Injurity: Interdiciplinary Journal and Humanity
Volume 5, Number 2, February 2026
e-ISSN: 2963-4113 and p-ISSN: 2963-3397

Reformulation of the Legal Politics of Restorative Justice in Handling Minor Criminal Offenses under Law Number 1 of 2023 on the Criminal Code

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Abstract

The enactment of Law Number 1 of 2023 on the Criminal Code marks a significant shift in Indonesia's criminal law reform, including the implicit recognition of restorative justice within sentencing policy. This condition reflects the absence of a coherent legal policy framework that positions restorative justice as an integral component of national criminal law policy; instead, it continues to be treated primarily as an alternative or administrative practice rather than a formally institutionalized legal mechanism. This study employs a normative juridical research method, utilizing both statutory and conceptual approaches to examine the implementation of restorative justice in the treatment of minor offences under the newly enacted Criminal Code. The analysis is grounded in the legal system theory framework, encompassing legal substance, legal structure, and legal culture, to identify structural factors contributing to the suboptimal effectiveness of restorative justice in Indonesia. The findings demonstrate that restorative justice has not been explicitly institutionalized within the Criminal Code, resulting in legal uncertainty, fragmented institutional practices, and continued reliance on the discretionary authority of law enforcement officials. Furthermore, this study challenges the conventional assumption that restorative justice undermines the deterrent function of criminal law. It argues that, when properly designed and subject to adequate oversight, restorative justice can generate moral, social, and psychological deterrent effects that are more proportionate and effective in addressing minor offences than fear-based punitive sanctions.

Keywords: legal policy reformulation; restorative justice in minor offences; Law Number 1 of 2023 on the Criminal Code

INTRODUCTION

Indonesia is constitutionally affirmed as a state governed by the rule of law, as explicitly stipulated in Article 1(3) of the 1945 Constitution of the Republic of Indonesia. This constitutional provision positions law not merely as a system of formal rules but as a primary instrument for regulating social relations, resolving conflicts, and realizing justice within society. As argued by Daniel S. Lev, the recognition of the rule of law in Indonesia reflects not only a constitutional commitment but also a sociological expectation that law should function as a legitimate, trusted, and just mechanism of social governance (Hendrianto, 2026; Lesmana et al., 2025; Putri, 2025). Within this framework, criminal law occupies a particularly strategic position, as it provides the legal justification for the exercise of the state's coercive power while simultaneously reflecting the political orientation of the state in responding to disruptions of social order (Ikenberry, 2019; Rose & Miller, 2017; Therborn, 2016).

From the perspective of criminal law theory, the objectives of criminal law encompass legal certainty, justice, and social utility, all of which should ideally be achieved in a balanced and proportional manner. In practice, however, Indonesia's criminal law enforcement system continues to face significant challenges in realizing this equilibrium (Anwary, 2022; Dessani et al., 2023; Doing et al., 2024; Widyawati et al., 2025). Romli Atmasasmita observes that the Indonesian criminal justice system remains heavily influenced by a positivistic and formalistic

legal tradition inherited from the colonial era. This tradition prioritizes written legal norms and procedural compliance as the primary orientation, often at the expense of substantive justice and the social context surrounding criminal conduct. Consequently, criminal law enforcement tends to emphasize punishment as an end in itself, rather than as a policy instrument for resolving social conflict and restoring public order (Nafid et al., 2024; Sloane, 2017; Tyler et al., 2015).

One of the fundamental problems in the implementation of restorative justice in Indonesia lies in the absence of an overarching normative framework and the disharmony of legal regulations among law enforcement institutions (Kurniawan et al., 2023; Sihole, 2026; Sikumbang & Sara, 2025; Wibowo et al., 2024). This condition has resulted in restorative justice not yet being implemented as a cross-sectoral and sustainable mechanism for criminal case resolution. To clarify the sources of such regulatory disharmony, this study presents an empirical, systematic, and operational mapping of restorative justice regulations in the form of an inter-institutional table.

Table 1. Comprehensive Mapping of Restorative Justice Regulations and Inter-Institutional Disharmony among Law Enforcement Agencies in Indonesia

No	Regulation	Type of Regulation	Institution	Stage of Law Enforcement	Character of RJ Regulation	Binding Force	Form of Disharmony
1	Law No. 11 of 2012 on the Juvenile Criminal Justice System	Statute	State	Investigation ▪ Prosecution ▪ Trial	Diversion as mandatory restorative justice	Binding on all law enforcement agencies	Applies only to juvenile cases; not applicable to adult cases → dual restorative justice regimes
2	Law No. 1 of 2023 on the Criminal Code (KUHP)	Statute	State	Substantive criminal law	Contains restorative and corrective values	General	Does not regulate cross-institutional restorative justice procedures
3	Law No. 8 of 1981 (Criminal Procedure Code/KUHAP)	Statute	State	Criminal procedure	Procedural–retributive	Binding on all law enforcement agencies	Does not recognize restorative justice as a systemic mechanism
4	Law No. 48 of 2009 on Judicial Power	Statute	State	Adjudication	Substantive justice orientation	General	Judges are not obliged to recognize pre-trial restorative justice outcomes
5	Law No. 39 of 1999 on Human Rights	Statute	State	General principles	Victim protection values	General	Not operational at the procedural level
6	National Police Regulation No. 8 of 2021	Institutional regulation	Police	Investigation & inquiry	Restorative justice as investigator discretion	Internal	Restorative justice outcomes are not binding on the prosecution
7	Circular Letter of the Chief of Police No. SE/2/II/2021	Circular letter	Police	Investigation	Restorative justice based on legal culture approach	Internal	Lacks external binding force

