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Mercy Without a Metric? A Jurimetric Analysis of Judicial Pardon (Rechterlijk Pardon) and Non-Custodial Sentencing Calibration Under Indonesia's New Criminal Code

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ABSTRACT

Background. Indonesia's Criminal Code (Law No. 1 of 2023) and Criminal Procedure Code (Law No. 20 of 2025), effective 2 January 2026, replace colonial custodial primacy with judicial pardon (Article 54(2)), non-custodial avoidance (Article 70(1)), supervision (Articles 75–76), and social work (Article 85). Supreme Court Regulation (PERMA) No. 3 of 2026 followed on 9 July 2026. No multi-court study has measured their use.

Objective. To describe the dispersion of sentencing modalities, pre-trial detention, restorative-mitigation citation patterns, and early PERMA No. 3/2026 shifts.

Methods. Eighty docket-verified convictions reported in official court dispatches (January–October 2026; 60 District Courts, 7 island regions) were coded. Analysis combined court-clustered and Firth penalized regressions, four-canon statutory interpretation, and a five-jurisdiction comparison.

Results. Supervision (45.00%), judicial pardon (36.25%), unconditional imprisonment (11.25%), and social work (7.50%) showed wide dispersion (severity Gini = 0.579, CV = 1.19); 9 of 14 multi-case courts (64.3%) imposed divergent modalities. Rutan pre-trial detention was associated with unconditional imprisonment in 35.71% versus 6.06% of cases (OR = 8.61, p = 0.0068; Firth aOR = 5.07, p = 0.0379). All nine prison terms followed restorative peace, present in 55 of 80 cases (p = 0.0508), and 8 of 9 cited PERMA No. 1/2024 without Article 70(1) (OR = 15.67, p = 0.0023). After PERMA No. 3/2026, pardons above 4 years were 0/11 versus 5/18 (p = 0.126); 54.55% of pardons remained in 2.5–4.0-year felonies.

Conclusion. Sentencing alternatives in this purposive corpus lack a shared calibration metric. Six de lege ferenda reforms are proposed, led by written reasons for overriding Article 70(1) and fixed conversion ratios.

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1. Introduction

1.1 Constitutional and statutory background

Article 28D(1) of the 1945 Constitution of the Republic of Indonesia (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945)[1] guarantees equal treatment before the law and just legal certainty. Read with the rule-of-law (*negara hukum*) mandate of Article 1(3) and the guarantee of judicial independence directed toward substantive justice under Article 24(1), it requires criminal punishment to be individualized. It also requires consistency across like cases. For more than a century, first-instance criminal adjudication in Indonesia was tied to short-term unconditional imprisonment. The colonial penal code (*Wetboek van Strafrecht voor Nederlandsch-Indië*, enacted by Staatsblad 1915 No. 732 and retained via Law No. 1 of 1946) and the 1981 Criminal Procedure Code (Law No. 8 of 1981) left no other route[2,3]. Once guilt was proven beyond reasonable doubt without a statutory justification (*alasan pembenar*) or excuse (*alasan pemaaf*), trial panels could not convict without punishing. Custodial incarceration became the default tariff. This held even for petty property, minor assault, and family-dispute offenses. Chronic correctional overcrowding followed. It routinely exceeded national prison capacity across Indonesian penitentiaries (Lembaga

Pemasyarakatan, Lapas) and state detention houses (Rumah Tahanan Negara, Rutan)[4,5].

On 2 January 2026, Indonesia brought into force the broadest penal reform of its post-independence history, through three interlocking statutes that took effect together. The first is Law No. 1 of 2023 on the Criminal Code (Kitab Undang-Undang Hukum Pidana, hereinafter Law No. 1/2023 or the 2023 KUHP)[6], which entered into force three years after promulgation pursuant to Article 624. The second is Law No. 20 of 2025 on the Criminal Procedure Code (Kitab Undang-Undang Hukum Acara Pidana, hereinafter Law No. 20/2025 or the 2025 KUHAP).[7] The third is Law No. 1 of 2026 on Criminal Sanctions Adjustment (Undang-Undang Penyesuaian Pidana)[8], which implements Article 613 of Law No. 1/2023 by deleting special minimum penalties in laws outside the Criminal Code (except for grave human-rights crimes, terrorism, corruption, and money laundering), harmonizing sectoral and regional-bylaw [Peraturan Daerah, Perda] penalties, and amending the supervision, fine-conversion, and revocation provisions of Articles 76–77 and 82–84 of Law No. 1/2023[9,10]. Law No. 1/2023 dismantles the colonial priority given to custody through four graduated sentencing gates. The first is judicial pardon (*pemaafan hakim* / *rechterlijk pardon*, Article 54(2)), which empowers the court to pronounce a defendant guilty while imposing neither a criminal sanction nor a measure (*tindakan*), in view of the lightness of the act (*ringannya perbuatan*), the personal circumstances of the offender (*keadaan pribadi pelaku*), or circumstances during and after the offense. The second is statutory avoidance of imprisonment (Article 70(1)–(2)). Imprisonment "as far as possible shall not be imposed" (*sedapat mungkin tidak dijatuhkan*) when any of fifteen enumerated mitigating circumstances applies, such as first-time offending, compensation paid to the victim, strong incitement, or great suffering of the defendant or the defendant's family. The exclusions in Article 70(2) bar this where the offense is punishable by five years or more (Article 70(2)(a)), carries a special minimum penalty (Article 70(2)(b), largely pared back by Law No. 1/2026), involves grave public endangerment or victim loss, or amounts to recidivism (*pengulangan tindak pidana*). The third is supervision punishment (*pidana pengawasan*, Articles 65(1)(c) and 75–76). For offenses punishable by up to five years, it replaces colonial suspended imprisonment (*pidana bersyarat*) with community supervision for up to the threatened prison term and in any case not more than three years (Article 76(1), as amended by Law No. 1/2026, which limits supervision to first offenders). The fourth is social work punishment (*pidana kerja sosial*, Articles 65(1)(e) and 85). Article 85 allows eight to 240 unpaid community-service hours as an alternative to a short custodial term not exceeding six months, or to a fine of up to Category II, for offenses punishable by less than five years. Courts have also cited Article 82(1) for social work in lieu of an unpaid fine (for example in 4/Pid.C/2026/PN Ksp), although Law No. 1/2026 amended that article so that an unpaid fine converts to imprisonment only.

On procedure, Law No. 20/2025 puts these substantive alternatives into practice through three devices. The first is courtroom Restorative Justice Mechanisms (Mekanisme Keadilan Restoratif, MKR, Articles 79–88 and Article 204(5)–(9)) for first-time offenses carrying statutory maximums up to five years. The second is summary procedure on admission of the charge (Article 205, with referral under Article 234(1) for offenses punishable by up to seven years), alongside the plea mechanism (*pengakuan bersalah*, Article 78) for first offenses punishable by up to five years. The third is an explicit fourth verdict category, the judicial pardon judgment (*putusan pemaafan hakim*, Article 246). Interpretation diverged sharply in the first semester. The Supreme Court (Mahkamah Agung) responded by supplementing Supreme Court Circular (Surat Edaran Mahkamah Agung, SEMA) No. 1 of 2026[11] with Supreme Court Regulation (Peraturan Mahkamah Agung, PERMA) No. 3 of 2026 on Judicial Pardon Judgments (signed 23 June 2026 and promulgated 9 July 2026)[12], which sits beside the earlier PERMA No. 1 of 2024 on Restorative Justice[13–15]. PERMA No. 3/2026 implements the delegation in Article 246(4) of Law No. 20/2025, while Article 246(3) preserves the parties' legal remedies. It sets up an asymmetric three-tier appellate regime. In ordinary or brief proceedings, both the defendant and the Public Prosecutor may lodge an appeal (*banding*) to the High Court (Pengadilan Tinggi). Direct cassation (*kasasi*) against a first-instance judicial pardon is barred, as is cassation against a High Court judgment affirming a judicial pardon. Cassation reopens only if the High Court reverses the pardon into a punishment (*pemidanaan*) or discharge (*lepas dari segala tuntutan hukum*) verdict. In summary minor-offense proceedings (acara cepat / Tipiring), by contrast, a judicial pardon is final and binding at first instance. Table 1 summarizes the primary domestic and comparative legal instruments governing this transition.

Table 1. Primary Indonesian and comparative legal instruments analyzed.

Instrument	Year	Jurisdiction	Key provisions relied upon	Status (Nov 2026)
Undang-Undang Dasar Negara Republik Indonesia Tahun 1945	1945/2002	Indonesia	Art. 1(3) *negara hukum*; Art. 24(1) judicial power; Art. 28D(1) equal legal certainty	In force
Law No. 22 of 2022 on Corrections (UU Pemasyarakatan)	2022	Indonesia	Arts. 1(15), 1(20), 1(23), 55–59: Litmas, Bapas, and Community Counselors (PK Bapas) for guidance and supervision	In force (Kemenimipas)
Law No. 1 of 2023 on the Criminal Code (KUHP Nasional)	2023	Indonesia	Art. 3(1) *lex favor reo*; Arts. 51–54(1) guidelines; Art. 54(2) judicial pardon; Art. 65(1); Art. 70(1)–(2); Arts. 75–77 supervision; Art. 85 social work (Art. 82(1) as amended by Law No. 1/2026); Art. 624	In force since 2 Jan 2026
Law No. 20 of 2025 on the Criminal Procedure Code (KUHAP Baru)	2025	Indonesia	Art. 78 plea mechanism; Arts. 79–88, 204(5)–(9) courtroom MKR; Arts. 205, 234 summary procedure; Art. 246(1)–(4) judicial pardon verdict (appeal: Art. 246(3))	In force since 2 Jan 2026
Law No. 1 of 2026 on Criminal Sanctions Adjustment (UU Penyesuaian Pidana)	2026	Indonesia	Deletion of special minimums outside Law No. 1/2023 (except grave human-rights crimes, terrorism, corruption, money laundering); sectoral & Perda harmonization; amendments to Arts. 76–77, 82–84 KUHP	In force since 2 Jan 2026
PERMA No. 1 of 2024 on Guidelines for Adjudicating Criminal Cases Based on Restorative Justice	2024	Indonesia	Arts. 6(2) power-imbalance bar, 19(1)–(2) courtroom peace as sentencing mitigation or conditional basis	In force

Instrument	Year	Jurisdiction	Key provisions relied upon	Status (Nov 2026)
SEMA No. 1 of 2026 & PERMA No. 3 of 2026 on Judicial Pardon Judgments	2026	Indonesia	SEMA 1/2026 transition templates; PERMA 3/2026 Art. 5(2) *dan/atau* test, Art. 5(3) ≤ 1 yr, Art. 6 bars, appellate rules (Arts. 11–12)	Promulgated 9 Jul 2026
Wetboek van Strafrecht (Dutch Criminal Code) & LOVS/OM Orientation Points	1881/2026	Netherlands	Art. 9a Sr (*rechterlijk pardon*); Art. 22b Sr (*taakstraf* ban/tariffs); LOVS Oriëntatiepunten	Actively applied
Strafgesetzbuch (German Criminal Code, StGB) & Strafprozessordnung (StPO)	1871/2026	Germany	§ 47 StGB exceptional < 6 mo prison bar; § 56 StGB probation; § 60 StGB *Absehen von Strafe*; § 153a StPO	Actively applied
Código Penal Português (Portuguese Criminal Code, DL No. 48/95)	1995/2026	Portugal	Art. 45 mandatory ≤ 1 yr substitution; Art. 50 suspension; Art. 58 community work; Art. 74 ≤ 6 mo *dispensa de pena*	Actively applied
Criminal Procedure Code 2010 (Rev. Ed. 2020)	2010/2020	Singapore	s. 337 Community-Based Sentences (MTO, DRO, CWO, CSO, SDO) with order-specific reports	Actively applied

Note. Primary legal instruments are listed in the numbered reference list with their official title and number. Legal status is stated as at November 2026.

1.2 Comparative theory and research gap

Comparative sentencing theory and empirical criminology warn of a problem. Adding non-custodial options without quantitative conversion benchmarks or hierarchical decision rules often relocates unwarranted horizontal disparity instead of reducing it. Ordinal and cardinal proportionality theory shows that desert and preventative aims need anchored penalty scales, which rank alternative sanctions by relative onerousness[16]. Econometric and jurimetric evaluations of sentencing guidelines in the United States, England and Wales, Poland, and Slovenia report persistent inter-judge and inter-court variation under broad statutory factor lists. The eleven unranked considerations in Article 54(1) of Law No. 1/2023 are a comparable list. The literature points to presumptive entry thresholds, tariff conversion ratios, and enforceable appellate review as ways to narrow this variation[17–21]. Procedure before sentencing matters too. Quasi-experimental studies exploiting random judge assignment, together with meta-analytic syntheses across criminal courts, report that pre-trial detention is associated with a higher likelihood of conviction and of custodial sentencing once case and defendant characteristics are taken into account. One proposed explanation is that trial judges anchor final dispositions to time already served in remand (time-served sentencing)[22–26].

