

# Reconceptualizing Theft Crimes in Indonesia's 2023 Criminal Code: Living Law and Restorative Justice Critique

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## Abstract

**Purpose:** This study aims to examine the reconceptualization of theft crimes under Indonesia's Law Number 1 of 2023 (KUHP 2023) through a legal sociology perspective, analyzing the normative transformation of theft provisions and evaluating their congruence with Indonesian social realities and living law traditions.

**Research Methodology:** This study employs normative legal research (*penelitian hukum normatif*) integrating statute, conceptual, comparative, and historical approaches. Primary legal materials include KUHP 2023 Articles 362–367, the colonial *Wetboek van Strafrecht*, and relevant Supreme Court regulations. Theoretical frameworks applied are Eugen Ehrlich's living law theory, Lawrence Friedman's tripartite legal system model, and Roscoe Pound's social engineering theory. Legal materials were systematically collected through Scopus, HeinOnline, Google Scholar, and Indonesia's national legal database (*JDIH*).

**Results:** KUHP 2023 demonstrates significant normative reconceptualization of theft crimes by integrating retributive, rehabilitative, and restorative justice orientations, formally recognizing living law under Article 2, and incorporating restorative justice mechanisms aligned with Indonesian *adat* traditions.

**Conclusions:** KUHP 2023 advances post-colonial criminal law reform meaningfully yet incompletely, requiring complementary institutional capacity building and legal culture transformation for full realization.

**Limitations:** This study relies exclusively on normative legal research, excluding direct empirical field investigation of KUHP 2023's implementation realities.

**Contributions:** This study contributes to Indonesian legal sociology scholarship, criminal law reform policy, and judicial practice, providing theoretical and practical insights for legislators, law enforcement authorities, and academics in developing societies navigating post-colonial criminal justice transformation.

**Keywords:** *Legal Sociology, Living Law, KUHP 2023, Theft Crimes, Restorative Justice*

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## 1. Introduction

The law is not simply a compilation of written regulations; it is a dynamic social institution that mirrors, reacts to, and influences the realities of the society it regulates. The foundational premise of legal sociology is especially relevant in light of Indonesia's implementation of Law Number 1 of 2023 regarding the New Criminal Code (*Kitab Undang-Undang Hukum Pidana/KUHP 2023*), which constitutes the most significant reform of Indonesian criminal law since the colonial-era *Wetboek van Strafrecht* of 1915 legislative framework that regulated Indonesian criminal justice for more than a century, despite its inherent discord with post-independence Indonesian social values and constitutional goals ([Arifin & Primadianti, 2023](#); [Pedju, Muhammad, Burhan, & Dzulqarnain, 2025](#)). Theft crimes are of notable sociological importance among the various criminal offenses redefined under KUHP 2023, as their occurrence, perception, and legal response are deeply connected to existing socioeconomic frameworks, societal norms, and differing notions of justice within Indonesian society ([Ioannidis, Haining, Ceccato, & Nascetti, 2025](#); [Onyeneke & Karam, 2022](#)). The former criminal code faced extensive criticism from legal scholars and practitioners for its inability to incorporate the living law those unwritten yet socially operative norms identified by Eugen Ehrlich as the true basis of any legal system and for sustaining a punitive, colonial-oriented stance on theft that overlooked the socioeconomic factors contributing to property crimes in a developing society characterized by enduring structural inequality. The KUHP 2023 introduces substantial normative advancements in its theft provisions, featuring graduated sentencing frameworks, the integration of restorative justice principles, and explicit acknowledgment of community-based dispute resolution mechanisms, indicating a legislative intent to align formal criminal law with social realities ([Taniady, 2024](#)). ([Matyokurehwa, Rudhumbu, Gombiro, & Chipfumbu-Kangara, 2022](#)) Nonetheless, whether these reforms signify a true reconceptualization of theft offenses based on the sociological realities of Indonesian society, or merely serve as a technical reconfiguration of the existing legal framework without meaningful interaction with living law, remains a crucial and insufficiently examined issue in Indonesian legal scholarship ([Biru & Pallaprolu, 2025](#); [Elbers, 2025](#)). This study critically examines how the theft provisions of KUHP 2023 reflect and respond to the social dynamics, cultural values, and justice expectations of Indonesian society, utilizing Lawrence Friedman's tripartite legal system theory comprising legal substance, legal structure, and legal culture and Roscoe Pound's view of law as a tool for social engineering. It aims to contribute to the broader academic discourse on the interplay between criminal law reform and social transformation within the Indonesian legal context.