8	Prosecutor Regulation No. 15 of 2020	Institutional regulation	Prosecution Service	Prosecution	Termination of prosecution based on restorative justice	Internal	Not required to recognize restorative justice outcomes from investigation stage
9	Instruction of the Attorney General No. 15 of 2020	Instruction	Prosecution Service	Prosecution	Optimization of restorative justice	Internal	Does not regulate inter-institutional coordination
10	Supreme Court Regulation No. 1 of 2024	Court regulation	Supreme Court	Adjudication	Guidelines for restorative justice-based adjudication	Internal (judicial)	Judges may disregard pre-adjudication restorative justice
11	Supreme Court Regulation No. 2 of 2012	Court regulation	Supreme Court	Adjudication	Adjustment of minor offenses and fines	Internal (judicial)	Not integrated with restorative justice mechanisms
12	Local practices / regional memoranda of understanding	Non-normative policy	Multi-institutional	Variable	Agreement-based restorative justice	Not nationally binding	Inter-regional inconsistency

The table demonstrates that restorative justice disharmony in Indonesia is structural rather than incidental. Restorative justice has not been positioned as an integrated component of the criminal justice system but has instead evolved as sectoral policies within each law enforcement institution. To date, there is no statutory-level regulation that comprehensively: 1) regulates the restorative justice process across stages of law enforcement (investigation–prosecution–trial); 2) mandates mutual recognition and legal validity of restorative justice outcomes among law enforcement institutions; and 3) provides a mechanism for resolving normative conflicts in the application of restorative justice. The absence of such a normative framework causes restorative justice to remain at the level of institutional discretion rather than functioning as an integrated national criminal procedural mechanism (Maglione, 2021; Sariyono et al., 2026).

The principal disharmony lies in the fragmentation of authority and the differing conceptions of restorative justice among law enforcement institutions. Each institution regulates restorative justice through autonomous internal regulations, unsupported by a binding cross-sectoral framework. Normatively, the Juvenile Criminal Justice System Act is the only regulation that explicitly mandates the application of restorative justice through diversion mechanisms and binds all law enforcement officials. In contrast, the application of restorative justice in adult criminal cases relies solely on sectoral policies and institutional discretion, resulting in a lack of continuity in case handling from investigation through adjudication.

Differences in the stages of application, case criteria, and legal status of restorative justice outcomes lead to the non-portability of case resolutions across institutions. Restorative justice-based settlements reached at the police level may be effectively nullified during prosecution and subsequently disregarded in judicial proceedings due to the absence of binding normative force upon judges.

At present, the implementation of restorative justice in Indonesia remains largely dependent on internal regulations issued by individual law enforcement institutions, including Regulation of the Indonesian National Police Number 8 of 2021, Regulation of the Prosecutor's Office Number 15 of 2020, and Supreme Court Regulation Number 1 of 2024. These regulatory instruments are sectoral in nature and do not constitute a unified legal framework binding across institutions. Moreover, their status as internal administrative regulations means they lack the normative authority of statutory law and therefore cannot negate the criminal character of

an offence or override the procedural rules governing criminal proceedings as stipulated in the Criminal Procedure Code (KUHAP).

This regulatory fragmentation is further reflected in the differing criteria and approaches adopted by each institution in applying restorative justice. Regulation of the Prosecutor's Office Number 15 of 2020, for example, establishes limitations based on the amount of material loss and certain subjective requirements relating to the offender. In contrast, Regulation of the Indonesian National Police Number 8 of 2021 places greater emphasis on considerations of public interest and the restoration of social harmony. Meanwhile, Supreme Court Regulation Number 1 of 2024 situates restorative justice primarily within the scope of judicial authority and the adjudicative stage of criminal proceedings. These divergent approaches result in inconsistent application in practice and render restorative justice highly dependent on the discretionary power of law enforcement officials rather than on an integrated legal system capable of ensuring legal certainty.

In cases involving minor criminal offences, the adverse effects of a predominantly repressive approach to law enforcement are particularly evident. Victims often perceive that the harm they have suffered is not meaningfully remedied, as formal punishment does not necessarily result in restitution or genuine recovery. Conversely, offenders in minor cases frequently experience social stigmatization and exclusion that are disproportionate to the gravity of their conduct. Society, in turn, continues to bear the burden of unresolved social conflict even after formal legal proceedings have concluded. In this context, punishment loses its function as an effective mechanism for conflict resolution and may instead perpetuate cycles of social harm.

By way of illustration, the application of certain criminal provisions is frequently criticized for failing to realize substantive justice. One recurring example concerns offences related to insult or defamation. In the digital era, the widespread use of social media as a primary means of communication has led to a significant increase in reports of electronically based defamation. However, the enforcement of such provisions is often questioned on the grounds that it is inconsistent with the constitutional guarantee of freedom of expression.

Similar concerns arise with respect to legal provisions characterized by interpretive ambiguity. Morality-based offences, for instance, are frequently applied in cases involving artistic works or cultural products, giving rise to debates over the boundary between unlawful conduct and artistic freedom. In several high-profile cases, artists have been accused of violating morality provisions due to works deemed offensive to particular social groups, despite the broad recognition of their artistic value. These cases reveal ongoing tensions between legal norms, moral values, and the protection of freedom of expression.

Furthermore, annual reports issued by judicial institutions indicate variations in judicial decisions involving the application of identical provisions of the Criminal Code. Such disparities suggest shortcomings in consistency and harmonization in the enforcement of criminal law, which ultimately undermine legal certainty and public perceptions of justice.

Within this broader context, Law Number 1 of 2023 on the Criminal Code introduces a renewed paradigm through the strengthening of a restorative justice approach. This approach emphasizes conflict resolution oriented toward the restoration of relationships among offenders, victims, and the community, rather than focusing exclusively on punishment. The new Criminal Code provides broader scope for the application of penal mediation, particularly in cases involving minor offences or matters with limited social impact, aiming to reduce the burden on the criminal justice system while promoting a more humane conception of justice.