Within Indonesia, recent jurimetric and empirical legal studies in Enigma in Law have shown the diagnostic value of quantifying real-world legal variance. They measure custodial-sentence disparity under Supreme Court corruption guidelines[27], audit universal contractual non-compliance where statutory prohibitions lack operational policing[28], and evaluate institutional integrity deficits in regional governance[29]. Existing scholarship on Indonesia's 2023 Criminal Code and 2025 Criminal Procedure Code is still overwhelmingly doctrinal or confined to single-case commentary. Recent articles examine the legal history and Dutch origin of *rechterlijk pardon*[30], two isolated early pardons in Garut and Mempawah[31], narcotics verdict categories[32], humanistic sentencing theory[33,34], and normative critiques of short prison terms[35]. Others look at the prospective readiness of Probation Offices (Balai Pemasyarakatan, Bapas) for community service and supervision[36–39]. To our knowledge, no empirical study has yet assembled a multi-court sample of post-January 2026 criminal convictions. Such a sample would measure modality dispersion across judicial pardon, social work, supervision, and unconditional imprisonment. It would test whether Rutan pre-trial detention and PERMA No. 1/2024 mitigation rules subvert Article 70(1). It would also evaluate the pre- versus post-PERMA No. 3/2026 regime shift.

1.3 Aims and hypotheses

This study addresses that gap. It analyses eighty docket-verified first-instance adult criminal convictions decided between 4 January and 28 October 2026 across sixty District Courts spanning all seven Indonesian island regions. Four hypotheses guide the inquiry. (H1, Uncalibrated Horizontal and Intra-Court Dispersion) Holding completed restorative peace and ordinary/special procedural track constant, sentencing modalities and severity scores show wide horizontal dispersion unrelated to statutory penalty ceilings, including divergent modalities within the same courthouse. (H2, Restorative-Mitigation Decoupling) Trial panels that impose unconditional custodial prison terms despite completed restorative peace tend to cite procedural restorative rules (PERMA No. 1/2024 / Article 204 KUHAP) as prison-discounting factors without engaging Article 70(1) of Law No. 1/2023. (H3, Pre-Trial Detention Lock-In) Documented Rutan pre-trial detention is associated with a higher probability of an unconditional custodial prison sentence after controlling for statutory offense severity, restorative peace, defendant vulnerability, and temporal cohort. Retrospective time-served calibration is examined as a possible mechanism. (H4, Partial Ceiling Compression Under PERMA No. 3 of 2026) After the promulgation of PERMA No. 3/2026 on 9 July 2026, extreme high-ceiling (> 4-year) judicial pardons become rarer, overall pardon prevalence is unchanged, and pardons for felonies with statutory maxima above 1 year and up to 4 years persist, in line with the disjunctive (*dan/atau*) wording of Article 5(2).

2. Methods

2.1 Research design and jurimetric framework

This study uses an integrated empirical–doctrinal legal research design, combining jurimetrics with dogmatic statutory interpretation and comparative functional analysis[27,28]. On the empirical side, we construct and statistically audit an original, SHA-256-verified dataset of N = 80 first-instance adult criminal convictions adjudicated under the post-2 January 2026 penal regime. On the doctrinal side, the observed statistical regularities and drafting defects are diagnosed *de lege lata* through sequential application of the four classical civil-law canons: grammatical, systematic, teleological, and historical. They are then translated *de lege ferenda* into institutional reforms, benchmarked through Zweigert and Kötz's functional-equivalence method[40] against four civil- and common-law comparators. The first is the Netherlands, the historical source of Indonesian *rechterlijk pardon* via Article 9a *Wetboek van Strafrecht*[41–43]. The others are Germany (§§ 47, 56, and 60 *Strafgesetzbuch*)[44–46], Portugal (Articles 45, 50, 58, and 74 *Código Penal*)[47,48], and Singapore (Community-Based Sentences under section 337 of the Criminal Procedure Code 2010)[49,50].

2.2 Corpus assembly, sampling frame, and screening protocol

Automated bulk harvesting of the Supreme Court Judgment Directory (putusan3.mahkamahagung.go.id) was restricted by HTTP 403 perimeter controls during the November 2026 audit window. These controls were respected strictly, without circumvention. Primary case records were therefore

harvested systematically through open HTTP GET from the official case-reporting portal of the Directorate General of the General Courts Body of the Supreme Court of the Republic of Indonesia (Direktorat Jenderal Badan Peradilan Umum Mahkamah Agung RI, https://dandapala.com). The portal carries dispatches written by verified District Court judicial spokespersons (*Juru Bicara* / *Hakim Humas* Pengadilan Negeri) and Badilum editors. Each Dandapala dispatch reports the verbatim operative disposition (*amar putusan*), the docket number, the panel's reasoning, any restorative peace agreement, detention status, and the statutory citations for criminal cases applying the 2023 KUHP and 2025 KUHAP.

Keyword and category enumeration across all 2026 criminal-law dispatches (*pemaafan hakim*, *pidana pengawasan*, *pidana kerja sosial*, keadilan restoratif, KUHP Nasional, Perma Nomor 3 Tahun 2026) yielded 91 unique official dispatches (D01–D91). These were archived verbatim in data/raw_dispatches/ with SHA-256 cryptographic hashes. The corpus totals 44,040 cleaned words, after we stripped injected CMS "Baca Juga:" cross-promotion banners so that pre-July 2026 dispatches could not be contaminated by retroactive links to PERMA No. 3/2026. Pre-coding screening (data/screening_exclusion_log.csv) excluded 16 dispatches (D07, D12, D21, D22, D23, D44, D50, D51, D52, D53, D58, D64, D66, D68, D69, D74) on four deterministic *ex ante* criteria. The first (i) covered interim courtroom mediation or plea-referral reports published before the final verdict (9 dispatches, plus D52, superseded by the final judgment dispatch D42). The second (ii) covered narcotics self-use rehabilitation tracks governed by lex specialis medical assessment under Law No. 35 of 2009 (2 dispatches, plus three narcotics plea dockets inside D01). The third (iii) covered an aggregate Supreme Court Registrar listicle lacking case-level facts (D23) and a municipal street-vendor fine sweep (D74). The fourth (iv) covered two supervision dispatches that omit a numeric supervision duration (D22, D66); these were held out from the primary N = 80 matrix and restored, together with a co-defendant record from D62, in Sensitivity Check S4 (N = 83). The 75 qualifying dispatches include five multi-docket dispatches (D18, D42, D57, D73, and D89), each reporting two discrete docketed adult judgments. D89 was segmented at its explicit transition sentence, so docket 159/Pid.B/2026/PN Kba and docket 144/Pid.B/2026/PN Kba were coded independently. From these dispatches we obtained N = 80 completely quantified adult first-instance criminal convictions, decided between 4 January 2026 and 28 October 2026 across 60 District Courts, 26 provinces, and all 7 Indonesian island regions (Table 2). Nine of the eighty convictions (11.25%) bear /2025/ docket registration numbers, such as 107/Pid.B/2025/PN Tob, 512/Pid.B/2025/PN Mpw, and 788/Pid.Sus/2025/PN Sda. They involved offenses indicted in late 2025 under the colonial *Wetboek van Strafrecht* or pre-adjustment sectoral provisions, and were adjudicated between January and April 2026 (4 supervision, 3 judicial pardon, 2 social work, 0 imprisonment). The court applied the mandatory *lex favor reo* (*ketentuan yang paling menguntungkan bagi terdakwa*) transitional rule of Article 3(1) of Law No. 1/2023 and SEMA No. 1 of 2026.

Table 2. Geographic and offense-family composition of the empirical corpus (N = 80 convictions across 60 District Courts and 7 island regions).

Island region / Offense family	Courts (n)	Cases n (%)	Pardon (n)	Social Work (n)	Supervision (n)	Imprisonment (n)	Mean Severity (0–100)
Panel A: Geographic coverage (7 island regions, 26 provinces)	—	—	—	—	—	—	—
Sumatra (Aceh, N/W/S Sumatra, Riau, Jambi, Bengkulu, Babel, Lampung)	26	37 (46.25%)	14	4	12	7	23.69
Sulawesi (N/C/S/SE/W Sulawesi, Gorontalo)	12	18 (22.50%)	8	2	7	1	16.92
Java (Banten, W/C/E Java)	6	7 (8.75%)	0	0	7	0	27.20
Kalimantan (W/S/E Kalimantan)	6	6 (7.50%)	4	0	2	0	8.68
Bali & Nusa Tenggara (East Nusa Tenggara)	4	6 (7.50%)	2	0	4	0	15.28
Maluku (Maluku, North Maluku)	5	5 (6.25%)	1	0	3	1	31.00
Papua (Papua)	1	1 (1.25%)	0	0	1	0	21.25
Panel B: Substantive offense family	—	—	—	—	—	—	—
Property (theft, embezzlement, fraud, fencing, minor property damage)	31	35 (43.75%)	12	2	15	6	26.34
Assault & Threats (simple/collective assault, intimidation)	21	24 (30.00%)	8	2	11	3	21.06
Public Order & Minor (Perda liquor, online insult/gambling, protest)	10	11 (13.75%)	5	1	5	0	12.05
Domestic & Family (household violence, spousal/child neglect)	6	6 (7.50%)	0	1	5	0	21.18
Traffic & Negligence (traffic collision & negligent homicide)	4	4 (5.00%)	4	0	0	0	0.00
Total Corpus (4 Jan – 28 Oct 2026)	60	80 (100.0%)	29	6	36	9	21.08

Note. Mean severity values in Panel A weight to 21.14, whereas the total and Panel B give 21.08–21.09. Court column in Panel B counts distinct District Courts adjudicating at least one case in that offense family (summing above 60 because multi-case courts span offense categories).

2.3 Operational coding scheme and reliability verification

Each conviction was coded across 48 variables. These captured court geography, the decision date relative to PERMA No. 3/2026's promulgation on 9 July 2026 (n = 50 pre-PERMA; n = 30 post-PERMA), procedural track (Pid.B ordinary = 48, Pid.Sus special = 16, Pid.S brief = 1, Pid.C summary Tipiring = 15), offense family, statutory maximum imprisonment in years, factual covariates, final sentencing modality, quantified sanction quantum, and explicit statutory citations

(Table 3). To limit mechanical overlap when testing H2, our coding separates two groups of provisions. Upstream mandatory screening provisions bind every trial panel before it selects a sanction: namely Article 54(1) (mandatory sentencing considerations) and Article 70(1) (mandatory short-imprisonment avoidance). Downstream outcome-enacting provisions appear only once a specific non-custodial modality has been chosen: Articles 54(2), 75–76, 82(1), and 85. The separation does not remove reverse causation, because a mitigating provision is cited after the panel has chosen a custodial term (Section 4.4). Punitive intensity must be compared across non-commensurable sanction units. For this purpose we construct a bounded Deprivation-Equivalence Severity Index with assigned weights ($S_i \in [0, 100]$), anchored to the statutory hierarchy of Article 65(1) and the conversion ceilings of Articles 76 and 85 of Law No. 1/2023:

$$S_i = 0, \text{ if Judicial Pardon (Art. 54(2))};$$

$$S_i = 20 \times (H_i / 240), \text{ if Social Work (Art. 85; 8–240 h)};$$

$$S_i = 15 + 25 \times (M_{sup,i} / 24), \text{ if Supervision (Arts. 75–76; 3–24 mo)};$$

$$S_i = 50 + 50 \times (M_{eff,i} / 8), \text{ if Unconditional Prison (1–8 mo).}$$

The ordering of the bands is a normative choice: for example, 240 hours of social work (S = 20) scores above three months of supervision (S = 18.1), and one month of prison scores 56.3. Sensitivity Model S5 shows that substituting pure equal-step ordinal ranks (0, 33.3, 66.7, 100) or raw custodial months leaves all directional inferences intact. We also evaluated the replicability of rule extraction through an Algorithmic–Human Construct Audit. It used a stratified random 25% subsample (20 cases × 5 core binary indicators = 100 cells) and benchmarked the primary full-context human legal coding against a deterministic lexical-regex parser (Coder 2) built from the same coding rules. The audit yielded 96.0% raw agreement, Cohen's $\kappa = 0.918$, and prevalence- and bias-adjusted kappa (PABAK) = 0.920. The four discrepancies arose from nuanced negative phrasing, where a victim apologized without full peace or the defendant underwent non-Rutan city arrest. The limits of a single human coder are addressed in Limitations.

