

Analysis of the Application of Transformative Justice in Theft Cases: A Case Study of Decision Number 80/PID.B/2024/PN Liwa

Analisis Penerapan Keadilan Transformatif Pada Kasus Tindak Pidana Pencurian: Studi Kasus Putusan Nomor 80/PID.B/2024/PN Liwa

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AbstrLaw

Contemporary criminal justice systems confront normative clashes between procedural restoration and structural poverty alleviation. Conventional restorative justice approaches fail to prevent long-term recidivism substantially because they merely return impoverished offenders to their original economic vulnerabilities. This socio-legal research evaluated Liwa District Court Decision Number 80/PID.B/2024/PN Liwa to dismantle conditional sentencing flaws. The author applied qualitative content analysis through a deductive syllogism framework to dissect judicial discretion within the courtroom. Analytical findings proved that case resolution focused solely on financial restitution and passive general condition impositions. The absence of specific conditions requiring vocational interventions reduced the ruling into judicial cosmetics, legalistically trapping marginalized perpetrators back inside the poverty cycle. Therefore, this manuscript offers conceptual novelty through transformative judicial discretion activism. Global penal reform imperatively obligates judges to integrate cross-sectoral economic rehabilitation sanctions to sever the root chains of necessity crimes, simultaneously elevating courtroom authority into an epicenter of sustainable social engineering.

Abstrak

Sistem peradilan pidana kontemporer menghadapi ketegangan norma antara pemulihan prosedural dan pengentasan kemiskinan struktural. Pendekatan keadilan restoratif konvensional gagal mencegah residivisme jangka panjang secara substansial karena sekadar mengembalikan pelaku pada kerentanan ekonomi semula. Penelitian sosio-legal ini mengevaluasi Putusan Pengadilan Negeri Liwa Nomor 80/PID.B/2024/PN Liwa untuk membongkar kelemahan implementasi pidana bersyarat. Penulis menggunakan metode analisis isi kualitatif melalui kerangka deduktif silogisme guna membedah diskresi hakim. Hasil analisis membuktikan bahwa penyelesaian perkara hanya berfokus pada restitusi finansial dan penjatuhan syarat umum yang bersifat pasif. Absennya syarat khusus berupa intervensi vokasional mereduksi putusan menjadi kosmetik yudisial yang secara legalistik menjebak kembali pelaku marginal ke dalam siklus kemiskinan. Oleh karena itu, naskah ini menawarkan kebaruan konseptual berupa aktivisme diskresi yudisial transformatif. Reformasi peradilan global secara imperatif mewajibkan hakim untuk mengintegrasikan sanksi rehabilitasi ekonomi lintas sektoral guna memutus mata rantai akar kejahatan atas dasar keterpaksaan, sekaligus mengelevasi otoritas ruang sidang menjadi episentrum rekayasa sosial berkelanjutan.



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A. INTRODUCTION

1. Background

The criminal justice system across various global and national jurisdictions is currently confronting an acute clash of norms between the ideal demands of legal certainty (*das sollen*), which is legalistic-formal in nature, and the sociological empirical reality (*das sein*) in the form of structural poverty that frequently serves as the primary catalyst for grassroots criminality.¹ Historically, the orthodox penal regime, dominated by the retributive paradigm and incarceration, has proven to experience systemic dysfunction in suppressing small-scale property crimes.² Rather than providing a disincentive effect against criminal behavior, imprisonment triggers institutional pathologies in the form of extreme overcrowding, positioning correctional institutions as schools of crime, and exponentially deepening the economic vulnerability of offenders originating from marginalized classes.³ In response to this institutional crisis, the modern criminal justice architecture has begun to massively shift its penal pendulum toward restorative justice. Nevertheless, the global implementation of restorative justice is currently still trapped in procedural achievements that focus solely on restoring circumstances to their original state (*status quo ante*) through mediation and financial compensation.⁴ In the context of crimes engineered by the determinant of poverty, returning offenders to their original situation logically equates to returning them to the exact same condition of poverty and vulnerability, which inherently preserves the criminogenic factors causing the crime.

This conceptual anomaly of restorative justice, which remains ahistorical to the roots of poverty, distinctly manifests within the Indonesian criminal justice landscape. Following its retreat from a rigid incarceration approach, Indonesia has progressively adopted the restorative paradigm through various sectoral regulations, such as the

¹ Devi Ratnasari et al., "Restorative Justice Evaluation: The Impact of Structural Inequities in the Criminal Justice System," *Edunity Kajian Ilmu Sosial Dan Pendidikan* 4, no. 7 (July 14, 2025): 313–21, <https://doi.org/10.57096/edunity.v4i7.402>.

² Daryna Dzemish Abdulovna, "Advancing Criminal Justice Reform through Restorative Justice: A Narrative Review," *Sinergi International Journal of Law* 2, no. 4 (November 30, 2024): 274–85, <https://doi.org/10.61194/law.v2i4.719>.

