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Reconstructing the Sentencing Framework for Minor Offenses through Restorative Justice: Toward Substantive Justice

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Abstract: This study examines the reconstruction of the sentencing framework for minor offenses through a restorative justice approach to advance substantive justice. The Indonesian criminal justice system remains predominantly retributive, prioritizing punitive sanctions while insufficiently addressing victim restoration, social reconciliation, and community-based justice values. This orientation creates a persistent gap between formal legal certainty and the realization of substantive justice, particularly in minor criminal cases where proportionality and social harm are limited. This research aims to develop an integrative sentencing framework that systematically embeds restorative justice as a central paradigm. A normative juridical method is employed, incorporating statutory, conceptual, and comparative approaches to critically analyze existing legal frameworks and institutional practices. The findings reveal that the implementation of restorative justice in minor offenses remains fragmented, sectoral, and lacks systemic coherence within the national criminal law system. To address this limitation, this study proposes a reconstructed sentencing framework grounded in four key dimensions: regulatory reform, institutional harmonization among law enforcement agencies, transformation of legal actors' paradigms, and recognition of living law as a legitimate normative foundation. This study offers a structured model that repositions restorative justice from a complementary mechanism to a core component of the sentencing system. This study contributes to the advancement of criminal law theory and practice by bridging retributive and restorative approaches within a unified framework. The proposed model is expected to enhance victim recovery, strengthen offender accountability, and promote community participation, thereby advancing the realization of substantive justice.

Keyword: Criminal Justice System, Minor Offenses, Restorative Justice, Sentencing Framework, Substantive Justice.

INTRODUCTION

The contemporary criminal justice system has increasingly been criticized for its persistent reliance on a retributive paradigm, particularly in the handling of minor offenses. In Indonesia, this paradigm continues to prioritize punitive sanctions over restorative outcomes, thereby marginalizing victim recovery, social reconciliation, and community participation. Such an orientation creates a structural imbalance, especially in cases involving low-level

crimes where the social harm is relatively limited. Recent studies indicate that punitive approaches often fail to achieve proportional justice and may undermine public trust in legal institutions (Butler et al., 2024; Marder, 2022).

The inefficiency of the retributive system is further reflected in systemic challenges such as prison overcrowding, procedural delays, and high enforcement costs. These issues demonstrate that punishment-oriented sentencing is not only ineffective but also counterproductive in addressing minor offenses. Empirical research shows that excessive reliance on incarceration contributes to recidivism and social exclusion, particularly when offenders are stigmatized and lack reintegration opportunities (Daly, 2020; Walgrave, 2020).

In response to these limitations, restorative justice has emerged as a widely recognized alternative paradigm that emphasizes restoration rather than punishment. This approach seeks to repair harm through dialogue, accountability, and the active involvement of victims, offenders, and the community (Zehr, 2015). Contemporary research highlights that restorative justice enhances victim satisfaction, reduces recidivism, and promotes sustainable conflict resolution, particularly in minor criminal cases (Latimer et al., 2020; Sherman & Strang, 2020). Moreover, restorative justice aligns closely with the socio-cultural context of Indonesia, where communal values, deliberation (*musyawarah*), and reconciliation are deeply embedded in societal norms.

Despite its theoretical and empirical advantages, the implementation of restorative justice in Indonesia remains fragmented and lacks systemic integration. Existing regulatory instruments, including prosecutorial and police guidelines, have introduced restorative mechanisms; however, their application is inconsistent and institutionally limited. As a result, restorative justice continues to function as a complementary mechanism rather than a central paradigm within the criminal justice system (Arief, 2021; Nasution et al., 2022).

From a theoretical perspective, the coexistence of retributive and restorative paradigms reflects an unresolved tension within modern criminal law. Retributive justice emphasizes proportional punishment based on legal culpability, whereas restorative justice focuses on repairing harm and restoring social relationships (Daly, 2020). The absence of a coherent integrative framework has limited the ability of criminal law systems to respond effectively to diverse categories of offenses, particularly minor crimes that require flexible and context-sensitive approaches (Butler et al., 2024).