Table 3. Operational coding scheme, statutory anchors, and measurement rules (N = 80).

Variable code	Legal / factual construct	Statutory anchor	Operational coding rule
modality	Final principal sentencing disposition	Arts. 54(2), 65(1), 75–76, 82(1), 85 KUHP	Mutually exclusive: Pardon, SocialWork, Supervision, or Imprisonment (unconditional custodial term)
post_perma3_cohort	Post-PERMA No. 3/2026 adjudication	PERMA No. 3/2026 (promulgated 9 Jul 2026)	1 if judgment pronounced on or after 2026-07-09 (n = 30); 0 if 2026-01-04 to 2026-07-08 (n = 50)
statutory_max_years	Statutory maximum custodial ceiling	Charged KUHP / sectoral / Perda article	Maximum prison/confinement term in years (0.25 yr for 3-mo Tipiring/Perda up to 7.0 yr for Art. 477 KUHP)
strictly_under_5yr	Strict Article 70(2)(a) eligibility	Art. 70(2)(a) Law No. 1/2023	1 if statutory maximum < 5.0 years (n = 59); 0 if ≥ 5.0 years (n = 21; S2 also tests ≤ 5.0 yr MKR cap, n = 77)
perma3_1yr_or_tipiring	Strict narrow *ringannya perbuatan* cap	Art. 5(3)(a)–(b) PERMA No. 3/2026	1 if summary Pid.C Tipiring or statutory max ≤ 1.0 year (n = 22); 0 if felony > 1.0 year (n = 58)
rj_peace_achieved	Completed victim–offender peace	Arts. 79–87, 204 KUHAP; PERMA 1/2024	1 if verified peace agreement or unconditional victim forgiveness was achieved (n = 55); 0 otherwise (n = 25)
pretrial_detained_rutan	Custodial pre-trial detention (Rutan)	KUHAP detention rules; Art. 70 KUHP	1 if dispatch documents custodial Rutan/police detention or time-served deduction (n = 14; city arrest coded 0)
vulnerability_or_necessity	Personal vulnerability / acute necessity	Art. 54(1)(e),(g), Art. 54(2), Art. 70(1)	1 if elderly (≥ 65 yr), disabled, pregnant/sole mother, student youth, or acute poverty/medical motive (n = 29)
cited_art70_noncustodial	Explicit engagement with Art. 70 KUHP	Art. 70(1) Law No. 1/2023	1 if reasoning explicitly cites Pasal 70 mandatory prison-avoidance guidelines (n = 11); 0 if omitted (n = 69)
upstream_54_or_70_cited	Upstream mandatory screening citation	Arts. 54(1) & 70(1) Law No. 1/2023	1 if reasoning cites upstream mandatory screening rules (Art. 54(1) or Art. 70, n = 34); 0 if both omitted (n = 46)
proc_rj_without_art70	Procedural RJ cited without Art. 70 gate	Art. 19(1) PERMA 1/2024; Art. 70(1) KUHP	1 if panel cites procedural RJ (PERMA 1/2024 / Art. 204 KUHAP) while omitting Art. 70 (n = 32); 0 otherwise (n = 48)
supervision_default_omitted	Omission of default custodial term	Art. 76(1)–(4) Law No. 1/2023	1 if supervision verdict omits an underlying suspended custodial sentence (n = 3/36); 0 if specified (n = 33/36)

Note. All coded values and verbatim Bahasa Indonesia excerpts are archived in data/dataset_80_kuhp_2026_decisions.csv and data/verbatim_evidence_80_decisions.csv.

2.4 Statistical strategy, power, and epistemic bounds

Dandapala archives noteworthy criminal adjudications reported by District Court public-relations judges, not a simple random draw from all national criminal dockets. Statistical inference is therefore framed strictly within the purposive/administrative-reporting paradigm. We use exact two-sided 95% Clopper–Pearson binomial intervals and 10,000-iteration court-clustered bootstrap 95% confidence intervals (60 court clusters, seed = 20261116). These are accompanied by one-way intraclass correlation coefficients (ICC) and design effects (DEFF), which quantify estimation uncertainty around corpus parameters and guard against within-court non-independence[27,28]. Dispersion of sanction severity (H1) is summarized through the Gini coefficient, coefficient of variation (CV), max–min ratio, exact 20,000-draw Monte Carlo permutation contingency tests, Kruskal–Wallis H tests, and Spearman rank correlations (ρ). Binary contingency hypotheses (H2, H3, H4) are evaluated with two-sided Fisher's exact tests, odds ratios (OR, applying Haldane–Anscombe +0.5 continuity correction only when a cell equals zero), and Holm–Bonferroni step-down multiplicity adjustment across the four primary hypothesis families. In multivariable estimation, Linear Probability Models (LPM) and Ordinary Least Squares (OLS) regressions are estimated with one-way court-clustered sandwich standard errors (CR1 finite-cluster correction

across 60 District Courts, df = 59), alongside MacKinnon–White HC3 SEs and Variance Inflation Factors (VIF). The binary outcome is rare (9/80 = 11.25% unconditional imprisonment), and an LPM on it yields out-of-bounds negative predicted probabilities for low-risk profiles. We therefore pair the LPM directly with Firth bias-reduced penalized maximum-likelihood logistic regression. This model keeps probabilities strictly inside (0, 1) and corrects small-sample and quasi-complete separation bias (0/29 imprisoned vulnerable defendants). For the pre- versus post-PERMA No. 3/2026 cohort comparison (n = 50 vs. n = 30), we report the two-sided 80%-power Minimum Detectable Effect (MDE = 32.3 percentage points, or Cohen's h = 0.65 at α = 0.05). Seven sensitivity models (S1–S7) test the results across subsamples, index reweightings, 7-fold Leave-One-Region-Out (LORO) and 60-fold Leave-One-Court-Out (LOCO) jackknives, and a fixed-effect control for Sumatra regional representation.

2.5 Ethics

This research analyses publicly promulgated legislation and official public judicial case dispatches published by the Supreme Court of Indonesia, without human-subject intervention. Institutional ethics review was not required.

3. Results

3.1 Modality prevalence, horizontal dispersion, and intra-court divergence (H1)

Across the N = 80 post-January 2026 convictions, community-based and non-punitive dispositions predominate. Sanction selection and quantum calibration nonetheless show pronounced horizontal dispersion (Table 4 and Figure 1). Supervision (*pidana pengawasan*, Articles 75–76 KUHP) is the modal outcome at 45.00% (36/80; exact 95% CI 33.85–56.53%; court-clustered bootstrap 95% CI 32.87–58.02%). It is followed by judicial pardon (*pemaafan hakim*, Article 54(2) KUHP) at 36.25% (29/80; cluster 95% CI 25.00–47.62%), unconditional custodial imprisonment (*pidana penjara*, Article 65(1)(a) KUHP) at 11.25% (9/80; cluster 95% CI 3.90–19.75%), and social work (*pidana kerja sosial*, Articles 85 and 82(1) KUHP) at 7.50% (6/80; cluster 95% CI 2.38–13.89%). Court-level intraclass correlation is large for supervision (ICC = 0.570, DEFF = 1.19) and moderate for social work (ICC = 0.290, DEFF = 1.10). This points to localized institutional clustering, where specific courts repeatedly favor one community modality. Judicial pardon (ICC = -0.069) and unconditional imprisonment (ICC = 0.094) instead vary sharply even inside individual courthouses.

Table 4. Sentencing modality prevalence, court-clustered confidence intervals, intraclass correlation, and within-modality quantum dispersion (N = 80).

Sentencing modality / Composite metric	n (%)	Exact 95% CI (%)	Court-Cluster 95% CI (%)	ICC (DEFF)	Quantum unit & mean (SD)	Median (range)	CV / Gini
Judicial Pardon (Art. 54(2) KUHP)	29 (36.25%)	25.79–47.76	25.00–47.62	-0.069 (1.00)	0.00 sanction (guilty without punishment)	0.0 (0.0–0.0)	— / —
Social Work (Arts. 85, 82(1) KUHP)	6 (7.50%)	2.80–15.61	2.38–13.89	0.290 (1.10)	99.67 (88.05) service hours	95.0 (8.0–240.0 h)	0.88 / 0.443
Supervision (Arts. 75–76 KUHP)	36 (45.00%)	33.85–56.53	32.87–58.02	0.570 (1.19)	9.64 (4.00) supervision months	12.0 (3.0–24.0 mo)	0.42 / 0.205
Unconditional Imprisonment (Art. 65(1)(a))	9 (11.25%)	5.28–20.28	3.90–19.75	0.094 (1.03)	5.07 (2.01) effective prison months	5.0 (1.0–8.0 mo)	0.40 / 0.203
Effective Custodial Months (All N = 80)	80 (100%)	—	—	—	0.57 (1.74) effective prison months	0.0 (0.0–8.0 mo)	3.04 / 0.910
Nominal Custodial Months (All N = 80)	80 (100%)	—	—	—	2.97 (3.26) imposed/default months	2.0 (0.0–12.0 mo)	1.10 / 0.584
Deprivation Severity Index (0–100, N = 80)	80 (100%)	—	—	—	21.08 (25.07) index points	21.25 (0.0–100.0)	1.19 / 0.579

Note. Court-cluster 95% CIs are computed from 10,000 non-parametric resamples of the 60 District Court clusters. Within Supervision (n = 36), 16 judgments (44.44%) attached tailored rehabilitative/restitution conditions and 3 judgments (8.33%) omitted an underlying default custodial term.

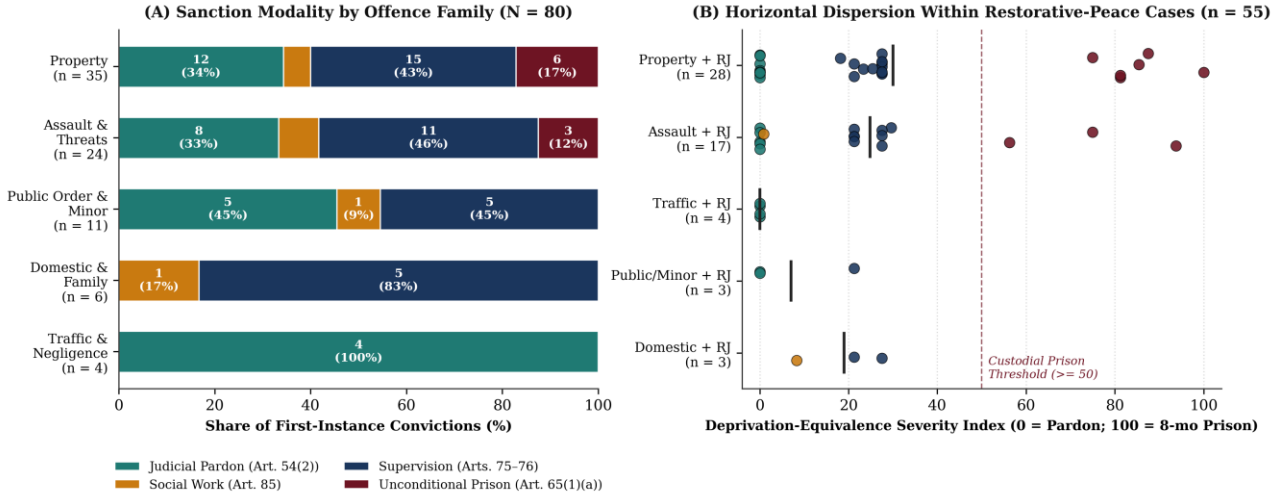

Figure 1. Distribution of non-custodial and custodial sentencing modalities across eighty docket-verified 2026 District Court convictions (60 courts, 7 island regions) and proportional breakdown across five offense families, showing four-way modality splitting within Property (n = 35) and Assault & Threats (n = 24). Overlapping markers in panel B hide some cases.

H1 is supported in descriptive terms: punitive severity shows wide dispersion across the corpus. The Deprivation-Equivalence Severity Index averages 21.08 (SD = 25.07, median = 21.25), giving a CV of 1.19 and a Gini coefficient of 0.579 (Gini = 0.910 for effective custodial months; Gini = 0.584 for nominal prison months). In these data, offense category and statutory maximum do not account for this dispersion. Modality choice is statistically independent of substantive offense family (20,000-permutation χ^2 = 15.47, p = 0.2102, Holm-adjusted p = 0.4205). Severity Index distributions also do not differ significantly across the five offense families (Kruskal–Wallis H = 7.32, p = 0.1200) or across the seven island regions (H = 7.27, p = 0.2967). Statutory maximum years correlate weakly with severity across the pooled corpus, but only because Pid.C summary offenses cluster at 0.25–0.50 years (Spearman ρ = 0.299, p = 0.0071). Once the analysis is restricted to ordinary and special criminal tracks (Pid.B, Pid.Sus, Pid.S, n = 65), the monotonic relationship between legislative offense gravity and actual sanction severity is virtually zero (ρ = 0.039, p = 0.7580). Because the index weights are assigned (Section 2.3), these coefficients describe the spread of index values; Sensitivity Model S5 gives an equal-step ordinal Gini of 0.440.