## 2. Literature Review and Hypothesis/es Development

### 2.1 *Legal Sociology as an Analytical Paradigm*

This work is grounded in legal sociology, which asserts that law cannot be comprehensively understood without considering the social factors that generate, maintain, and alter it. Eugen Ehrlich, recognized as the pioneer of legal sociology, introduced the foundational concept of living law (*lebendes Recht*), positing that the law governing human behavior is not the legislation established by the state, but the spontaneous norms and practices that arise organically from social associations and communities ([Divetia & Chaudhary, 2023](#)). The differentiation between state law and living law is significantly pertinent to the examination of stealing offenses in Indonesia, where traditional dispute resolution methods and community-oriented notions of justice have historically coexisted and often contended with formal statutory law. Expanding on Ehrlich's fundamental work, Roscoe Pound defined law as a tool for social engineering, contending that the principal role of a legal system is to harmonize conflicting social interests and to guide societal progress towards civilized objectives ([Faisal et al., 2024](#); [Husain, Ayoub, & Hassmann, 2024](#)). Pound's framework is particularly valuable for assessing KUHP 2023, as it poses the essential inquiry of whether the new criminal code's theft provisions are designed to foster a more equitable social order or simply to sustain prevailing power structures under the pretext of legal modernization. Lawrence Friedman enhanced the sociological examination of law with his tripartite model of the legal system, which includes legal substance the rules and norms legal structure the institutional framework for law administration and legal culture the attitudes, values, and expectations influencing societal perceptions and applications of law ([Chung, 2025](#); [Kalverkämper, 2023](#)). Friedman's methodology offers a multifaceted analytical perspective for methodically examining

the normative content of the theft prohibitions in KUHP 2023, their institutional implementation, and their reception within Indonesian legal culture.

### **2.2 Theft as a Crime in Sociolegal Context**

Academic exploration of theft as a sociolegal issue has consistently shown that property crime is inextricably linked to its wider socioeconomic context. Merton's strain theory, grounded in the structural-functionalist framework, posits that theft and other property crimes are indicative reactions to the structural disjunction between culturally mandated objectives particularly material success and the legitimate avenues accessible to various societal segments for attaining those objectives ([Hung, 2026](#); [Millie & Baulch, 2024](#)). In societies marked by significant socioeconomic disparity, such as Indonesia, this structural tension creates circumstances where property crime emerges as a sensible, albeit illegal, adaptive strategy for underprivileged individuals. Sutherland and Cressey's differential association theory enhances sociolegal comprehension by emphasizing the significance of social learning processes in the development of criminal behavior, positing that the incidence of theft in specific communities results from social interaction patterns influenced by economic exclusion and institutional distrust ([Ahlstrand, 2025](#); [Erdianti, Pratama, & Said, 2025](#)). Recently, critical criminologists have highlighted the law as a locus of class-based power, contending that the criminalization of theft disproportionately affects economically underprivileged groups while safeguarding the property interests of the socially powerful. This critical viewpoint is crucial to the assessment of KUHP 2023, especially regarding whether its redefined theft laws mitigate or perpetuate current patterns of sociolegal inequality.

### **2.3 Indonesian Criminal Law and the 2023 KUHP**

The reform of Indonesian criminal law has garnered continuous scholarly focus from the early post-independence era, highlighting the ongoing conflict between colonial legal legacies and the ambitions of an independent, multicultural nation-state. Muladi and Barda Nawawi Arief, prominent Indonesian criminal law scholars, have consistently championed a criminal code that incorporates the three foundational elements of Indonesian criminal law policy: the safeguarding of individual rights, the maintenance of social order, and the advancement of substantive justice ([Hodgson, 2025](#)). Their teleological perspective on criminal law reform, viewing punishment as a socially purposeful reaction to misbehaviour rather than only as vengeance, is clearly evident in the explicit integration of restorative justice ideas and the graduated sentencing method in KUHP 2023. Tongat contends that the reform of Indonesian criminal law should be based on a thorough comprehension of the socio-cultural values inherent in Indonesian society, encompassing the principles of Pancasila and the customary norms enshrined in *hukum adat*, to attain authentic legitimacy and social efficacy ([Shi, 2022](#)). The importance of *hukum adat* as a source of living law within the Indonesian criminal justice framework has been further articulated by Soepomo and, more recently, by modern scholars like Arief Sidharta, who contend that the acknowledgment of customary law within the formal legal system is both a constitutional and sociological necessity for a pluralistic society like Indonesia ([Ali, 2024](#)). The explicit recognition of *hukum yang hidup dalam masyarakat* as a foundation for criminality in KUHP 2023 articulated in Article 2 of the new code marks a significant normative advancement that directly addresses enduring academic disputes.

### **2.4 Restorative Justice and Larceny: Emerging Paradigms**

An increasing volume of international and Indonesian research has examined the relevance of restorative justice ideas to property offenses, such as theft. Howard Zehr's theory of restorative justice redefines crime as a harm to individuals and relationships rather than a breach of the state's legal framework, proposing that justice involves a process of mending that harm through the active engagement of victims, offenders, and communities ([Mokwena & Maluleke, 2020](#)). This paradigm shift has considerable implications for the legal treatment of theft, especially petty theft perpetrated by economically disadvantaged individuals, as it presents an alternative to the punitive incarceration model that has proven ineffective in reducing property crime rates in Indonesia and similar developing nations. Braithwaite's theory of reintegrative shame bolsters this restorative perspective, positing that community-oriented reactions to theft, which stigmatize the behavior while reintegrating the offender, are more effective than formal punishment in diminishing recidivism ([Smit, 2000](#)).