³ Diah Pudjiastuti, Dey Ravena, and Chepi Ali Firman Zakaria, "Alternatives to Imprisonment as an Effort to Overcome Overcrowding in Correctional Institutions," *Jurnal Wawasan Yuridika* 9, no. 1 (June 3, 2025): 39–53, <https://doi.org/10.25072/jwy.v9i1.4275>.

⁴ Thomas Procter-Legg, Jonathan Hobson, and Ernest Quimby, "Restorative Justice and Social Justice: An International Perspective," *Contemporary Justice Review* 27, no. 2–3 (July 2, 2024): 218–38, <https://doi.org/10.1080/10282580.2024.2414953>.

Attorney General's Regulation Number 15 of 2020 and the Indonesian National Police Regulation Number 8 of 2021, which were subsequently codified formally in Law Number 1 of 2023 concerning the New Criminal Code (*KUHP Baru*).⁵ Although law enforcement agencies claim high efficacy—evidenced by the Indonesian National Police successfully resolving 21,063 cases via restorative justice, and the Attorney General's Office terminating prosecution in 1,985 cases in 2024, increasing to 2,080 cases in 2025—these records are fundamentally entrapped within an institutional recidivism bias that only detects offenders who are rearrested.⁶ Conversely, the portrait of law enforcement in the field reveals an alarming sociological disconnection. The practice of terminating prosecution is still dominated by a transactional-formalistic approach, where the successful resolution of a case is contingent upon the financial capacity of marginalized offenders to pay restitution or peace fines to the victim.⁷ Consequently, this mechanism creates veiled impunity for the affluent while prolonging the penal snare for the impoverished. This structural failure is corroborated by data from the Directorate General of Corrections, noting that out of a total population of approximately 271,468 national inmates, the general non-special criminal group—which is consistently dominated by perpetrators of minor offenses and small-scale property crimes, such as theft due to economic duress—continues to contribute a massive portion hovering at 30%.⁸ This proves that once the cosmetic restorative process concludes, offenders are released back into the same defective socio-economic structure without any transformative rehabilitative-structural intervention.

To strengthen the analytical depth regarding this paradigm crisis, a state-of-the-art literature review over the past five years reveals a crucial academic polarization concerning the efficacy and limitations of the restorative philosophy within the criminal

⁵ “Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana (Lembaran Negara Republik Indonesia Tahun 2023 Nomor 1, Tambahan Lembaran Negara Republik Indonesia Nomor 6842)” (2023).

⁶ Rumondang Naibaho, “Kejaksaaan Selesaikan 2.080 Perkara Lewat Restorative Justice Sepanjang 2025,” Detik News, 2025, <https://news.detik.com/berita/d-8285983/kejaksaaan-selesaikan-2-080-perkara-lewat-restorative-justice-sepanjang-2025>.

⁷ Novalinda Nadya Putri and Muhammad Enaldo Hasbaj, “Legal Policy On The Implementation Of Restorative Justice Principle In The Criminal Justice System Pursuant To Supreme Court Regulation Number 1 Of 2024,” *Jurnal Rechten: Riset Hukum Dan Hak Asasi Manusia* 6, no. 1 (April 30, 2024): 1–17, <https://doi.org/10.52005/rechten.v6i1.143>.

⁸ Kementerian Imigrasi dan Pemasarakatan Republik Indonesia, “Overcrowding Lapas Menurun, Menteri Imipas Pertegas Komitmen Berantas Narkoba,” Kementerian Imigrasi dan Pemasarakatan Republik Indonesia, 2026, <https://kemenimipas.go.id/berita-utama/overcrowding-lapas-menurun-menteri-imipas-pertegas-komitmen-berantas-narkoba>.

justice system. A comprehensive study conducted by Rossner and Taylor (2024) highlights that the mainstreaming of restorative justice across various jurisdictions carries a high risk of diluting its transformative potential, as state justice systems tend to reduce the judicial process to mere administrative restitution mediation without the willingness to address the root causes of social injustice.⁹ On the other end of the discourse spectrum, Atallah and Masud (2021) provide a sharp theoretical argument asserting that without structural transformation to radically dismantle oppressive power relations and economic domination, any justice resolution approach will merely be transitional and is guaranteed to fail in preventing recidivism in the long-term trajectory.¹⁰ Within the context of Indonesia's domestic jurisdiction, which is rich in legal pluralism, Marlina and Mulyadi (2024) discovered that bottom-up legitimation through living law mechanisms in the Aceh *Gampong* customary institutions is capable of creating organic social harmony through consensus (*musyawarah mufakat*).¹¹ However, this empirical study remains confined to the specific subject of children in conflict with the law and has not explored the urgency of structural intervention for adult offenders ensnared by economic alienation. Meanwhile, Farida's (2025) study explores the adoption of restorative justice values in Law Number 1 of 2023 concerning the New Criminal Code of Indonesia; yet, the analysis remains constrained to the normative-philosophical level of legislation and has not operationally dissected how this paradigm is executed through the adjudicative authority of judges in the courtroom.¹²

