

Monetizing Crime: Public Perception and The Stigma of Commercialized Justice in Indonesian Penal Mediation

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Abstract

This article examines the stigmatization of penal mediation in Indonesia as a form of commercialized justice or monetization of crime, particularly in the context of the newly enacted National Criminal Code of 2023. Utilizing normative legal research methods incorporating conceptual and statutory approaches, this study analyzes the factors shaping public perception that penal mediation constitutes a commodification of justice. The findings identify three primary sources of this stigma: (1) the persistence of retributive paradigms within public legal consciousness; (2) the absence of comprehensive technical regulations governing penal mediation implementation; and (3) economic disparities that undermine the bargaining position of economically disadvantaged parties. The research further reveals a significant disjuncture between the formal provisions of the National Criminal Code and their practical implementation across Indonesian jurisdictions, attributable to inadequate facilitator training, insufficient oversight mechanisms, and the lack of standardized procedural guidelines. Conceptually, penal mediation embodies restorative justice principles centered on victim restoration, offender accountability, and social reintegration, rather than constituting a marketplace for justice. This study contributes to restorative justice scholarship by integrating John Rawls' theory of justice with Islamic legal principles, offering a culturally grounded framework for analyzing equitable access to restorative processes. The findings inform policy recommendations encompassing comprehensive technical regulations, transparent oversight mechanisms, professional and independent facilitators, equitable legal aid provision, and sustained public education initiatives to ensure penal mediation functions as an instrument of substantive justice rather than a vehicle for commercializing crime.

Keywords: Penal Mediation; Restorative Justice; Public Perception; Commercialization of Justice; National Criminal Code



Introduction

In the midst of continuously evolving societal life, the understanding of justice remains an ongoing debate. The question often posed in academic circles and daily conversations—"Can justice be bought?"—has become increasingly relevant when discussing penal mediation, a mechanism for resolving criminal cases outside the court system that has been utilized in the Indonesian criminal justice system.¹

From a sociological perspective, law is not merely a collection of written rules but a reflection of values embedded in society.² When the value of justice intersects with economic interests, tensions arise that are not easily resolved. Penal mediation, fundamentally an effort to bring offenders and victims together to reach a peace agreement, is often viewed with suspicion by certain groups. Some label it as a form of "commercialization of justice," as if punishment could be negotiated with money. This view is not without basis; in reality, penal mediation often concludes with the payment of money from the offender to the victim as part of the peace agreement. Superficially, this may indeed create the impression that crime can be "settled" like a transaction. However, deeper analysis reveals that penal mediation contains dimensions far more complex than mere financial transactions.³

Indonesia's criminal justice system has experienced significant development with the enactment of Law No 1 2023 concerning the National Criminal Code (KUHP Nasional), which will take effect in 2026.⁴ This new code represents a fundamental shift from the colonial-era *Wetboek van Strafrecht* (WvS) and formally incorporates restorative justice principles into Indonesian criminal law. This regulatory change demonstrates Indonesia's commitment to legal modernization that is more responsive to societal needs, particularly in resolving minor crimes through restorative approaches. However, the transition period between the old and new criminal codes has

¹ Yoyok Uruk Suyono, "Penal Mediation As An Alternative Resolution In The Indonesian Criminal Justice System (A Dignified Justice Jurisprudence)," *International Journal of Advanced Research* 8, no. 10 (2020): 12–21, <https://doi.org/10.21474/IJAR01/11817>.

² Rina Shahriyani Shahrullah, "Unveiling the Illicit Trade: Legal Perspectives on Lobster Seed Smuggling in Batam City," *Unveiling the Illicit Trade: Legal Perspectives on Lobster Seed Smuggling in Batam City*, *Journal of Indonesian Legal Studies* 10, no. 1 (2025), <https://doi.org/10.15294/jils.v10i1.1577>.

³ Anggita Anggraeni, "Penal Mediation as Alternative Dispute Resolution: A Criminal Law Reform in Indonesia," *Penal Mediation as Alternative Dispute Resolution: A Criminal Law Reform in Indonesia*, *Journal of Law and Legal Reform* 1, no. 2 (2020), <https://doi.org/10.15294/jllr.v1i2.35409>.

⁴ Rr Sita Prameswari, "Tinjauan Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana (Kuhp) Baru," *Tinjauan Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana*, 2026, 546–53, <https://doi.org/10.59188/jurnalsostech.v6i2.32706>.

created regulatory uncertainty that affects the consistent implementation of penal mediation across different jurisdictions.

Despite this progressive development, the implementation of restorative justice through penal mediation in Indonesia faces significant challenges related to public trust and perception. Studies have shown a gradual increase in public acceptance of restorative justice within Indonesia, reflecting growing recognition of its potential as an alternative to conventional punitive measures.⁵ However, significant challenges persist, particularly regarding transparency and consistency in its implementation, especially by the prosecutor's office.⁶ Factors such as individual experiences, legal awareness, and public perceptions of the prosecutor's office significantly influence trust dynamics in restorative processes.⁷ Research demonstrates that transparent processes and accountability are essential for maintaining public confidence, underscoring the importance of addressing these gaps in Indonesia.⁸

The theoretical framework of restorative justice, as articulated by scholars such as Margarita Zernova, emphasizes that restoration must be genuinely desired by both parties and implemented without pressure from any party.⁹ This principle aligns with the concept of *islah* (reformation) in Islamic criminal law, which emphasizes reconciliation, compassion (*rahmah*), and repentance (*tawbah*) as essential moral foundations advocating for the acceptance and reintegration of reformed individuals.¹⁰ These Islamic ethical values serve to complement restorative justice mechanisms in Indonesia's predominantly Muslim society, emphasizing the potential for personal transformation and the collective responsibility of society to facilitate restorative outcomes.¹¹

⁵ Hadi Sucipto, "Transformation of Public Trust in Restorative Justice by the Prosecutor's Office: An Islamic and Social Law Approach in the Contemporary Era," *Transformation of Public Trust in Restorative Justice by the Prosecutor's Office: An Islamic and Social Law Approach in the Contemporary Era*, MILRev Metro Islamic Law Review 3, no. 2 (2024), <https://doi.org/10.32332/milrev.v3i2.9938>.

⁶ Sucipto.

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⁹ Sukardi Sukardi and Hadi Rahmat Purnama, "Restorative Justice Principles in Law Enforcement and Democracy in Indonesia," *Restorative Justice Principles in Law Enforcement and Democracy in Indonesia*, Journal of Indonesian Legal Studies 7, no. 1 (2022), <https://doi.org/10.15294/jils.v7i1.53057>.