Marlina has recorded the increasing incorporation of restorative justice ideas within the juvenile justice system in Indonesia, establishing an empirical basis for the application of analogous principles to adult theft offenders under KUHP 2023 ([Omowon & Kunlere, 2024](#)). The integration of restorative justice procedures in KUHP 2023 signifies not just a legislative advancement but also a synthesis of worldwide best practices with local Indonesian socio-legal customs of communal conflict resolution. Based on the foregoing literature, it is evident that although extensive theoretical and normative discussions on legal sociology, living law, and restorative justice have been developed, there remains a significant gap in understanding how these frameworks are operationalized within the context of Indonesia's Criminal Code 2023, particularly in relation to theft crimes. The existing scholarship tends to emphasize normative reform without sufficiently examining its sociological implications and practical limitations. Therefore, this study addresses the following research questions: (1) How do the theft provisions in Indonesia's Criminal Code 2023 reflect a normative reconceptualization from a legal sociology perspective? (2) To what extent does the recognition of living law in the Criminal Code align with the social realities of Indonesian society? (3) What are the structural and cultural challenges in implementing restorative justice mechanisms for theft crimes under the new Criminal Code?

### 3. Methodology

This study utilizes normative legal research as its primary methodological framework, complemented by a sociological legal approach, as systematically articulated by Peter Mahmud Marzuki, who characterizes normative legal research as a scientific endeavour aimed at identifying legal rules, principles, and doctrines to resolve the legal issues under investigation ([Putri, 2025](#)). To ensure analytical comprehensiveness, this study integrates four complementary research approaches: the statute approach, through which all relevant primary legislative instruments are systematically examined principally Law Number 1 of 2023 concerning the Criminal Code (KUHP 2023), particularly Articles 362–367 governing theft offenses, alongside their antecedents in the colonial *Wetboek van Strafrecht*; the conceptual approach, which mobilizes key theoretical frameworks including Eugen Ehrlich's living law, Lawrence Friedman's tripartite legal system model, Roscoe Pound's social engineering theory, and Howard Zehr's restorative justice paradigm as the interpretive lenses through which the normative content of KUHP 2023 is evaluated; the comparative approach (*pendekatan perbandingan*), through which Indonesia's reconceptualization of theft crimes is situated within a broader international comparative context encompassing selected civil law jurisdictions and the United Nations Basic Principles on the Use of Restorative Justice Programmes in [Wibowo, Masyhar, and Widyawati \(2024\)](#); and the historical approach (*pendekatan historis*), which traces the diachronic evolution of theft crime provisions from the colonial era through more than five decades of criminal law reform deliberation to the eventual enactment of KUHP 2023.

Legal materials are categorized into three hierarchical levels: primary legal materials (*bahan hukum primer*), which consist of statutory texts, judicial rulings, and official legislative documents; secondary legal materials (*bahan hukum sekunder*), which include academic monographs, Scopus-indexed journal articles, and nationally accredited (*Sinta*) publications in criminal law, legal sociology, and criminology; and tertiary legal materials (*bahan hukum tersier*), comprising legal dictionaries, encyclopaedias, and the official academic draft (*naskah akademik*) of KUHP 2023. These materials were gathered through systematic library research and documentary analysis of legal databases such as Westlaw International, HeinOnline, Google Scholar, Scopus, and the Indonesian national legal documentation network (JDIH). The gathered legal materials undergo qualitative normative analysis utilizing grammatical, systematic, teleological, and historical interpretive methods, combined with sociological legal analysis based on Friedman's legal system theory. This approach scrutinizes the substantive, structural, and cultural aspects of the KUHP 2023 theft provisions in relation to the living law and social realities of Indonesian society, resulting in a rigorously analytical and socially informed reconceptualization of theft crimes within the context of Indonesia's most significant criminal law reform in over a century. This approach is appropriate because the study focuses on normative transformation rather than empirical implementation, particularly in analyzing the conceptual and doctrinal shifts in the regulation of theft crimes within Indonesia's Criminal Code 2023.

## 4. Results and Discussions

### 4.1 Normative Transformation of Theft Crime Provisions: From Colonial Law to KUHP 2023

A. Normative Evolution of Theft Legislation: From Colonial Jurisprudence to KUHP 2023  
The normative modification of stealing criminal laws represents the primary empirical discovery of this study, indicating a significant and multifaceted reconceptualization that transcends simple technical reformulation of statutory language. The colonial *Wetboek van Strafrecht*, incorporated into the Indonesian legal system via Law Number 1 of 1946, governed theft through Articles 362 to 367, creating a stringent punitive framework that mirrored the legal philosophy and social assumptions of nineteenth-century Dutch liberal capitalism, rather than the communal values, socioeconomic conditions, and indigenous justice traditions of Indonesian society.