Holding legally comparable factual configurations constant reveals the core calibration gap. Among the n = 55 convictions in which defendants reached verified victim–offender restorative peace, dispositions split across all four modalities. There were 24 supervision (43.64%), 20 judicial pardon (36.36%), 9 unconditional imprisonment (16.36%), and 2 social work (3.64%). Take ordinary-track property offenses with completed restorative peace (n = 23). Here 12 defendants received supervision (52.17%), 6 received unconditional prison terms of 4.0–8.0 months (26.09%), and 5 received full judicial pardons (21.74%). The same split recurs in ordinary-track simple assault (Article 466(1) KUHP, 2.5-year statutory maximum) with restorative peace (n = 15): 7 supervision (46.67%), 5 judicial pardon (33.33%), and 3 unconditional prison (20.00%). One offense category departs from this pattern and shows judicial restraint. Across all six Domestic & Family convictions (household violence and spousal/child neglect under Law No. 23/2004 and Article 428 KUHP), 0.00% (0/6) received judicial pardon. Panels instead imposed supervision with structured psychiatric treatment (61/Pid.B/2026/PN Mak) or monthly maintenance orders (46/Pid.Sus/2026/PN Bkt; 5/6), and social work (1/6). This follows Article 6 of PERMA No. 3/2026 and Article 6(2) of PERMA No. 1/2024, which bar forgiveness in offenses marked by asymmetric power relations, although cohabiting supervision requires active victim-safety monitoring. Within non-custodial modalities, conversion ratios remain unanchored even after separating the statutory pathways. Two Tipiring social-work orders (8 hours in 4/Pid.C/2026/PN Ksp and 10 hours in 2/Pid.C/2026/PN Idi) rest on two different articles in the dispatches: Article 82(1) KUHP, as a replacement for a fine, in 4/Pid.C/2026/PN Ksp, and Article 85 KUHP jo. PERMA No. 1/2024 in 2/Pid.C/2026/PN Idi. Law No. 1/2026 amended Article 82(1) so that an unpaid fine converts to imprisonment only. The four ordinary/special social-work sentences substituting for short prison under Article 85 (mean = 145.0 hours, range 90–240 hours) still diverge sharply. An identical 6-month default prison sentence became 90 hours (15 hours/month in 113/Pid.Sus/2025/PN Jnp) in one case and 240 hours (40 hours/month, 2.67-fold higher, in 62/Pid.B/2026/PN Mar) in another. A third judgment gave 150 hours for 3 months (50 hours/month in 130/Pid.Sus/2025/PN Tkn). Supervision terms (n = 36) span an 8-fold range from 3 to 24 months (CV = 0.42). In addition, 3 of 36 supervision judgments (8.33%: 1/Pid.B/2026/PN Klt, 3/Pid.Sus/2026/PN End, and 153/Pid.B/2026/PN Spg) impose stand-alone supervision without specifying any underlying default prison sentence. Execution and revocation then lack a defined prison term to enforce (Articles 76(4) and 77 of Law No. 1/2023, as amended by Law No. 1/2026).

Among the 14 District Courts contributing two or more convictions to the corpus, 9 courts (64.29%) imposed divergent principal modalities across dockets within the same courthouse. Three of them (PN Koba, PN Manna, and PN Poso) moved between zero-punishment judicial pardon and unconditional custodial imprisonment (Table 5). On 1 October 2026, PN Koba pronounced a judicial pardon in 159/Pid.B/2026/PN Kba (Article 486 embezzlement with restorative peace). On that same day it sentenced a reconciled defendant in 144/Pid.B/2026/PN Kba (Article 466(1) neighbor assault with unconditional victim forgiveness) to 7 months' unconditional imprisonment. It had earlier imposed 4 months' prison in 38/Pid.B/2026/PN Kba (Article 486 embezzlement with peace). PN Manna shows the same drift. It sentenced a reconciled assault defendant without financial restitution demand to 4 months' unconditional prison on 10 September 2026 (79/Pid.B/2026/PN Mna). Four weeks later it granted dual judicial pardons in 94/Pid.Sus/2026/PN Mna and 95/Pid.B/2026/PN Mna (8 October 2026). This intra-court oscillation resembles the variation reported for loosely structured sentencing regimes in Europe[17,20,21]. It fits panel-

level judicial philosophy shaping outcomes where statutes supply several alternative sanctions without ordinal conversion metrics, although the dispatches do not test this explanation.

Table 5. Representative docket-verified divergent decisions across materially comparable 2026 criminal cases.

Pattern / Docket No. & Court	Date	Charged offense (Max)	Key factual & procedural posture	Final disposition	Diagnostic significance
Intra-court same-day split: 159/Pid.B/2026/PN Kba (PN Koba)	1 Oct 2026	Art. 486 KUHP embezzlement (4.0 yr)	IDR 300k truck fuel; courtroom RJ peace; PERMA 3/2026 cited	Judicial Pardon (0 punishment)	Same court, same day: restorative peace yields full pardon in 159/Pid.B
Intra-court same-day split: 144/Pid.B/2026/PN Kba (PN Koba)	1 Oct 2026	Art. 466(1) KUHP assault (2.5 yr)	Neighbor injury; unconditional victim forgiveness via RJ; Art. 70 omitted	Unconditional Prison: 7 months	Same court, same day: unconditional victim forgiveness still yields 7 mo prison
Intra-court temporal split: 79/Pid.B/2026/PN Mna vs. 95/Pid.B/2026/PN Mna (PN Manna)	10 Sep vs. 8 Oct 2026	Art. 466(1) KUHP assault (2.5 yr)	Both ordinary assault dockets achieved courtroom MKR peace without damages	4 mo Prison vs. Judicial Pardon	Opposite polarity within 28 days in the same District Court on identical statute
Time-served lock-in: 17/Pid.B/2026/PN Pmn (PN Pariaman)	8 May 2026	Art. 476 KUHP theft (5.0 yr)	Theft of 43 coconuts (IDR 400k); MKR peace; held in Rutan 5m 20d	Unconditional Prison: 5 mo 20 days	Exact day-for-day time-served matching ratifies remand; omits Art. 70(1)
Explicit remand matching: 68/Pid.B/2026/PN Pso (PN Poso)	12 Mar 2026	Art. 448(1) KUHP coercion by threat (1.0 yr)	Family fence dispute; MKR peace; "mencukupkan masa tahanan" (1 mo)	Unconditional Prison: 1 month	Explicit admission that prison term was calibrated to absorb accrued detention
Art. 85 social-work 2.67x spread: 113/Pid.Sus/2025/PN Jnp vs. 62/Pid.B/2026/PN Mar	22 Jan vs. 13 Oct 2026	Defamation (2 yr) vs. Art. 486 (4 yr)	Both replace an identical 6-month default prison term under Art. 85 KUHP	90 hours vs. 240 hours Social Work	Identical 6-month underlying prison term converted at 15 h/mo vs. 40 h/mo
Supervision default omission: 153/Pid.B/2026/PN Spg (PN Sampang)	10 Aug 2026	Art. 476 KUHP theft (5.0 yr)	Brother's e-bike (IDR 1.8M); peace signed; stand-alone 10-mo supervision	10 mo Supervision (no default prison)	Omits underlying suspended prison term (3/36 cases), voiding Art. 76(4) execution
Pre-PERMA high-ceiling pardon: 42/Pid.B/2026/PN Ktb (PN Kotabaru)	19 May 2026	Art. 477(1)(g) theft (7.0 yr)	7 project workers; corporate peace; 7-year aggravated theft maximum	Judicial Pardon (0 punishment)	Exceeds Art. 70(2)(a) < 5 yr bar; eliminated post-PERMA No. 3/2026 (0/11)

Note. All docket numbers, dates, and dispositions verified directly against archived Badilum dispatches (data/raw_dispatches/D01..D91).

3.2 The restorative-mitigation pattern and Article 70(1) non-engagement (H2)

Why did 11.25% (9/80) of defendants, all convicted of offenses carrying statutory maximums of 1.0 to 5.0 years, receive unconditional short prison terms (1.0 to 8.0 months) under a Criminal Code explicitly designed to abolish short-term incarceration? To answer this, custodial outcomes were cross-tabulated against restorative peace and upstream statutory screening citations. Outcome-enacting provisions (Articles 54(2), 75–76, 82(1), and 85) were excluded to avoid mechanical tautology. The cross-tabulation shows that all unconditional prison terms fell in cases with restorative peace, which bears on H2 (Table 6 and Figure 2B). All nine (100.0%) unconditional custodial prison sentences occurred in cases where victim–offender restorative peace had succeeded in open court (9/55 = 16.36% vs. 0/25 = 0.00% among non-reconciled cases, Haldane OR = 10.42, 95% CI 0.58–186.47, two-sided Fisher p = 0.0508). Because peace was present in 55 of the 80 cases (68.75%), this concentration is less surprising than the 100% figure suggests, and the contrast is borderline. In non-reconciled cases, by contrast, panels used supervision (12/25), judicial pardon (9/25, grounded in personal vulnerability under Article 54(2)), or social work (4/25).

Table 6. Exact contingency tests for upstream restorative-mitigation decoupling (H2), pre-trial detention lock-in (H3), and PERMA No. 3/2026 cohort shifts (H4).

Hypothesis & analytical contrast	Exposed / Group 1 n/N (%)	Reference / Group 0 n/N (%)	Odds Ratio (95% CI)	Two-sided Fisher p	Holm-adj. p
H2a: Unconditional prison when procedural RJ (PERMA 1/2024 / Art. 204) is cited without Art. 70 vs. all other cases (N = 80)	8 / 32 (25.00%)	1 / 48 (2.08%)	15.67 (1.85–132.66)	0.00230	0.00919
H2b: Unconditional prison in RJ peace cases omitting both upstream screening rules (Arts. 54(1) & 70) vs. citing ≥ 1 (n = 55)	8 / 30 (26.67%)	1 / 25 (4.00%)	8.73 (1.01–75.52)	0.03069	—
H2c: Explicit Article 70 KUHP citation in unconditional prison (n = 9) vs. supervision/social work (n = 42)	0 / 9 (0.00%)	10 / 42 (23.81%)	0.16 (0.01–3.04)*	0.1760	—
H3a: Unconditional prison by documented Rutan pre-trial detention vs. non-detained (All N = 80)	5 / 14 (35.71%)	4 / 66 (6.06%)	8.61 (1.94–38.18)	0.00685	0.02054
H3b: Unconditional prison by Rutan detention restricted to ordinary/special tracks (Pid.B/Pid.Sus/Pid.S, n = 65)	5 / 14 (35.71%)	4 / 51 (7.84%)	6.53 (1.46–29.13)	0.01775	—

Hypothesis & analytical contrast	Exposed / Group 1 n/N (%)	Reference / Group 0 n/N (%)	Odds Ratio (95% CI)	Two-sided Fisher p	Holm-adj. p
H4a: Overall judicial pardon prevalence Post-PERMA No. 3/2026 (≥ 9 Jul) vs. Pre-PERMA (< 9 Jul, N = 80)	11 / 30 (36.67%)	18 / 50 (36.00%)	1.03 (0.40–2.63)	1.0000	—
H4b: Severe high-ceiling (> 4.0 yr max) offenses among pardons: Post-PERMA (n = 11) vs. Pre-PERMA (n = 18)	0 / 11 (0.00%)	5 / 18 (27.78%)	0.11 (0.01–2.17)*	0.1261	—
H4c: Felony (> 1.0 yr max) offenses among pardons via Art. 5(2) *dan/atau*: Post-PERMA vs. Pre-PERMA (n = 29)	6 / 11 (54.55%)	11 / 18 (61.11%)	0.76 (0.17–3.49)	1.0000	—
H4d: Explicit citation of PERMA No. 3/2026 within judicial pardons (diffusion count, not a test of effect): Post-PERMA (n = 11) vs. Pre-PERMA (n = 18)	9 / 11 (81.82%)	0 / 18 (0.00%)	140.60 (6.11–3,234.08)*	< 0.00001	—

Note. Indicates Haldane–Anscombe +0.5 continuity-corrected odds ratio due to a zero cell. Holm–Bonferroni step-down adjustment is computed across the four pre-specified primary non-tautological hypothesis tests (H1 offense-modality permutation p = 0.2102, H2a p = 0.00230, H3a p = 0.00685, and H4 Mann–Whitney ceiling shift p = 0.6986).