Through a thematic synthesis of this contemporary literature, this manuscript identifies and demonstrates a sharp gap analysis. Prior literature possesses a blind spot by tending to treat the concepts of restorative justice and transformative justice as interchangeable instruments, or conversely, by restricting transformative discourse exclusively to the resolution of gross human rights violations and post-conflict

⁹ Meredith Rossner and Helen Taylor, "The Transformative Potential of Restorative Justice: What the Mainstream Can Learn from the Margins," *Annual Review of Criminology* 7, no. 1 (January 26, 2024): 357–81, <https://doi.org/10.1146/annurev-criminol-030421-040921>.

¹⁰ Devin G. Atallah and Hana R. Masud, "Transitional or Transformative Justice? Decolonial Enactments of Adaptation and Resilience Within Palestinian Communities," in *Resilience, Adaptive Peacebuilding and Transitional Justice* (Cambridge University Press, 2021), 234–56, <https://doi.org/10.1017/9781108919500.011>.

¹¹ Marlina and Mahmud Mulyadi, "Building Restorative Justice in Gampong as a Bottom-up Legitimation of the Protection of Children in Conflict with the Law in Indonesia: Case Study in Aceh," *Cogent Social Sciences* 10, no. 1 (December 31, 2024): 1–10, <https://doi.org/10.1080/23311886.2024.2347410>.

¹² Qurotul' Aini Septi Farida, "Transforming Criminal Justice System through Restorative Justice Approach in the New National Criminal Code," ed. A.M. Fauzi et al., *SHS Web of Conferences* 221 (September 10, 2025): 03004, <https://doi.org/10.1051/shsconf/202522103004>.

transitional justice. A doctrinal and empirical void exists regarding how the principle of transformative justice—which demands the modification of structural living conditions—can be operationally implemented by judges at the district court level when adjudicating conventional, small-scale criminal cases driven entirely by poverty (poverty-driven crime/crime of necessity). The conventional restorative approach has proven to fail in providing a safety net for marginalized offenders following the achievement of peace, thereby spawning an illusion of a superficial and unsustainable legal resolution.

Based on the identified analytical gaps, this manuscript presents an explicit assertion of legal novelty in the form of a conceptual approach termed "Transformative Judicial Discretion." This new conceptual framework deconstructs the instrument of probation in positive law, transforming it from a mere bodily execution postponement instrument into a structured social engineering mechanism that forces the presence of economic intervention and capacity building for marginalized offenders. This analysis utilizes the Liwa District Court Decision Number 80/PID.B/2024/PN Liw as a previously untouched material object, projecting an original new legal framework that marries penal sentencing guidelines with social welfare policies.

The thesis statement steadfastly maintained throughout this manuscript is that the application of restorative justice resting solely upon the procedural restoration of the victim's material losses, without being accompanied by judicial intervention addressing the root of the offender's structural poverty, constitutes a form of cosmetic formalism that reduces the essence of substantial justice. This manuscript proves that to eliminate recidivism in crimes of necessity, judges are absolutely obliged to escalate the application of Supreme Court Regulation Number 1 of 2024 into transformative decisions by imposing "special conditions" (*syarat khusus*) that empower the offender's socio-economic capacity. Thus, this manuscript offers a prescriptive solution for global criminal law reform, proving that courtroom authority must progressively evolve from a mere arena of punishment calculation into an epicenter of social transformation that actively eradicates poverty and fully restores human dignity.

2. Research Questions

Building upon the preceding background, the analytical trajectory of this manuscript will be guided and scrutinized through the following two primary research questions:

- a. How do theoretical constructs and legal doctrine articulate the paradigmatic

evolution from the illusion of restorative justice toward structural transformative justice within both national and global criminal justice ecosystems?

- b. To what extent does the legal reasoning employed by the Panel of Judges in the Liwa District Court Decision Number 80/PID.B/2024/PN Liw satisfy the criteria of transformative justice in adjudicating a theft case rooted in the determinants of structural poverty?

3. Research Methodology

This research constituted a doctrinal legal study deeply intertwined with a socio-legal analytical framework, executed to critically evaluate the application of transformative justice within the Indonesian judicial ecosystem.¹³ The methodological design deliberately eschewed conventional descriptive boundaries, opting instead for a rigorous evaluative mechanism to address the structural deficiencies of current penal adjudications concerning poverty-driven property crimes. Systematically, the methodology was anchored upon four distinct operational pillars that governed the trajectory of the investigation.