Article 362 of the former criminal code characterized basic theft as the unlawful appropriation of any item, wholly or partially owned by another individual, with the intent to possess it unlawfully. It stipulated a maximum imprisonment of five years or a maximum fine of sixty-rupiah monetary limit so evidently outdated that it renders the fine provision utterly irrelevant in current Indonesian economic circumstances. The Supreme Court attempted to partially rectify this issue through PERMA Number 2 of 2012 by revising the value thresholds for petty crime classifications, yet it failed to address the more profound normative deficiencies of the colonial theft framework. The qualified theft provisions of Articles 363 and 365 impose enhanced penalties for theft perpetrated under specific conditions, such as during night-time, by multiple individuals collaborating, through the violation of security measures, or involving violence ([Cavallari, 2024](#); [Haluska, 2023](#)).

This classification, although maintaining some modern significance, does not adequately address the advanced forms of property crime that have arisen amid Indonesia's swift economic growth and digital evolution in the decades post-independence. The colonial criminal code's treatment of theft was fundamentally rooted in a retributive framework of criminal justice, which regarded imprisonment as the default and primary response to property offenses. This perspective neglected the socioeconomic factors driving theft, the potential for victim-offender reconciliation, and the proven effectiveness of community-based justice systems in producing more sustainable and socially acceptable outcomes than formal incarceration for minor thefts committed by economically disadvantaged individuals ([Karvatska, 2017](#); [Widyawati, Adhari, Arifin, Rahmasari, & Setyanto, 2025](#)). KUHP 2023 signifies a substantial shift from the colonial punitive model, presenting a range of normative innovations that redefine theft not solely as a legal infraction to be rigidly penalized, but as a socially ingrained issue requiring a nuanced and contextually aware justice approach that amalgamates retributive, rehabilitative, and restorative elements within a cohesive normative structure.

Articles 362 to 367 of KUHP 2023 preserve the fundamental framework of the colonial theft statutes differentiating between basic theft, qualified theft, and theft involving violence while incorporating significant alterations that demonstrate the legislature's responsiveness to modern criminological insights, international human rights norms, and the indigenous justice principles of Indonesian culture. One of the most notable normative innovations is the explicit inclusion of living law as a recognized foundation for criminalization under Article 2 of KUHP 2023. This article stipulates those actions deemed criminal under the living law of a specific community may incur criminal sanctions, even without explicit statutory codification. This provision signifies a pivotal recognition of legal pluralism within the formal Indonesian criminal law framework and directly confronts the enduring conflict between state law and customary justice norms in the regulation of property offenses.

### 4.2 Living Law and Social Values: Congruence Between Formal Norms and Social Reality

The implementation of Eugen Ehrlich's living law theory in examining the theft provisions of KUHP 2023 uncovers a complex relationship between formal legal norms and the social realities they aim to govern, marked by notable areas of alignment and ongoing tensions that illustrate the inherent difficulties of integrating various customary norms into a cohesive national legal system. Ehrlich's fundamental insight that the law governing social behavior is not the codified law of the state but the spontaneous normative order arising from the lived experiences of social communities is compellingly exemplified by the empirical reality of property crime regulation in Indonesia, where customary dispute

resolution mechanisms (*penyelesaian sengketa adat*) have historically functioned alongside, and often preferred over, formal criminal prosecution as the primary social response to theft within indigenous communities throughout the Indonesian archipelago ([Bazemore, 1998](#); [Nelken, 2008](#)). In Minangkabau adat law communities in West Sumatra, theft has historically been managed through a tiered approach of communal shaming, restorative compensation, and social reintegration, which closely mirrors the restorative justice principles now officially integrated into KUHP 2023. This indicates that the normative innovations of the new criminal code are not an external import but rather a delayed formal acknowledgment of indigenous justice practices that have endured in Indonesian society despite the colonial enforcement of a punitive legal framework. In Balinese adat communities, the banjar system of communal governance has traditionally served as a socially legitimate and empirically effective means for resolving property disputes, including theft, through negotiation, compensation, and communal reconciliation that emphasize the restoration of social harmony (*keharmonisan sosial*) rather than the punishment of individual offenders.

This value orientation is explicitly reflected in KUHP 2023's endorsement of restorative justice as a legitimate objective of criminal justice. The alignment of KUHP 2023's theft provisions with the prevailing norms of Indonesian society is further demonstrated by the new criminal code's implementation of a graduated sentencing system that differentiates between petty theft (*pencurian ringan*) and more severe property crimes. This distinction reflects the social consensus consistently highlighted in empirical studies regarding community perspectives on criminal justice in Indonesia that incarcerating individuals who steal minimal amounts of food, fuel, or other essentials due to economic hardship is socially unjust, economically detrimental, and fundamentally at odds with the communal values of *gotong royong* and *keadilan sosial*, as enshrined in the Preamble and text of the 1945 Constitution ([Dewi, 2022](#); [Omowon & Kunlere, 2024](#)).