In addition, the new Criminal Code seeks to minimize interpretive ambiguity through clearer and more structured normative formulations. The reformulation of provisions concerning morality and defamation, for example, is intended to align more closely with human

rights principles and the protection of freedom of expression, thereby preventing repressive and discriminatory enforcement.

In light of these issues, this research is highly relevant for examining the underlying problems in the implementation of the Criminal Code and exploring how restorative justice can be further developed and operationalized. The study focuses on analyzing practical legal challenges through examination of actual cases, while also evaluating the role of legal policy in strengthening restorative justice as a foundation for a criminal justice system more responsive to the needs of contemporary society.

The accumulation of minor criminal cases has generated structural problems within the criminal justice system. Court congestion, prolonged case processing, and the excessive use of imprisonment are among the most evident consequences. Mochtar Kusumaatmadja emphasizes that law should function as an instrument of social reform capable of responding to social dynamics and fostering social order. When criminal law is applied rigidly, without adequate consideration of its broader social consequences, it risks losing both legitimacy and effectiveness. Contemporary discourse on criminal justice reform further highlights that disproportionate reliance on imprisonment—particularly for minor offences—undermines substantive justice and systemic efficiency while failing to produce meaningful deterrent effects.

Within this context, restorative justice has emerged as an alternative approach to criminal law enforcement, especially in the handling of minor offences. Unlike conventional approaches that conceptualize crime solely as a violation of state legal norms, restorative justice views crime as conduct that harms individuals and social relationships. Accordingly, the pursuit of justice is directed not merely toward punishing offenders, but toward repairing harm through dialogue, accountability, and consensual resolution involving victims, offenders, and the community.

Although often regarded as a modern development in criminal justice theory, the substantive principles of restorative justice are deeply rooted in Indonesia's legal culture. Soepomo explains that customary law mechanisms in various regions of Indonesia have long emphasized reconciliation, compensation, and deliberation as primary means of dispute resolution. These mechanisms prioritize the restoration of social balance rather than the imposition of repressive sanctions. This cultural foundation is reinforced by the philosophical values of Pancasila. The fourth principle of Pancasila places deliberation and consensus at the core of collective decision-making, reflecting a normative preference for resolving conflicts through dialogue and mutual agreement.

Satjipto Rahardjo associates this orientation with the concept of substantive justice, namely justice assessed not solely on the basis of formal legal compliance but on its ability to restore social harmony and moral order. From this perspective, restorative justice is not a foreign concept within the Indonesian legal system but one that aligns with the living values of justice embedded in society.

Despite this strong normative and cultural foundation, the institutionalization of restorative justice within Indonesia's formal criminal justice system remains fragmented and inconsistent. Prior to the enactment of the new Criminal Code, restorative justice was generally implemented through sectoral regulations issued by law enforcement institutions, such as police regulations and prosecutorial guidelines. Although these instruments provide practical mechanisms for restorative case resolution, they lack the binding force of statutory law and are not systematically integrated into the codified structure of criminal law.

Mahfud MD argues that legal policies not grounded in strong statutory regulation are inherently vulnerable to inconsistency and weak enforcement. In the context of restorative justice, reliance on discretionary authority has resulted in significant variations in application across regions and institutions. Cases with similar characteristics may be resolved through

restorative mechanisms in one jurisdiction while being processed through formal criminal proceedings in another. Such disparities raise serious concerns regarding legal certainty and the principle of equality before the law.

From the perspective of legal policy, this situation reflects the absence of a clear and explicit direction regarding the position of restorative justice within the national criminal law system. Padmo Wahjono asserts that legal policy represents the state's conscious choice of which values to institutionalize through law and how those values are to be realized in practice. Without a coherent policy framework, restorative justice remains susceptible to divergent interpretations, selective implementation, and potential abuse of authority.

Restorative justice constitutes an approach to criminal case resolution that prioritizes the restoration of relationships among offenders, victims, and the community rather than focusing exclusively on repressive penal sanctions. Within Indonesian criminal law, this approach is particularly relevant to certain categories of offences, especially minor crimes and complaint-based offences (delik aduan). The defining features of complaint-based offences—namely, the requirement of a victim's complaint and the possibility of its withdrawal—render such cases more amenable to resolution outside formal judicial proceedings, provided that victims' rights are safeguarded, offenders assume accountability, and societal perceptions of justice are maintained.

Several provisions of the Criminal Code (KUHP) provide substantial room for the application of restorative justice, including defamation under Article 310, theft within the family under Article 367, and minor extortion under Article 369. In addition, offences involving relatively minor material losses, such as petty theft under Article 364 and minor embezzlement under Article 373, are frequently resolved through restorative mechanisms. In such cases, resolution is directed not solely toward punishment but toward achieving fair agreements through dialogue, restitution, and the restoration of social relationships.

Conceptually, restorative justice arises from a critique of conventional criminal justice systems that tend to be retributive and offer limited opportunities for victim participation. This approach centers on victims' needs for recognition, recovery, and substantive justice while encouraging offenders to assume moral and social responsibility. Through structured penal mediation and dialogue, restorative justice seeks to restore social balance disrupted by criminal conduct, thereby reframing justice as a process of repair and reconciliation rather than mere punishment.

In practice, restorative justice is most appropriately applied to cases that do not pose serious threats to public order or community safety. This approach is consistent with human rights principles, as it considers the interests of victims, offenders, and the broader community. Moreover, restorative justice is widely regarded as a mechanism for reducing the burden on criminal justice systems facing high caseloads, limited resources, and prolonged judicial processes.