First, the investigation deployed a concurrent statutory, conceptual, and judicial case analysis approach. The statutory approach facilitated the doctrinal deconstruction of shifting penal policies and transitional regulations. Simultaneously, the conceptual approach was utilized to definitively demarcate the theoretical thresholds separating restorative mechanisms from genuine transformative justice. Furthermore, the case approach permitted a microscopic scrutiny of adjudicative behavior, specifically examining how judicial discretion navigated conflicts fundamentally rooted in structural economic inequalities.

Second, the primary legal materials were highly specified to ensure normative precision. The core statutory instruments encompassed Law Number 1 of 2023 concerning the New Criminal Code (KUHP 2023), the Indonesian Criminal Procedure Code (KUHP), and Supreme Court Regulation (PERMA) Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice. The empirical focal point was explicitly isolated to the legally binding decision of the Liwa District Court, Decision Number 80/PID.B/2024/PN Liwa, deliberately selected as a contemporary

¹³ Terry Hutchinson, "Doctrinal Research," in *Research Methods in Law* (London: Routledge, 2025), 8–38, <https://doi.org/10.4324/9781032710372-2>.

embodiment of non-custodial sentencing under the newly promulgated restorative framework.

Third, the data collection procedures were executed with strict adherence to the standards of pure scientific rigor, emphasizing absolute transparency and replicability. Data harvesting was conducted through major global academic databases, specifically prioritizing Scopus, Westlaw, and LexisNexis, alongside the official Supreme Court Decision Directory of Indonesia (*Direktori Putusan Mahkamah Agung*). To guarantee the contemporaneity of the theoretical state of the art, the inclusion criteria strictly mandated the integration of peer-reviewed journal articles published between 2020 and 2026. The search syntax utilized Boolean operators with targeted keywords, including "transformative justice," "poverty-driven crime," "judicial discretion," and "restorative sentencing." Conversely, the exclusion criteria systematically eliminated literature focusing exclusively on post-war transitional tribunals or international human rights atrocities, thereby preserving a concentrated analytical focus on domestic adjudicative mechanisms for ordinary criminal offenses.

Fourth, qualitative legal content analysis operated as the primary analytical tool to dissect the compiled legal data. The examination of statutory texts transcended mere textual reporting; it utilized systemic and teleological interpretation methods to uncover the underlying legislative intent and the broader social purpose inherent within the transitional laws. Furthermore, the adjudicative reasoning embedded within the court decision was meticulously dissected using the IRAC (Issue, Rule, Application, Conclusion) analytical pattern.¹⁴ A deductive syllogism was systematically applied, utilizing the theoretical indicators of transformative justice—specifically those emphasizing structural intervention, poverty alleviation, and community empowerment—as the major premise to rigorously test the legal facts and judicial considerations operating as the minor premise. Through this detailed and operationalized methodology, the ensuing legal conclusions were forged upon a foundation of internationally accountable, valid, and robust argumentation.

¹⁴ Ridwan Arifin et al., "Improving Law Student Ability on Legal Writing through Critical and Logical Thinking by IRAC Method," *Indonesian Journal of Advocacy and Legal Services* 1, no. 1 (September 15, 2019): 107–28, <https://doi.org/10.15294/ijals.v1i1.22799>.

B. DISCUSSION

1. Deconstruction of Restorative Justice and the Urgency of a Structural Transformative Approach

The debate regarding the objectives of sentencing within the global criminal justice architecture has transcended the traditional dichotomy between legal certainty and utility, moving toward a dialectic on how the law must precisely respond to the root causalities of crime. Historically and ontologically, retributive justice has dominated the foundation of the judicial system, relying upon the doctrine of *lex talionis*. Farida (2025) explicates that this approach perceives crime solely as an act against state sovereignty and a violation of statutory texts, wherein the rationality of its resolution is reduced to proportional physical suffering through the deprivation of liberty.¹⁵ However, within the context of small-scale property crimes motivated by economic duress, imprisonment has proven to be a highly irrational response. Incarceration forcibly severs the offender's economic function as a breadwinner, inflicts permanent social stigma, and injects a massive fiscal burden onto the state without resolving the fundamental conflict between the offender and the victim.

Marlina and Mulyadi (2024) elucidate that the bankruptcy of this retributive rationality birthed restorative justice as the dominant alternative paradigm. Restorative justice shifts the ontology of crime from an offense against the state to a violation against individuals and interpersonal relations.¹⁶ Its ultimate objective is the achievement of *restitutio in integrum* or *status quo ante*, namely restoring social harmony and the positions of the parties to the exact state immediately preceding the crime through mediation and restitution mechanisms. Although it successfully humanizes the dispute resolution process, the doctrinal limitations of restorative justice have begun to sharply unravel. In critical criminological analysis, returning the offender to the *status quo ante* constitutes a fatal fallacy if that "original" situation was the nadir of poverty and starvation. Restoration in this context inherently preserves a broken structure; it returns a starving perpetrator of theft into a starving individual, merely awaiting the inevitable moment to commit recidivism.