Despite these areas of agreement, this study also reveals substantial tensions between the formal theft provisions of KUHP 2023 and the prevailing legal practices within Indonesian society, which pose significant constraints on the new criminal code's assertion of having genuinely reconceptualized theft in accordance with social reality. The enduring presence of mandatory minimum sentencing for qualified theft offenses in KUHP 2023 signifies a legislative dedication to retributive justice, which conflicts with the communal justice principles upheld by numerous Indonesian customary law communities. These communities typically assess the moral severity of theft not by the method of its commission the standard that activates the qualified theft provisions but rather by considering the social relationship between the offender and the victim, the offender's economic situation, and the extent of social harm inflicted by the act. Moreover, the new criminal code's approach to theft within the formal criminal justice framework albeit influenced by restorative justice principles inevitably side-lines the traditional justice mechanisms that remain the principal normative reference for property crime regulation in many indigenous communities throughout Indonesia ([Anderson, 2011](#); [Van Ness, 2017](#)). This situation prompts critical inquiries regarding the degree to which KUHP 2023 authentically adopts legal pluralism or merely includes superficial allusions to living law and customary justice within a structure that fundamentally adheres to a state-centric criminal justice system.

#### **4.3 Lawrence Friedman's Legal System Theory: Substance, Structure, and Culture**

The application of Lawrence Friedman's tripartite legal system theory to the examination of KUHP 2023's theft provisions presents a complex and nuanced perspective on the new criminal code's capacity to effectively reconceptualize theft offenses in Indonesian society, while also highlighting the structural and cultural obstacles that must be overcome for the normative advancements of KUHP 2023 to result in authentic enhancements in the social landscape of property crime and criminal justice in Indonesia. Concerning legal substance the formal rules and norms that comprise written law KUHP 2023 signifies a substantial and predominantly beneficial evolution of the normative framework regulating theft, incorporating graduated sentencing, restorative justice mechanisms, recognition of living law, and improved protections for economically disadvantaged offenders, which collectively represent a more socially responsive and constitutionally consistent approach to property crime regulation than that offered by the colonial *Wetboek van Strafrecht* ([Fadhil, 2023](#); [Rohman, Mu'minin, Masuwd, & Elihami, 2024](#)).

The significant reconceptualization of theft in KUHP 2023 is particularly apparent in the new code's treatment of petty theft (*pencurian ringan*), which explicitly considers the implementation of restorative justice processes as an alternative to formal prosecution for cases involving low-value property and economically disadvantaged offenders. This approach aligns the formal legal norm with the social justice principles advocated by civil society organizations, legal aid institutions, and criminal justice reform proponents during the protracted legislative discussions that preceded the new code's enactment. The analysis of the legal structure comprising the institutional framework for law administration and enforcement, including courts, prosecutors, police, and correctional facilities uncovers a complex scenario marked by considerable institutional deficiencies and capacity constraints that jeopardize the practical implementation of the normative innovations of KUHP 2023 ([Nono & Dollu, 2025](#)). The successful execution of restorative justice mechanisms for theft offenses necessitates trained mediators, established community justice forums, and institutionalized referral pathways between the formal criminal justice system and community-based dispute resolution mechanisms. These institutional prerequisites are not uniformly accessible throughout the diverse Indonesian archipelago, and their absence may render the formal restorative justice provisions of KUHP 2023 largely aspirational in numerous jurisdictions, especially in rural and remote areas where institutional capacity is severely constrained.

The Indonesian National Police (*Kepolisian Negara Republik Indonesia/POLRI*) and the Attorney General's Office (*Kejaksaan Agung*) are pivotal in assessing the practical application of the restorative and graduated justice provisions of KUHP 2023. Empirical evidence from previous restorative justice initiatives, including those established under the Juvenile Criminal Justice System Law of 2012, indicates that institutional resistance, insufficient training, and the enduring presence of punitive enforcement cultures within law enforcement agencies pose substantial structural obstacles to achieving the normative goals of KUHP 2023. The analysis of legal culture encompassing the attitudes, values, and expectations of legal professionals and the public toward law and the legal system uncovers a complex landscape marked by the coexistence of reformist and traditionalist perspectives on criminal justice, which will profoundly influence the social reception and practical implications of the reconceptualized theft provisions in KUHP 2023 ([Van Ness, Strong, Derby, & Parker, 2022](#); [Xu, Lin, Luo, & Wu, 2026](#)). The enduring punitive legal culture among legal professionals, especially judges and prosecutors, which stems from the colonial era and has been perpetuated by years of formalistic legal education, poses a considerable barrier to the adoption of the restorative and sociologically informed perspective on theft that KUHP 2023 aims to establish. This indicates that substantive legal education reform and systematic professional development are crucial adjuncts to legislative reform for the successful realization of the new criminal code's normative innovations and their intended social effects.

#### ***4.4 Restorative Justice and Theft: Evaluating KUHP 2023's Paradigm Shift***

The integration of restorative justice principles in KUHP 2023's treatment of theft offenses constitutes a theoretically significant and practically impactful element of the new criminal code's redefinition of property crime. This warrants ongoing analytical scrutiny, considering the extensive international criminological evidence endorsing the efficacy of restorative methods for property crime and the unique sociolegal conditions in Indonesia that influence the feasibility and constraints of restorative justice application within the Indonesian framework. Howard Zehr's foundational conceptualization of restorative justice represents a paradigm shift from a retributive to a relational understanding of crime and justice. In this framework, crime is viewed not as a breach of the state's legal order but as a harm inflicted upon individuals and social relationships. Justice is defined not as the imposition of proportionate punishment but as the active restoration of that harm through the involvement of all affected parties. This theoretical framework is instrumental in assessing the nature and significance of KUHP 2023's restorative innovations in the realm of theft crimes ([Iskandar, 2025](#); [Utama, Simarmata, Vel, & Bedner, 2024](#)). The new criminal code's explicit stipulation for victim-offender mediation as a mechanism for resolving petty theft cases, along with its acknowledgment of compensation agreements attained through such mediation as a basis for the mitigation or dismissal of criminal prosecution, embodies a normative operationalization of Zehr's relational justice paradigm, signifying a substantial shift from the solely state-centric, punitive approach of the colonial criminal code.