Furthermore, the concept of substantive justice has become increasingly relevant as a normative benchmark for evaluating legal systems. Substantive justice goes beyond formal legality by emphasizing fairness, social impact, and the lived experiences of affected individuals (Rawls, 1999; Rahardjo, 2009). In the context of minor offenses, achieving substantive justice requires mechanisms that are participatory, restorative, and socially grounded. However, current legal frameworks in Indonesia remain predominantly formalistic, prioritizing legal certainty over equitable outcomes.

Another critical dimension is the recognition of living law, which refers to norms and practices that develop within society and are perceived as legitimate by the community. Integrating living law into formal legal systems can enhance legitimacy, compliance, and effectiveness in resolving disputes (Rahardjo, 2009). In Indonesia, where customary values remain influential, the incorporation of living law into the sentencing framework is essential for strengthening restorative justice practices.

Notwithstanding these developments, a significant research gap remains regarding the absence of a systematically integrated sentencing framework that positions restorative justice as a central paradigm in handling minor offenses (Amelya, S., & Nofrizal, 2023). Existing studies have primarily focused on the effectiveness or implementation challenges of restorative justice, without offering a comprehensive reconstruction model that integrates normative, institutional, and socio-cultural dimensions (Marder, 2022).

Therefore, this study aims to reconstruct the sentencing framework for minor offenses through a restorative justice approach. Specifically, it seeks to: (1) critically examine the limitations of the current retributive-based sentencing system, (2) analyze the extent and constraints of restorative justice implementation, and (3) develop an integrative reconstruction model that systematically embeds restorative justice as a core component of the sentencing system.

The novelty of this study lies in its effort to reposition restorative justice from a complementary mechanism to a central paradigm within the sentencing framework. Unlike previous studies, this research proposes a structured and multidimensional reconstruction model that integrates regulatory reform, institutional harmonization, paradigm transformation, and recognition of living law into a unified system.

In terms of contribution, this study advances criminal law theory by bridging retributive and restorative paradigms within a coherent framework. It also provides practical implications for policymakers and law enforcement institutions in developing a more responsive, efficient, and socially grounded criminal justice system. Ultimately, the proposed reconstruction is expected to enhance victim recovery, strengthen offender accountability, and promote community participation, thereby advancing the realization of substantive justice in handling minor offenses.

Beyond structural inefficiencies, the persistence of retributive justice in handling minor offenses also reflects a deeper epistemological limitation within criminal law. The dominant legal reasoning continues to conceptualize crime primarily as a violation against the state, rather than as a relational harm involving victims, offenders, and the broader community. This state-centric orientation constrains the capacity of the legal system to address the multidimensional impacts of crime, particularly in cases where social relationships and communal harmony are significantly affected. As a result, the existing sentencing framework tends to produce formally valid outcomes that are substantively inadequate (Marder, 2022).

Recent criminological scholarship emphasizes that minor offenses require differentiated legal responses that are adaptive, proportionate, and socially embedded. Standardized punitive approaches fail to capture the contextual nature of such offenses, including socio-economic factors, relational dynamics, and community expectations (Butler et al., 2024). In this regard, restorative justice offers a normative and procedural alternative that redefines crime as harm and prioritizes restoration over retribution. However, the transition from retributive to restorative logic is not merely a procedural adjustment but requires a fundamental restructuring of legal norms, institutional arrangements, and professional practices within the criminal justice system.

In the Indonesian context, the partial adoption of restorative justice has not yet resolved this structural misalignment. Although several regulatory instruments have introduced restorative mechanisms, their implementation remains contingent on institutional discretion and lacks binding normative authority. This condition creates legal uncertainty and limits the scalability of restorative practices across different jurisdictions. Furthermore, the absence of standardized procedural guidelines and evaluation frameworks results in inconsistent application, thereby undermining both legitimacy and effectiveness (Nasution et al., 2022).