¹⁰ Sumiadi, Zul Akli, and Harley Agustian As-Samawi, "Concept of Deradicalization against Criminal Acts of Terrorism in the Perspective of Islamic Criminal Law," *Concept of Deradicalization against Criminal Acts of Terrorism in the Perspective of Islamic Criminal Law*, The International Journal of Law, Social Science, and Humanities 2, no. 2 (2025), <https://doi.org/10.70193/ijlsh.v2i2.252>.

¹¹ Joko Budi Darmawan, "Incorporating *Islah* Principles into Restorative Justice: Bridging Contemporary Legal Practice and Islamic Values," *Incorporating Islah Principles into*

The Indonesian context is particularly relevant for studying the intersection of restorative justice and public stigma because the criminal justice system operates within a legal framework still influenced by both Western legal traditions and Islamic legal principles. The formal recognition of penal mediation in the KUHP Nasional reflects broader modernization efforts in Indonesian criminal law, yet empirical evidence reveals that implementation remains inconsistent across different regions and types of offenses. For instance, research on unlicensed small-scale mining crimes in East Java demonstrated that criminal mediation resolved 393 cases during 2023–2024, preventing 1,650 offenders from conventional litigation and saving law enforcement budgets, and providing empirical evidence on the application of penal mediation in environmental criminal cases.¹² Similarly, the implementation of restorative justice at various Indonesian District Attorney's Offices has utilized mediation to emphasize reconciliation and social healing, demonstrating the potential of restorative approaches for certain types of offenses.¹³

The public perception that penal mediation constitutes "commercialized justice" reflects a deeper anxiety about inequality before the law. This stigma is reinforced by sensationalized media coverage, which shapes public perceptions and can lead to misunderstandings about the effectiveness of alternative approaches to justice.¹⁴ However, this perspective overlooks the central role of victim satisfaction and voluntary agreement in genuine restorative processes. Factors such as media coverage and cultural narratives shape public perception and can contribute to the persistence of stigma,

Restorative Justice: Bridging Contemporary Legal Practice and Islamic Values, "MILRev Metro Islamic Law Review" 4, no. 1 (2025), <https://doi.org/10.32332/milrev.v4i1.10435>.

¹² Qoirul Khitam Bastomi, I Nyoman Nurjaya, and Istislam Istislam, "Criminal Mediation in the Settlement of Unlicensed Small-Scale Mining Crimes in the Jurisdiction of the East Java Regional Police," *Criminal Mediation in the Settlement of Unlicensed Small-Scale Mining Crimes in the Jurisdiction of the East Java Regional Police*, "Jurnal Ius Constituendum" 10, no. 3 (2025), <https://doi.org/10.26623/jic.v10i3.12276>.

¹³ Neeyssha Nathani Sitorus and Janpatar Simamora, "The Role of the Prosecutor's Office in Promoting Restorative Justice for Social Reintegration and Prevention of Recidivism," *The Role of the Prosecutor's Office in Promoting Restorative Justice for Social Reintegration and Prevention of Recidivism*, "Jurnal Indonesia Sosial Sains" 6, no. 10 (2025), <https://doi.org/10.59141/jiss.v6i10.2063>.

¹⁴ Annette Kuhlmann and Helmut Kury, "Some Considerations of Restorative Justice Before and Outside of Contemporary Western States," *Some Considerations of Restorative Justice Before and Outside of Contemporary Western States*, "Kriminologijos Studijos" 5 (2018), <https://doi.org/10.15388/crimlithuan.2017.5.11731>.

thereby challenging efforts to establish restorative justice as a legitimate alternative to conventional litigation.¹⁵

Recent scholarship on penal mediation and restorative justice in Indonesia has developed significantly, reflecting growing academic and policy attention to alternative dispute resolution mechanisms. Aprilia and Soponyono (2024) conducted a doctrinal comparison between the old Criminal Code and the 2023 National Criminal Code, concluding that the KUHP Nasional significantly broadens the scope of penal mediation by incorporating restorative justice principles and providing a clear legal framework, though their analysis did not examine practical implementation challenges.¹⁶ Sucipto et al. (2024) studied public trust in restorative justice by the prosecutor's office, finding gradual increases in acceptance while identifying transparency and consistency as critical challenges, yet they did not specifically address the commercialization stigma.¹⁷ Bastomi, Nurjaya, and Istislam (2025) provided empirical evidence from 393 resolved cases of unlicensed mining in East Java, demonstrating penal mediation's effectiveness though limited to a specific crime type.¹⁸ Rachmanto (2025) evaluated penal mediation for minor offenses under Regional Regulations, identifying mediator training and institutional support as key challenges.¹⁹ Sitohang, Maysarah, and Silalahi (2026) revealed gaps between formal provisions and practical implementation in domestic violence cases.²⁰ Akmal (2024) analyzed the potential for misuse from an Islamic legal perspective, finding that weak regulation creates exploitation

¹⁵ Swati Kaushal, "Perceptions of Public on Justice: A Socio-Legal Analysis of Influencing Factors," *Perceptions of Public on Justice: A Socio-Legal Analysis of Influencing Factors*, *Ius Humani Law Journal* 14, no. 1 (2025), <https://doi.org/10.31207/ih.v14i1.422>.

¹⁶ Winda Aprilia and Eko Soponyono, "Penal Mediation Regulations as Modernization of Indonesian Law from Criminal Code (WVS) to National Criminal Code," *International Journal of Multicultural and Multireligious Understanding* 11 (2024): 238–44, <https://doi.org/10.18415/ijmmu.v11i11.6358>.

¹⁷ Sucipto, "Transformation of Public Trust in Restorative Justice by the Prosecutor's Office: An Islamic and Social Law Approach in the Contemporary Era."

¹⁸ Bastomi, Nurjaya, and Istislam, "Criminal Mediation in the Settlement of Unlicensed Small-Scale Mining Crimes in the Jurisdiction of the East Java Regional Police."

¹⁹ Fandri Rachmanto, "The Application of Penal Mediation in Handling Minor Criminal Offenses Regulated by Regional Regulations," *The Application of Penal Mediation in Handling Minor Criminal Offenses Regulated by Regional Regulations*, *JUSTISI* 11, no. 2 (2025), <https://doi.org/10.33506/js.v11i2.3961>.