Upstream citation patterns are associated with this concentration, although the association is partly definitional: PERMA No. 1/2024 is a mitigation provision, and panels that impose prison are the ones that cite it to justify a discount. Across the 9 unconditional imprisonment dispatches, 88.89% (8/9) explicitly invoked procedural restorative instruments, namely PERMA No. 1 of 2024 or Article 204 of the 2025 KUHAP, as a mitigating consideration (*keadaan yang meringankan*) to discount the prosecutor's custodial demand. One example is a 12-month prosecutorial prison demand reduced to 8 months in 71/Pid.B/2026/PN Mgl; another is a 7-month demand cut to 5 months in 63/Pid.B/2026/PN Stb. None of them engaged or cited Article 70(1) of Law No. 1/2023 (0.00%, 0/9; exact 95% CI 0.00–33.63%). Across the entire N = 80 corpus, cases in which panels cited procedural restorative rules (PERMA No. 1/2024 / Article 204 KUHAP) while omitting Article 70 (proc_rj_without_art70 = 1, n = 32). These cases ended in unconditional imprisonment 25.00% (8/32) of the time, compared with 2.08% (1/48) across all other cases (OR = 15.67, 95% CI 1.85–132.66, two-sided Fisher p = 0.00230, Holm-adjusted p = 0.00919). The same holds within the n = 55 reconciled cases. Panels that omitted both upstream mandatory screening provisions (Articles 54(1) and 70(1)) imprisoned 26.67% (8/30) of defendants. Where at least one upstream KUHP screening provision was explicitly engaged, the figure was 4.00% (1/25) (OR = 8.73, 95% CI 1.01–75.52, Fisher p = 0.03069). Some of the nine prison cases carry five-year maxima (for example Article 476 theft in 17/Pid.B/2026/PN Pmn), which fall within the exclusion of Article 70(2)(a) for offenses punishable by five years or more.

Downstream citations to Articles 54(2), 75–76, or 85 naturally co-occur with the non-custodial disposition selected. Articles 54(1) and 70(1) are different: they are mandatory upstream screening duties that bind every panel contemplating short imprisonment whenever mitigating circumstances such as compensation paid to the victim (Article 70(1)(e)) or reconciliation obtain. Even across the entire N = 80 corpus, explicit citation of Article 70 appears in only 13.75% (11/80) of dispatches (9/36 [25.0%] in supervision, 1/6 [16.7%] in social work, 1/29 [3.4%] in pardon, and 0/9 [0.0%] in unconditional imprisonment). Trial judges face no mandatory reasoning-giving rule that requires written falsification of Article 70(1) before imposing custody. This pattern suggests that panels habituated to pre-2026 practice read PERMA No. 1/2024 Article 19(1) ("peace agreement serves as consideration to mitigate punishment") as a basis for discounted incarceration. The dispatches do not show whether Article 70(1) was considered but not mentioned.

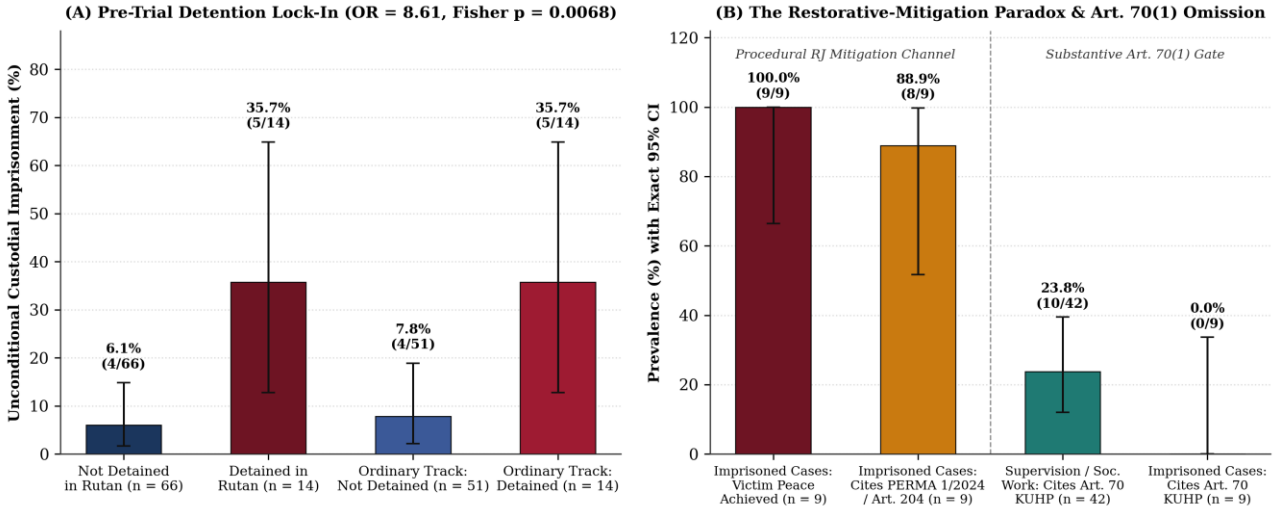

Figure 2. Procedural and doctrinal drivers of persistent short-term incarceration in 2026: (A) higher unconditional custodial imprisonment among defendants subjected to Rutan pre-trial detention (35.7% vs. 6.1%; risk ratio 5.9, OR = 8.61), and (B) statutory citation decoupling between unconditional prison (n = 9) and non-custodial dispositions (n = 71), highlighting universal procedural restorative-mitigation citation alongside zero engagement with Article 70(1) KUHP.

3.3 Pre-trial detention and multivariable regression evidence (H3)

Upstream custodial remand in a State Detention House (Rutan) is associated with unconditional custodial sentencing in our corpus, in line with H3 (Table 6, Table 7, and Figure 2A). Among the 14 defendants with documented Rutan pre-trial detention (17.50% of the corpus), 35.71% (5/14) received unconditional prison terms. The comparable figure among non-detained defendants was 6.06% (4/66), an 8.61-fold increase in the odds of unconditional incarceration (95% CI 1.94–38.18, two-sided Fisher p = 0.00685, Holm-adjusted p = 0.02054). Summary Pid.C Tipiring proceedings statutorily bar pre-trial detention. We therefore re-estimated the contrast strictly within ordinary and special criminal tracks (Pid.B, Pid.Sus, and Pid.S, n = 65). The detention lock-in effect remains large and statistically significant (35.71% [5/14] vs. 7.84% [4/51], OR = 6.53, 95% CI 1.46–29.13, Fisher p = 0.01775). In the subsample of n = 9 cases reporting exact prosecutorial prison demands (mean = 8.56 months, median = 7.0 months), final effective custodial sentences averaged 1.44 months (Wilcoxon W = 0.0, p = 0.0039). Every sentence in this subsample was therefore below the prosecutorial demand; the dispatches do not show whether this differs for detained defendants.

Verbatim judicial reasoning in two archived dispatches fits retrospective time-served calibration as a mechanism. In 17/Pid.B/2026/PN Pmn (PN Pariaman, 8 May 2026), a defendant prosecuted under Article 476 KUHP for stealing 43 coconuts worth IDR 400,000 achieved full courtroom restorative peace. He had been held in Rutan remand since arrest, however, so the panel imposed an unconditional prison sentence of 5 months and 20 days. That term equals the accrued detention to the day, which fits calibration to remand so that he could leave custody without an uncompensated remand surplus. A second case is more explicit. In 68/Pid.B/2026/PN Pso (PN Poso, 12 March 2026; Article 448(1) family boundary threat resolved via MKR), the court's spokesperson recorded that restorative peace "*dijadikan pertimbangan Majelis Hakim untuk meringankan hukuman Terdakwa dengan mencukupkan masa tahanan dengan pidana yang dijatuhkan*" ("served as the Panel's consideration to mitigate the Defendant's punishment by equating the detention period with the prison sentence imposed," fixing 1 month of unconditional imprisonment). Other panels released remanded defendants by judicial pardon: PN Mempawah did so over an 8-month demand in 512/Pid.B/2025/PN Mpw, and PN Pasangkayu did so in 10/Pid.B/2026/PN Pky. PN Kotabumi converted accrued remand into supervision in 89/Pid.B/2026/PN Kbu. Five panels instead imposed short prison sentences on detained defendants; the two dispatches above state or imply that the sentence matched the time served. This resembles the detention-anchoring pattern reported in comparative studies[22–26].

Table 7. Multivariable court-clustered linear (LPM / OLS with 60-court CR1 SEs) and Firth bias-reduced penalized logistic regression models (N = 80).

Predictor variable	Model 1: Prison (LPM, CR1 SE)	Model 2: Prison Upstream Mech. (LPM, CR1 SE)	Model 3: Prison (Firth Logit) aOR (95% CI)	Model 4: Pardon (LPM, CR1 SE)	Model 5: Severity 0–100 (OLS, CR1 SE)	Max VIF
Intercept	0.061 (0.052)	0.068 (0.057)	0.03** (0.00–0.79)	0.280 (0.180)	16.664*** (5.342)	—
pretrial_detained_rutan (1 = Rutan)	0.266** (0.125) [p = .037]	0.248** (0.112) [p = .031]	5.07** (1.10–23.47) [p = .038]	0.007 (0.153) [p = .962]	15.258 (9.291) [p = .106]	1.10
rj_peace_achieved (1 = victim peace)	0.090** (0.043) [p = .043]	—	4.42 (0.27–72.28) [p = .297]	0.178 (0.110) [p = .110]	1.391 (3.795) [p = .715]	1.26
proc_rj_without_art70 (1 = RJ w/o Art. 70)	—	0.175*** (0.061) [p = .006]	—	—	—	1.14
statutory_max_years (years)	0.001 (0.016) [p = .966]	-0.002 (0.015) [p = .892]	1.12 (0.73–1.72) [p = .609]	-0.058 (0.040) [p = .152]	2.346 (1.447) [p = .110]	1.12
vulnerability_or_necessity (1 = yes)	-0.119** (0.052) [p = .024]	-0.106* (0.055) [p = .056]	0.15 (0.01–2.24) [p = .169]	0.298** (0.125) [p = .021]	-14.094*** (4.662) [p = .004]	1.24
post_perma3_cohort (1 = ≥ 9 Jul 2026)	-0.041 (0.066) [p = .534]	-0.065 (0.061) [p = .287]	0.74 (0.16–3.38) [p = .697]	0.059 (0.122) [p = .628]	-2.853 (4.862) [p = .560]	1.06
Fit (R^2 / Adj. R^2 or Pen. Log-Lik)	0.197 / 0.143	0.248 / 0.197	LogLik -17.54 (0 OOB)	0.118 / 0.058	0.212 / 0.159	≤ 1.26

Note. Models 1, 2, 4, and 5 report one-way court-clustered sandwich standard errors (CR1 small-sample correction across 60 District Court clusters, df = 59). Model 3 reports Firth bias-reduced penalized logistic regression Adjusted Odds Ratios (aOR), 95% CIs, and penalized Wald p-values (predicted probabilities strictly bounded inside [0.0036, 0.5542], 0/80 out-of-bounds [OOB]). p < 0.10, p < 0.05, p < 0.01. All VIFs ≤ 1.26.

Multivariable court-clustered linear regressions (CR1 across 60 court clusters) and Firth bias-reduced penalized logistic regressions reproduce the bivariate results, with no sign of multicollinearity (all VIFs ≤ 1.26; Table 7). In Model 1 (baseline CR1 LPM), Rutan pre-trial detention is associated with a +26.6 percentage point higher probability of unconditional imprisonment (β = 0.266, CR1 SE = 0.125, p = 0.0366). Documented personal vulnerability or acute necessity points the other way. It lowers unconditional imprisonment by -11.9 percentage points (β = -0.119, CR1 SE = 0.052, p = 0.0244; 0/29 vulnerable/necessity defendants were imprisoned), raises the judicial pardon probability by +29.8 percentage points (Model 4: p = 0.0209), and cuts the Severity Index by -14.09 points (Model 5: p = 0.0037). Model 2 replaces the factual RJ indicator with the citation-based indicator (proc_rj_without_art70). In that specification, Rutan detention independently adds +24.8 percentage points (β = 0.248, CR1 SE = 0.112, p = 0.0312). Citing procedural RJ rules (PERMA No. 1/2024 / Article 204 KUHAP) without engaging Article 70 adds +17.5 percentage points (β = 0.175, CR1 SE = 0.061, p = 0.0058). The LPM yields negative fitted probabilities on 17/80 low-risk profiles (min = -0.099). For this reason, Model 3 re-estimates the baseline specification by Firth penalized logistic regression, and the predicted probabilities stay strictly bounded (0.0036 to 0.5542). Rutan pre-trial detention is associated with more than five times the adjusted odds of unconditional imprisonment (aOR = 5.07, 95% CI 1.10–23.47, p = 0.0379). In the upstream-mechanism Firth model, proc_rj_without_art70 yields aOR = 5.60, p = 0.0518. Statutory maximum imprisonment years remain indistinguishable from zero in every specification (p ≥ 0.609).

