

Restorative Justice as an Instrument for Resolving Minor Criminal Offenses from the Perspective of Law Number 1 of 2023

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Abstract

The development of modern criminal law has shifted from a retributive approach toward a more humane and restorative-oriented paradigm, particularly in the resolution of minor criminal offenses. In Indonesia, the enactment of Law Number 1 of 2023 concerning the Criminal Code reflects the strengthening of restorative justice as an alternative mechanism for resolving criminal cases through reconciliation, restoration of social relations, and protection of victims' rights. This study aims to examine the juridical implications of implementing restorative justice in resolving minor criminal offenses and to analyze its legal regulation within the perspective of Law Number 1 of 2023. This research employs a normative legal research method using statutory, conceptual, and comparative approaches. Legal materials were collected through library research and analyzed qualitatively using deductive and interpretative reasoning methods. The findings demonstrate that the implementation of restorative justice has progressive juridical implications for Indonesia's criminal justice system by shifting the orientation of punishment from retaliation toward social recovery, victim protection, and offender reintegration. Furthermore, restorative justice contributes to reducing prison overcrowding and improving the effectiveness of criminal justice administration. However, the study also reveals that the regulation of restorative justice in the 2023 Criminal Code remains implicit and lacks clear procedural standards, potentially creating disparities in law enforcement practices. Therefore, harmonization between substantive and procedural criminal law, along with the establishment of clear technical guidelines, is necessary to ensure legal certainty, justice, and accountability in the implementation of restorative justice for minor criminal offenses.

Keywords: *Restorative Justice, Minor Criminal Offenses, Criminal Law Reform, Legal Certainty, Law Number 1 of 2023.*

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Introduction

The development of modern criminal law demonstrates a paradigm shift from a retributive approach toward a more humane and recovery-oriented approach. Within the retributive paradigm, criminal case resolution primarily emphasizes the punishment of offenders through imprisonment as a form of state retaliation for unlawful acts committed. However, in practice, such an approach often creates new problems, particularly in the handling of minor criminal offenses that essentially have relatively limited social impacts. Repressive punishment for minor offenses not only generates social stigma against offenders but also increases the burden on correctional institutions and reduces the overall effectiveness of the criminal justice system [1].

This phenomenon can be observed in various minor criminal cases that have attracted public attention in Indonesia. Cases involving petty theft, defamation, and criminal acts causing minor losses are frequently processed through formal judicial mechanisms and ultimately result in imprisonment. Such conditions have generated public criticism because they are considered inconsistent with substantive justice and insufficiently attentive to humanitarian values. In this context, restorative justice emerges as an alternative approach that prioritizes conflict resolution, restoration of social relations, and protection of victims' rights as the primary orientation in resolving criminal cases [2].

Conceptually, restorative justice views crime not merely as a violation against the state, but also as a social conflict causing harm to victims and society. Therefore, the resolution of criminal cases should not solely focus on punishing offenders, but also on restoring conditions and rebuilding social harmony through dialogue, mediation, and agreements among the parties involved [3]. This approach is considered more relevant in handling minor criminal offenses because it is more proportional, efficient, and capable of avoiding the negative consequences of short-term imprisonment.

In Indonesia, the strengthening of the restorative justice approach has gained greater legitimacy following the enactment of Law Number 1 of 2023 concerning the Criminal Code. The new Criminal Code embodies the spirit of national criminal law reform by positioning sentencing objectives not merely as retaliation, but also as a means of conflict resolution, restoration of social balance, and protection of society [4]. This shift in orientation reflects the state's effort to establish a criminal justice system that is more just and aligned with the values of Pancasila and human rights principles.

The strengthening of restorative justice is also reflected in law enforcement practices in recent years. The Attorney General's Office of the Republic of Indonesia reported that throughout 2024, approximately 1,985 criminal cases were resolved through restorative justice mechanisms, while 4,654 Restorative Justice Houses had been established across various regions in Indonesia. These figures indicate that the restorative approach is increasingly recognized as an instrument for resolving criminal cases, particularly minor offenses emphasizing reconciliation and the restoration of social relations.