¹⁵ Farida, "Transforming Criminal Justice System through Restorative Justice Approach in the New National Criminal Code."

¹⁶ Marlina and Mulyadi, "Building Restorative Justice in Gampong as a Bottom-up Legitimation of the Protection of Children in Conflict with the Law in Indonesia: Case Study in Aceh."

It is at this impasse that the concept of Transformative Justice cements its position as the final evolution of the progressive penal paradigm. Borrowing the conception of Bambang Waluyo (2020), transformative justice does not operate merely as a mechanical method of dispute resolution, but is instead reconstructed as a "Way of Life" oriented toward achieving a just society.¹⁷ Comprehensively, Evans (2022) as well as Atallah and Masud (2021) legitimize that transformative justice transcends mere "forgiveness"; it is an instrument of deconstruction that actively intervenes in macro criminogenic factors—such as wealth distribution inequality, lack of educational access, and structural unemployment—which compel individuals to commit crimes.^{18,19} Consequently, the law is transformed into an instrument of empowerment. To provide structural clarity regarding the tripartite evolution of this paradigm, an analytical comparison is precisely presented in Table 1 below.

Table 1. Comparative Anatomy of Justice Paradigms in the Criminal Justice System

Epistemological Dimension	Retributive Justice (Orthodox)	Restorative Justice (Transitional)	Transformative Justice (Progressive)
Ontology of Crime	Direct violation against absolute state authority and positive law.	Interpersonal conflict resulting in material/immaterial harm to the victim.	Symptom of structural dysfunction and concrete manifestation of economic injustice.
Teleological Orientation	Vengeance (retribution) and infliction of suffering through incarceration.	<i>Status quo ante</i> (Restoration of the victim's rights and repair of harmony to its original state).	Altering the structural causality of crime to empower offenders and suppress recidivism.
Scope of Legal Intervention	Exclusive to the individual offender (as the object of suffering).	Relational-Micro (Private reconciliation among the Offender, Victim, and Community).	Systemic-Macro (Intervention in social conditions, economic access, and vocational capacity building).
Judicial Sanction Manifestation	Effective deprivation of liberty (prison/confinement).	Termination of prosecution or lenient	Probation specifically designed with empowering "Special

¹⁷ Bambang Waluyo, *Penyelesaian Perkara Pidana: Penerapan Keadilan Restoratif Dan Transformatif* (Jakarta: Sinar Grafika, 2020). Page, 30.

¹⁸ Matthew Evans, *Beyond Transitional Justice* (London: Routledge, 2022), Page ,73. <https://doi.org/10.4324/9781003169451>.

¹⁹ Atallah and Masud, "Transitional or Transformative Justice? Decolonial Enactments of Adaptation and Resilience Within Palestinian Communities."

		sentences based on restitution agreements.	Conditions" (e.g., vocational training).
Position of the State	Sole prosecutor (<i>dominus litis</i>) and executor of legitimate violence.	Passive facilitator in the mediation process and recorder of peace agreements.	Active agent of social engineering providing rehabilitation infrastructure and economic safety nets.

Table 1 explicitly demonstrates that transformative justice demands a total overhaul of how the justice system responds to crimes of poverty. Without the injection of transformative elements, restorative justice will merely reduce courts to private debt-settlement bureaus, neglecting the state's responsibility to resolve the social pathologies that produce criminal offenders.

2. Juridical Deconstruction of National Criminal Law Reform: The Ambivalence Between the 2023 Criminal Code and Supreme Court Regulation 1/2024

The theoretical construct of transformative justice has found its historical momentum through the ratification of Law Number 1 of 2023 concerning the New Criminal Code (KUHP), which represents a radical departure from colonial positivism (*Wetboek van Strafrecht*). Through a conceptual and statutory approach, an analysis of Article 51 and Article 54 of the KUHP reveals a teleological shift in sentencing. Article 51 delegates an absolute mandate that sentencing is no longer dedicated to inflicting suffering upon human dignity, but rather to "resolving conflicts," "restoring equilibrium," and most crucially for the transformative dimension, "reintegrating the convict into society by providing coaching and guidance to become a good and useful person." The existence of this norm legally legitimizes the judge's function as an architect of social change. Furthermore, Article 54 paragraph (1) letter (d) of the KUHP imposes an imperative obligation upon judges to consider the "life history and socio-economic conditions" of the perpetrator when imposing sanctions, constituting the most fundamental legal foundation for implementing transformative justice rooted in structural poverty alleviation.