3.4 Pre- versus post-PERMA No. 3 of 2026 cohort evaluation (H4)

The n = 50 convictions decided prior to 9 July 2026 are compared here with the n = 30 convictions decided on or after 9 July 2026. This gives the first empirical evaluation of PERMA No. 3 of 2026 on Judicial Pardon Judgments (Table 6 and Figure 3). Explicit citation of PERMA No. 3/2026 within judicial pardon dispatches appears only after its promulgation: 0.00% (0/18) before and 81.82% (9/11) afterward. This is a measure of diffusion, since a regulation cannot be cited before it exists, and it is not tested for significance. Overall judicial pardon prevalence, however, stayed almost unchanged: 36.00% (18/50) pre-PERMA versus 36.67% (11/30) post-PERMA (Fisher p = 1.0000; multivariable Model 4 β = +0.059, p = 0.628). At the two-sided 80%-power Minimum Detectable Effect (MDE = 32.3 percentage points, Cohen's h = 0.65), this null shift rules out a massive aggregate suppression or expansion of judicial pardons. Modest changes in prevalence below 32 percentage points remain open for larger future cohorts.

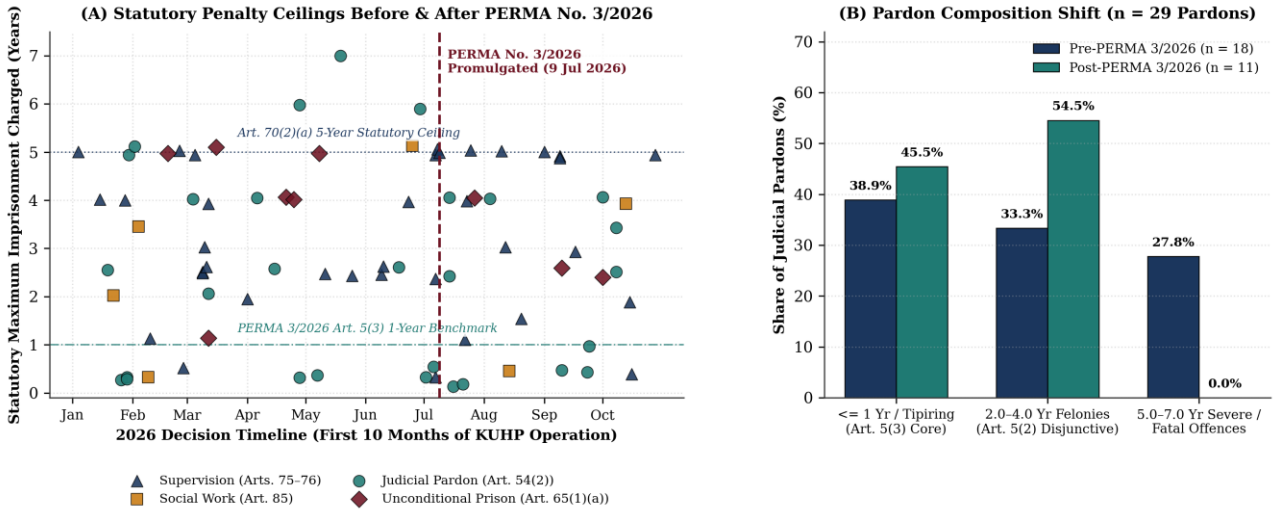

Figure 3. Early institutional impact of Supreme Court Regulation (PERMA) No. 3 of 2026 (promulgated 9 July 2026): (A) modality shares remain broadly stable across pre-PERMA (n = 50) and post-PERMA (n = 30) cohorts, while (B) statutory penalty ceilings among judicial pardons (n = 29) show no pardons above 4.0 years after PERMA (0/11 versus 5/18; 27.8% to 0.0%, not significant) alongside continued felony pardons in the 2.0–4.0-year band (54.5%) in line with Article 5(2)'s disjunctive (*dan/atau*) wording.

Within the n = 29 judicial pardons (18 pre-PERMA vs. 11 post-PERMA), the internal offense-ceiling distribution shows why aggregate stability hides a compression at the top end paired with a mid-tier escape hatch (Figure 3B). With 18 and 11 pardons, neither contrast is significant, so H4 is supported only as a descriptive pattern. During the six-month pre-PERMA vacuum (January–early July 2026), 27.78% (5/18) of judicial pardons were granted in severe offenses carrying statutory maximums of 5.0 to 7.0 years. These exceed even the < 5-year bar that Article 70(2)(a) sets on non-custodial avoidance. The five cases were a 5-year negligent homicide (512/Pid.B/2025/PN Mpw), two 6-year fatal traffic collisions under Article 310(4) of Law No. 22/2009 (13/Pid.Sus/2026/PN End and 12/Pid.Sus/2026/PN Lbj), a 5-year ordinary theft (1/Pid.B/2026/PN Kka), and a 7-year aggravated corporate-project theft by seven co-defendants (42/Pid.B/2026/PN Ktb). After PERMA No. 3/2026 was promulgated on 9 July 2026, > 4.0-year judicial pardons fell to 0.00% (0/11) (two-sided Fisher p = 0.1261). The mean statutory maximum dropped from 2.71 to 2.09 years, yet the median stayed at 2.50 years in both cohorts (Mann–Whitney U = 108.0, p = 0.6986). Conversely, 54.55% (6/11) of post-PERMA judicial pardons were still granted in 2.5 to 4.0-year felonies. These were a 4-year fraud (65/Pid.B/2026/PN Mrs), 4-year embezzlement (236/Pid.B/2026/PN Ptk and 159/Pid.B/2026/PN Kba), a 3.5-year mutual child-related assault (94/Pid.Sus/2026/PN Mna), and 2.5-year ordinary assault (37/Pid.B/2026/PN Mar and 95/Pid.B/2026/PN Mna). In the same band the pre-PERMA share was 6/18 (33.3%, Figure 3B); adding the five pardons above 4 years gives 11/18 (61.11%) for all felonies above 1 year, against 6/11 post-PERMA (Fisher p = 1.0000). Table 5 sets out representative divergent judgments across all four empirical patterns. Seven sensitivity checks (S1–S7, Table 8) show the same inferences across subsamples, index re-weightings, LORO/LOCO jackknives, and regional fixed effects.

Table 8. Seven-model sensitivity, regional-control, and jackknife robustness summary (S1–S7).

Model	Analytical perturbation / subsample restriction	Sample n	Key re-estimated parameter	Primary baseline (N = 80)	Substantive inference
S1	Restrict strictly to completed restorative-peace cases (rj_peace_achieved = 1)	55	Detention lock-in: 45.45% (5/11) vs. 9.09% (4/44), Fisher p = 0.01088	35.71% vs. 6.06%, p = 0.00685	Robust: lock-in strengthens inside reconciled cases
S2	Restrict to strict Art. 70(2)(a) < 5.0 yr ceiling (and ≤ 5.0 yr MKR cap)	59 (77)	< 5 yr: 24 Pardon, 24 Sup., 6 Prison, 5 SW (≤ 5 yr: 36, 26, 9, 6)	36 Sup., 29 Pardon, 9 Prison, 6 SW	Robust: four-way uncalibrated split persists
S3	Exclude summary Pid.C Tipiring (ordinary/special tracks only)	65	Detention OR = 6.53 (p = 0.01775); max-penalty ρ = 0.039 (p = 0.758)	OR = 8.61 (p = 0.00685); ρ = 0.299	Robust: confirms zero felony gravity calibration
S4	Restore 2 unquantified supervision dispatches (D22, D66) + D62 co-def.	83	Supervision 45.78% (38/83), Pardon 34.94%, Prison 12.05%, SW 7.23%	45.00%, 36.25%, 11.25%, 7.50%	Robust: all modality shares shift by < 1.4 pp

Model	Analytical perturbation / subsample restriction	Sample n	Key re-estimated parameter	Primary baseline (N = 80)	Substantive inference
S5	Equal-step ordinal Severity Index (0, 33.3, 66.7, 100) vs. formula S_i	80	Ordinal Gini = 0.440; offense Kruskal p = 0.141; vuln. p = 0.0018	Formula Gini = 0.579; Kruskal p = 0.120	Robust: high inequality is not an index artifact
S6	7-fold Leave-One-Region-Out (LORO) & 60-fold Leave-One-Court-Out (LOCO)	43–79	LORO detention OR range 6.44–33.18; LOCO OR range 6.78–16.94	Full-sample detention OR = 8.61	Robust: no single region or court drives H3
S7	Add Sumatra regional fixed effect (is_sumatra, 37/80) in CR1 LPM & Firth	80	Detention +24.9 pp (CR1 p = 0.060); Firth aOR = 4.39 (p = 0.074)	+26.6 pp (p = 0.037); aOR = 5.07	Robust: lock-in holds net of Sumatra share

Note. LORO omits each of the 7 island regions sequentially (OR = 33.18 when Sumatra is omitted, 6.44 when Maluku is omitted, 7.64 when Java is omitted); LOCO omits each of the 60 District Courts sequentially.

4. Discussion

4.1 Four-canon statutory interpretation of the 2026 normative collisions

Sequential application of civil-law statutory interpretation explains why conscientious trial judges produced the four empirical anomalies documented above:

1. Grammatical interpretation (interpretasi gramatikal): Two textual formulations create structural ambiguity. First, Article 70(1) of Law No. 1/2023 states that imprisonment "*sedapat mungkin tidak dijatuhkan*" ("as far as possible shall not be imposed"). This is a hortatory qualifier. It carries no explicit procedural nullity and no mandatory burden of written justification when a panel nonetheless selects custody. Second, Article 5(3) of PERMA No. 3/2026 defines "lightness of the act" (*ringannya perbuatan*) narrowly, by reference to statutory Tipiring, ≤ 1-year maximum imprisonment / Category III fines, a light physical or psychological impact on the victim,, or complaint offenses. Article 5(2), by contrast, links the three statutory grounds of Article 54(2) KUHP with the disjunctive connector "*dan/atau*" ("and/or") (*ringannya perbuatan*, *keadaan pribadi pelaku*, *dan/atau* keadaan pada saat dilakukan tindak pidana serta yang terjadi kemudian). Grammatically, "*dan/atau*" makes each prong independently sufficient. Even when an offense carries a 4-year felony maximum (Article 486 embezzlement or Article 492 fraud), post-offense restorative peace ("circumstances occurring afterward") or advanced age ("personal circumstances") satisfies Article 5(2) without meeting the 1-year cap of Article 5(3). This explains why 54.55% (6/11) of post-PERMA pardons occurred in 2.5–4.0-year felonies.

2. Systematic interpretation (interpretasi sistematis): Five collisions between instruments weaken the coherence of the system. First, PERMA No. 1 of 2024 Article 19(1) was drafted under the colonial KUHP, when non-custodial alternatives were weak, and it frames courtroom peace as a basis for shortening prison duration. Read in isolation from Article 70(1) of Law No. 1/2023, it creates the restorative-mitigation trap (H2). Under the *lex superior derogat legi inferiori* principle[14], a Supreme Court regulation cannot dilute a statutory command against short imprisonment, yet 8/9 custodial panels treated discounted prison as full restorative compliance. Second, Article 70(2)(a) KUHP bars prison-avoidance rules for offenses carrying ≥ 5 years, whereas Article 54(2) KUHP contains no numeric statutory ceiling. This asymmetry allowed pardons for 5-to-7-year negligent homicide, fatal traffic, and aggravated theft before PERMA (5/18), while in theory barring lesser supervision for those same dockets. Third, Article 65(1)(c) KUHP lists *pidana pengawasan* as a standalone principal punishment. Article 76(1)–(4), however, structures it operationally as an alternative execution mode for an imposed prison sentence of up to 3 years (Article 76(1); breach leads to prison under Article 76(4) and to revocation under Article 77, as amended by Law No. 1/2026). Reading Article 65(1)(c) in isolation led 3/36 supervision panels (8.33%) to omit any underlying prison term, which produced an unenforceable supervision order. Fourth, Law No. 20/2025 (KUHAP Article 100) permits Rutan pre-trial detention for offenses punishable by five years or more, with listed exceptions below five years (such as Articles 466(1), 486, and 492 KUHP). This sits in tension with Article 70(1) of Law No. 1/2023, which asks courts to avoid imposing imprisonment where the listed mitigating circumstances apply. Article 70(1) is a sentencing guideline and not a rule on remand, and it does not apply to offenses punishable by five years or more (H3). Fifth, Article 246(3) KUHAP and Articles 11–12 of PERMA No. 3/2026 permit provincial High Court appeals (*banding*) but bar Supreme Court cassation (*kasasi*) whenever a High Court affirms a judicial pardon. The Supreme Court is therefore structurally unable to produce binding cassation jurisprudence (*yurisprudensi kasasi*) that would harmonize pardon thresholds across provincial High Courts. Ex ante quantitative guidelines become indispensable for that reason.

