukumperadilan/article/download/425/245> (jurnalhukumdanperadilan.org)

rather than as an “execution service.” This placement preserves civil-law doctrine while allowing restorative outcomes that reduce conflict and social harm.

A third requirement is a clear institutional boundary: police-led restorative justice must be treated as an order-maintenance and dispute-deescalation function, not an adjudicative or executorial function. Practically, this means that police may convene meetings, ensure safety, document voluntariness, and refer parties to court or formal mediation when default, ownership, or surrender is contested—but police must not remove collateral, escort debt collectors for repossession, or apply threats of criminal prosecution to obtain “agreement.” This boundary is crucial because the legitimacy of police action under the rule of law depends on avoiding arbitrariness and preventing the “criminalization” of civil disputes through informal leverage.<sup>45</sup>

A fourth requirement concerns internal governance instruments: although Indonesian police restorative justice rules are principally drafted for **criminal** cases, they still matter as governance signals because they articulate procedural values—such as prioritizing restoration, proportionality, and structured settlement—that can guide police behavior when handling civil conflicts in practice. However, because Perpol No. 8 of 2021 is explicitly framed around “handling crimes based on restorative justice,” legitimate integration into fiduciary enforcement requires an explicit **SOP addendum** (or inter-agency guidance) clarifying that police restorative facilitation in fiduciary disputes is limited to de-escalation and voluntary settlement support, and cannot be used to bypass judicial control required when there is no consent.<sup>46</sup>

A fifth requirement is the installation of measurable procedural safeguards to satisfy rule-of-law standards in the micro-process of “restorative facilitation.” At minimum, legality and rights protection require: (i) written invitation and agenda; (ii) disclosure that participation is voluntary; (iii) prohibition of detention, seizure, or threats; (iv) right to be accompanied by counsel; (v) documentation of any agreement; (vi) a mandatory referral rule when default or surrender is disputed; and (vii) oversight by internal accountability units. These safeguards translate constitutional due process expectations into operational policing constraints,

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<sup>45</sup> The Constitutional Court of the Republic of Indonesia. (2021, April 20). *Execution of Fiduciary Security Certificate Challenged*. [https://en.mkri.id/news/details/2021-04-20/Execution of Fiduciary Security Certificate Challenged](https://en.mkri.id/news/details/2021-04-20/Execution%20of%20Fiduciary%20Security%20Certificate%20Challenged) (MKRI)

<sup>46</sup> Badan Pemeriksa Keuangan Republik Indonesia. (2021). *Peraturan Kepolisian Negara Republik Indonesia Nomor 8 Tahun 2021 tentang Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif* (PDF). <https://peraturan.bpk.go.id/Download/260357/Perpol%20No.%208%20th%202021%20ttg%20tp%20berdasarkan%20restoratif.pdf> (Peraturan BPK)

ensuring that police-led restorative justice remains facilitative and does not become a disguised instrument of coercive execution.<sup>47</sup>

Under these conditions, the legitimate integration model that emerges is a **three-track architecture**: Track 1 (Restorative facilitation) for consensual restructuring or voluntary settlement; Track 2 (Formal mediation/court-linked process) when negotiation fails but parties are willing to mediate under neutral institutions; and Track 3 (Judicially supervised execution) when default and surrender are contested. This architecture operationalizes the rule of law by ensuring that the police role is confined to de-escalation and voluntary resolution, while disputes that require authoritative determination proceed through legally competent institutions, consistent with constitutional constraints on unilateral parate execution.<sup>48</sup>

### ***Police-led restorative justice contribute to legal certainty and procedural fairness in fiduciary guarantee execution compared to coercive civil enforcement mechanisms?***

Police-led restorative justice contributes to **legal certainty** in fiduciary guarantee execution when it operates as a clearly delimited, procedure-based facilitative mechanism rather than as an informal extension of coercive enforcement. Legal certainty, as a core element of the rule of law, requires predictability of legal consequences, clarity of institutional roles, and consistency in the application of norms. In contrast, coercive fiduciary execution practices—particularly those involving informal police assistance to creditors—have historically produced uncertainty due to inconsistent interpretations of default, discretionary use of authority, and uneven enforcement practices across jurisdictions. Restorative justice, when governed by standardized procedures and explicit limits, reduces this uncertainty by replacing ad hoc coercion with structured, transparent, and consensual processes.<sup>49</sup>