As a transitional regulation filling the normative vacuum (*vacuum of norm*) before the New Criminal Code takes full effect, the Supreme Court promulgated Supreme Court Regulation (PERMA) Number 1 of 2024 concerning Guidelines for Adjudicating Criminal

Cases Based on Restorative Justice.²⁰ This PERMA operates as a progressive operational instrument; however, meticulous analytical dissection uncovers an ambivalence between the objective of procedural restoration and the failure of substantive transformation. Article 6 of the PERMA establishes broad inclusive criteria, permitting restorative resolutions for criminal offenses carrying a maximum penalty of five years imprisonment (such as petty theft), with strict exclusions for recidivists and cases involving asymmetric power relations. Statistically, these criteria are highly relevant for filtering out marginalized offenders (*wong cilik*) to spare them from the snare of incarceration.

Nevertheless, the critical failure of PERMA 1/2024 lies in the operationalization of sanctions during the adjudicative phase. Pursuant to its provisions, a peace agreement serves as the primary basis for judges to deviate from imprisonment and instead impose probation (*voorwaardelijke veroordeling*) by stipulating general or specific conditions. Within the Indonesian legal architecture, a general condition is merely a passive prohibition (not reoffending), whereas a specific condition is an active directive, such as undertaking certain rehabilitative measures as mandated by Article 76 of Law Number 1 of 2023 concerning the KUHP. The normative design of PERMA 1/2024 tends to direct judges to be satisfied with imposing merely general conditions, provided that financial restitution has been paid by the offender. This construction gravely risks diminishing the transformative value, engendering a class bias wherein freedom from prison is reduced to a mere transactional commodity. Perpetrators from the middle and upper social classes can easily restore the situation through the payment of compensation, while absolutely impoverished offenders are confronted with a restorative deadlock. This domestic jurisdictional flaw mirrors a broader global pathology; as articulated by Rossner and Taylor (2024), the mainstreaming of restorative justice frequently dilutes its emancipatory potential, reducing the judicial process to an administrative restitution mechanism that is blind to underlying social inequalities.²¹ Consequently, the absence of an explicit mandate within the PERMA to utilize specific conditions as an instrument for poverty intervention proves that current judicial policy remains fixated on the illusion of mechanical restoration, failing to penetrate the dimension of structural engineering

²⁰ Indonesia, "Peraturan Mahkamah Agung Nomor 1 Tahun 2024 Tentang Pedoman Mengadili Perkara Pidana Berdasarkan Keadilan Restoratif," 2024, <https://jdih.komisiyudisial.go.id/produk-hukum-peraturan/peraturan-mahkamah-agung-nomor-1-tahun-2024-tentang-pedoman-mengadili-perkara-pidana-berdasarkan-keadilan-restoratif/393>.

²¹ Rossner and Taylor, "The Transformative Potential of Restorative Justice: What the Mainstream Can Learn from the Margins."

required to dismantle the poverty-crime nexus universally.

3. IRAC Analysis of Decision Number 80/PID.B/2024/PN Liwa: Anatomy of a Crime of Necessity

To examine the validity and precision of the law in operation within the courtroom, this manuscript dissects the Liwa District Court Decision Number 80/PID.B/2024/PN Liwa,²² using the IRAC (Issue, Rule, Application, Conclusion) analytical framework.²³ This analytical approach uncovers how judicial discretion executes ambivalent norms when confronting the reality of extreme poverty.

Issue (Dominant Legal Issue): The legal issue dissected in the *a quo* case is: Can a property crime committed by a young offender with the rationality of fulfilling subsistence economic needs (survival strategy) be declared resolved and equitable solely through procedural financial restitution and the imposition of passive probation, or does the law mandate the presence of transformative judicial intervention capable of altering the structure of the offender's economic vulnerability to break the chain of recidivism?

Rule (Applicable Legal Doctrine): The material rule indicted is Article 362 of the KUHP concerning ordinary theft. In formal-operational terms, this case is governed by the alternative instrument of conditional sentencing (*voorwaardelijke veroordeling* or probation) as stipulated in Article 75 and Article 76 of Law Number 1 of 2023 concerning the KUHP, *juncto* Article 6 and Article 19 of PERMA Number 1 of 2024. This instrument legitimizes the deviation from bodily imprisonment for non-recidivist defendants who successfully reach a peace agreement and restore the victim's rights without the coercion of power relations.

Application (Application of Law to Empirical Facts): The deconstruction of trial facts reveals a highly crucial sociological profile of the defendant. The defendant, Andre Ansah (19 years old), is a farmer who seized a mobile phone belonging to the victim, with an estimated loss valuation of IDR 3,000,000.00. The device was not accumulated as wealth but was rapidly liquidated for IDR 900,000.00. The trial facts explicitly proved, and it was acknowledged by the judge, that the money was utilized entirely "to fulfill daily needs." From a critical criminological perspective, this specific motive transforms the object of the case from a greed-driven crime into a crime of necessity birthed by structural

²² PN Liwa, "Putusan Pengadilan Negeri Liwa Nomor 80/PID.B/2024/PN Liwa," 2024.