Nevertheless, the implementation of restorative justice in practice still faces various juridical challenges. The regulation concerning restorative justice mechanisms within the 2023 Criminal Code remains implicit and does not comprehensively regulate the categories of minor criminal offenses that may be resolved through restorative approaches. Such conditions potentially create disparities in law enforcement and excessive dependence on the discretion of law enforcement officials [5]. Furthermore, the absence of uniform standards may also result in legal uncertainty, particularly concerning the protection of victims' rights and guarantees of equality before the law.

These issues are reinforced by research findings indicating that the lack of clarity in restorative justice regulations remains an obstacle in Indonesian law enforcement practices. Research published in *Lex Crimen* emphasized that the implementation of restorative justice requires clear guidelines to avoid differing interpretations among law enforcement authorities [6]. Other studies have also shown that the lack of harmonization between the Criminal Code,

the Criminal Procedure Code, and sectoral regulations causes restorative justice implementation to depend heavily on the subjective approaches of law enforcement officials [7].

Apart from issues of legal certainty, the implementation of restorative justice must also pay attention to the protection of victims' rights to ensure that reconciliation mechanisms do not become instruments of compromise detrimental to victims. In practice, victims are not always in equal positions with offenders, thereby necessitating supervision and clear legal mechanisms to ensure that agreements are reached voluntarily and without coercion [8]. Therefore, the implementation of restorative justice must remain within the framework of the criminal justice system that upholds the principles of justice, legal certainty, and utility.

Based on the foregoing discussion, it can be understood that restorative justice holds an important position as an instrument for resolving minor criminal offenses from the perspective of Law Number 1 of 2023. However, strengthening this concept still requires in-depth juridical analysis regarding its implications for the criminal justice system and its legal regulation within the 2023 Criminal Code. Such analysis is essential to assess the extent to which restorative justice is capable of delivering substantive justice while simultaneously ensuring legal certainty in the handling of minor criminal offenses in Indonesia.

Literature Review

1. Restorative Justice Theory in the Criminal Justice System

The development of modern criminal law demonstrates a shift in orientation in the resolution of criminal cases. Whereas criminal law previously emphasized the punishment of offenders through a retributive approach, contemporary developments have increasingly moved toward a more humane, participatory, and recovery-oriented approach. In this context, restorative justice emerges as a new paradigm that places the resolution of social conflict as the primary objective of criminal law enforcement. This approach developed as a response to the weaknesses of the conventional sentencing system, which is considered excessively formalistic, repressive, and insufficiently attentive to the interests of victims and social relationships within society.

Theoretically, restorative justice perceives criminal acts not merely as violations against the state, but also as conflicts causing harm to individuals and society. Therefore, the resolution of criminal cases should be directed toward restoring victims' losses, ensuring the moral and social accountability of offenders, and rebuilding relationships among offenders, victims, and society [11]. From this perspective, justice is not solely measured by the severity of punishment imposed, but also by the extent to which conflicts can be resolved fairly and harmoniously.

Tony Marshall defines restorative justice as a process involving all parties with an interest in a particular offense to collectively resolve the consequences of the offense and determine future recovery measures [12]. This definition emphasizes the importance of active participation by all parties in resolving criminal cases, making restorative justice more focused on dialogue, deliberation, and reconciliation rather than punishment alone.

In its development, restorative justice is not intended to abolish criminal law, but rather to complement the criminal justice system in order to become more responsive to societal needs. This approach is particularly important for minor criminal offenses that sociologically still allow opportunities for reconciliation and restoration of social relations. Imprisonment for minor offenses often creates consequences more severe than the harm caused by the offense itself, including stigmatization of offenders, deterioration of social relationships, and overcrowding in correctional institutions [13].

Howard Zehr explains that restorative justice is based on three primary principles: the harm caused by crime must be repaired, offenders must take responsibility for correcting the consequences of their actions, and society must participate in creating social peace [14]. These principles indicate that restorative justice possesses broader humanitarian dimensions compared to conventional sentencing systems. In practice, offenders are not only required to undergo

punishment but are also encouraged to understand the impact of their actions on victims and the surrounding social environment.