According to Police Regulation Number 8 of 2021 concerning the handling of criminal offences based on restorative justice, minor criminal cases (tindak pidana ringan) may be resolved through restorative mechanisms as regulated in Chapter III. Such resolution may be initiated on the basis of (a) a report or complaint, or (b) a direct finding of an alleged criminal offence (Article 11 of Police Regulation No. 8 of 2021). Officers responsible for implementing restorative justice at this stage include personnel from the Community Development Unit (Binmas) and the Public Order Unit (Samapta), as stipulated in Article 12 of the same regulation

Procedurally, the settlement of minor criminal offences through restorative justice begins with the submission of a written application addressed to the Head of the District Police (Kapolres) or Sector Police (Kapolsek). The application may be filed by the offender, the victim, their respective families, or other relevant parties. It must be accompanied by a written

statement of reconciliation and evidence demonstrating the restoration of the victim's rights, where applicable (Article 13 of Police Regulation No. 8 of 2021). Following submission, law enforcement officers are required to summon the disputing parties, facilitate and mediate the restorative process, prepare a report on the mediation outcome, and formally record the settlement in the official register.

The effectiveness of restorative justice within Indonesia's criminal justice system is highly dependent on the existence of a clear and consistent regulatory framework. Several legal instruments provide normative foundations for its implementation, including Supreme Court Regulation Number 4 of 2014 on penal mediation and Police Regulation Number 8 of 2021 concerning the handling of criminal offences based on restorative justice. These regulations play a crucial role in limiting excessive discretionary power exercised by law enforcement officials while ensuring that restorative justice is implemented accountably and in accordance with the principle of legal certainty.

From an empirical perspective, restorative justice has demonstrated significant growth in Indonesian law enforcement practice. Data from the Indonesian National Police show a consistent upward trend in the number of cases resolved through restorative mechanisms. In 2022, 15,809 cases were settled through restorative justice, representing an increase of approximately 11.8 percent compared to 2021, which recorded 14,137 cases. This trend continued in 2023 with approximately 18,175 cases and further increased in 2024 to 21,063 cases. These figures reflect a sustained institutional commitment to applying restorative justice, particularly in non-violent and minor criminal offences.

Similarly, the Attorney General's Office of the Republic of Indonesia has demonstrated a strong commitment to restorative justice. Throughout 2024, nearly 2,000 cases were resolved through restorative mechanisms. During the same period, thousands of Restorative Justice Houses (Rumah Restorative Justice) and Adhyaksa Rehabilitation Centers were established across various regions, indicating efforts to institutionalize restorative justice systematically within the prosecution system. These developments suggest that restorative justice is no longer incidental but has become part of routine criminal law enforcement practice.

Historically, the formal implementation of restorative justice began to take shape around 2020. Since its introduction, thousands of cases have been resolved through restorative mechanisms up to the end of 2022, with increasing numbers in subsequent years. This accumulation of data indicates that restorative justice has evolved from an experimental initiative into a relatively established model for resolving minor and non-violent offences. Consequently, restorative justice holds significant potential as an instrument for fostering a criminal justice system that is more efficient, equitable, and oriented toward social restoration.

The importance of a clear legal framework lies in ensuring consistency and legal certainty across all levels of law enforcement. In the absence of a strong statutory basis—such as explicit legislative recognition—the application of restorative justice relies heavily on discretionary authority and internal institutional regulations. This condition risks generating uneven implementation, legal uncertainty, and potential abuse of power. Normatively, criminal liability cannot be negated solely on the basis of internal administrative instruments, as these lack the binding legal force of statutory law. Without formal legal legitimacy, restorative justice may be marginalized in formal proceedings. Therefore, comprehensive statutory regulation is necessary to integrate restorative justice into Indonesia's criminal justice system while safeguarding the rights of all parties involved.

The enactment of Law Number 1 of 2023 on the Criminal Code marks a major milestone in Indonesian criminal law reform. This codification aims to end colonial legal legacies, consolidate fragmented regulatory regimes, and align criminal law with Indonesia's constitutional, social, and cultural values. As Soedarto observes, meaningful reform requires

not only textual amendment but also a philosophical shift toward more humane and proportionate punishment.

Within this framework, the 2023 Criminal Code introduces broader sentencing considerations, including attention to victims' interests, offenders' personal circumstances, and living social values. These provisions implicitly create space for restorative justice in minor offences. However, recognition remains implicit; the Code does not explicitly regulate restorative justice as a comprehensive mechanism nor establish clear procedural standards. Consequently, restorative justice continues to depend substantially on discretionary law enforcement practices rather than functioning as a fully integrated codified policy.

From a legal policy (politik hukum) perspective, this reflects an incomplete institutional commitment. Although the limitations of retributive punishment are acknowledged, restorative justice has not yet been fully elevated into binding statutory policy. As Mahfud MD argues, legal policy determines whether normative ideas become enforceable legal commitments or remain aspirational. Without explicit political will, restorative justice risks remaining symbolic rather than transformative.

Lawrence M. Friedman's legal system theory provides an analytical framework for understanding this condition. Law functions through three interrelated components: legal substance, legal structure, and legal culture. Legal substance concerns normative clarity; legal structure refers to institutional mechanisms of enforcement; and legal culture encompasses societal and institutional attitudes toward law. Weaknesses in any of these elements hinder effective implementation. In Indonesia, restorative justice faces normative gaps (substance), fragmented institutional supervision (structure), and resistance from a punitive legal culture that equates justice with imprisonment (culture). These interacting weaknesses limit optimal implementation in minor criminal offences.

Unlike previous studies that treat restorative justice abstractly or focus narrowly on specific fields such as juvenile justice, this research situates restorative justice within the framework of post-codification national criminal law policy. By analyzing minor offences regulated under Law Number 1 of 2023, the study offers a contextually grounded and operational examination rooted in positive law.

This research also challenges the assumption that restorative justice undermines deterrence. Rather than equating deterrence solely with fear-based punishment, it argues that restorative justice—when selectively and properly supervised—can generate moral, social, and psychological deterrent effects through direct accountability, community involvement, and value internalization.