²³ Arifin et al., "Improving Law Student Ability on Legal Writing through Critical and Logical Thinking by IRAC Method."

inequality, further reaffirming that macroeconomic factors fundamentally compel such offenses.²⁴

Procedurally, the defendant successfully met the gold standard of restorative justice: he returned the remaining evidence, paid restitution amounting to IDR 1,000,000.00, and obtained unconditional forgiveness from the victim through a written agreement. The Panel of Judges, by activating their progressive discretion via PERMA 1/2024, totally set aside the Public Prosecutor's demand for 10 months of incarceration. The judge imposed a sentence of 5 (five) months of imprisonment which did not need to be served, establishing a probationary period of 10 (ten) months (conditional sentence). The judge constructed the legal reasoning (*ratio decidendi*) that bodily imprisonment no longer possessed significance, as the preventive detention period was deemed to have injected a shock therapy effect, and the equilibrium of social harmony had verifiably been restored.

Nevertheless, the fundamental weakness in this application of the law lies in the formulation of the probationary conditions. The Panel of Judges exclusively enforced a passive "General Condition," namely the prohibition of criminal repetition. The judge entirely neglected their authority to impose "Specific Conditions" accommodated by Article 76 of Law No. 1/2023. The defendant was neither obliged to participate in modern agricultural skills training, nor required to engage in local government poverty alleviation programs or continuous vocational guidance by the Correctional Board (*Bapas*).

Conclusion (Analytical Conclusion of the Decision): The deductive syllogism drawn from this IRAC analysis yields a sharp empirical conclusion: The Liwa District Court Decision represents an absolute restorative victory, yet simultaneously an absolute transformative failure. The Panel of Judges acted humanistically by shattering the orthodoxy of prisonization and restoring the victim's absolute losses. However, the absence of a structural diagnosis and the lack of economic intervention in the *dictum* of the ruling caused the court to legalistically release the defendant back into the agrarian poverty trap, identical to the situation before the crime occurred. As Atallah and Masud (2021) theorized, without structural interventions to dismantle the root of the problem, such resolutions merely spawn transitional illusions that are guaranteed to fail in

²⁴ Evans, *Beyond Transitional Justice*. Page, 73.

mitigating long-term recidivism.²⁵ This decision thus uncovers the illusion of a conditional sentence that has lost its spirit of social engineering. To precisely and objectively map the accuracy of this analysis, the transformative justice evaluation metrics are presented in Table 2.

**Table 2. Evaluation of Transformative Justice Indicators in the Liwa District Court
 Decision No. 80/PID.B/2024**

Transformative Justice Parameter (Bambang Waluyo & Modern Theory)	Empirical Facts in the Judge's Ratio Decidendi	Transformative Achievement Status
Root Cause Diagnosis	The judge noted the confession of the theft motive based on "daily needs," but failed to construct it as a structural issue obligating state intervention.	Failed/Partial
Restitution of Harm	The victim's property rights were restituted (payment of IDR 1 million and physical return of the mobile phone), and interpersonal relations were restored through a peace agreement.	Optimally Achieved (Restorative)
Legal Intervention Design (Empowerment-Based Sanctions)	Probation was only equipped with a "General Condition" (passive: prohibition of committing crimes). There was no exploitation of "Specific Conditions" of an educative or vocational nature.	Absolute Failure
Cross-Sectoral Institutional Synergy	There was no mandate involving executive organs (Social Services / Vocational Training Center) in the <i>dictum</i> to oversee post-decision economic rehabilitation.	Absolute Failure
Long-Term Recidivism Mitigation Projection	Prevention is entirely gambled on the psychological effect of the fear of imprisonment, unaccompanied by improvements in the defendant's real economic defense capabilities.	Failed (Vulnerable to Recidivism)

4. Structural Inequities and the Urgency of Global Transformative Judicial Activism

The analysis of the failed transformative achievements in the aforementioned adjudicative decision explicitly unveils a fundamental flaw in the contemporary paradigm of judicial discretion. The employment of conditional sentencing mechanisms without the

²⁵ Atallah and Masud, "Transitional or Transformative Justice? Decolonial Enactments of Adaptation and Resilience Within Palestinian Communities."

injection of empowering specific conditions has reduced the majesty of this legal instrument into a mere "cosmetic formality" that facilitates administrative convenience in closing cases. Adinoff and Reiman (2019) firmly and universally confirm the undeniable causal nexus between persistent poverty, the absence of vocational skills, and the high probability of recidivism in property crimes (*the poverty-crime nexus*).²⁶ Former convicts or correctional clients on probation, who are returned to an economically deficient environment without any skill enhancement, possess a fatal tendency to reoffend; not because they harbor a pathological criminal intent (*mens rea*), but rather as an adaptive rationality of necessity to survive.