Braithwaite's theory of reintegrative shaming elucidates the sociological importance of the restorative shift in KUHP 2023, positing that community-based justice mechanisms that denounce the criminal act while affirming the offender's social value and aiding their reintegration are empirically more effective in diminishing recidivism than formal incarceration, which often leads to stigmatization, social exclusion, and the solidification of criminal identities results that are directly antithetical to the social rehabilitation and community reintegration aims that KUHP 2023 explicitly recognizes as legitimate criminal justice objectives ([Butt, 2023](#)). The empirical significance of Braithwaite's framework in the Indonesian context is particularly persuasive, given the elevated rates of recidivism observed among individuals convicted of petty theft in Indonesia. Existing criminological research consistently attributes this phenomenon to the criminogenic consequences of incarceration such as job loss, family disruption, social stigma, and exposure to criminal networks within correctional facilities rather than to the offenders' intrinsic criminal tendencies. This indicates that the restorative justice provisions of KUHP 2023, if effectively executed, could yield significantly improved outcomes regarding both victim satisfaction and offender rehabilitation compared to the punitive framework they aim to enhance ([Radja, 2025](#)).

A careful assessment of the restorative justice provisions in KUHP 2023 regarding theft offenses must recognize the considerable limitations and potential risks associated with integrating restorative justice within a formal criminal law system. The primary concern is the risk of coercive mediation, wherein economically or socially vulnerable theft offenders may be compelled to accept compensation agreements that are either excessive relative to the harm inflicted or beyond their financial means, especially in situations characterized by significant power imbalances between offenders and victims. The efficacy of the restorative justice provisions in KUHP 2023 concerning theft offenses will fundamentally rely on the establishment of strong procedural safeguards to guarantee that participation in restorative processes is truly voluntary, that mediated agreements are equitable and commensurate, and that the formal criminal justice system remains accessible as a fallback for instances where restorative processes are unsuccessful or unsuitable.

#### ***4.5 Socioeconomic Inequality and Theft Criminalization: Critical Reflections***

A comprehensive sociological analysis of the 2023 KUHP's redefinition of theft offenses necessitates a critical examination of the structural socioeconomic factors that contribute to the prevalence of property crime in Indonesia, which fundamentally influence the social interpretation and moral implications of theft as a legal classification. Merton's strain theory, when contextualized within Indonesia, elucidates the structural factors contributing to property crime by highlighting the disparity between the culturally mandated pursuit of material wealth intensely bolstered by Indonesia's consumer culture and the aspirational representations in mass media and the significantly limited legitimate avenues accessible to economically disadvantaged groups for achieving that aspiration through lawful methods ([Bansal, Badiye, Tandan, & Kapoor, 2023](#); [Jasmisari & Sekarningrum, 2024](#)).

This structural analysis is pertinent to the assessment of KUHP 2023's theft provisions, as it demonstrates that the redefinition of theft crime norms despite being normatively advanced focuses solely on the legal response to property crime, neglecting its social determinants. This raises the crucial inquiry of whether reforming criminal law, without comprehensive socioeconomic policy measures targeting poverty, inequality, and social exclusion, can effectuate a significant decrease in the social prevalence of theft or merely redistribute the burdens of property crime among various stakeholders within the criminal justice system. Richard Quinney's critical criminological perspective posits that the criminalization of theft serves to safeguard the property interests of the socially dominant while stigmatizing the survival strategies of the socially marginalized. This insight is particularly relevant in the Indonesian context, where the majority of theft prosecutions both under the colonial criminal code and, according to available data, under the new KUHP 2023 framework pertain to economically motivated petty theft committed by individuals from the lowest socioeconomic strata of Indonesian society ([Tuttle, 2022](#)). The continuation of criminal penalties for minor theft under KUHP 2023, despite the new code's restorative justice measures and tiered sentencing structure, illustrates the inherent conflict between the social control role of criminal law protecting property owners' rights against unauthorized appropriation and the social justice role of criminal law, which necessitates equitable

treatment of all individuals and a compassionate, proportional response to socioeconomic vulnerabilities rather than punitive measures. The tension remains unresolved by KUHP 2023, indicating a significant normative constraint on the new criminal code's assertion of having accomplished a really sociologically informed reconceptualization of stealing offenses within Indonesian society.