²⁰ Veryanto Sitohang, Andi Maysarah, and Dian Hardian Silalahi, "Restorative Justice and Fulfillment of Victims' Rights in Handling Domestic Violence Cases (Study at the Deli Serdang District Attorney's Office)," *Nomoi Law Review* 7, no. 1 (2026): 196–208, <https://doi.org/10.30596/nomoi.v7i1.31054>.

opportunities.²¹ Farman et al. (2025) demonstrated structural obstacles to restorative justice for corporate cases.²²

Despite this growing scholarship, several research gaps remain. First, while regulatory analyses have identified the legal framework for penal mediation, there is limited examination of the gap between formal legal provisions and actual implementation practices. Second, although public trust in restorative justice has been studied, there is insufficient analysis of the specific factors contributing to the stigma that penal mediation constitutes "commercialized justice" or "monetization of crime." Third, the intersection of economic inequality and access to restorative processes remains under-theorized, despite evidence that bargaining power disparities affect mediation outcomes. Fourth, while the KUHP Nasional's provisions represent a significant legal development, the practical implications of this regulatory change for public perception and access to justice have not been thoroughly examined. This article addresses these gaps by providing a comprehensive analysis of the origins and persistence of the commercialization stigma, examining its relationship to regulatory gaps and economic inequality, and proposing a framework for non-discriminatory penal mediation.

This research aims to: (1) identify and analyze the regulatory framework governing penal mediation in Indonesia, including recent developments under the KUHP Nasional; (2) examine the factors contributing to public perception and stigma that penal mediation constitutes the commercialization of justice; (3) analyze the relationship between economic inequality and access to restorative processes; (4) evaluate the gap between formal legal provisions and practical implementation of penal mediation; and (5) propose a framework for non-discriminatory penal mediation that safeguards the rights of vulnerable parties.

The urgency of this research is underscored by several factors. First, the enactment of the KUHP Nasional in 2023, which explicitly recognizes penal mediation and will take effect in 2026, represents a significant shift in Indonesia's criminal justice framework that requires careful examination of its implications.²³ Second, prevailing perceptions that restorative justice methods

²¹ Ahmad Wildan Rofrofil Akmal, "Eksistensi Penerapan Keadilan Restoratif Melalui Mediasi Penal Perspektif Masalah Mursalah Di Indonesia," *Eksistensi Penerapan Keadilan Restoratif Melalui Mediasi Penal Perspektif Masalah Mursalah Di Indonesia*, *Yurispruden Jurnal Fakultas Hukum Universitas Islam Malang* 7, no. 2 (2024), <https://doi.org/10.33474/yur.v7i2.21598>.

²² Eka Farman, "The Implementation of Restorative Justice in Cases Involving Corporate Perpetrators," *The Implementation of Restorative Justice in Cases Involving Corporate Perpetrators*, *International Journal of Law, Crime and Justice* 2, no. 2 (2025), <https://doi.org/10.62951/ijlcj.v2i2.679>.

²³ Alif Fajar Herihanli Palimai, Mulyati Pawennei, and Baharuddin Badaru, "The Effectiveness of Restorative Justice in Judicial Decisions: The Transformation of the

only emphasize case resolution can undermine trust and discourage participation by victims and offenders.²⁴ Third, empirical evidence reveals that the gap between regulatory provisions and implementation practices contributes to inconsistent outcomes and potential exploitation of vulnerable parties.²⁵ Fourth, economic inequality in Indonesia creates structural barriers to equitable access to restorative processes, requiring specific safeguards to protect the rights of economically disadvantaged parties.²⁶ Fifth, the opportunity to learn from international best practices, particularly from countries such as Austria and Finland that have successfully implemented restorative justice systems, provides valuable insights for optimizing penal mediation in Indonesia.²⁷ Without addressing these urgent concerns, the promise of restorative justice as a more humane and effective approach to criminal justice may fail to materialize in practice.

This article contributes to academic scholarship and policy development in several ways. For academic scholarship, it advances theoretical understanding of the relationship between economic inequality, public perception, and access to restorative justice, integrating perspectives from restorative justice theory, John Rawls's theory of justice, and Islamic legal principles. For policy development, it provides evidence-based recommendations for regulatory and institutional reforms to ensure equitable access to penal mediation. For legal practice, it offers guidance for facilitators and law enforcement officials on ensuring non-discriminatory processes that safeguard the rights of all parties. For public education, it contributes to

Sentencing Paradigm in Indonesia,” *The Effectiveness of Restorative Justice in Judicial Decisions: The Transformation of the Sentencing Paradigm in Indonesia*, *Al-Ishlah Jurnal Ilmiah Hukum* 29, no. 1 (2026), <https://doi.org/10.56087/j7x6y995>.

²⁴ Lenna Andriyani, Matthew Marcellinno Gunawan, and Ramalina Ranaivo Mikea Manitra, “Restorative Justice in Criminal Cases in Indonesia: The Urgency of Reinterpretation and Concept for Reform,” *Restorative Justice in Criminal Cases in Indonesia: The Urgency of Reinterpretation and Concept for Reform*, *Indonesian Journal of Crime and Criminal Justice* 2, no. 1 (2026), <https://doi.org/10.62264/ijccj.v2i1.167>.

²⁵ Mashendra, “Hukuman Pidana Ke Keadilan Restoratif: Reintegrasi Sosial Di Bawah Kerangka Kerja Peradilan Pidana Baru Indonesia,” *Hukuman Pidana Ke Keadilan Restoratif: Reintegrasi Sosial Di Bawah Kerangka Kerja Peradilan Pidana Baru Indonesia* *Collegium Studiosum Journal* 8, no. 2 (2026), <https://doi.org/10.56301/csj.v8i2.2033>.

²⁶ Sri Damayanti, “Kelas Sosial Dan Akses Terhadap Keadilan: Kajian Ketimpangan Dalam Penegakan Hukum Di Indonesia,” *Kelas Sosial Dan Akses Terhadap Keadilan: Kajian Ketimpangan Dalam Penegakan Hukum Di Indonesia*, *Jurnal Pengabdian Masyarakat Dan Riset Pendidikan* 4, no. 2 (2025), <https://doi.org/10.31004/jerkin.v4i2.3708>.

²⁷ Carolina Villacampa Estiarte, “Justicia Restaurativa En Supuestos de Violencia de Género En España: Situación Actual y Propuesta Político-Criminal,” *Justicia Restaurativa En Supuestos de Violencia de Género En España: Situación Actual y Propuesta Político-Criminal*, *Política Criminal* 15, no. 29 (2020), <https://doi.org/10.4067/s0718-33992020000100047>.

understanding the legitimate role of penal mediation as a mechanism for substantive justice rather than the commercialization of crime.

Methodology

This research employs normative legal research methods combining conceptual and statutory approaches, supported by a comprehensive literature review. Normative legal research examines legal materials to analyze and construct legal principles and doctrines.³¹ This approach is appropriate for analyzing the regulatory framework governing penal mediation and examining the relationship between legal provisions and public perception. The statutory approach involves analysis of relevant legislation, including Law Number 1 of 2023 concerning the National Criminal Code, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, and Police Regulation Number 8 of 2021 concerning Handling of Criminal Cases Based on Restorative Justice.