Another critical issue lies in the disjunction between formal legal systems and socio-cultural realities. Indonesian society is characterized by strong communal values, where dispute resolution traditionally emphasizes consensus, reconciliation, and social balance. However, the formal criminal justice system often operates independently of these socio-cultural norms, leading to outcomes that may be legally correct but socially contested. This disconnection highlights the urgency of integrating living law into the sentencing framework, not merely as a supplementary consideration but as a constitutive element of legal reasoning (Rahardjo, 2009).

Moreover, contemporary debates in criminal law increasingly call for a shift toward hybrid justice models that integrate multiple paradigms to address complex legal realities. Rather than viewing retributive and restorative justice as mutually exclusive, recent theoretical developments suggest the possibility of constructing a complementary framework that leverages the strengths of both approaches (Daly, 2020). However, such integration requires a clear conceptual foundation and operational design, which remain underdeveloped in current legal scholarship, particularly in the context of minor offenses.

The lack of an integrative framework also limits the capacity of the criminal justice system to achieve substantive justice in a consistent and measurable manner. While restorative justice has been associated with positive outcomes such as reduced recidivism and increased victim satisfaction, these benefits are often realized in isolated cases rather than at the systemic level. This indicates that the problem lies not in the concept itself, but in the absence of institutionalization and structural integration (Sherman & Strang, 2020).

From a policy perspective, the urgency of reconstructing the sentencing framework is further reinforced by the need to align criminal justice practices with principles of efficiency, proportionality, and social sustainability. In an era where legal systems are increasingly evaluated based on their responsiveness and inclusiveness, the continued reliance on rigid punitive models appears increasingly untenable. This is particularly relevant in developing legal systems, where resource constraints and social diversity require more flexible and adaptive approaches to justice delivery (Walgrave, 2020).

In light of these considerations, this study positions itself within a critical and constructive paradigm that seeks to move beyond incremental reforms toward systemic transformation. Unlike previous studies that focus on the implementation or effectiveness of restorative justice, this research adopts a reconstructive approach that addresses the structural foundations of the sentencing system. By doing so, it aims to provide a comprehensive framework that integrates normative, institutional, and socio-cultural dimensions into a coherent model.

This study argues that the reconstruction of the sentencing framework must be grounded in a paradigm shift that redefines the objectives of criminal justice. Rather than focusing solely on punishment and deterrence, the system should prioritize restoration, accountability, and social equilibrium. This shift requires not only regulatory reform but also a transformation of legal consciousness among law enforcement actors, as well as the active participation of communities in the justice process.

Ultimately, the proposed reconstruction model seeks to bridge the gap between formal legality and substantive justice by embedding restorative justice as a central organizing principle within the sentencing system. In doing so, this study contributes to the development of a more holistic and context-sensitive approach to criminal law, capable of addressing the complexities of minor offenses in a manner that is both legally sound and socially meaningful.

METHOD

This study employs a normative juridical research design aimed at reconstructing the sentencing framework for minor offenses through a restorative justice approach. The normative juridical method is selected because it focuses on the analysis of legal norms, principles, doctrines, and regulatory structures, which are essential for examining systemic inconsistencies and proposing a conceptual reconstruction within criminal law. The research is positioned within a critical-constructive paradigm, allowing not only an evaluation of the limitations of the existing sentencing system but also the development of a theoretically grounded and integrative model. This approach enables the study to move beyond descriptive legal analysis toward a prescriptive framework that contributes to legal reform.