Furthermore, this study proposes the establishment of a Restorative Justice Supervisory Institution (Lembaga Pengawas Restorative Justice – LPRJ). This institutional design would function as a tiered oversight body involving both state and community representatives, ensuring transparency, accountability, and consistency while reducing discretionary abuse and strengthening public legitimacy.

By synthesizing the philosophical values of Pancasila, customary law traditions, and contemporary criminal law theory, this study demonstrates that restorative justice is deeply compatible with Indonesia's legal culture. Therefore, reformulating restorative justice policy represents a strategic choice to balance justice, legal certainty, and social utility.

Based on this framework, the study examines the application of restorative justice in minor criminal offences under Law Number 1 of 2023 and analyzes the urgency of policy reformulation to ensure legal certainty, institutional accountability, and substantive justice. By integrating restorative justice into the codified criminal law system and applying Friedman's systemic theory, this article contributes both conceptually and practically to the development of a more humane, coherent, and responsive national criminal law policy.

METHOD

This study employs a normative juridical research method to analyze the legal policy framework governing the application of restorative justice in the handling of minor criminal offences under Law Number 1 of 2023 on the Criminal Code. The normative juridical approach is selected because the central issues examined concern the coherence of criminal law norms, policy orientation, and institutional design within the broader context of national criminal law reform, rather than the empirical measurement of behavior (Soedarto, 1986; Mahfud MD, 2010).

The research adopts both a statutory approach and a conceptual approach. The statutory approach is used to examine relevant legal instruments, including the 1945 Constitution of the Republic of Indonesia and Law Number 1 of 2023 on the Criminal Code, as primary sources of binding legal norms. This approach is essential in normative legal research to assess the hierarchy of legislation, normative consistency, and the degree of legal certainty produced by the regulatory framework (Atmasasmita, 2016).

The conceptual approach, meanwhile, is employed to analyze legal doctrines and theoretical frameworks related to criminal law policy, restorative justice, and legal politics. The principal analytical framework adopted in this study is Lawrence M. Friedman's legal system theory, which consists of three interrelated components: legal substance, legal structure, and legal culture (Friedman, 1975). This theoretical framework is applied to evaluate how normative regulation, institutional arrangements, and legal cultural orientations influence the effectiveness of restorative justice within Indonesia's criminal justice system.

The legal materials utilized in this research comprise primary, secondary, and tertiary sources. Primary legal materials include statutory regulations and official legal documents with binding authority. Secondary legal materials consist of legal doctrines, academic textbooks, scholarly journal articles, and relevant research findings related to criminal law policy and restorative justice (Kusumaatmadja, 2006; Rahardjo, 2009). Tertiary legal materials are used to support conceptual clarification and the interpretation of legal terminology employed in this study.

Data analysis is conducted qualitatively through descriptive and analytical methods. All legal materials are examined systematically to identify normative gaps, structural constraints, and legal cultural factors that influence the effectiveness of restorative justice in the handling of minor criminal offences. Based on this analysis, the study formulates recommendations for reformulating criminal law policy, including the reconceptualization of deterrence and the proposal to establish an institutional oversight mechanism to strengthen the implementation of restorative justice within Indonesia's national criminal law system.

RESULT AND DISCUSSION

Restorative Justice within the Framework of National Criminal Law Policy

Although a legal framework governing restorative justice has been established at the levels of the police, prosecution service, and judiciary, its implementation in Indonesia has not yet reached an ideal stage. The principal challenges include divergent interpretations among institutions, limited inter-agency coordination, and insufficient community involvement in the resolution process. Consequently, there is a pressing need for regulatory harmonization, capacity building for law enforcement officials, and the strengthening of a legal culture oriented toward restoration rather than punishment alone.

A significant inconsistency is evident in Article 5 paragraph (8) of Prosecutorial Regulation No. 15 of 2020, which explicitly lists categories of criminal offences excluded from termination of prosecution through a restorative justice approach. This provision affirms that not all offences are eligible for restorative settlement. However, comparable exclusions are absent in Police Regulation No. 8 of 2021, thereby creating potential disharmony between

investigators and public prosecutors. The lack of synchronization may result in divergent interpretations and inconsistent application, particularly regarding the categories of cases that may be resolved through restorative justice.

The implementation of restorative justice in minor criminal offences is supported by various legal instruments, including Supreme Court Regulation No. 2 of 2012 on adjusting thresholds for minor offences and fines; the Joint Decree of 2012 issued by the Chief Justice of the Supreme Court, the Minister of Law and Human Rights, the Attorney General, and the Chief of the Indonesian National Police regulating the categorization of minor offences, expedited procedures, and restorative justice application; Decree of the Director General of the General Courts No. 1691/DJU/SK/PS.00/12/2020; Circular Letter of the Chief of Police No. 8 of 2018; and Prosecutorial Regulation No. 15 of 2020 concerning termination of prosecution based on restorative justice.

Despite this comprehensive framework, effectiveness remains highly dependent on victims' understanding and consent. Although law enforcement officials strive to apply restorative mechanisms consistently with institutional guidelines, challenges persist due to limited public awareness of non-litigation alternatives. Some victims continue to prioritize punitive outcomes based on emotional considerations, thereby constraining optimal implementation.

From an implementation perspective, restorative justice requires a clear and firm legal foundation to ensure certainty and legitimacy. The principles of simple, expeditious, and low-cost justice were formally affirmed in the Joint Agreement of 7 October 2012 between the Chief Justice of the Supreme Court, the Minister of Law and Human Rights, the Attorney General, and the Chief of the Indonesian National Police. This agreement sets thresholds for minor offences, fine limits, expedited procedures, and restorative justice applications oriented toward reconciliation and restoration of the status quo, provided the offence is not repetitive.