The application of restorative justice in minor criminal cases is considered relevant to the characteristics of Indonesian society, which highly values deliberation, reconciliation, and familial conflict resolution. Philosophically, these values are consistent with Pancasila as the ideological foundation of the state, particularly the second and fifth principles emphasizing just and civilized humanity as well as social justice for all Indonesian people [15]. Therefore, strengthening restorative justice within Indonesia's criminal law system may be understood as an effort to establish laws that are more contextual and aligned with societal values.

Nevertheless, the implementation of restorative justice is not free from criticism. Some scholars argue that reconciliation mechanisms may potentially create legal uncertainty if not clearly regulated. Furthermore, restorative justice is also feared to create opportunities for abuse of discretion by law enforcement officials if not accompanied by strict guidelines [16]. Therefore, the implementation of restorative justice must remain within the framework of the criminal law system that upholds the principles of legality, protection of victims' rights, and equality before the law.

Within the context of Law Number 1 of 2023 concerning the Criminal Code, the spirit of restorative justice is reflected in sentencing objectives that no longer focus solely on retaliation, but also on conflict resolution and restoration of social balance within society. This demonstrates that Indonesian criminal law is gradually moving toward a more humane and progressive legal paradigm. However, the still implicit nature of such regulation creates the need for more in-depth studies regarding the juridical implications and legal certainty of its application to minor criminal offenses.

2. The Theory of Sentencing Objectives and Its Relevance to Minor Criminal Offenses

Sentencing constitutes an essential component of the criminal justice system because it is closely related to the state's objective of combating criminal acts and maintaining public order. In the development of criminal law scholarship, sentencing theories have undergone significant transformation. Initially, sentencing was primarily understood as a means of retaliation against offenders. However, over time, sentencing theories began to position punishment as an instrument for social protection, offender rehabilitation, and the restoration of social balance [17].

Retributive theory views punishment as a moral consequence of the offender's wrongdoing. According to this theory, individuals must be punished because they have committed unlawful acts that disrupt public order. Punishment is therefore regarded as a proportionate form of retaliation for the offender's misconduct [18]. Although this theory possesses a strong moral foundation, its application to minor criminal offenses often raises issues of substantive justice, particularly when relatively minor losses result in imprisonment.

As a response to the limitations of retributive theory, utilitarian theory emerged, positioning punishment as a means of preventing criminal acts. From the utilitarian perspective, the primary objective of punishment is not retaliation, but rather the creation of social benefits through deterrence and the protection of society [19]. Nevertheless, the utilitarian approach is also considered insufficient in resolving social conflicts arising from criminal acts because it focuses more on state interests than on victims' interests.

Subsequent developments gave rise to integrative or combined theories that attempt to reconcile elements of retaliation and social protection within sentencing. Muladi explains that punishment must be implemented proportionally while maintaining a balance among the interests of offenders, victims, and society [20]. This approach is particularly important in the context of minor criminal offenses because not all criminal acts should be resolved through imprisonment.

From a modern perspective, the objective of sentencing is no longer solely oriented toward punishment, but also toward rehabilitation and social reintegration of offenders.

Sentencing should encourage offenders to return as constructive members of society without losing their human dignity [21]. Consequently, imprisonment for minor offenses is increasingly viewed as a last resort (*ultimum remedium*), while non-penal resolutions such as restorative justice are positioned as more proportional alternatives.

In relation to minor criminal offenses, the restorative justice approach has a close relationship with modern sentencing theories. Restorative justice enables the resolution of criminal cases in ways that are more oriented toward restoring victims' losses and repairing social relationships rather than imposing repressive punishment [22]. In practice, offenders are encouraged to take direct responsibility toward victims through compensation, apologies, or other relevant social obligations.

This approach is consistent with Indonesia's criminal law reform through Law Number 1 of 2023, which places conflict resolution and restoration of social balance as part of the objectives of sentencing. Therefore, the application of restorative justice to minor criminal offenses may be understood as a concrete manifestation of the shift in sentencing orientation from a paradigm of retaliation toward one of recovery and social protection.

Nevertheless, the implementation of restorative approaches in sentencing must continue to uphold the principles of legality and legal certainty. Without clear regulation, restorative justice may create disparities in law enforcement and open opportunities for discriminatory treatment [23]. Therefore, strengthening legal regulations and implementation guidelines for restorative justice is essential to ensure that humane sentencing objectives remain consistent with the principles of justice and legal certainty.