The conceptual approach draws on concepts and theories from restorative justice, criminal law, and legal philosophy, particularly the theories of restorative justice as articulated by scholars such as Margarita Zernova and John Braithwaite, and John Rawls' theory of justice.²⁸

Data sources consist of primary legal materials (legislation and official regulations), secondary legal materials (academic literature, scholarly articles, and research reports), and tertiary legal materials (encyclopedias and legal dictionaries). Data collection employs literature study techniques, systematically reviewing relevant legal and academic materials. Data analysis uses qualitative analysis methods, examining legal norms, principles, and doctrines through interpretation and systematic analysis to develop coherent legal arguments and conclusions.

This research employs three interconnected theoretical frameworks: restorative justice theory, John Rawls' theory of justice, and Islamic legal principles. Restorative justice theory, as articulated by scholars such as Margarita Zernova and John Braithwaite, emphasizes restoration over punishment through inclusive processes involving victims, offenders, and the community. Key principles include recognition of harm, repairing harm rather than punishing, victim participation, offender accountability, and preventing future harm.²⁹

This framework is particularly relevant for analyzing whether penal mediation constitutes a legitimate restorative process or merely a commercial

²⁸ Margarita Zernova, *Restorative Justice: Ideals and Realities* (Aldershot: Ashgate, 2007).

²⁹ Paul Gavin and Allyson MacVean, "Police Perceptions of Restorative Justice: Findings from a Small-scale Study," *Police Perceptions of Restorative Justice: Findings from a Small-scale Study*, *ResearchSPAce*, 2018, 115–30, <https://doi.org/10.1002/crq.21235>.

transaction. John Rawls' theory of justice provides a framework for analyzing equity and access to restorative processes. Rawls' first principle of equal basic liberties and the difference principle offer lenses for examining whether penal mediation systematically disadvantages economically vulnerable parties.³⁰ The application of restorative justice to cases such as petty theft, defamation, and domestic violence aligns with Rawls' principles in protecting vulnerable groups. A review concluded that penal mediation embodies a substantive model of justice that is inclusive and responsive to local values.³¹

Islamic legal principles complement these frameworks by providing culturally specific values relevant to Indonesia's predominantly Muslim society. Islamic ethical values such as rahmah (compassion), tawbah (repentance), and islah (reconciliation) serve as essential moral foundations advocating for the acceptance and reintegration of reformed individuals.³² In the context of penal mediation, the Islamic concept of sulh (settlement) provides a framework for resolving disputes through agreement, while the concept of diyah (blood money or compensation) offers a culturally grounded model of restitution.³³

The integration of these three frameworks allows for a comprehensive analysis of penal mediation that addresses both universal principles of justice and culturally specific values. Restorative justice theory provides the conceptual foundation, Rawlsian theory provides tools for analyzing equity and non-discrimination, and Islamic legal principles provide culturally specific values that shape public perception and acceptance of restorative processes in Indonesia.

Discussion and Result

Regulatory Framework for Penal Mediation in Indonesia

The legal basis for penal mediation in Indonesia has undergone significant development with the enactment of Law Number 1 of 2023 concerning the National Criminal Code (KUHP Nasional), which will take effect in 2026. This represents a fundamental shift from the old Criminal Code (Wetboek van

³⁰ Nur Solikin and Moh Wasik, "The Construction Of Family Law In The Compilation Of Islamic Law In Indonesia: A Review of John Rawls's Concept of Justice and Jasser Auda's Maqashid Al-Shari'a," *Ulumuna* 27, no. 1 (2023): 315–40, <https://doi.org/10.20414/ujis.v27i1.708>.

³¹ Akmal, "Eksistensi Penerapan Keadilan Restoratif Melalui Mediasi Penal Perspektif Masalah Mursalah Di Indonesia."

³² Fatah Chotib Uddin, "Stigma of Former Drug Offenders: Islamic and Restorative Justice Perspectives in the Contemporary Era," *Stigma of Former Drug Offenders: Islamic and Restorative Justice Perspectives in the Contemporary Era*, *MILRev Metro Islamic Law Review* 4, no. 1 (2025), <https://doi.org/10.32332/milrev.v4i1.10460>.

³³ Akmal, "Eksistensi Penerapan Keadilan Restoratif Melalui Mediasi Penal Perspektif Masalah Mursalah Di Indonesia."

Strafrecht), which contained no formal provisions regarding penal mediation and focused primarily on criminalization and retribution. The KUHP Nasional explicitly recognizes and regulates penal mediation, incorporating the concept of restorative justice into Indonesia's criminal justice system. The key differences between the old and new frameworks are significant. Under the old Criminal Code, there were no formal provisions regarding penal mediation; the main focus was on criminalization and retribution, and out-of-court settlements were based solely on informal practices without clear legal force. The role of law enforcement was limited to formal judicial processes with limited discretion in handling cases, and the focus was on punishing perpetrators without providing space for victim and perpetrator participation. In contrast, the KUHP Nasional regulates the procedures and mechanisms of penal mediation in detail, providing a clear legal framework for implementation. It expands the scope of application for various types of specific crimes and provides clear guidance on cases that can be mediated. The new code expands the role of law enforcement in facilitating penal mediation and provides greater discretion in choosing case resolution. Most significantly, it provides greater space for the participation of victims and perpetrators in resolving cases, emphasizing restoration of relationships and compensation.³⁴

Beyond the KUHP Nasional, several other regulations provide the legal basis for penal mediation in specific contexts. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System mandates diversion mechanisms for child offenders, requiring law enforcement officials to facilitate restorative processes before proceeding with formal prosecution. Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice provides guidelines for prosecutors to terminate prosecution when restorative justice criteria are met.⁵² Police Regulation Number 8 of 2021 provides similar guidelines for police investigators. The National Criminal Code's provisions on penal mediation are further elaborated in Government Regulation Number 34 of 2024 concerning Procedures for Implementing Penal Mediation.

Despite these regulatory developments, significant challenges remain in the implementation of penal mediation. Research on the implementation of restorative justice through penal mediation in Indonesia, using John Rawls' theory of justice as a theoretical framework, found that although *mediasi penal* has been applied in cases such as petty theft, defamation, and domestic violence, implementation remains inconsistent across jurisdictions.³⁵ The study concluded that penal mediation aligns with both restorative justice values and

³⁴ Aprilia and Soponyono, "Penal Mediation Regulations as Modernization of Indonesian Law from Criminal Code (WVS) to National Criminal Code."