Further institutional reinforcement has been achieved through Prosecutorial Regulation No. 15 of 2020, Decree No. 1691/DJU/SK/PS.00/12/2020, and Police Regulation No. 8 of 2021. These regulations establish loss thresholds—IDR 2,500,000 for specific Criminal Code provisions—and procedural safeguards. Collectively, they signal institutional commitment to integrating restorative justice into a more humane and equitable criminal justice system.

Nevertheless, the study finds that restorative justice has not yet been fully institutionalized as an integral component of Indonesia's national criminal law policy. Although its application is increasingly visible in practice and academic discourse, it remains peripheral and fragmented. Indonesian criminal law continues to reflect a predominantly retributive orientation, even in minor offences.

From a legal policy perspective, criminal law embodies the state's choices regarding social order, justice, and coercive power. As Mahfud MD emphasizes, legal policy determines the direction and substance of law through value selection and institutionalization. The marginal positioning of restorative justice illustrates the absence of a coherent political commitment to embedding it formally within the codified structure of criminal law.

This gap is particularly visible in the handling of minor offences. Such cases typically involve limited harm and low economic value, yet they are often processed using procedures designed for serious crimes, resulting in disproportionate sanctions. Satjipto Rahardjo criticizes this practice as privileging procedural certainty over substantive justice, thereby producing legally valid but socially ineffective outcomes.

The punitive orientation toward minor offences generates structural consequences: excessive reliance on imprisonment contributing to overcrowding, neglect of victims' restorative needs, and stigmatization of offenders without meaningful reintegration. Soedarto's concept of ultimum remedium underscores that criminal law should function as a last resort,

applied proportionally. When minor offences are treated equivalently to serious crimes, criminal law risks undermining its corrective and educational purposes.

Within this framework, restorative justice offers an approach aligned with proportionality, justice, and social utility. However, it is still frequently perceived merely as a discretionary administrative tool for reducing caseloads rather than as a normatively institutionalized legal mechanism. This limited interpretation restricts its transformative potential.

To overcome regulatory disharmony and fragmentation, restorative justice should be explicitly integrated into national criminal procedural law—either through revision of the Criminal Procedure Code or through a dedicated statute regulating cross-sectoral restorative mechanisms. Such a framework must formally recognize restorative outcomes at all stages of law enforcement, mandate inter-institutional coordination, and establish standardized procedures and documentation. Through this reconstruction, restorative justice would evolve from sectoral discretion into a legally certain, sustainable, and nationally legitimate component of Indonesia's criminal justice system.

The Normative Position of Restorative Justice in the 2023 Criminal Code

An analysis of Law No. 1 of 2023 on the Criminal Code indicates that restorative justice has not been explicitly regulated as a comprehensive legal mechanism. Although the new Criminal Code introduces broader sentencing considerations—such as the interests of victims, the personal circumstances of offenders, and prevailing social values—these provisions merely accommodate restorative justice principles implicitly. They do not establish clear operational norms governing the procedural application of restorative justice, particularly in cases involving minor offences.

From the perspective of legal substance, normative ambiguity continues to characterize the regulation of restorative justice in Indonesia. Regulatory mapping demonstrates that restorative justice has not been constructed as a unified and cross-sectoral criminal justice mechanism. Instead, its regulation remains fragmented across various sectoral instruments issued independently by law enforcement institutions, including the police, the prosecution service, and the judiciary. Each regulation operates within its respective institutional sphere, governs authority in a partial manner, and lacks connective norms ensuring continuity of restorative mechanisms from the investigation stage through adjudication. This condition indicates that restorative justice has developed primarily as an institutional policy rather than as an integrated component of the national criminal procedural law system.

Such normative ambiguity produces legal uncertainty, particularly regarding application criteria, procedural stages, and the distribution of institutional authority. As Lawrence M. Friedman emphasizes, weaknesses in legal substance inevitably affect legal structure and legal culture. In the absence of explicit and integrated statutory regulation, law enforcement officials rely heavily on individual discretion. This reliance increases the risk of inconsistent enforcement practices and unequal treatment in the administration of justice, thereby undermining the objectives of legal certainty and substantive fairness.

Legal Structure: Institutional Fragmentation and the Limits of Discretion

The analysis further reveals that the legal structure dimension plays a significant role in constraining the effectiveness of restorative justice implementation in Indonesia. The Indonesian criminal justice system comprises multiple institutions with sequential and overlapping authorities, including the police, the prosecution service, the courts, and correctional institutions. Although each of these institutions has issued internal policies encouraging the application of restorative justice, these policies do not operate within a unified normative framework.

From a legal policy perspective, this condition reflects the absence of a coordinated policy direction. Mahfud MD argues that when legal policy fails to provide clear normative guidance, law enforcement institutions tend to develop sectoral policies based on their respective interests and priorities. In the context of restorative justice, such institutional fragmentation results in striking disparities in practice, both in determining which cases are eligible for restorative resolution and in the procedures applied.

This fragmentation further reinforces reliance on discretionary authority exercised by law enforcement officials. While discretion is an inherent element of law enforcement, its exercise without adequate normative boundaries and supervisory mechanisms risks undermining legal certainty and accountability. Friedman's legal system theory explains that deficiencies in legal substance impose additional burdens on legal structure, forcing institutions to compensate for normative gaps through ad hoc decision-making. In restorative justice practice, this condition manifests in inconsistent implementation and unequal treatment of offenders and victims.

Legal Culture: Punitive Orientation and Resistance to Restorative Justice

Beyond normative and structural factors, legal culture constitutes a key determinant influencing the implementation of restorative justice. The findings of this study indicate that public perceptions of justice in Indonesia remain heavily shaped by a punitive paradigm. Justice is often equated with imprisonment, even in cases involving minor offences. Satjipto Rahardjo observes that this orientation is rooted in a formalistic legal culture that positions retribution as the primary symbol of justice.