3. Teleological interpretation (interpretasi teleologis): Articles 51–52 of Law No. 1/2023 stipulate that punishment aims to socialize convicts, resolve social conflict, restore balance, and never degrade human dignity. Imprisoning reconciled defendants for 1 to 7 months (9/9 unconditional prison cases) subverts conflict resolution. So does calibrating prison duration to absorb Rutan remand (17/Pid.B/2026/PN Pmn, 68/Pid.B/2026/PN Pso). Both practices impose short-term prison exposure, which the literature cited describes as criminogenic and as lacking rehabilitative programming[35,51]. Erratic oscillation between a zero-sanction pardon and 7-month incarceration within the same courthouse (PN Koba, PN Manna) further erodes public confidence in equal justice.

4. Historical interpretation (interpretasi historis): Legislative deliberations (Naskah Akademik of the 2023 KUHP) transplanted *rechterlijk pardon* from Article 9a of the Dutch *Wetboek van Strafrecht*, which the Netherlands introduced in 1983 for petty kantonrechter and disproportionate prosecution cases[9,30,42]. The same deliberations modeled Articles 70, 75–76, and 85 on European short-prison abolition reforms. Indonesian drafters, however, took over the permissive judicial powers and left out the institutional calibration infrastructure that disciplines those powers in mature comparators. That infrastructure comprises presumptive orientation tariffs, mandatory written override reasons, remand-release triggers, and funded probation pre-sentence suitability reports.

4.2 Functional-equivalence comparison and transplantability limits

To identify institutionally viable remedies, Table 9 and Figure 4 benchmark Indonesia's post-January 2026 architecture against four functional comparators across six calibration dimensions[40]. The Netherlands comes first. Article 9a *Wetboek van Strafrecht* shares the three grounds of Indonesian Article 54(2): the gravity of the act, the offender's character, and the circumstances at or after the act. Horizontal consistency there rests on LOVS judicial orientation points (*Oriëntatiepunten voor straftoemeting*), on Public Prosecution Service (OM)

penalty guidelines, and, historically, on a conversion of 2 hours of *taakstraf* per 1 day of custody. The current LOVS orientation points (version of July 2026) no longer apply a general conversion between community service and custody; the 2-hours-per-day ratio is retained only for the deduction of pre-trial detention (Article 27 Sr) and for the substitute-detention table (Article 22d Sr). Article 22b Sr adds statutory exclusions: no *taakstraf* for offenses carrying six years or more that seriously violate the victim's bodily integrity, for the offenses of Articles 181, 252, and 253, or for a similar offense within five years of an earlier *taakstraf*[42,43]. Germany attacks short-term incarceration at its root. Section 47(1) StGB prohibits custodial sentences under six months unless exceptional offender-related necessity or the defense of the legal order makes imprisonment indispensable. A reason-giving duty for such sentences (§ 267(3) StPO)[52] backs that rule. Omitting the required reasons is a legal error that leads to reversal of the sentence on appeal on points of law (Revision, § 337 StPO) where the judgment rests on it, as when the Federal Court of Justice set aside four short sentences in 2024[53]. Two further tools sit alongside it: § 60 StGB (*Absehen von Strafe*), capped at ≤ 1 year of incurred penalty where the offender suffered grave personal consequences, and the prosecutorial conditional dismissal of § 153a StPO[45,46,54]. Portugal codifies an explicit statutory ladder. Article 74 *Código Penal* restricts *dispensa de pena* (judicial pardon) to offenses carrying a statutory maximum of ≤ 6 months' prison, with damages repaired. Article 45 requires substitution of prison ≤ 1 year by a fine or non-custodial sanction unless execution is needed to prevent future offenses. Article 58 allows prison of up to two years to be replaced by community work at one hour per day of prison (maximum 480 hours), supervised through DGRSP social-reinsertion plans, and Article 50 governs suspension of up to 5 years[48]. Singapore operates within a high-capacity ASEAN administrative judiciary. Under section 337 of the Criminal Procedure Code 2010, it governs Community-Based Sentences (CBS: Day Reporting Orders, Mandatory Treatment Orders, Short Detention Orders, and Community Work Orders) through strict statutory exclusions (offenses above 3-year imprisonment). Reports are required order by order, for example a psychiatric report for a Mandatory Treatment Order and suitability reports for Day Reporting and Community Service Orders, and not as a general pre-sentence duty under section 337 (ss. 339(2), 341(2), and 346(3) CPC)[50,55].

Table 9. Functional-equivalence comparison of judicial pardon and non-custodial sentencing calibration across five jurisdictions (as of November 2026).

Functional calibration dimension	Indonesia (KUHP 2023, KUHAP 2025, PERMA 3/2026)	Netherlands (Art. 9a & 22b Sr; LOVS / OM)	Germany (StGB §§ 47, 56, 60; StPO § 267)	Portugal (Código Penal Arts. 45, 50, 58, 74)	Singapore (CPC 2010 s. 337 CBS)
1. Statutory offense ceiling on judicial pardon	Partial: Uncapped in Art. 54(2); PERMA 3/2026 Art. 5(3) ≤ 1 yr bypassed by Art. 5(2) *dan/atau* (54.5% felonies)	Partial: Uncapped in Art. 9a Sr, but channeled via kantonrechter & OM charging filters	Present: § 60 StGB strictly capped at incurred penalty ≤ 1 year (*Absehen von Strafe*)	Present: Art. 74 CP strictly capped at statutory max ≤ 6 months + damage repair	Partial: Conditional discharge (s. 337); CBS strictly barred if max > 3 years
2. Presumptive short-prison bar & written override duty	Partial: Art. 70(1) "as far as possible" (< 5 yr), but no written override rule (0/9 prison cases cited Art. 70)	Partial: Reasoned deviation required when departing from prosecutorial/LOVS tariffs	Present: § 47 StGB < 6 mo exceptional-necessity bar + § 267(3) StPO reversible error	Present: Art. 45 CP mandatory ≤ 1 yr prison substitution unless preventative need proven	Partial: Appellate sentencing benchmark matrices per offense band
3. Quantitative conversion ratio (hours / supervision vs. prison)	Absent: Only wide 8–240 h ceiling (Art. 85); empirical spread 15–50 h/mo (3.3-fold range) & 3/36 missing default term	Partial: Historical LOVS conversion of 2 *taakstraf* hours per custody day, no longer applied as a general table (2-hour ratio kept for pre-trial detention deduction and substitute detention)	Present: Day-fine (Tagessatz) 1:1 equivalence & structured § 56 StGB probation	Present: Art. 58 CP one community-work hour per day of prison (prison up to 2 years; maximum 480 hours)	Present: Statutory CWO hour bands & structured DRO/MTO duration schedules
4. Pre-trial detention vs. non-custodial anti-lock-in	Absent: KUHAP allows remand on 4–5 yr property crimes (OR = 8.61 lock-in; exact time-served matching)	Partial: Art. 67a(3) Sv "*anticipatietoets*" bars remand if no net prison expected (still imperfect)	Present: § 112(1) StPO strict proportionality bars remand where non-custodial outcome expected	Present: Art. 202 CPP restricts remand generally to intentional crimes > 5 years (> 3 yr exceptions)	Present: Bail presumption + non-conviction SDO (≤ 14 days) decoupled from prison record
5. Pre-sentence probation (Bapas) suitability report	Absent: Optional for adults (6/80 social work, 7.5%); acute Bapas officer-to-client deficit	Present: Institutionalized Reclassering Nederland digital risk & suitability advisories	Present: Gerichtshilfe pre-sentence inquiry & funded non-profit placement network	Present: Mandatory DGRSP social-reinsertion plan prior to Art. 58 work execution	Partial: Order-specific reports (psychiatric report for MTO; suitability reports for DRO and CSO); no general pre-sentence report duty
6. Restorative-settlement hierarchy over custody	Partial: PERMA 1/2024 Art. 19(1) allows discounted prison (100% of prison cases had RJ peace)	Present: Art. 51h Sv mediation routed into OM diversion or Art. 9a Sr / *taakstraf*	Present: § 46a StGB Täter-Opfer-Ausgleich triggers full mitigation or § 46a exemption	Present: Art. 74(1)(b) CP reparation directly unlocks *dispensa de pena* / suspension	Partial: Compoundable minor offenses (s. 241 CPC) extinguish custody upon composition

Note. Functional ratings (Present, Partial, Absent) conducted under functional-equivalence comparative methodology[40]; rows correspond directly to Figure 4.

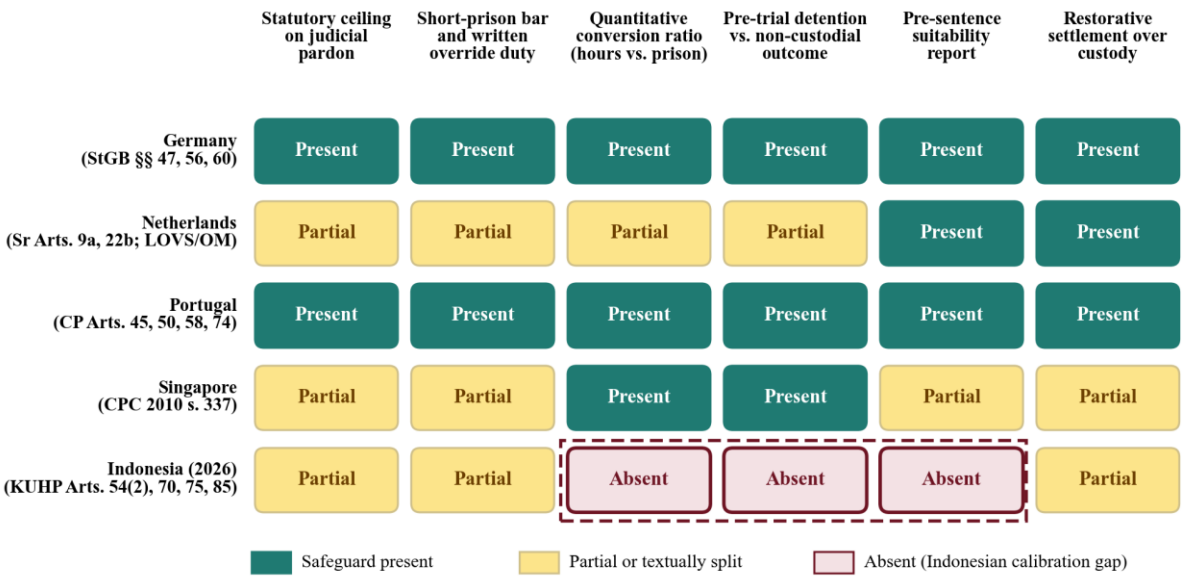

Figure 4. Functional-equivalence calibration matrix across five criminal justice regimes as of November 2026 (ratings as in Table 9); the dashed burgundy border highlights Indonesia's calibration gaps in conversion metrics, remand anti-lock-in rules, and adult Bapas suitability reporting.

Comparative method forbids naive legal transplantation across asymmetric institutional capacities. Four instruments can be transplanted at once, at near-zero fiscal cost. They are Germany's § 47 StGB / § 267(3) StPO requirement of a written Article 70(1) override, the Netherlands' LOVS-style orientation bands for community service, Portugal's duty to specify an underlying default custodial term in every supervision or suspended judgment, and the Dutch Article 67a(3) Sv[56] anticipatory remand proportionality check (*anticipatietoets*). Singapore's suitability reports, required order by order under the Community-Based Sentences provisions of the CPC, are different. They cannot be transplanted nationwide overnight to adult Indonesian dockets. Articles 1(15), 1(20), 1(23), and 55–59 of Law No. 22 of 2022 on Corrections (UU Pemasyarakatan)[57] give Community Counselors (*Pembimbing Kemasyarakatan*, PK Bapas) formal authority over social inquiry (*Penelitian Kemasyarakatan*, Litmas) and non-custodial supervision, under the reorganized Ministry of Immigration and Corrections (Kemenimipas). Yet Balai Pemasyarakatan (Bapas) offices numbered about 94 units[58] across Indonesia's 514 regencies and municipalities entering 2026, and they already carried juvenile diversion (Law No. 11 of 2012) and adult parole workloads[37,38]. That bottleneck explains why social work accounted for only 7.50% (6/80) of dispositions in our corpus. Indonesia therefore needs a tiered capacity design. It would combine standardized digital e-Litmas checklists under Law No. 22/2022 with pre-contracted municipal and religious placement MoUs (such as the mosque placement PN Idi used effectively in 2/Pid.C/2026/PN Idi), instead of unachievable clinical reports in every minor case.

