

**Article History**

Received: 12 Dec 2024

Reviewed: 18 Feb 2025

Accepted: 22 Feb 2025

Published: 04 Mar 2025

The Application of Penal Mediation in Handling Minor Criminal Offenses Regulated by Regional Regulations

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Abstract: Purpose This study evaluates the effectiveness of penal mediation in resolving minor offenses under Regional Regulations (Perda) in Indonesia, focusing on reducing court caseloads and aligning with national and local legal frameworks. **Methodology** A normative legal research method was used, analyzing primary legal materials, such as laws and judicial decisions, supplemented by secondary sources, including case studies. A comparative analysis was conducted with New Zealand's restorative justice system. **Novelty** The research highlights the integration of penal mediation within Perda as a tailored approach for minor offenses. It identifies challenges such as regional disparities, limited mediator availability, and insufficient public awareness, offering strategic recommendations. **Findings** Penal mediation effectively resolves minor offenses by emphasizing dialogue and accountability. However, inconsistent mediator training and lack of institutional support remain key challenges. **Conclusion** Penal mediation is an effective alternative for minor offenses under Perda. Its success depends on public awareness, standardized training, and institutional support. Lessons from international best practices can help optimize its implementation.

Keywords : Judicial Efficiency; Legal Framework; Minor Criminal Offenses; Penal Mediation; Restorative Justice.

Abstrak: Tujuan Penelitian ini mengevaluasi efektivitas mediasi penal dalam menyelesaikan tindak pidana ringan berdasarkan Peraturan Daerah (Perda) di Indonesia, dengan fokus untuk mengurangi beban perkara di pengadilan dan menyelaraskannya dengan kerangka hukum nasional dan lokal. Metodologi Metode penelitian hukum normatif digunakan untuk menganalisis bahan hukum primer, seperti undang-undang dan putusan pengadilan, yang dilengkapi dengan sumber-sumber sekunder, termasuk studi kasus. Analisis komparatif dilakukan dengan sistem keadilan restoratif di Selandia Baru. Kebaruan Penelitian ini menyoroti integrasi mediasi penal dalam Perda sebagai pendekatan yang disesuaikan untuk pelanggaran ringan. Penelitian ini mengidentifikasi tantangan-tantangan seperti kesenjangan antar daerah, ketersediaan mediator yang terbatas, dan kurangnya kesadaran masyarakat, serta menawarkan rekomendasi strategis. Temuan Mediasi pidana secara efektif menyelesaikan pelanggaran ringan dengan menekankan pada dialog dan akuntabilitas. Namun, pelatihan mediator yang tidak konsisten dan kurangnya dukungan kelembagaan masih menjadi tantangan utama. Kesimpulan Mediasi pidana merupakan alternatif yang efektif untuk pelanggaran ringan di bawah Perda. Keberhasilannya tergantung pada kesadaran masyarakat, pelatihan standar, dan dukungan kelembagaan. Pelajaran dari praktik terbaik internasional dapat membantu mengoptimalkan pelaksanaannya.

Kata kunci : Efisiensi Peradilan; Kerangka Hukum; Tindak Pidana Ringan; Mediasi Penal; Keadilan Restoratif.

1. INTRODUCTION

The application of penal mediation for minor criminal offenses regulated by regional regulations (Perda) has emerged as a practical and effective alternative within Indonesia's judicial system. This approach aligns with the principles of restorative justice, which emphasize repairing harm and restoring relationships rather than imposing punitive measures^{1,2}. Penal mediation involves the active participation of offenders, victims, and the community in resolving disputes, fostering a sense of accountability and reconciliation among the parties involved^{3,4,5}. As a method of alternative dispute resolution, penal mediation has proven particularly effective in addressing minor public order violations and trivial offenses. By facilitating dialogue and mutual agreement it allows for resolutions that are satisfactory to both the victim and the offender, often leading to outcomes that are more constructive and rehabilitative than traditional punitive approaches⁶. This process not only alleviates the burden on the formal judicial system but also promotes community involvement and support in the justice process⁷.

In Indonesia, penal mediation is supported by various models, including informal mediation, traditional village or tribal moots, victim-offender mediation, reparation negotiation programs, and community panels or courts⁸. These models are rooted in local customs and practices, reflecting the diverse cultural landscape of the country and ensuring that the mediation process is culturally relevant and accepted⁹. Moreover, the principles of restorative justice embedded in penal mediation are consistent with the values of Pancasila, Indonesia's foundational philosophical theory, which underscores the importance of

¹ I Nyoman Putu Budiarta, "The Existence of Pancasila as a Basic Rule toward the Dispute Settlement of Complaint Offence through Penal Mediation Outside the Court of Indonesia." *Journal of Legal, Ethical and Regulatory* 22, No. 2 (2019).