This punitive orientation is not limited to society at large but is also deeply embedded in the professional culture of law enforcement officials. Professional identity within the criminal justice system is frequently associated with the ability to impose firm criminal sanctions. Romli Atmasasmita emphasizes that the behavior of law enforcement officials is shaped not only by legal norms but also by institutional habits and organizational culture. As a result, restorative justice is often perceived as a "soft" approach or as potentially undermining legal authority, leading to cautious implementation or even avoidance.

Yet, the objectives of criminal law extend beyond punishment to include education, crime prevention, and the restoration of social order. When justice is understood within this broader framework, restorative justice can in fact strengthen the substantive dimension of criminal law. By actively involving victims, offenders, and the community, restorative justice creates space for more meaningful accountability and the restoration of social relationships disrupted by criminal conduct.

Reconceptualizing the Deterrent Effect in Restorative Justice

One of the most significant findings of this study concerns the relationship between restorative justice and the deterrent effect. In conventional criminal law theory, deterrence is commonly understood as prevention derived from fear of criminal sanctions, particularly imprisonment. Within this framework, restorative justice is often perceived as an approach that contradicts the deterrent function of punishment.

This study challenges that assumption by proposing a broader understanding of deterrence. Referring to Soedarto's view that the objectives of criminal law include moral development and the maintenance of social order, deterrence should not be reduced solely to its coercive dimension. Deterrence may also arise through mechanisms of value internalization, the cultivation of responsibility, and social control.

Based on the analysis, the deterrent potential of restorative justice operates through several interrelated dimensions, namely:

1. Moral deterrence, arising from the offender's acknowledgment of wrongdoing and direct accountability to the victim;

2. Social deterrence, generated through community involvement and the reinforcement of social norms;
3. Psychological deterrence, stemming from emotional experiences such as guilt, empathy, and remorse;
4. Coercive deterrence, which may remain present as a background mechanism should restorative justice fail to be implemented.

The Urgency of Institutional Oversight in the Implementation of Restorative Justice

The preceding analysis demonstrates that the limitations of restorative justice in the handling of minor criminal offences are not solely attributable to normative ambiguity or resistance within legal culture, but also to the absence of adequate oversight mechanisms. Although restorative justice has been promoted through various internal regulations issued by law enforcement institutions, these regulations largely emphasize the expansion of discretionary authority without being accompanied by a systematic and integrated oversight framework.

From a legal policy perspective, oversight constitutes a fundamental element in ensuring accountability. Mahfud MD asserts that legal policies granting broad discretionary powers must be accompanied by clear control mechanisms to ensure alignment with legal objectives and to prevent deviations from principles of justice. In the context of restorative justice, the absence of oversight creates the risk of inconsistent, selective, and potentially abusive practices.

This situation becomes increasingly problematic when restorative justice is applied to minor criminal offences on pragmatic grounds, such as procedural efficiency and the reduction of judicial caseloads. Without adequate oversight, restorative justice may be perceived merely as an administrative shortcut rather than as a legal mechanism grounded in principles of restoration, accountability, and substantive justice. Accordingly, strengthening institutional oversight emerges as a crucial prerequisite for the reformulation of restorative justice legal policy.

Proposal for the Establishment of a Restorative Justice Supervisory Institution (LPRJ)

Based on the findings of this study, the establishment of a Restorative Justice Supervisory Institution (Lembaga Pengawas Restorative Justice – LPRJ) is proposed as a new institutional design within Indonesia's criminal justice system. The LPRJ is envisioned as an independent and tiered supervisory body involving both state and community elements, aimed at ensuring consistency, transparency, and accountability in the implementation of restorative justice, particularly in cases involving minor criminal offences.

Conceptually, the LPRJ would perform several core functions:

1. Normative oversight, to ensure that restorative justice practices comply with statutory regulations and fundamental principles of criminal law;
2. Procedural oversight, to guarantee that restorative justice processes are conducted fairly, voluntarily, and free from coercion;
3. Substantive oversight, to assess whether case outcomes genuinely reflect victim recovery, offender accountability, and proportionate deterrence;
4. Public accountability, by facilitating community participation and transparency in restorative justice practices.

This institutional design aligns with Lawrence M. Friedman's view that effective legal reform requires adjustment across legal substance, legal structure, and legal culture. The establishment of the LPRJ is expected not only to strengthen legal structure but also to

contribute to the development of a legal culture that recognizes restorative justice as a legitimate and authoritative component of the criminal justice system.

Table 2. Institutional Design of the Restorative Justice Supervisory Institution (LPRJ)

Institutional Level	Composition	Primary Functions
National LPRJ	State representatives, academics, civil society actors	Policy formulation, standard-setting, national evaluation
Regional LPRJ	Law enforcement officials, local government, community leaders	Case coordination and oversight
Local LPRJ	Mediators, community representatives	Monitoring implementation and reporting

This tiered model enables simultaneous vertical coordination and horizontal participation, thereby reducing the concentration of discretionary authority while strengthening the social legitimacy of restorative justice practices.

This model accords with the author's conception of the ideal implementation of restorative justice, which requires a fundamental transformation of Indonesia's criminal justice system. Such transformation entails the codification of restorative justice through a dedicated statute to ensure legal certainty, uniform application, and effective protection of the rights of victims, offenders, and the community. Philosophically, this codification aligns with the values of Pancasila justice, which emphasize the restoration of social relationships and human balance as the primary objectives of punishment rather than retribution alone. From a sociological standpoint, formal regulation is necessary to accommodate deliberative and consensus-based dispute resolution practices long embedded in Indonesian customary law, allowing their proportional integration into the national legal system. Juridically, a specific statute is required to overcome the current fragmentation of restorative justice regulation across sectoral instruments, which frequently produces divergent standards and institutional disharmony among law enforcement agencies.