Research Methodology

This study employs a normative legal research method by positioning law as a system of norms analyzed based on statutory regulations, legal principles, doctrines, and legal concepts related to the implementation of restorative justice in the resolution of minor criminal offenses under Law Number 1 of 2023 concerning the Criminal Code. Normative legal research was selected because this study focuses on analyzing the normative construction of restorative justice, the juridical implications of its implementation, and the relevance of its regulation within the national criminal law system. This approach is intended to assess the extent to which the provisions contained in the 2023 Criminal Code are capable of ensuring legal certainty while simultaneously delivering substantive justice in the resolution of minor criminal cases [24].

This study was conducted through statutory, conceptual, and comparative approaches. The statutory approach was applied by examining various regulations related to restorative justice and sentencing policies, particularly Law Number 1 of 2023 concerning the Criminal Code, Law Number 8 of 1981 concerning the Criminal Procedure Code, as well as several internal regulations of law enforcement institutions governing the implementation of restorative justice. Through this approach, the study seeks to identify normative synchronization, legal gaps, and potential disharmony in the regulation of restorative justice within the Indonesian criminal justice system [25].

The conceptual approach was carried out by examining theories of criminal law, sentencing theories, and restorative justice theories that have developed within modern legal literature. This approach was employed to understand the philosophical and sociological foundations of restorative justice as an instrument for resolving minor criminal offenses. Furthermore, the conceptual approach was also used to analyze the relationship between restorative justice and the principles of legal certainty, protection of victims' rights, and equality before the law within the criminal justice system [26].

Meanwhile, the comparative approach was implemented by comparing the regulation of restorative justice in Indonesia with restorative justice practices in several other legal systems and relevant international legal instruments. This approach was undertaken to obtain critical perspectives regarding effective restorative justice models that are consistent with the principles of a modern rule of law. Comparative legal analysis is also important in examining how other

countries regulate the categories of cases that may be resolved restoratively, as well as the mechanisms for protecting the rights of victims and offenders [27].

The legal materials used in this research consist of primary, secondary, and tertiary legal materials. Primary legal materials include statutory regulations, court decisions, and legal policies related to restorative justice and minor criminal offenses. Secondary legal materials were obtained from legal textbooks, national and international scientific journals, research articles, and academic publications relevant to the research topic. Meanwhile, tertiary legal materials were used as supporting references, including legal dictionaries, legal encyclopedias, and other reference sources supporting the research analysis [28].

The collection of legal materials was conducted through library research by inventorying, examining, and classifying various legal sources relevant to the object of the study. The literature review was conducted systematically in order to obtain comprehensive legal arguments concerning the implementation of restorative justice in handling minor criminal offenses. In normative legal research, library research plays a crucial role because the entire analysis is based on legal norms, doctrines, and scientific literature that are academically accountable [29].

The analysis of legal materials was conducted qualitatively using deductive and interpretative reasoning methods. Deductive reasoning was applied by drawing conclusions from general legal norms to specific issues concerning restorative justice in minor criminal cases. Meanwhile, the interpretative method was employed to understand the meaning of legal norms contained within the 2023 Criminal Code in order to obtain a comprehensive understanding of the direction of national criminal law reform. This analysis was conducted to address the research problems concerning the juridical implications of restorative justice implementation and its legal regulation within the perspective of Law Number 1 of 2023 [30].

In addition to employing a normative approach, this research also considers the social realities developing within law enforcement practices in Indonesia. This consideration is important because the implementation of restorative justice is not only related to legal texts, but also to legal culture, the discretion of law enforcement officials, and the sense of justice within society. Therefore, this research is expected to provide an analysis that is not only theoretical in nature, but also contextual and relevant to the contemporary development of Indonesian criminal law.

Results

1. Juridical Implications of the Implementation of Restorative Justice in the Resolution of Minor Criminal Offenses under Law Number 1 of 2023

The implementation of restorative justice in resolving minor criminal offenses under Law Number 1 of 2023 concerning the Criminal Code reflects a paradigm shift in Indonesia's national criminal law from a retributive approach toward a more humane and recovery-oriented approach. This transformation is evident in the orientation of sentencing, which no longer places imprisonment as the primary instrument for resolving criminal cases, but rather as a last resort (*ultimum remedium*) while still balancing the interests of victims, offenders, and society.