² Matthew Marcellino Gunawan, Pujiyono Suwadi, and Muhammad Rustamaji, "Comparison of Restorative Justice Implementation in Indonesia, Usa, Germany, Poland and Switzerland." *Revista de Gestao Social e Ambiental* 18, No. 1 (2024): 1–15.

³ Budiarta, *Op.Cit.*, h.1.

⁴ Gunawan, Suwadi, Rustamaji, *Op.Cit.*, h.2.

⁵ Cahya Wulandari, Esmi Warassih Pujirahayu, Edward Omar Sharif Hiariej, Muhamad Sayuti Hassan, and Juan Anthonio Kambuno, "Penal Mediation: Criminal Case Settlement Process Based on the Local Customary Wisdom of Dayak Ngaju." *Lex Scientia Law Review* 6, No. 1 (2022): 69–92.

⁶ Rinaldy Amrullah, Diah Gustiniati, and Tri Andrisman, "Restorative Justice As an Effort To Resolve Excise Crimes Against Cigarettes." *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 22, No. 2 (2022): 188–200.

⁷ Moch Fauzan Zarkasi, Nur Azisa, and Haeranah, "Implications of Renewal System of Criminal Justice Based on the Principles of Restorative Justice on The Role of Probation and Parole Officer." *Khazanah Hukum* 4, No. 1 (2022): 29–44.

⁸ Wulandari et al., *Op.Cit.*, h.70.

⁹ Marlina, and Mahmud Mulyadi, "Building Restorative Justice in Gampong as a Bottom-up Legitimation of the Protection of Children in Conflict with the Law in Indonesia: Case Study in Aceh." *Cogent Social Sciences* 10, No. 1 (2024).

deliberation and consensus in resolving conflicts¹⁰. This alignment with national values further legitimizes and strengthens the application of penal mediation within the Indonesian legal framework.

A concrete example of community involvement in penal mediation can be observed in Yogyakarta, where disputes regarding public disturbances, such as excessive noise, have been settled through mediation facilitated by local leaders. In these cases, offenders agreed to limit noise levels and participate in community projects, demonstrating the approach's effectiveness in maintaining public order and fostering civic responsibility. This aligns with recent findings that emphasize the importance of community-based mediation in resolving minor offenses and enhancing social cohesion¹¹. In Indonesia, penal mediation is particularly applicable to trivial offenses, juvenile cases, and first-time offenders, highlighting its role in restorative justice and community integration. Additionally, studies have shown that community-based mediation programs contribute to reducing recidivism and promoting peaceful conflict resolution^{12, 13}. These programs not only address immediate conflicts but also enhance long-term community stability and individual accountability.

By integrating penal mediation into Perda, Indonesia can alleviate the burden on formal judicial systems while promoting social harmony. Penal mediation, which emphasizes restorative justice, has been shown to be effective in resolving minor offenses by focusing on reconciliation and community involvement^{14, 15, 16}. However, implementation varies across regions due to differences in mediator availability and public awareness¹⁷. This study aims to assess the effectiveness of penal mediation in addressing minor offenses, focusing on its impact on judicial efficiency and alignment with legal frameworks. By examining these factors, the study seeks to provide insights into how penal mediation can be more uniformly and effectively implemented across Indonesia.

Penal mediation, as an alternative dispute resolution mechanism, has gained significant attention in the context of handling minor criminal offenses. This approach emphasizes the involvement of the community in resolving conflicts, thereby fostering restorative justice and reducing the burden on the formal judicial system. The application of penal mediation in handling minor criminal offenses regulated by regional regulations is particularly noteworthy as it directly involves the community in the resolution process. Penal mediation allows for the resolution of criminal cases outside the traditional court system,

¹⁰ Bona Fernandez M.T. Simbolon, Alvi Syahrin, Ediwarman, and Marlina, "The Prosecutor'S Promise in Executing the Claim Cessation Based on Restorative Justice." *Revista de Gestao Social e Ambiental* 18, No. 7 (2024): 1–14.

¹¹ Gunawan, Suwadi, Rustamaji, *Loc.Cit.*

¹² Caroline Harmon-Darrow, "Mediation for Misdemeanor Assault." *Victims and Offenders* (2024), p: 1–17.