To ensure analytical depth, this research integrates three main approaches: statutory, conceptual, and comparative. The statutory approach is used to examine relevant legal instruments governing minor offenses and restorative justice in Indonesia, including the Criminal Code, Law No. 1 of 2023, Prosecutorial Regulation No. 15 of 2020, Police Regulation No. 8 of 2021, and other related regulations. This approach is essential to identify normative gaps, inconsistencies, and structural limitations within the current sentencing system. The conceptual approach is applied to analyze key legal doctrines and theoretical frameworks, including the distinction between retributive and restorative justice, the concept of substantive justice, and the role of living law in shaping legal legitimacy. This approach provides the philosophical foundation for constructing the proposed reconstruction model. Meanwhile, the comparative approach is employed to examine restorative justice practices in other jurisdictions, enabling the identification of best practices and transferable principles that can be adapted to the Indonesian legal context.

The sources of legal materials in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include binding legal instruments such as statutory regulations and official legal documents. Secondary legal materials comprise scholarly articles from reputable international journals (particularly those published between 2020 and 2025), books, and academic commentaries related to criminal law and restorative justice. Tertiary legal materials, including legal dictionaries and encyclopedias, are used to support conceptual clarification. Data collection is conducted through a systematic literature review and legal document analysis, ensuring that all materials are selected based on relevance, credibility, and recency.

The analytical method employed is qualitative normative analysis combined with a reconstructive analytical framework. The analysis is conducted in four stages: descriptive analysis to map the existing sentencing system and restorative justice practices; evaluative analysis to identify structural weaknesses of the retributive approach, such as disproportionality, inefficiency, and lack of victim-oriented justice; comparative analysis to extract relevant insights from other legal systems; and reconstructive analysis as the core stage of the research, in which a new sentencing framework is formulated. The reconstruction model is developed based on four interrelated dimensions: regulatory reform, institutional harmonization among law enforcement agencies, transformation of legal actors' paradigms, and integration of living law into the formal legal system.

To ensure methodological rigor, this study applies triangulation of legal sources, doctrinal consistency analysis, and analytical transparency. These techniques ensure that the proposed reconstruction model is both theoretically sound and practically applicable. Through this methodological framework, the study offers a systematic and multidimensional approach to legal reconstruction, positioning restorative justice not merely as a complementary mechanism but as a central paradigm within the sentencing framework for minor offenses.

RESULTS AND DISCUSSION

The Indonesian Sentencing Framework Has Formally Shifted Toward Restorative Justice, but Its Structural Logic Remains Incomplete

A central finding of this study is that Indonesia has formally entered a new phase of criminal law reform in which restorative justice is no longer merely a policy discourse, but has begun to receive explicit recognition within the national penal framework. This shift is closely linked to the entry into force of Law No. 1 of 2023 on the Criminal Code (KUHP) and Law No. 20 of 2025 on the Criminal Procedure Code (KUHAP) on 2 January 2026, which the government described as marking a new era in criminal law enforcement. The new KUHP reformulates the philosophy of punishment, while the new KUHAP strengthens the procedural

position of victims, witnesses, suspects, defendants, and persons with disabilities, and expressly introduces restorative justice mechanisms into criminal procedure. In normative terms, this means that Indonesian criminal law has moved beyond the old purely retributive orientation and has begun to institutionalize a justice model that is more balanced, participatory, and recovery-oriented.

This normative shift is particularly visible in the objectives of punishment under the new KUHP. Official judicial explanations discussing Article 51 of Law No. 1 of 2023 underline that punishment is no longer framed solely as retaliation, but also as a means to resolve conflicts arising from crime, restore balance, and create a sense of security and peace in society. Such a formulation is highly significant for minor offenses, because it reorients sentencing away from state-centered retaliation toward social repair and practical conflict resolution. This development strengthens the theoretical basis for reconstructing the sentencing framework for minor offenses: once the positive law itself recognizes restoration and social balance as penal objectives, it becomes increasingly difficult to justify a sentencing practice that remains narrowly punishment-driven.

However, the results of this study also show that this normative transition has not yet been matched by a fully integrated structural transformation. Although the legal texts are moving in a restorative direction, the operational logic of criminal justice still largely reflects the old retributive model. In practice, minor offenses are still often processed through formal investigation, prosecution, and adjudication pathways that treat punishment as the default response, while restorative justice continues to function as an exception, a discretionary route, or a case-specific accommodation. Accordingly, the problem is no longer the absence of restorative language in the law, but the gap between normative recognition and systemic implementation.