From a juridical perspective, the implementation of restorative justice has significant implications for the criminal justice system, particularly in the handling of minor criminal offenses. For a long time, the resolution of minor criminal cases through formal judicial mechanisms has often created disproportionality between the offender's level of culpability and the sanctions imposed. Imprisonment for minor criminal acts not only generates social stigma against offenders but also exacerbates the problem of overcrowding in Indonesian correctional institutions. This condition demonstrates that repressive approaches do not always succeed in delivering substantive justice within society.

Within the perspective of restorative justice, criminal case resolution is directed toward restoring social relationships and resolving conflicts peacefully. This approach provides victims with opportunities to obtain direct recovery through dialogue, reconciliation, and mutual

agreements with offenders. Consequently, victims are no longer positioned merely as instruments of evidence within criminal proceedings, but rather as primary subjects possessing the right to justice and restoration for the losses they have suffered [2].

Another juridical implication can be observed in the transformation of the form of criminal accountability imposed upon offenders. Within the conventional sentencing system, offender accountability is realized through imprisonment as a form of state retaliation. However, under the restorative justice approach, offender accountability is directed more toward moral and social obligations to repair the consequences of the committed offense. Offenders are encouraged to acknowledge their wrongdoing, apologize to victims, provide compensation, and restore disrupted social relationships resulting from the criminal act .

The implementation of restorative justice also has positive implications for the effectiveness of the criminal justice system. The resolution of minor criminal offenses through restorative mechanisms can reduce court case burdens and decrease the number of inmates in correctional institutions. Data from the Directorate General of Corrections indicate that correctional institutions in Indonesia continue to experience severe overcrowding, thereby necessitating criminal law policies that are more proportional and efficient. In this context, restorative justice becomes an alternative mechanism for resolving cases in a manner that is more effective and consistent with humanitarian principles.

Nevertheless, the implementation of restorative justice also raises complex juridical challenges. One of the primary issues concerns the absence of detailed regulations regarding the categories of minor criminal offenses that may be resolved through restorative approaches. Such ambiguity potentially creates disparities in law enforcement because implementation heavily depends on the discretion of law enforcement officials. In practice, differing understandings among law enforcement authorities regarding the concept of restorative justice may result in inconsistent treatment of cases with similar characteristics.

Furthermore, the implementation of restorative justice must also ensure the protection of victims' rights so that reconciliation mechanisms do not become instruments of compromise detrimental to victims. In several cases, victims may occupy weaker economic or social positions compared to offenders, thereby creating risks of reconciliation achieved through pressure or unequal bargaining positions among the parties. Therefore, restorative justice implementation must remain under strict legal supervision while upholding the principle of equality before the law.

Based on the foregoing analysis, it can be understood that the implementation of restorative justice in resolving minor criminal offenses under Law Number 1 of 2023 possesses progressive juridical implications for the reform of Indonesia's national criminal law system. The restorative approach is capable of delivering criminal case resolutions that are more humane, efficient, and socially recovery-oriented. However, strengthening regulations and harmonizing legal policies remain necessary to ensure that its implementation does not create legal uncertainty or abuse of discretion in law enforcement practices.

2. Legal Regulation of the Implementation of Restorative Justice in Handling Minor Criminal Offenses under Law Number 1 of 2023

Law Number 1 of 2023 concerning the Criminal Code constitutes part of Indonesia's national criminal law reform aimed at establishing a legal system that is more modern, contextual, and oriented toward humanitarian values. One of the significant transformations introduced by the 2023 Criminal Code is the strengthening of the restorative justice paradigm within the national sentencing system, particularly in handling minor criminal offenses. Although the term "restorative justice" is not explicitly regulated within a specific provision, the spirit of restorative justice is reflected in the sentencing objectives and diversification of criminal sanctions regulated within the new Criminal Code.