³⁵ Akmal, "Eksistensi Penerapan Keadilan Restoratif Melalui Mediasi Penal Perspektif Masalah Mursalah Di Indonesia."

Rawls' principles of justice, particularly in protecting vulnerable groups, but that normative and institutional barriers continue to impede consistent implementation.

The regulation of penal mediation in the KUHP Nasional represents a significant step toward the modernization of Indonesian criminal law. The new provisions are expected to provide greater legal certainty for the implementation of restorative justice, reduce court caseloads, and provide more efficient and humane resolution of minor criminal cases.³⁶ However, the transition from the old to the new framework creates a period of regulatory uncertainty, particularly regarding cases that arise before the new code takes effect in 2026. Additionally, the gap between formal legal provisions and actual implementation practices, particularly the limited availability of trained mediators and institutional support, remains a significant challenge.³⁷

Penal Mediation as Implementation of Restorative Justice

Penal mediation conceptually represents an implementation of restorative justice principles, focusing on victim recovery, offender accountability, and social relationship restoration rather than mere punishment. As articulated by restorative justice scholars, the process emphasizes dialogue, recognition, and restoration.⁵⁸ When an offender sits face-to-face with the victim and acknowledges their actions, when the victim has the opportunity to express the impact they have experienced, and when both voluntarily agree on a way forward, this constitutes restorative justice in its genuine form.³⁸

Research on the implementation of restorative justice through penal mediation in Indonesia has demonstrated its potential for achieving substantive justice. The implementation of penal mediation in a pesantren setting reflects Rawls' principles of justice, particularly the equal basic liberties and the difference principle, in protecting juvenile offenders.³⁹ In cases such

³⁶ Ronaldo Maradona Siregar, R Lina Sinaulan, and Andravirti Karita, "Kepastian Hukum Restorative Justice Sebagai Suatu Konsep Pemidanaan Dalam Hukum Pidana Dibandingkan Dengan Pembaharuan Hukum Pidana Indonesia," *Kepastian Hukum Restorative Justice Sebagai Suatu Konsep Pemidanaan Dalam Hukum Pidana Dibandingkan Dengan Pembaharuan Hukum Pidana Indonesia*, *Jurnal Hukum Pelita* 6, no. 2 (2025), <https://doi.org/10.37366/jhp.v6i2.6300>.

³⁷ Arpangi Arpangi, Maydika Ramadani, and Cindy Yosiana, "Optimizing Penal Mediation through Restorative Justice: A Progressive Solution in Criminal Law Reform," *Optimizing Penal Mediation through Restorative Justice: A Progressive Solution in Criminal Law Reform*, *Journal of Justice Dialectical* 2, no. 2 (2024), <https://doi.org/10.70720/jjd.v2i2.51>.

³⁸ Anggraeni, "Penal Mediation as Alternative Dispute Resolution: A Criminal Law Reform in Indonesia."

³⁹ Akmal, "Eksistensi Penerapan Keadilan Restoratif Melalui Mediasi Penal Perspektif Masalah Mursalah Di Indonesia."

as petty theft, defamation, and domestic violence, restorative processes have successfully involved offenders, victims, families, and the community in the mediation, achieving outcomes that conventional litigation could not provide.

Empirical evidence from various jurisdictions demonstrates the effectiveness of penal mediation in achieving restorative outcomes. In East Java, criminal mediation resolved 393 cases of unlicensed small-scale mining during 2023–2024, diverting approximately 1,650 offenders from conventional litigation and saving law enforcement budgets.⁴⁰ This approach reflects the renewal of Indonesian criminal law, which not only punishes but also restores and empowers. The research concluded that the success of penal mediation in these cases was due to its legal legitimacy through various regulations, including Police Regulation No. 8 of 2021 and Prosecutor's Regulation No. 15 of 2020.⁴¹

The implementation of restorative justice at the Deli Serdang District Attorney's Office in domestic violence cases demonstrates the pragmatic superiority of restorative approaches over incarceration in certain contexts.⁶³ The prosecutor's office successfully utilized mediation to secure immediate economic restitution and preserve family unity, offering a superior pragmatic alternative to incarceration. However, the analysis revealed a critical deficiency: the current practice prioritizes material compensation and administrative efficiency, frequently overlooking long-term psychological recovery and safety guarantees due to the absence of mandatory professional risk assessments. This finding highlights the gap between the restorative ideal and practical implementation, and the need for more comprehensive approaches that address both material and psychological dimensions of harm.

The application of penal mediation in handling minor criminal offenses regulated by Regional Regulations (Perda) demonstrates the potential for contextualized restorative approaches.⁴² Research found that this practice effectively resolves minor offenses by emphasizing dialogue and accountability. However, inconsistent mediator training and lack of institutional support remain key challenges. The research recommended learning from international best practices, particularly New Zealand's restorative justice system, which has successfully integrated restorative

⁴⁰ Bastomi, Nurjaya, and Istislam, "Criminal Mediation in the Settlement of Unlicensed Small-Scale Mining Crimes in the Jurisdiction of the East Java Regional Police."

⁴¹ Nurul Putri Awaliah Nasution, Fathul Hamdani, and Ana Fauzia, "The Concept of Restorative Justice in Handling Crimes in the Criminal Justice System," *The Concept of Restorative Justice in Handling Crimes in the Criminal Justice System*, *European Journal of Law and Political Science* 1, no. 5 (2022), <https://doi.org/10.24018/ejpolitics.2022.1.5.37>.

⁴² Rachmanto, "The Application of Penal Mediation in Handling Minor Criminal Offenses Regulated by Regional Regulations."

processes with formal criminal justice through comprehensive training, institutional support, and public awareness.⁴³

The integration of Islamic ethical values with restorative justice mechanisms provides a culturally grounded framework for penal mediation in Indonesia.⁶⁷ Islamic values such as *rahmah* (compassion), *tawbah* (repentance), and *islah* (reconciliation) serve as essential moral foundations that advocate for the acceptance and reintegration of reformed individuals.⁴⁴ These values emphasize the potential for personal transformation and the collective responsibility of society to facilitate restorative outcomes. The integration of socio-legal theory with Islamic moral philosophy provides a contextualized model for human-centered restorative justice in Muslim-majority societies.