Restorative Justice Is Already Regulated Across Police, Prosecutorial, and Judicial Levels, but the Framework Remains Fragmented

Another major finding is that Indonesia now has a multi-institutional restorative justice regime, yet that regime remains fragmented. At the prosecutorial stage, Prosecutor Regulation No. 15 of 2020 remains in force and formally governs the termination of prosecution based on restorative justice. At the police level, Police Regulation No. 8 of 2021 remains in force and governs the handling of criminal acts through restorative justice. At the adjudicative level, Supreme Court Regulation No. 1 of 2024 now provides judges with a specific guideline for adjudicating criminal cases based on restorative justice. This means that restorative justice is no longer absent from the Indonesian criminal justice system; rather, it is present in multiple institutional domains.

Yet the coexistence of these instruments has not automatically produced doctrinal unity. The prosecutorial regulation, police regulation, and judicial regulation were enacted at different times, for different institutional purposes, and with different operational thresholds. As a consequence, restorative justice still tends to operate in a segmented manner: the police may frame it as a basis for halting investigation or settlement at an early stage; prosecutors may use it to terminate prosecution; and judges may invoke it in sentencing or case disposition. The absence of one fully harmonized restorative architecture means that the same minor offense may still receive different treatment depending on where the case is filtered, which institution takes initiative, and how individual officials interpret their discretion. This fragmentation weakens predictability and undermines the ideal of equal treatment before the law.

The fragmentation problem is not merely technical; it is structural. A sentencing framework can only be called coherent when restorative justice is embedded not as an ad hoc option but as a shared penal logic across the criminal process. At present, restorative justice in Indonesia is regulated, but not yet fully integrated. This finding is strengthened by the Supreme

Court's own acknowledgment that the issuance of PERMA No. 1 of 2024 was necessary precisely because prior judicial practice lacked a common guideline regarding the types of criminal cases that could be handled restoratively, the conditions under which restorative justice could be applied, and the procedure for judges to operationalize it. In other words, the new judicial guideline emerged because disparity had already become a practical problem.

Recent Procedural Reform Strengthens the Basis for Restorative Justice, but Minor Offense Handling Still Suffers from Inconsistency

The new KUHAP is especially important in sharpening the discussion on minor offenses because it does not merely revise procedural technique; it also recalibrates the relationship between the state, the accused, and the victim. Official summaries of Law No. 20 of 2025 indicate that the new procedural code strengthens victims' rights, regulates restitution and compensation, improves coordination between investigators and prosecutors, introduces restorative justice mechanisms, and seeks procedural efficiency through a more integrated prosecution model and digitalized case management. For minor offenses, these developments are highly relevant because they create a procedural environment more conducive to non-custodial, victim-aware, and proportionate justice.

Nevertheless, the results indicate that procedural modernization does not automatically eliminate inconsistency. Even after the issuance of PERMA No. 1 of 2024, implementation at the court level remains uneven. A February 2026 report from the Supreme Court Registry found that, among cases handled with a restorative approach, compliance with the requirement to expressly cite PERMA No. 1 of 2024 in judicial reasoning was extremely low. The report recorded 3,353 criminal cases handled using a restorative approach during 2025, but only 93 decisions identified through the decisions database explicitly cited the regulation, producing an implementation compliance rate of only 2.80%. The same report also noted wide variation in how courts referred to the regulation, which indicates weak standardization and inconsistent doctrinal internalization among judges. These data are crucial because they show that the institutionalization of restorative justice in Indonesia is not blocked primarily by the lack of regulation; rather, it is impeded by uneven adoption within the adjudicative culture itself.