From a doctrinal perspective, restorative justice enhances legal certainty by realigning fiduciary enforcement with post-constitutional jurisprudence. Following the Constitutional Court's Decision No. 18/PUU-XVII/2019, the

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<sup>47</sup> The Constitutional Court of the Republic of Indonesia. (2021). *Decision Summary on Cases Number 18/PUU-XVII/2019 (Executorial Power in Fiduciary Guarantee Certificate and Default Conditions in Fiduciary Guarantee)*. Asian Constitutional Court Judges Association. [https://aacc-asia.org/content/summarydecisions/46\\_Decision%20Summary%2018-PUU-XVII-2019.pdf](https://aacc-asia.org/content/summarydecisions/46_Decision%20Summary%2018-PUU-XVII-2019.pdf) (aacc-asia.org)

<sup>48</sup> Budi, A. N. (2020). *Abolition of parate executie as a result of Constitutional Court ruling...* Jurnal Hukum dan Peradilan. <https://www.jurnalhukumdanperadilan.org/index.php/jurnalhukumperadilan/article/download/425/245> (jurnalhukumdanperadilan.org)

<sup>49</sup> Bingham, T. (2010). *The rule of law*. London: Penguin Books. <https://www.penguin.co.uk/books/103/1037560/the-rule-of-law/9780141034539>

determination of default and the execution of fiduciary objects can no longer rely on unilateral creditor assertions. Police-led restorative justice accommodates this doctrinal shift by suspending coercive action until mutual agreement is achieved or judicial determination is obtained. In this sense, restorative facilitation functions as a *compliance buffer* that prevents premature execution and ensures that enforcement outcomes remain consistent with constitutional requirements.<sup>50</sup>

Police-led restorative justice also contributes significantly to **procedural fairness**, particularly through the application of procedural justice principles such as voice, neutrality, respect, and transparency. Empirical legal research demonstrates that parties are more likely to perceive outcomes as fair—and to comply voluntarily—when they are given meaningful opportunities to be heard and when decision-making processes are perceived as unbiased. In fiduciary disputes, restorative facilitation enables debtors to articulate defenses, negotiate repayment structures, and contest default claims without immediate threat of repossession, thereby strengthening procedural legitimacy compared to coercive enforcement models.<sup>51</sup>

In contrast, coercive civil enforcement mechanisms—particularly those involving debt collectors accompanied by law enforcement—often undermine procedural fairness by creating implicit pressure, fear of criminalization, and power asymmetry. Studies on debt enforcement show that such practices frequently suppress debtor participation and incentivize “formal consent” obtained under duress rather than genuine agreement. These conditions weaken both procedural fairness and substantive justice, even where enforcement is technically lawful. Police-led restorative justice mitigates these risks by explicitly separating facilitation from enforcement and by prohibiting the use of threat or detention during negotiations.<sup>52</sup>

From an institutional standpoint, restorative justice enhances procedural fairness by redefining the police role as a neutral process guardian rather than an enforcement ally of creditors. This role redefinition aligns with modern policing standards that emphasize legitimacy derived from fair procedures rather than outcome control. When police ensure voluntariness, document agreements, and refer unresolved disputes to judicial forums, they contribute to a perception of

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<sup>50</sup> Mahkamah Konstitusi Republik Indonesia. (2019). *Putusan Nomor 18/PUU-XVII/2019*. <https://www.mkri.id/index.php?page=web.Putusan&id=17613>

<sup>51</sup> Tyler, T. R. (2006). *Why people obey the law*. Princeton: Princeton University Press. <https://press.princeton.edu/books/paperback/9780691126739/why-people-obey-the-law>