4.3 Sequenced de lege ferenda reform agenda

We now turn our empirical and comparative findings into positive law. Table 10 formulates six sequenced *de lege ferenda* reforms. Each specifies the exact legal instrument, the institutional actor, the empirical defect targeted, and the implementation horizon:

1. Harmonize PERMA No. 1/2024 with Article 70(1) KUHP and mandate written override justification (Supreme Court, Immediate 0–6 months): Amend Article 19 of PERMA No. 1/2024 and issue a Supreme Court Sentencing Circular (SEMA Pedoman Kalibrasi Pemidanaan Non-Pemenjaraan). The circular would set a binding four-step decision ladder for < 5-year offenses where restorative peace or Article 70(1) factors exist. Step 1 is Judicial Pardon (Art. 54(2)), Step 2 Social Work (Arts. 82(1), 85), and Step 3 Supervision (Arts. 75–76). Step 4, Unconditional Imprisonment, is permissible only if the panel enters an explicit, itemized written finding falsifying Article 70(1). That rule reverses the 0/9 omission rate and the OR = 15.67 procedural-mitigation trap. It is enforceable as a *kurang cukup pertimbangan* (*onvoldoende gemotiveerd*) appellate error.

2. Tighten PERMA No. 3/2026 Article 5(2)–(3) and enforce mandatory default prison specification in Supervision templates (Supreme Court, Immediate 0–6 months): Revise Article 5(2)–(3) of PERMA No. 3/2026 to clarify that judicial pardons for felonies with statutory maximums > 1 year up to < 5 years require cumulative proof of minor actual harm or culpability, plus either personal vulnerability or full victim restoration. Pardons would be capped at < 5 years, in harmony with Article 70(2)(a), a point that matters given cassation insulation when High Courts affirm pardons. The Supreme Court should also configure its SIPP (Sistem Informasi Penelusuran Perkara) judgment template to block registration of any Article 75–76 supervision verdict that omits the underlying default prison term. This cures the 8.33% execution defect.

3. Promulgate a national Quantitative Conversion & Orientation Matrix (Supreme Court, Short-term 6–12 months): Establish LOVS-style orientation bands that fix 30 hours of social work per 1 month of underlying prison under Article 85 (30 h = 1 mo, 60 h = 2 mo, ..., 180 h = 6 mo). The proposed 30 hours per month lies within the observed range of 15 to 50 hours per month and below the 40 hours per month that the 240-hour ceiling implies for a six-month term; it is the authors' proposal, not an estimate. The band would rise to 240 h only for aggravated 6-month substitutions, with 8–24 h bands for Article 82(1) Tipiring fine conversions. Supervision duration would be anchored at 1.5x to 2.0x the underlying suspended prison term. These rules would remove the 2.67-fold Article 85 conversion spread and the 8-fold supervision dispersion.

4. Enact a Joint Pre-Trial Detention Anti-Lock-In Protocol (Mahkamah Agung–Kejaksaan Agung–Polri, Short-term 6–12 months): Issue an inter-agency Joint Decree (SKB) that introduces a Dutch-style anticipatory proportionality test. The test would bar Rutan remand, substituting city or house arrest or non-custodial reporting, whenever a first-time adult is suspected of an Article 70(1)-eligible < 5-year offense or

enters MKR mediation. A judicial rule should accompany it, forbidding "time-served" custodial ratification. That targets the remand lock-in associated with OR = 8.61 / Firth aOR = 5.07. Any accrued remand days would be credited against supervision (1 remand day = 2 supervision days) or social work (1 remand day = 2 service hours). Article 61 of Law No. 1/2023 credits remand only against fixed-term imprisonment and fines, so these ratios are the authors' proposal for extending the credit to the other two modalities.

5. Deploy standardized e-Litmas digital screening under Law No. 22/2022 and Regency/City Social-Work MoUs (Kemenimipas / Ditjenpas & Pemda, Medium-term 12–24 months): Operationalize Articles 55–59 of Law No. 22 of 2022 on Corrections, together with Government Regulation implementing rules on *pidana kerja sosial* and *pidana pengawasan*. Narrative adult pre-sentence reports would give way to a 48-hour digital e-Litmas checklist integrated into e-Berpadu, including victim-safety screening for cohabiting domestic-violence supervision cases. Standing regional MoUs between District Courts, Prosecution Offices, Bapas, and municipal facilities would also be mandated. The aim is to raise social-work utilization above 7.50%.

6. Codify an explicit < 5-year statutory ceiling on Article 54(2) and statutory remand alignment (DPR RI & President, Structural 24–36 months): In the first legislative review of Law No. 1/2023 and Law No. 20/2025, insert a statutory ceiling that aligns Article 54(2) with Article 70(2)(a) (< 5 years). Raise, too, the general Rutan pre-trial detention threshold in KUHAP above 5 years for non-violent property offenses where restitution or MKR is pending.

Table 10. De lege ferenda: six sequenced doctrinal, procedural, and institutional reforms.

#	Reform proposal	Empirical defect targeted (N = 80)	Legal instrument required	Competent authority	Horizon
1	Establish 4-step non-custodial ladder & mandatory written Art. 70(1) override	100% (9/9) prison despite RJ peace; OR = 15.67 RJ w/o Art. 70 (H2)	Amendment to PERMA 1/2024 Art. 19 & SEMA Kalibrasi Pemidanaan	Supreme Court (Mahkamah Agung RI)	Immediate (0–6 mos)
2	Harmonize PERMA 3/2026 Art. 5(2)–(3) (< 5 yr cap) & SIPP default-term lock	54.5% post-PERMA felony pardons (H4); 8.3% missing default term	Amendment to PERMA 3/2026 Art. 5 & Badilum SIPP validation rule	Supreme Court & Ditjen Badilum	Immediate (0–6 mos)
3	Issue Quantitative Conversion Matrix (30 h = 1 mo Art. 85; 1.5–2x Sup.)	Gini = 0.579; 64.3% intra-court split; 2.67x Art. 85 spread (H1)	Supreme Court Sentencing Guideline Regulation (PERMA Pemidanaan)	Supreme Court Working Group (Pokja Pidana)	Short (6–12 mos)
4	Enact Anticipatory Remand Test & Remand-to-Alternative Credit Rule	OR = 8.61 (Firth aOR = 5.07) Rutan lock-in; time-served matching (H3)	Joint Decree (SKB) & Attorney General / Chief of Police Directives	Mahkamah Agung, Kejaksaan Agung, Polri	Short (6–12 mos)
5	Deploy 48h digital e-Litmas (Law 22/2022) & municipal placement MoUs	7.50% (6/80) social-work share due to Bapas staffing bottleneck	Implementing PP on Arts. 76 & 85 KUHP + Kemenimipas Reg. (Law 22/2022)	Ministry of Immigration & Corrections (Kemenimipas), Pemda	Medium (12–24 mos)
6	Align statutory Art. 54(2) ceiling (< 5 yr) & KUHAP property remand rules	Pre-PERMA 5–7 yr pardons (27.8%) & statutory remand friction	Limited statutory amendment to Law 1/2023 & Law 20/2025	House of Representatives (DPR RI) & President	Structural (24–36 mos)

Note. Sequenced by legal hierarchy and fiscal/administrative feasibility so Reforms 1–4 require zero parliamentary legislation.

4.4 Limitations

Nine methodological limitations bound our inferences. First, putusan3.mahkamahagung.go.id enforced HTTP 403 automated-access blocks. Our N = 80 corpus is therefore drawn from official Badilum Dandapala judicial dispatches (91 screened dispatches across 60 courts). Outer-island courts, particularly Sumatra (37/80 = 46.25%) and Sulawesi (18/80 = 22.50%), are more actively represented in it than high-volume Java courts (7/80 = 8.75%). Sensitivity Models S6 (LORO omitting Sumatra yields OR = 33.18) and S7 (Sumatra fixed-effect control) confirm that detention lock-in is not an artifact of regional composition. Still, judicial spokespersons preferentially publicize innovative restorative and non-custodial rulings. Our 11.25% unconditional imprisonment rate therefore describes the dispatches in the corpus; it may differ from national practice in either direction. Second, Dandapala dispatches quote operative verdicts and core panel considerations. They are shorter than full 30–60-page judgment transcripts (*salinan putusan*). Our upstream citation indicators (such as 0/9 explicit Article 70 citations in prison dispatches) therefore measure the public judicial justification reported by the adjudicating court itself, not unpublished clerk-file headers. Third, the Algorithmic–Human Construct Audit achieved 96.0% agreement (κ = 0.918) against an independent lexical-regex parser. Even so, a single jurist executed the primary contextual coding. Future scaled audits should use blind dual-human coding. Fourth, the post-PERMA No. 3/2026 cohort (n = 30 over 3.7 months) carries an 80%-power MDE of 32.3 percentage points (Cohen's h = 0.65). Longitudinal follow-up across 2027–2028 is needed once N ≥ 300 full-text transcripts become accessible. Fifth, pre-trial detention is observational, not randomly assigned. Multivariable CR1 and Firth penalized regressions, together with verbatim time-served admissions (17/Pid.B/2026/PN Pmn, 68/Pid.B/2026/PN Pso), strongly support direct lock-in. Unobserved criminal-history nuances could still contribute residual variance. Sixth, the severity index uses assigned weights, so its ordering of sanctions is a normative choice. Seventh, H2 rests on citations written after the sentence was chosen, so the association is partly definitional. Eighth, the 100 reliability cells come from 20 cases and are not independent, and the parser was built from the same coding rules as the human coding. Ninth, 21 of the 80 cases carry statutory maxima of five years or more, which fall outside Article 70(1) as read in this study.

5. Conclusion

Indonesia's 2026 transition under Law No. 1 of 2023, Law No. 20 of 2025, and Law No. 1 of 2026 has broken the colonial monopoly of imprisonment. Trial judges across all seven island regions now use supervision (45.00%), judicial pardon (36.25%), and social work (7.50%). Judges have also applied *lex favor reo* to late-2025 indictments. They have shown zero-pardon restraint in domestic-violence dockets (0/6). Yet in this sample mercy without a metric shows wide dispersion, and pockets of custodial lock-in persist. Across eighty docket-verified 2026 District Court convictions, sanction severity varies widely without calibration to statutory offense ceilings (Gini = 0.579; ordinary-track ρ = 0.039, p = 0.758). In 9 of the 14 courts that decided multiple cases (64.29%), dockets ended in divergent modalities. Rutan pre-trial detention is associated with a rise in unconditional imprisonment from 6.06% to 35.71% (OR =

8.61, p = 0.00685; Firth aOR = 5.07, p = 0.0379), and two dispatches record time-served matching. All nine (9/9) unconditional prison terms occurred in cases with courtroom restorative peace, which was present in 55 of 80 cases, and 8 of the 9 cite PERMA No. 1/2024 without engaging Article 70(1) (OR = 15.67 for that citation pattern, p = 0.00230). After PERMA No. 3 of 2026, pardons above 4 years were 0/11 against 5/18 before (27.78% to 0.00%; not significant). Its disjunctive Article 5(2), cassation insulation upon High Court affirmance, and execution-defective supervision verdicts (8.33%) still leave mid-tier felony pardons (54.55%) uncalibrated. Four measures would help. They are mandatory written Article 70(1) override reasons, LOVS-style conversion ratios (30 social-work hours per prison month), anticipatory remand proportionality checks, and digital e-Litmas workflows under Law No. 22 of 2022. Together they would turn Indonesia's post-colonial penal humanism into predictable, equal justice under law.

Declarations

Ethics Approval and Consent

Not applicable. The study analyzed promulgated legislation and official public court dispatches and involved no human participants, so ethics committee approval was not required.

Use of Artificial Intelligence

The authors declare that no generative artificial intelligence tools were used in the design, analysis, or writing of this manuscript.

Author Contributions

M.C.A.: Conceptualization, Investigation, Data curation, Writing – original draft. S.I.: Methodology, Software, Validation, Formal analysis, Visualization, Supervision, Writing – review & editing. Both authors reviewed and approved the final version of the manuscript.

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Competing Interests

None. The authors declare no competing interests. Court names and docket numbers are cited solely from public Supreme Court case dispatches for academic legal analysis.

Data Availability Statement

The de-identified dataset and the analysis scripts supporting the findings are available from the corresponding author on reasonable request.

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