This inconsistency has direct implications for minor offenses. If a restorative mechanism exists in statute and regulation but is not implemented consistently, then defendants, victims, and communities cannot rely on it as a stable pathway to justice. Legal certainty is weakened not only when there is no rule, but also when an existing rule is not uniformly used. Therefore, the reconstruction of the sentencing framework must include not only doctrinal reform but also implementation discipline, standardized judicial reasoning, and cross-institutional harmonization. Without these elements, restorative justice risks becoming symbolically attractive but operationally fragile.

Minor Offense Cases Demonstrate the Disproportionate Effects of a Punishment-Centered System

The strongest practical justification for reconstructing the sentencing framework lies in the nature of minor offenses themselves. Minor offenses typically involve relatively limited material harm, lower levels of violence, and social contexts in which restoration, apology, compensation, and reconciliation may be more meaningful than incarceration or prolonged adversarial processing. Yet under a punishment-centered system, such cases can still travel through the full criminal process, producing costs and burdens that are often disproportionate to the gravity of the offense. This disproportionality affects not only the accused but also victims, institutions, and society more broadly. The system may formally punish wrongdoing, but it often fails to repair the underlying social rupture.

This point becomes even sharper when viewed against the continuing problem of prison overcapacity. Official Directorate General of Corrections data published in July 2025 reported that correctional institutions had capacity for 146,260 people but were housing 280,414 occupants. Another official report from July 2025 similarly stated that available capacity was 147,414, while excess occupancy had reached 89.64% above capacity. These figures are not caused solely by minor offenses, but they are highly relevant to the sentencing debate because they demonstrate that reliance on custodial and formal punitive responses imposes systemic pressure on the penal system. In such a context, retaining a rigid punishment-first model for low-harm offenses becomes increasingly difficult to defend from the standpoint of efficiency, proportionality, and penal rationality.

Thus, the issue is not merely whether restorative justice is morally preferable; it is whether a modern criminal justice system can remain functionally sustainable while continuing to process minor cases through heavily formalized punitive pathways. The findings suggest that it cannot. For minor offenses, substantive justice is better served when the law differentiates between conduct that truly requires coercive penal severity and conduct that can be resolved through accountable restoration. A sentencing framework that ignores this distinction risks being both substantively unfair and institutionally irrational.

The Current Restorative Justice Instruments Already Contain Important Eligibility Logic, but They Are Still Institution-Specific

The study also finds that the existing restorative justice instruments already contain a rudimentary logic for filtering eligible cases, but this logic remains institution-specific rather than system-wide. In prosecutorial practice, public explanations of PERJA No. 15 of 2020 repeatedly emphasize criteria such as the offender being a first-time offender, the offense being punishable by no more than five years' imprisonment, and the possibility of restoring the harm caused. Those criteria reflect a clear normative preference for applying restorative justice to lower-gravity, lower-risk cases—precisely the types of cases that often fall within the category of minor offenses or closely adjacent low-severity crimes.

At the police level, public police guidance interpreting PERPOL No. 8 of 2021 has similarly stressed that restorative settlement is not available for all offenses and must satisfy material and formal requirements. Police sources have emphasized that cases suitable for restorative justice should not involve terrorism, crimes against state security, offenses causing death, or other matters with serious public-order implications, and they have also underlined the need for the absence of broader social unrest and for fulfillment of formal peace-related requirements. This shows that the policing stage already recognizes restorative justice as a filtered, principled mechanism rather than an unrestricted bargain.

At the judicial level, PERMA No. 1 of 2024 sharpens the matter further. Official Supreme Court explanations indicate that the regulation allows restorative adjudication, among others, for minor offenses or cases where the victim's loss does not exceed Rp2,500,000 or the applicable provincial minimum wage, as well as for complaint-based offenses. The regulation also excludes cases where the victim or defendant refuses reconciliation, where there is a power imbalance, or where the defendant repeats the same type of offense within a three-year period after completing a final sentence. These provisions are significant because they show that restorative justice is already being juridically linked to proportionality, voluntariness, and protection against abuse. However, because the filters are distributed across different institutional regulations, Indonesia still lacks a single unified restorative sentencing framework that carries these principles consistently from investigation to adjudication.