Beyond regulatory strengthening, an ideal restorative justice model must be grounded in active community participation and recognition of customary legal values. Case resolution should not operate solely through a top-down approach but must incorporate community involvement as an integral component of social restoration. The state should empower community leaders and local institutions as partners in conflict resolution to ensure that justice outcomes are contextual, substantive, and socially legitimate.

The effectiveness of restorative justice also depends on the capacity of law enforcement officials. Transitioning from a retributive to a restorative paradigm requires enhanced competence in ethical reasoning, psychosocial understanding, empathetic communication, and non-confrontational facilitation. Without adequate capacity building, restorative justice risks being reduced to a procedural formality devoid of substantive restorative content.

From an implementation perspective, restorative justice must function through structured mechanisms and a clearly defined inter-institutional referral system, supported by administrative and information technology frameworks that facilitate monitoring, evaluation, and accountability. This process must be anchored in core restorative principles, including voluntariness, active offender responsibility, victim restoration, and neutral, transparent state facilitation.

The protection of victims' rights must remain central throughout the process. Proceedings should not continue without the victim's consent, and recovery must extend beyond material compensation to include psychological, emotional, and social restoration. In

this context, the role of the police as neutral facilitators is strategically significant and must be supported by strong internal oversight mechanisms to prevent abuse of authority.

An ideal restorative justice framework should also be open to comparative learning from other jurisdictions, adapted appropriately to Indonesia's social context. Restorative justice should serve as the primary pathway for resolving minor criminal offences in order to reduce systemic burdens on courts and correctional institutions. To preserve integrity and accountability, the establishment of an independent Restorative Justice Supervisory Institution is essential. Such a body would determine eligibility standards, supervise implementation, safeguard victims' rights, and ensure voluntariness and substantive justice.

Conceptually, restorative justice adopts a triangular model involving offenders, victims, and the community. Community participation as a third actor is crucial for restoring social relationships and reinforcing communal cohesion within Indonesia's communitarian social structure. Once a restorative agreement is reached, victim recovery mechanisms should be implemented in measurable, supervised stages. Offender accountability may take various agreed forms, including restitution, formal apologies, non-material compensation, or community service. The process must be facilitated by competent mediators or law enforcement officers who guarantee active victim participation, access to psychological and social assistance where necessary, and full protection of legal rights.

Subsequent evaluation by law enforcement authorities and community representatives is required to ensure proportional and good-faith fulfillment of offender obligations. If all conditions are satisfied, the case may be concluded without formal judicial proceedings. In this manner, restorative justice not only resolves criminal cases but also restores victims' conditions and social relationships in a humane, participatory, and meaningful way.

Accordingly, restorative justice should be understood not merely as an alternative dispute resolution mechanism, but as an instrument for transforming the criminal justice system into a model that is more humane, participatory, and substantively just, in alignment with Pancasila values and the needs of Indonesian society.

Final Discussion of the Research Findings

Overall, the findings of this study affirm that the limited application of restorative justice in the handling of minor criminal offences is not the result of conceptual weakness, but rather stems from normative gaps, institutional fragmentation, and resistance within legal culture. Without a firm and integrated reformulation of legal norms, restorative justice will continue to occupy a marginal position and remain dependent on discretionary practices within the criminal justice system.

By proposing the establishment of a Restorative Justice Supervisory Institution (LPRJ) and an integrated model for the reformulation of criminal law policy, this study offers an original contribution to the development of criminal law scholarship and legal policy in Indonesia. The findings demonstrate that restorative justice, when properly designed and effectively supervised, is capable of achieving substantive justice, legal certainty, and proportionate deterrence in the handling of minor criminal offences.

CONCLUSION

The implementation of restorative justice in the handling of minor criminal offences in Indonesia has not yet reached an optimal stage, despite its regulation through various sectoral instruments, including Police Regulation No. 8 of 2021, Prosecutorial Regulation No. 15 of 2020, and Supreme Court Regulation No. 1 of 2024, as well as its implicit normative acknowledgment under Law Number 1 of 2023 on the Criminal Code. The limited effectiveness of its application does not originate from conceptual weaknesses inherent in

restorative justice itself, but rather from structural, normative, and legal-policy constraints within the criminal justice system.

From the perspective of legal structure, law enforcement agencies have not implemented restorative justice in a coordinated and harmonized manner across institutional levels. Each agency operates under its respective regulatory framework, resulting in inconsistent procedural pathways and the absence of an integrated referral mechanism. In terms of legal substance, the regulatory framework remains fragmented and procedurally unintegrated, particularly due to the absence of explicit provisions concerning restorative justice within the Criminal Procedure Code. This gap produces legal uncertainty, unclear eligibility standards, and non-uniform law enforcement practices. From the standpoint of legal culture, the dominant paradigm among law enforcement officials and segments of the public continues to prioritize formalistic and retributive approaches. As a result, peaceful and collaborative mechanisms of conflict resolution are often perceived as secondary or exceptional rather than as legitimate manifestations of justice. This situation encourages excessive reliance on discretionary authority, thereby weakening legal certainty and equality before the law and illustrating that restorative justice has not yet been fully institutionalized as a coherent component of national criminal law policy.

The study further highlights the pivotal role of legal culture in shaping resistance to restorative justice. A deeply rooted punitive orientation persists among both society and law enforcement officials, equating justice predominantly with imprisonment—even in cases involving minor criminal offences. This perception sustains the assumption that restorative justice diminishes the deterrent function of criminal law. However, the findings of this research demonstrate that such a view rests upon an overly narrow conception of deterrence as solely fear-based prevention. In contrast, restorative justice is capable of generating moral, social, and psychological deterrent effects through direct accountability, victim-offender dialogue, community involvement, and the internalization of social responsibility. By promoting meaningful acknowledgment of harm and structured restitution, restorative justice can achieve preventive outcomes that are proportionate, relational, and sustainable, particularly in the context of minor criminal cases.

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