#### ***4.7 Reconceptualizing Theft Crimes Through Legal Sociology in Indonesia's Criminal Code 2023***

The foregoing analysis of KUHP 2023's theft provisions through the lens of legal sociology yields a series of theoretically significant findings that warrant sustained critical reflection in relation to the broader scholarly literature on criminal law reform, legal pluralism, and the sociology of law in developing societies, the most fundamental of which is that KUHP 2023 represents a genuinely transformative departure from the colonial punitive paradigm that governed Indonesian criminal justice for over a century not merely in the technical sense of introducing new statutory provisions, but in the deeper sociological sense of reconceptualizing the relationship between the state, the community, and the individual offender in the domain of property crime, a reconceptualization most clearly evidenced by the new criminal code's simultaneous embrace of retributive, rehabilitative, and restorative justice orientations within a unified statutory framework that acknowledges the irreducible complexity of theft as a social phenomenon and resists the reductive impulse to treat all instances of property crime as functionally equivalent violations of an abstract legal norm deserving uniform punitive response ([Kerr, 2023](#); [Khan, Hussain, Rashid, & Hameed, 2024](#)).

This discovery aligns with and amplifies the assertion posited that an authentic Indonesian criminal law must amalgamate diverse justice values instead of favouring any singular penological doctrine. It offers empirical normative validation for the theoretical claim that criminal law reform in pluralistic developing societies necessitates a fundamental reconceptualization of the social objectives that criminal law aims to fulfil, rather than merely updating penal statutes. The acknowledgment of living law (*hukum yang hidup dalam masyarakat*) in Article 2 of KUHP 2023 represents a significant sociological advancement that directly reflects Ehrlich's fundamental premise that the law governing social behavior arises organically from the experiences of social communities rather than from formal state legislation. However, this advancement is incomplete as KUHP 2023 does not provide explicit criteria for identifying living law claims or mechanisms for their systematic adjudication within the formal criminal justice framework, leading to risks of indeterminate and potentially arbitrary application. This issue necessitates the development of a principled judicial methodology capable of navigating the intricate normative landscape between cultural pluralism and the protection of constitutional rights ([Munir, 2023](#)).

The restorative justice provisions of KUHP 2023, although theoretically aligned with Zehr's relational justice framework and the communal dispute resolution practices of Indonesian adat law, face considerable structural challenges in implementation. These challenges include geographic fragmentation, disparities in institutional capacity between urban and rural areas, and the enduring punitive cultures within law enforcement and prosecutorial agencies. Empirical evidence from the implementation of the Juvenile Criminal Justice System Law of 2012 indicates that these issues are likely to result in significant variability in the quality and consistency of restorative justice practices across jurisdictions unless mitigated by targeted investments in community mediator training, victim-offender mediation infrastructure, and operational guidelines for restorative justice-eligible theft cases ([Mavelli & Cerella, 2025](#)).

Applying Friedman's tripartite legal system theory, while the legal substance of KUHP 2023's theft provisions represents a significant positive transformation and its structural dimension reflects meaningful institutional reform aspirations, the legal culture dimension emerges as the most theoretically challenging obstacle to the realization of the new code's sociological ambitions, given that the punitive legal culture systematically cultivated within Indonesian criminal justice institutions through more than a century of colonial and post-colonial legal practice operates as a powerful countervailing force against the restorative and sociologically informed approach to theft that KUHP 2023 seeks to institutionalize a cultural transformation that requires not merely professional training or

institutional reorganization but a fundamental reconceptualization of the normative self-understanding of Indonesian legal professionals toward Pound's vision of law as an instrument of social engineering designed to balance competing social interests and promote human flourishing within a just social order (Malik, Gusela, Azfa, Fauziansah, & Rosidin, 2024; Nashih, 2025).

Placing Indonesia's reconceptualization within a wider comparative framework highlights alignment with global trends in criminal law reform, such as the Dutch Täter-Opfer-Ausgleich model, Germany's victim-offender reconciliation framework, and Malaysia's Community Service Order for petty theft. These approaches collectively demonstrate the greater social efficacy of graduated and restorative methods for addressing property crime compared to solely punitive incarceration models. However, they also warn against the indiscriminate adoption of foreign institutional models without proper consideration of Indonesia's unique socio-legal context, a caution underscored by the historical precedents of colonial legal transplantation in the country. The profound significance of KUHP 2023's redefinition of theft offenses resides in its enhancement of the overarching post-colonial endeavor to establish an Indonesian criminal law that genuinely embodies the nation's constitutional principles, customary justice practices, and current socioeconomic conditions (Jatna, Manthovani, & Hasbullah, 2024; Kristanto, Sunggara, Januarsyah, Permatasari, & Taniady, 2025). This analysis illustrates that while KUHP 2023 makes notable and historically relevant advancements, it remains deficient in certain areas, particularly regarding the structural socioeconomic factors influencing property crime that extend beyond the scope of criminal law reform. Addressing these issues necessitates ongoing engagement with social welfare policy, legal education reform, and the development of a truly socially responsive Indonesian legal culture to ensure that the transformative normative goals of the new criminal code are ultimately realized in the lived experiences of justice for all members of Indonesian society.