3.6. The Core Deficit Is No Longer the Absence of Law, but the Absence of a Unified Sentencing Design

One of the most important analytical results of this study is that the main weakness of the Indonesian system is no longer the lack of restorative justice norms. The law now contains restorative language, restorative procedures, and restorative institutional instruments. The true deficit lies in the absence of a unified sentencing design that treats restorative justice as a central legal philosophy for minor offenses rather than as a peripheral procedural possibility. This distinction is fundamental. A legal system may contain many restorative provisions and still remain structurally retributive if those provisions are not integrated into the core logic of sentencing, adjudication, and case filtering.

The findings show that the present arrangement still leaves too much to dispersed discretion. Whether a minor case is resolved restoratively may depend on institutional culture, local practice, interpretive preference, or procedural timing. Such dependence undermines equality and predictability. In a reconstructed system, restorative justice should not be activated only when individual officials are sympathetic to it; rather, it should be presumptively available whenever legally defined minor-offense criteria are satisfied, subject to clear safeguards concerning voluntariness, victim protection, recidivism, and public interest. The movement from discretionary exception to structured norm is therefore the central reconstructive challenge.

This argument is reinforced by recent scholarship. Recent academic discussions on minor offenses in Indonesia have consistently pointed to the same cluster of obstacles: sectoral regulation, inconsistent implementation, weak institutional coordination, and the tendency to leave restorative justice outside the main architecture of criminal law reform. Contemporary scholarship therefore supports the conclusion that the Indonesian debate must move from asking whether restorative justice is desirable to asking how it can be fully embedded into the criminal law system.

Reconstruction Should Be Directed Through Four Dimensions: Codification, Harmonization, Standardization, and Social Legitimacy

Based on the legal developments and implementation gaps identified above, this study argues that reconstructing the sentencing framework for minor offenses requires at least four interlocking dimensions.

First, there must be normative codification. Restorative justice for minor offenses should not depend exclusively on sectoral regulations issued by separate institutions. It must be expressly and coherently anchored within the broader framework of the KUHP and the post-2025 KUHAP regime so that its use has a stable statutory basis. This includes codifying the categories of minor offenses eligible for restorative handling, the threshold of victim loss, the procedural stage at which restorative intervention may occur, and the legal consequences of successful restorative settlement. The new penal and procedural codes already provide a strong normative basis for such codification; what remains is doctrinal consolidation.

Second, there must be institutional harmonization. Police, prosecutors, and judges should not apply restorative justice according to disconnected procedural cultures. The same eligibility logic and core safeguards should operate throughout the case trajectory. This is particularly important in minor offense cases, where early restorative settlement can prevent unnecessary case escalation, but judicial recognition remains essential for legal consistency and legitimacy. The current multi-regulation landscape shows that Indonesia already has the ingredients of restorative justice; what it lacks is a single coordinated institutional grammar.

Third, there must be implementation standardization. The Supreme Court's 2026 data on low compliance in citing PERMA No. 1 of 2024 clearly shows that doctrinal adoption is uneven even after regulation exists. This means that reconstruction cannot stop at legislative reform. It must include standardized templates of legal reasoning, measurable compliance indicators, judicial training, prosecutorial guidance, police supervision, and integrated data collection so

that restorative justice becomes traceable and reviewable across institutions. A sentencing framework that cannot be monitored cannot be consistently institutionalized.

Fourth, there must be social and cultural legitimacy. Restorative justice will only function effectively for minor offenses if it is not understood as a transactional shortcut but as a principled legal response rooted in accountability, victim recovery, and community peace. Indonesia's legal culture, which still values *musyawarah*, reconciliation, and social equilibrium, gives restorative justice a strong socio-cultural foundation. The challenge is to incorporate these values without sacrificing safeguards against coercion, power imbalance, or repeated offending. In this way, living law and formal law should not be treated as competitors, but as complementary normative sources for substantive justice.