<sup>52</sup> Cappelletti, M., & Garth, B. (1978). Access to justice: The newest wave in the worldwide movement. *Buffalo Law Review*, 27, 181–292. <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol27/iss2/6/>

impartial authority, which is essential for sustaining public trust in both law enforcement and civil justice institutions.<sup>53</sup>

However, the contribution of police-led restorative justice to legal certainty and procedural fairness is **conditional**, not automatic. Without explicit procedural safeguards and standardized operating procedures, restorative practices risk degenerating into informal bargaining environments characterized by unequal power relations and opaque outcomes. Legal certainty is compromised when restorative outcomes lack documentation, legal recognition, or enforceability, while procedural fairness is undermined when participation is nominal rather than genuinely voluntary. These risks underscore the necessity of embedding restorative justice within a clear normative and institutional framework.<sup>54</sup>

Comparative legal experience further demonstrates that mediation-based enforcement mechanisms improve fairness and predictability when they are institutionally supervised and procedurally formalized. European civil law systems increasingly integrate mediation into enforcement stages under judicial or quasi-judicial oversight, ensuring that consensual outcomes coexist with legal certainty. These experiences reinforce the conclusion that police-led restorative justice can enhance procedural fairness only when it complements—rather than substitutes—formal legal processes.<sup>55</sup>

In sum, police-led restorative justice contributes positively to legal certainty and procedural fairness in fiduciary guarantee execution **to the extent that** it is framed as a rule-bound, transparent, and non-coercive facilitative process. Compared to coercive civil enforcement mechanisms, restorative justice reduces conflict escalation, enhances voluntary compliance, and aligns enforcement practices with constitutional due process standards. Its effectiveness, however, depends on strict adherence to rule-of-law principles, clear institutional boundaries, and robust procedural safeguards that prevent the informal reintroduction of coercion under restorative labels.<sup>56</sup>

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<sup>53</sup> Mazerolle, L., Bennett, S., Davis, J., Sargeant, E., & Manning, M. (2013). Procedural justice and police legitimacy: A systematic review. *Journal of Experimental Criminology*, 9(3), 245–274. <https://doi.org/10.1007/s11292-013-9175-2>

<sup>54</sup> Fuller, L. L. (1969). *The morality of law* (Revised ed.). New Haven: Yale University Press. <https://yalebooks.yale.edu/book/9780300104997/the-morality-of-law/>

<sup>55</sup> European Commission for the Efficiency of Justice. (2018). *European judicial systems efficiency and quality of justice*. <https://www.coe.int/en/web/cepej>

<sup>56</sup> Braithwaite, J. (2016). Restorative justice and responsive regulation in a globalized world. *Regulation & Governance*, 10(2), 107–115. <https://doi.org/10.1111/rego.12104>

## CONCLUSION

This study concludes that police-led restorative justice can be legitimately integrated into civil law enforcement—particularly in the execution of fiduciary guarantees—only when it is strictly positioned as a non-coercive, facilitative mechanism operating within the framework of the rule of law. Such integration is constitutionally defensible when police involvement is limited to dispute de-escalation, safeguarding voluntariness, and facilitating consensual settlement between creditors and debtors, without exercising executorial authority or exerting implicit pressure. By confining the police role to procedural facilitation and clearly separating it from judicially supervised execution, restorative justice aligns with legality, due process, and institutional accountability, thereby preventing the criminalization of civil disputes and preserving the doctrinal integrity of civil law enforcement.

This study finds that police-led restorative justice contributes positively to legal certainty and procedural fairness when compared to coercive civil enforcement mechanisms, provided that it is governed by clear procedural safeguards and standardized practices. Restorative facilitation enhances legal certainty by suspending unilateral enforcement until agreement or lawful adjudication is achieved, while procedural fairness is strengthened through participatory dialogue, transparency, and respect for party autonomy. However, these benefits are conditional; without explicit limits and documentation requirements, restorative practices risk reproducing informal coercion and uncertainty. Accordingly, police-led restorative justice is most effective when it complements, rather than replaces, formal legal processes, reinforcing constitutional due process and voluntary compliance within fiduciary guarantee execution.

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