Public Perception and the Stigma of "Commercialized Justice"

One of the most significant challenges facing penal mediation in Indonesia is the social stigma that it constitutes "commercialized justice." Much of the public still views justice in criminal cases as achievable only through imprisonment.⁴⁵ This view is rooted in a retributive paradigm that has been normalized through the education system, culture, and mass media, rather than simply arising from ignorance.⁴⁶ When a criminal case is resolved through mediation and concludes with the payment of money from the offender to the victim, the public often reacts with the question: "So, if you have money, you're free?" This question expresses a deeper anxiety about inequality before the law.⁴⁷

This anxiety is not entirely without basis. In some cases, parties with greater economic resources indeed have stronger bargaining positions in mediation processes. Victims from economically disadvantaged backgrounds may be forced to accept agreements that do not genuinely reflect justice, solely because they need material compensation for their livelihood.⁴⁸ This strengthens the perception that penal mediation is an arena for buying and selling justice.

Research on the implementation of restorative justice through penal mediation from the perspective of *maslahah mursalah* in Islamic law found

⁴³ Gavin and MacVean, "Police Perceptions of Restorative Justice: Findings from a Small-scale Study."

⁴⁴ Uddin, "Stigma of Former Drug Offenders: Islamic and Restorative Justice Perspectives in the Contemporary Era."

⁴⁵ Uddin.

⁴⁶ Anggraeni, "Penal Mediation as Alternative Dispute Resolution: A Criminal Law Reform in Indonesia."

⁴⁷ Rachmanto, "The Application of Penal Mediation in Handling Minor Criminal Offenses Regulated by Regional Regulations."

⁴⁸ Uddin, "Stigma of Former Drug Offenders: Islamic and Restorative Justice Perspectives in the Contemporary Era."

that the potential for misuse of penal mediation arises when the process is applied without adequate oversight.⁴⁹ The research identified weak regulation, supervision, and institutional capacity as factors creating opportunities for exploitation by economically powerful parties. The absence of comprehensive regulation regarding penal mediation outside the context of child cases creates a gap that is potentially misused, so its application still faces juridical obstacles and creates legal uncertainty.⁵⁰

The study of public trust in restorative justice by the prosecutor's office in Indonesia provides important insights into the factors shaping public perception. The research found a gradual increase in public trust in restorative justice, reflecting growing acceptance of its potential as an alternative to conventional punitive measures. However, significant challenges persist, particularly regarding transparency and consistency in its implementation. Studies on similar cases worldwide reveal that transparent processes and accountability are essential for maintaining public confidence, underscoring the importance of addressing these gaps in Indonesia. By positioning restorative justice as a culturally resonant and equitable alternative within Indonesia's legal framework, the study provides actionable insights for policymakers and practitioners striving to create a justice system that aligns with societal needs and ethical values.⁵¹

The media's role in shaping public perception cannot be.⁵² Sensational media coverage, when a case involving an affluent offender is resolved through mediation, often frames it with an implication that the law can be bought. However, the full context of the mediation process including whether the victim was genuinely satisfied with the outcome is rarely presented in a balanced manner.

The impact of the commercialization stigma extends beyond public perception to affect the willingness of victims and offenders to participate in restorative processes. Victims may fear that mediation will result in inadequate compensation or pressure to accept unfavorable terms.⁵³ Offenders may view

⁴⁹ Syaifullah Noor, Kamil Ismail Banapon, and Tamboa Ketum Levis, "Distorted Practice of Restorative Justice in the Enforcement of Criminal Law in Indonesia," *Distorted Practice of Restorative Justice in the Enforcement of Criminal Law in Indonesia*, "Peradaban Hukum Nusantara 2, no. 1 (2025), <https://doi.org/10.62193/ze7dhp98>.

⁵⁰ Akmal, "Eksistensi Penerapan Keadilan Restoratif Melalui Mediasi Penal Perspektif Masalah Mursalah Di Indonesia."

⁵¹ Sucipto, "Transformation of Public Trust in Restorative Justice by the Prosecutor's Office: An Islamic and Social Law Approach in the Contemporary Era."

⁵² Ines Sučić, "Portrayal of the Croatian Probation Service's Development in Print Media," *Portrayal of the Croatian Probation Service's Development in Print Media*, "Društvena Istraživanja 25, no. 4 (2016), <https://doi.org/10.5559/di.25.4.03>.

⁵³ Won Kyung Chang, "Old Wine in New Wineskins? A Trial of Restorative Justice in a Korean Criminal Court," *Old Wine in New Wineskins? A Trial of Restorative Justice in a Korean*

mediation as merely a financial transaction rather than an opportunity for genuine accountability and change. Law enforcement officials may be reluctant to facilitate mediation due to fear of accusations of favoritism or corruption. These effects collectively challenge the potential of penal mediation to achieve its restorative objectives.

Examining the Commercialization Accusation: Between Stigma and Reality

The accusation that penal mediation constitutes the monetization of crime requires careful examination. Several arguments must be considered to gain a more complete and fair picture. First, it is essential to understand that the essence of penal mediation is not the payment of money, although financial compensation may be part of the agreement. The core of this process is dialogue, acknowledgment, and restoration.⁵⁴ When the offender sits face-to-face with the victim and acknowledges their actions, when the victim has the opportunity to express the impact they have experienced, and when both voluntarily agree on a way forward, this is restorative justice in its genuine form.⁵⁵

Second, the conventional sentencing system is not free from financial elements. Fines are a form of monetary payment that has long been part of the criminal justice system. Probation, asset forfeiture, and various other sanctions also have economic dimensions that cannot be ignored. Therefore, it is worth questioning why financial compensation in mediation is considered commercialization, while fines in formal criminal justice are not.⁵⁶ The key distinction lies in the nature of the payment: fines are imposed by the state as punishment, while compensation in mediation is agreed upon by the parties as part of a restorative process.⁵⁷ This distinction is crucial for understanding the different functions of monetary payments in different justice contexts.

Third, from the victim's perspective, material compensation obtained through mediation is often much more concrete and faster than what is obtained through the lengthy litigation process. The current criminal justice

Criminal Court," *Asian Journal of Law and Society* 5, no. 2 (2018), <https://doi.org/10.1017/als.2017.34>.

⁵⁴ Steve Kirkwood, "A Practice Framework for Restorative Justice," *A Practice Framework for Restorative Justice*, *Edinburgh Research Explorer*, 2022, 101688, <https://doi.org/10.1016/j.avb.2021.101688>.

⁵⁵ Alex Lloyd and Jo Borrill, "Examining the Effectiveness of Restorative Justice in Reducing Victims' Post-Traumatic Stress," *Examining the Effectiveness of Restorative Justice in Reducing Victims' Post-Traumatic Stress*, *Psychological Injury and Law* 13, no. 1 (2019), <https://doi.org/10.1007/s12207-019-09363-9>.

⁵⁶ Kuhlmann and Kury, "Some Considerations of Restorative Justice Before and Outside of Contemporary Western States."