Theoretical Implication: The Debate Must Shift from Retributive Formalism to Substantive Justice

Theoretically, the results of this study show that the reconstruction of sentencing for minor offenses should be framed not simply as procedural reform but as a paradigmatic shift in the meaning of justice itself. Under the old model, the central question was whether the offender deserved punishment under the law. Under the emerging model, the relevant question becomes whether the legal response is capable of restoring the victim, holding the offender meaningfully accountable, repairing social relations, and preserving legal certainty in a proportionate way. This is the move from retributive formalism to substantive justice. The significance of the new KUHP and KUHAP lies precisely in the fact that they now make such a shift doctrinally imaginable within positive law.

For minor offenses, substantive justice is especially important because the damage caused by the offense is often relational and localized rather than system-threatening. In such cases, a criminal justice system that insists on punishment without restoration may satisfy formal legality while failing to satisfy justice in any socially meaningful sense. The results therefore support the argument that restorative justice is not merely an optional humanitarian supplement to criminal law; in minor offense cases, it is increasingly the more rational expression of criminal law's own contemporary objectives.

Discussion Synthesis

Taken together, the results demonstrate a dual reality. On the one hand, Indonesia now has a much stronger legal basis for restorative justice than it had only a few years ago. The coming into force of the new KUHP and new KUHAP on 2 January 2026, the existence of PERJA No. 15 of 2020 and PERPOL No. 8 of 2021, and the issuance of PERMA No. 1 of 2024 collectively show that restorative justice has moved from the periphery of legal policy toward the center of criminal justice reform. On the other hand, this legal progress has not yet produced a fully coherent sentencing framework for minor offenses. Fragmentation, uneven implementation, low judicial standardization, and continued punitive default practices still prevent restorative justice from operating as the principal mode of substantive justice in low-severity cases.

Accordingly, the reconstruction of the sentencing framework must not be limited to adding restorative clauses into existing law. It must redesign the logic of minor offense handling itself. Restorative justice should be statutorily codified, institutionally harmonized, procedurally standardized, and socially legitimized as the default justice pathway for legally defined minor offenses that do not involve coercion, serious violence, repeated offending, or strong public-interest barriers. Only through such reconstruction can Indonesia move from symbolic restorative recognition to a genuinely integrated sentencing system capable of realizing substantive justice.

CONCLUSION

Concludes that the Indonesian criminal justice system has formally entered a transformative phase with the recognition of restorative justice within the new legal framework, particularly through Law No. 1 of 2023 on the Criminal Code and Law No. 20 of 2025 on the Criminal Procedure Code. These reforms mark a significant shift from a purely retributive paradigm toward a more balanced approach that emphasizes restoration, social harmony, and substantive justice. However, despite this normative advancement, the sentencing framework for minor offenses remains structurally incomplete due to fragmentation across institutional regulations, inconsistent implementation, and the continued dominance of punitive practices. The findings demonstrate that restorative justice, although widely regulated, has not yet been fully integrated as a central sentencing paradigm. Instead, it continues to function as a complementary and discretionary mechanism, resulting in disparities and legal uncertainty in minor offense cases. This condition prevents the criminal justice system from achieving substantive justice, as outcomes often fail to reflect proportionality, victim recovery, and social reconciliation. To address these limitations, this study proposes a reconstruction of the sentencing framework through four key dimensions: regulatory integration, institutional harmonization, paradigm transformation, and recognition of living law. Theoretically, this reconstruction contributes to bridging retributive and restorative paradigms within a unified framework. Practically, it offers a pathway toward a more efficient, humane, and socially responsive criminal justice system. Ultimately, the realization of substantive justice in minor offense cases requires not merely legal reform, but a systemic transformation that positions restorative justice as the core foundation of sentencing policy..

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