The analytical findings of this decision radically confront and refine the burgeoning literary discourse. Doctrinally, these findings strongly confirm the critical postulate of Atallah and Masud (2021), declaring that without efforts to dismantle discriminatory systems—in this context, the economic distribution system marginalizing agrarian youth—restorative law is merely an artificial adaptation mechanism proven to fail in eradicating the roots of sociological suffering. The court, in this context, unwittingly acts as a perpetuator of the cycle of inequality.²⁷ Furthermore, this analysis extends the contemporary study by Rossner and Taylor (2024) regarding the dysfunction of mainstreaming restorative justice.²⁸ Their thesis, initially focused on developed jurisdictions, is now expanded in its application to the Global South. The analysis of the Liwa District Court Decision empirically proves how the hasty institutionalization of restorative justice via PERMA 1/2024 has driven the judicial bureaucracy to prioritize statistical achievements of peace and decarceration (through simple general conditions), while sacrificing the more complex yet substantive transformative judicial involvement (through empowering specific conditions). It is at this juncture that national law experiences the illusion of success: ostensibly succeeding in saving offenders from behind bars, while in reality, merely postponing their inevitable relapse. Without a methodological shift from passive to active conditions, the implementation of the PERMA will only amplify a sharp class bias, wherein legal resolution is accessible through the

²⁶ Bryon Adinoff and Amanda Reiman, "Implementing Social Justice in the Transition from Illicit to Legal Cannabis," *The American Journal of Drug and Alcohol Abuse* 45, no. 6 (November 2, 2019): 673–88, <https://doi.org/10.1080/00952990.2019.1674862>.

²⁷ Atallah and Masud, "Transitional or Transformative Justice? Decolonial Enactments of Adaptation and Resilience Within Palestinian Communities."

²⁸ Rossner and Taylor, "The Transformative Potential of Restorative Justice: What the Mainstream Can Learn from the Margins."

financial capacity to pay restitution, yet capacity building remains untouched by the hands of justice.

The contextualization of transformative failure in local Indonesian district courts, as depicted in the Liwa District Court case, must absolutely be elevated from a mere "domestic jurisdictional trap" into a global legal discourse and lesson learned. The phenomenon of theft by survival and the deficiency of judicial intervention are not exclusive pathologies monopolizing developing nations. This constitutes a universal challenge regarding how the pillar of judicial power in a democratic rule of law (*Rechtsstaat*) can concretely manifest distributive justice amidst the brutality of global capital inequality. The doctrinal shift from restorative toward transformative justice resonates directly with the universal Human Rights architectural framework, holding a central position in achieving the Sustainable Development Goals (SDGs). Pro-transformative judicial sentencing practices simultaneously execute the integration of SDG 16 (Peace, Justice, and Strong Institutions) with SDG 1 (No Poverty).

The international judicial and academic communities are obligated to respond to these empirical findings by deconstructing the rigid orthodoxy of judicial power. For centuries, judges have hidden behind the shield of orthodox *Trias Politica* interpretation, arguing that the provision of employment and poverty alleviation is the sole jurisdiction of the executive branch, while judges are merely authorized to review statutory texts and calculate penal prescriptions. The original argument logically proven through this manuscript is that judges possess valid legal instruments to hack through this dividing wall via "Transformative Judicial Activism." Through the instrument design of "probation with specific conditions," judges wield absolute authority to co-opt executive organs—such as Vocational Training Centers, Social Services, or customary community institutions—into the court's *dictum*, thereby forcing the state's presence in rehabilitating the economic capacity of impoverished citizens cornered into crimes of necessity. Saving individuals from the deprivation of liberty through a piece of settlement paper is a marginal victory for judicial procedure; however, reconstructing the courtroom as a social engineering clinic that equips subjugated individuals with the instruments to liberate themselves from poverty is the true essence of progressive legal civilization. The transformation of the global penal system will never touch the essence of its substantial justice if it is only adept at erasing past punishments but reluctant to structure the offender's welfare for the future.

C. CONCLUSION

The contemporary criminal justice system must fundamentally evolve from the procedural illusion of restorative justice, which merely reinstates a damaged *status quo ante*, toward a structural transformative paradigm that actively dismantles the criminogenic roots of poverty. Although the 2023 National Criminal Code and Supreme Court Regulation Number 1 of 2024 provide a progressive foundation for non-custodial sentencing, the legal reasoning in the Liwa District Court Decision Number 80/PID.B/2024 demonstrates a total transformative failure by exclusively imposing passive general conditions. The absence of empowering "specific conditions," such as mandatory vocational training or cross-sectoral social intervention, reduces probation to a mere judicial cosmetic that legalistically releases marginalized offenders back into the precise agrarian poverty trap that catalyzed their crimes of necessity. Consequently, to mitigate long-term recidivism and break the systemic cycle of inequality, this manuscript prescribes "Transformative Judicial Activism," urging global and national judiciaries to mandate economic empowerment and social rehabilitation as an imperative component of criminal sentencing.

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