The regulation concerning sentencing objectives in the 2023 Criminal Code demonstrates that punishment is no longer understood solely as an instrument of retaliation, but also as a

means of resolving conflicts, restoring social balance, and achieving justice within society. This concept indicates a shift in the orientation of Indonesian criminal law toward a more rehabilitative and restorative approach. In cases involving minor criminal offenses, such an approach becomes particularly important because imprisonment is often disproportionate to the social impact and losses caused by the offense.

In addition to regulating sentencing objectives, the 2023 Criminal Code also expands alternative forms of punishment, including supervisory sanctions, community service penalties, and fines. Such diversification of criminal sanctions reflects efforts to reduce the dominance of imprisonment within the national sentencing system. Substantively, these regulations are consistent with the principles of restorative justice because they create opportunities for more proportional and recovery-oriented case resolution mechanisms.

From the perspective of criminal law policy, the strengthening of restorative justice within the 2023 Criminal Code represents a form of modernization of Indonesia's criminal justice system. This approach demonstrates that criminal law no longer functions solely as an instrument of punishment, but also as a means of social protection and societal harmonization. Therefore, restorative justice may be understood as part of criminal policy aimed at creating a criminal justice system that is more effective and equitable.

Nevertheless, the findings of this study indicate that the regulation of restorative justice within the 2023 Criminal Code still possesses normative weaknesses. The implicit nature of the regulation results in the absence of legal certainty concerning the mechanisms, requirements, and limitations for implementing restorative justice in minor criminal cases. Such conditions potentially create multiple interpretations in law enforcement practices. Furthermore, the absence of clear harmonization between the 2023 Criminal Code, the Criminal Procedure Code, and internal regulations of law enforcement institutions causes the implementation of restorative justice to remain highly dependent upon sectoral policies of individual institutions.

Another issue concerns the absence of uniform technical guidelines regarding procedures for resolving criminal cases through restorative justice. In practice, the police, prosecution service, and courts often adopt different approaches in implementing reconciliation mechanisms for minor criminal offenses. These differences may create legal uncertainty and potentially undermine the principle of equality before the law.

From the perspective of protecting victims' rights, the regulation of restorative justice also requires strengthening to ensure that reconciliation processes do not eliminate victims' rights to obtain justice. Reconciliation mechanisms must be conducted voluntarily, transparently, and free from any form of coercion. Therefore, the state must ensure that restorative justice is not utilized as a means of avoiding criminal accountability, but rather as a mechanism of recovery that continues to uphold the principles of justice and legal certainty.

Accordingly, the results of this study demonstrate that the regulation of restorative justice within Law Number 1 of 2023 reflects the spirit of national criminal law reform that is more humane and progressive. Nevertheless, regulatory strengthening remains necessary through harmonization with criminal procedural law and the establishment of clear technical guidelines so that the implementation of restorative justice in minor criminal offenses may operate objectively, accountably, and provide legal certainty for all parties involved.

Conclusion

Based on the results of the research and discussion, it can be concluded that the implementation of restorative justice in resolving minor criminal offenses under Law Number 1 of 2023 has progressive juridical implications for the reform of Indonesia's national criminal law system. This approach no longer positions punishment solely as a means of retaliation, but rather as an instrument for restoring social relationships, protecting victims' rights, and reintegrating offenders into society. The implementation of restorative justice is capable of providing a more humane, proportional, and substantively just resolution of criminal cases, particularly in relation to minor criminal offenses that sociologically still allow opportunities

for reconciliation and restoration. Nevertheless, the implementation of restorative justice continues to require strict legal supervision in order to prevent abuse of discretion while simultaneously ensuring the principles of equality before the law and the protection of victims' rights.

Furthermore, the legal regulation of restorative justice under Law Number 1 of 2023 fundamentally reflects the spirit of modern criminal law reform oriented toward humanitarian values. However, the regulation remains implicit and has not yet provided sufficient legal certainty regarding implementation mechanisms, case limitations, and procedural standards for the resolution of minor criminal offenses. Such conditions potentially create disparities in law enforcement if they are not accompanied by regulatory harmonization and clear technical guidelines for law enforcement authorities. Therefore, strengthening the regulatory framework through synchronization with criminal procedural law and the establishment of objective, transparent, and accountable standards for the implementation of restorative justice is necessary to ensure that the objectives of national criminal law reform can be realized effectively and equitably.

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