⁵⁷ Kirkwood, "A Practice Framework for Restorative Justice."

system, frankly, deals more with the state versus the offender, not victim versus offender. Victims often only become witnesses in a process that does not give them much voice.⁵⁸ Research on the implementation of restorative justice found that victims valued the opportunity to have their needs addressed directly and to receive timely restitution, which the formal system often failed to provide.⁵⁹

Fourth, genuine penal mediation must be built on the principles of voluntariness and equality of bargaining position. If these principles are violated, what occurs is not true mediation but veiled coercion that has the potential to exploit the weaker party.⁶⁰ This is where the role of oversight and regulation is critical. In the Indonesian context, concerns about unfair mediation practices or those misused by wealthy parties indeed require serious attention. This does not mean penal mediation must be rejected entirely, but rather that its implementation requires a strong regulatory framework, competent and neutral facilitators, and effective oversight mechanisms.⁶¹

The gap between regulatory provisions and implementation practices is a significant concern. Research on the application of penal mediation in handling minor criminal offenses found that inconsistent mediator training and lack of institutional support remain key challenges.⁶² Without standardized procedures, independent facilitators, and effective oversight mechanisms, penal mediation risks being exploited by parties with stronger economic positions, thereby reducing public trust in the justice system.⁶³ A study on

⁵⁸ Ian D Marder, "The New International Restorative Justice Framework: Reviewing Three Years of Progress and Efforts to Promote Access to Services and Cultural Change," *The New International Restorative Justice Framework: Reviewing Three Years of Progress and Efforts to Promote Access to Services and Cultural Change*, *The International Journal of Restorative Justice* 3, no. 3 (2020), <https://doi.org/10.5553/ijrj.000048>.

⁵⁹ Toran Hansen and Mark S Umbreit, "State of Knowledge: Four Decades of Victim-offender Mediation Research and Practice: The Evidence," *State of Knowledge: Four Decades of Victim-offender Mediation Research and Practice: The Evidence*, *Conflict Resolution Quarterly* 36, no. 2 (2018), <https://doi.org/10.1002/crq.21234>.

⁶⁰ Rathna N Koman, "Balancing the Force in Criminal Mediation," *Balancing the Force in Criminal Mediation*, *Beijing Law Review* 7, no. 3 (2016), <https://doi.org/10.4236/blr.2016.73018>.

⁶¹ Ekawaty Kristianingsih and Rowela Cartin-Pecson, "The Principle of Penal Mediation: An Analysis of the Integration of Justice, Legal Certainty, and Utility in the Settlement of Fraud and Embezzlement Cases," *The Principle of Penal Mediation: An Analysis of the Integration of Justice, Legal Certainty, and Utility in the Settlement of Fraud and Embezzlement Cases*, *Pena Justisia Media Komunikasi Dan Kajian Hukum* 24, no. 2 (2025), <https://doi.org/10.31941/pj.v24i2.7145>.

⁶² Rachmanto, "The Application of Penal Mediation in Handling Minor Criminal Offenses Regulated by Regional Regulations."

⁶³ Farman, "The Implementation of Restorative Justice in Cases Involving Corporate Perpetrators."

implementing restorative justice in corporate criminal cases further highlighted how structural barriers, particularly the 1981 Criminal Procedure Code, impede genuine restorative outcomes.⁶⁴

Perspectives on Reform Toward Justice-Oriented Penal Mediation

Indonesia's criminal justice system is at a crossroads. On one hand, there is pressure to maintain the formal criminal approach that has long been considered a symbol of firm law enforcement. On the other hand, there is growing awareness that this approach does not always produce substantive justice, especially for victims.⁶⁵ The reform needed is not to replace the criminal justice system with mediation entirely, but to position them as complementary. Penal mediation should be an option, not coercion; an alternative that can be chosen when certain conditions are met, not a shortcut that can be misused.⁶⁶

Several measures are necessary to overcome the commercialization stigma and ensure justice-oriented penal mediation. First, there must be clear regulation regarding which types of cases can be mediated and which cannot. Penal mediation currently relies on limited and partial regulations, highlighting the need for detailed implementing guidance for law enforcement officials in different contexts.⁶⁷ The regulation should distinguish between minor offenses where mediation is appropriate and serious offenses where it is not, considering factors such as the severity of the harm caused, the offender's criminal history, and the victim's willingness to participate.

Second, mediation facilitators must be professionally trained and free from conflicts of interest. Research has identified inadequate mediator training as a key challenge affecting the quality of restorative processes.⁶⁸ International

⁶⁴ Ajif Yunizar Pratama Yusuf, "Strategic Issues in the Reform of the Criminal Procedure Code towards an Inclusive and Effective Criminal Justice System," *Strategic Issues in the Reform of the Criminal Procedure Code towards an Inclusive and Effective Criminal Justice System*, *Journal of Law Science* 7, no. 1 (2025), <https://doi.org/10.35335/jls.v7i1.5874>.

⁶⁵ Nurhayati Nurhayati, "Seeking Substantive Justice: The Progressive Spirit of Law on Sexual Violence Crimes," *Seeking Substantive Justice: The Progressive Spirit of Law on Sexual Violence Crimes*, *Jurnal Dinamika Hukum* 23, no. 3 (2023), <https://doi.org/10.20884/1.jdh.2023.23.3.3749>.

⁶⁶ Anggraeni, "Penal Mediation as Alternative Dispute Resolution: A Criminal Law Reform in Indonesia."

⁶⁷ Yusriando Yusriando, "Implementasi Mediasi Penal sebagai Perwujudan Nilai-nilai Pancasila Guna Mendukung Supremasi Hukum Dalam Rangka Pembangunan Nasional," Implementasi Mediasi Penal sebagai Perwujudan Nilai-nilai Pancasila Guna Mendukung Supremasi Hukum dalam Rangka Pembangunan Nasional" *Jurnal Pembaharuan Hukum* 2, no. 1 (2016), <https://doi.org/10.26532/jph.v2i1.1413>.

⁶⁸ Jennifer L. Lanterman, "Critical Deficiencies in Restorative Conference Facilitator Trainings: A Multiple-Case Study," *Critical Deficiencies in Restorative Conference Facilitator Trainings: A Multiple-Case Study*, *Contemporary Justice Review* 25, no. 2 (2022), <https://doi.org/10.1080/10282580.2022.2090349>.

best practices, such as New Zealand's Family Group Conference model, utilize trained social service representatives as facilitators to resolve even serious crimes.⁶⁹ Indonesia should invest in developing professional facilitator certification programs, establishing standards for mediator qualifications, and ensuring facilitators have access to ongoing professional development.