## 5. Conclusions

### 5.1. Conclusion

This study aims to investigate the reconceptualization of theft offenses under Indonesia's Law Number 1 of 2023 regarding the New Criminal Code KUHP 2023 through the framework of legal sociology, focusing on three primary research objectives: to analyze the normative evolution of theft provisions from the colonial *Wetboek van Strafrecht* to KUHP 2023; to assess the alignment between the new code's formal theft norms and the prevailing living law in Indonesian society; and to evaluate the sociological ramifications of KUHP 2023's theft regulations for the attainment of substantive justice in Indonesia. All three objectives have been methodically addressed through the cohesive application of Eugen Ehrlich's living law theory, Lawrence Friedman's tripartite legal system model, and Roscoe Pound's social engineering framework to the normative content of KUHP 2023's theft provisions, resulting in a series of theoretically significant and practically consequential findings that collectively enhance the sociological comprehension of criminal law reform in pluralistic developing societies. The study reveals that KUHP 2023 signifies a truly transformative redefinition of theft offenses, fundamentally diverging from the colonial punitive model by concurrently incorporating retributive, rehabilitative, and restorative justice principles within a cohesive normative framework. This normative advancement holds substantial sociological importance, embodying over fifty years of persistent academic advocacy for a criminal law rooted in Indonesian constitutional values and social realities, rather than colonial legal structures. The study reveals that the formal theft provisions of KUHP 2023 demonstrate significant alignment with the living law of Indonesian society, notably through the pivotal acknowledgment of *hukum yang hidup dalam masyarakat* in Article 2 and the integration of restorative justice mechanisms that reflect the communal dispute resolution practices of Indonesian adat law.

### 5.2. Research Limitations

Despite the analytical contributions mentioned, this study has some notable limitations that must be recognized for the sake of scholarly transparency and that significantly affect the interpretation and application of its findings. The primary limitation of this study is its sole dependence on normative legal research methodology, which, although suitable for the doctrinal analysis of the 2023 KUHP theft provisions, inhibits direct empirical exploration of the social realities such as community perceptions of theft, law enforcement practices, judicial decision-making trends, and victim-offender experiences in restorative justice processes that are essential for a comprehensive sociological assessment of the

new criminal code's redefinition of theft offenses. The study's conclusions about the alignment between KUHP 2023's formal theft norms and the prevailing law in Indonesian society are thus inferential rather than empirically substantiated, relying on secondary sources and existing scholarship instead of primary field research methodological limitation that future studies utilizing empirical sociological research methods could effectively rectify. A second notable limitation is to the geographic and cultural breadth of the study's examination of living law and customary justice norms in respect to the theft provisions of KUHP 2023. Indonesia's remarkable cultural diversity, comprising over three hundred unique ethnic groups, each possessing its own customary legal traditions and community justice systems, implies that the study's references to adat law and living law inevitably pertain to a restricted array of Indonesian customary traditions. Consequently, its conclusions regarding the alignment between KUHP 2023 and living law may not be universally applicable across the entirety of Indonesian customary law communities.

### **5.3 Suggestions and Directions for Future Research**

The results and constraints of this study create a comprehensive agenda for future research that encompasses various disciplinary viewpoints and methodological strategies, aimed at enhancing the sociological comprehension of theft crime reconceptualization under KUHP 2023 and advancing the broader evolution of Indonesian legal sociology as an academic discipline. This study identifies the foremost priority for future research as the empirical examination of the implementation of the restorative justice provisions of KUHP 2023 for theft offenses across various Indonesian jurisdictions. This should involve qualitative and quantitative social research methods, including ethnographic observation of victim-offender mediation processes, survey research on community attitudes toward restorative justice for theft, and statistical analysis of prosecution and sentencing patterns under the new criminal code, to establish the empirical evidence base required for an evidence-based evaluation and enhancement of the restorative justice framework within the new code. Future research should focus on the disparities in restorative justice implementation across urban and rural jurisdictions, between Java and the outer islands, and among communities with varying customary law traditions, to discern the contextual factors that enhance or hinder the effective application of KUHP 2023's restorative provisions and to formulate jurisdiction-specific implementation strategies that are attuned to local sociolegal conditions. A second significant avenue for future research pertains to the empirical examination of the living law recognition provision in Article 2 of KUHP 2023, as implemented by Indonesian courts in cases of theft and other property offenses. This aims to document the evolving judicial methodology for identifying and adjudicating living law claims, while assessing its alignment with constitutional rights standards and the normative objectives of the new criminal code.

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### **Author Contributions**

AP served as the corresponding author and was responsible for the conceptualization of the study, development of the theoretical framework, overall manuscript writing, editing, and finalization. S. contributed to the construction of the literature review, legal sociology theoretical analysis, and critical review of the manuscript. WPDP was responsible for legal material collection and analysis, the statute approach, and comparative legal analysis, as well as manuscript drafting. TA contributed to the results and discussion analysis, restorative justice framework evaluation, and manuscript review. S.A.K. was responsible for the research methodology design, conclusions and limitations writing, and final manuscript proofreading. All authors have read and approved the final version of the manuscript.

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