Third, the mediation process must be conducted transparently and documented, so there is accountability that can be reviewed if disputes later arise. Transparency helps address the perception that restorative processes are merely informal, unmonitored agreements, while documentation provides a record that can be used for oversight and learning. However, transparency must be balanced with respect for the privacy and confidentiality necessary for candid dialogue in restorative processes. A model that provides for oversight while protecting participants' privacy is needed.

Fourth, public education about the nature of restorative justice and penal mediation is essential. The public needs to understand that the purpose of criminal law is not solely punishment but also restoration, and that restoration does not always have to take the form of prison bars.⁷⁰ This educational effort must address the deeply held retributive paradigm that has been normalized through education, culture, and media. Public education should employ multiple channels, including formal education, media engagement, community outreach, and public awareness campaigns, to reach different segments of society.

Fifth, mechanisms must be established to ensure equality of bargaining position between parties in mediation. This includes providing legal aid for economically disadvantaged parties, establishing standard protocols for assessing voluntariness, and implementing oversight to prevent exploitation.⁷¹ John Rawls' difference principle provides a framework for designing such mechanisms, suggesting that inequalities in economic resources should be arranged to benefit the least advantaged.⁷² In the context of penal mediation, this means ensuring that economically disadvantaged victims and offenders have access to resources, such as legal assistance and trained facilitators, that enable them to participate meaningfully in the process.

⁶⁹ Jonathan Derby, *Restorative Justice Principles and Practice* (Washington: Prison Fellowship International (PFI), 2021).

⁷⁰ Kuhlmann and Kury, "Some Considerations of Restorative Justice Before and Outside of Contemporary Western States."

⁷¹ Ellen Waldman and Lola Akin Ojelabi, "Mediators and Substantive Justice: A View from Rawls' Original Position," *Ohio State Journal on Dispute Resolution* 30 (2016): 391–430.

⁷² Rafael H M Pereira, Tim Schwanen, and David Banister, "Distributive Justice and Equity in Transportation," *Distributive Justice and Equity in Transportation*, *Transport Reviews* 37, no. 2 (2016), <https://doi.org/10.1080/01441647.2016.1257660>.

Sixth, institutional capacity must be strengthened to support consistent implementation of penal mediation across all jurisdictions. This includes allocating resources for facilitator training, providing physical infrastructure for restorative processes, and establishing oversight mechanisms.⁷³ Research has documented significant regional disparities in the quality and availability of restorative justice services, with economically disadvantaged areas often lacking the resources necessary for effective implementation.⁷⁴ The government must commit to addressing these disparities to ensure equal access to restorative processes for all citizens.

Seventh, international best practices should inform the development of Indonesia's penal mediation framework. Experience from countries including Germany, Finland, and Austria shows that well-managed penal mediation can produce higher levels of victim satisfaction compared to formal litigation processes.⁷⁵ In these countries, penal mediation is not considered commercialization of crime but a form of respect for the dignity of victims and offenders as human beings capable of resolving their conflicts maturely.¹⁰⁴ The success of these systems is attributed to comprehensive regulatory frameworks, professional facilitator training, institutional support, and public education. Indonesia, with its rich traditions of *musyawarah* (deliberation), *mufakat* (consensus), and local wisdom, possesses extraordinary cultural capital to develop authentic and justice-oriented penal mediation.⁷⁶

Conclusion

Penal mediation is fundamentally not a mechanism for monetizing crime or commercializing justice, but rather a dispute resolution instrument grounded in restorative justice principles: repairing victims' harm, fostering offender accountability, and restoring social equilibrium disrupted by crime. The stigma that justice can be "bought" through mediation stems largely from public perceptions shaped by the enduring retributive paradigm, limited

⁷³ Giuseppe Maglione, Jamie Buchan, and Laura Robertson, "The Local Provision of Restorative Justice in Scotland: An Exploratory Empirical Study," *The Local Provision of Restorative Justice in Scotland: An Exploratory Empirical Study*, *European Journal on Criminal Policy and Research* 28, no. 4 (2020), <https://doi.org/10.1007/s10610-020-09470-3>.

⁷⁴ Devi Ratnasari, "Restorative Justice Evaluation: The Impact of Structural Inequities in the Criminal Justice System," *Restorative Justice Evaluation: The Impact of Structural Inequities in the Criminal Justice System*, *Edunity Kajian Ilmu Sosial Dan Pendidikan* 4, no. 7 (2025), <https://doi.org/10.57096/edunity.v4i7.402>.

⁷⁵ Kuhlmann and Kury, "Some Considerations of Restorative Justice Before and Outside of Contemporary Western States."

⁷⁶ Dwi Andayani Budisetyowati, "Mediation of Criminal Cases as an Effort to Settle Criminal Actions Based on Local Wisdom in Indonesia," *Mediation of Criminal Cases as an Effort to Settle Criminal Actions Based on Local Wisdom in Indonesia*, *Journal of Law Politic and Humanities* 3, no. 4 (2023), <https://doi.org/10.38035/jlph.v3i4.245>.

understanding of restorative justice, and practices that lack adequate regulatory and oversight frameworks.

This research confirms that inequalities in access to penal mediation rooted in disparities in economic capacity pose a genuine challenge to its implementation. Empirical evidence from cases involving unlicensed small-scale mining, domestic violence, and minor offenses demonstrates that while penal mediation can effectively resolve disputes and alleviate court congestion, its success is contingent upon the availability of trained facilitators, robust institutional support, and effective oversight mechanisms. In the absence of clear procedural standards, independent facilitators, and transparent oversight, penal mediation risks exploitation by economically powerful parties, thereby eroding public trust in the justice system.

The enactment of the National Criminal Code (KUHP Nasional) in 2023, effective in 2026, marks a significant milestone in modernizing Indonesian criminal law by formally recognizing and regulating penal mediation. This regulatory advancement provides a foundation for more consistent application of restorative justice principles and addresses some of the legal uncertainty that previously characterized penal mediation. Nevertheless, the persistent gap between formal provisions and actual implementation remains a critical challenge that demands urgent attention.

Meaningful policy reform encompassing comprehensive regulations, enhanced capacity-building for law enforcement officials, equitable access to legal aid, and intensified public education on restorative justice is essential to ensure that penal mediation is implemented fairly, transparently, and without discrimination. The experiences of countries that have successfully integrated restorative justice into their criminal justice systems underscore the importance of well-designed regulatory frameworks, professional facilitator training, institutional support, and sustained public engagement. Indonesia, with its rich traditions of *musyawarah* (deliberation) and local wisdom, possesses the cultural capital to develop authentic and justice-oriented penal mediation. The critical task ahead is to integrate these cultural values into the formal legal system, ensuring that penal mediation serves as a vehicle for substantive justice rather than a tool for commercializing crime.

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