¹³ Patrick G. Coy, and Timothy Hedeem, "A Stage Model of Social Movement Co-Optation: Community Mediation in the United States." *Sociological Quarterly* 46, No. 3 (2005): 405–35.

¹⁴ Wulandari et al., *Op.Cit.*, h.76.

¹⁵ Budiarta, *Loc.Cit.*

¹⁶ Zarkasi et al., *Op.Cit.*, h.30.

¹⁷ F A Syukur, and D M Bagshaw, "When Home Is No Longer 'Sweet': Family Violence and Sharia Court-Annexed Mediation in Indonesia." *Conflict Resolution Quarterly* 30, No. 3 (2013): 271–94.

focusing on reconciliation and the restoration of relationships between the offender and the victim. This process is deeply rooted in the principles of restorative justice, which aim to repair the harm caused by criminal behavior through inclusive and participatory methods^{18, 19}. The community's role in penal mediation is multifaceted, involving various stakeholders such as victims, offenders, family members, and community representatives. Mechanisms of community involvement in penal mediation include informal mediation, where respected community members facilitate dialogue²⁰; victim-offender mediation, where structured communication between the victim and offender is encouraged²¹; community panels, where local representatives oversee mediation outcomes²²; and family and community group conferences, where all affected parties collectively determine appropriate reparative measures²³.

A notable example of community involvement in penal mediation is the handling of minor theft cases in Indonesian villages. In these cases, first-time juvenile offenders are brought before a community panel consisting of local leaders, the victim, and their families. The panel facilitates discussions in which the offender acknowledges their wrongdoing, and the victim expresses the impact of the crime. Together, they agree on a form of restitution, such as community service or financial compensation, which the offender must fulfill²⁴. This process not only resolves the conflict but also reintegrates the offender into the community, reducing the likelihood of reoffending. Penal mediation fosters restorative outcomes by encouraging accountability and healing, making it more satisfying for victims and offenders than punitive measures^{25, 26}. Additionally, penal mediation expedites case resolution, reducing the caseload of formal courts and alleviating prison overcapacity²⁷. Furthermore, by promoting behavioral improvement and reducing recidivism, penal mediation presents a promising alternative to conventional punitive justice.

The application of penal mediation in handling minor criminal offenses regulated by regional regulations exemplifies a shift toward more community-centered and restorative approaches to justice. By actively involving the community in the resolution process, penal mediation not only addresses the immediate harm caused by criminal behavior but also promotes long-term social harmony and reintegration of offenders. This approach aligns with broader principles of restorative justice and offers a viable alternative to the traditional

¹⁸ Milot Krasniqi, "Several Characteristics of Mediation in Criminal Field on the Republic of Kosovo." *International Comparative Jurisprudence* 5, No. 2 (2019): 190–205.

¹⁹ Catherine Forde, "Co-Production and Co-Creation: Engaging Citizens in Public Services." *Voluntas: International Journal of Voluntary and Nonprofit Organizations* 31, No. 2 (2020): 454–55.

²⁰ Budiarta, *Loc.Cit.*

²¹ Forde, *Loc.Cit.*

²² Gunawan, Suwadi, Rustamaji, *Loc.Cit.*

²³ Budiarta, *Loc.Cit.*

²⁴ Gunawan, Suwadi, Rustamaji, *Loc.Cit.*

²⁵ Krasniqi, *Loc.Cit.*

²⁶ Forde, *Loc.Cit.*

²⁷ Emmanuel Ariananto Waluyo Adi, "Penal Mediation as the Concept of Restorative Justice in the Draft Criminal Procedure Code." *Lex Scientia Law Review* 5, No. 1 (2021): 139–64.

punitive justice system. Consequently, penal mediation should be further developed and institutionalized across Indonesia to enhance the efficiency of the judicial system and reinforce the role of community participation in conflict resolution.

2. METHOD

This research employs a normative legal research method, focusing on the examination of legal principles and frameworks that govern the application of penal mediation in minor criminal offenses under Regional Regulations (Perda)²⁸. Normative legal research emphasizes the analysis of written norms, legal doctrines, and statutory provisions, utilizing primary legal materials such as laws, regulations, and judicial decisions²⁹. The study systematically reviews the legal structure supporting penal mediation, complemented by a comparative analysis of similar legal practices in other jurisdictions. Primary legal materials include Indonesian laws such as the Penal Code (KUHP), relevant Perda, and national policies on mediation³⁰. These materials are supplemented by secondary legal sources, including journal articles, books, and commentaries that discuss the role of penal mediation in restorative justice systems³¹. Comparative insights are also drawn from reports and empirical studies from jurisdictions that have implemented penal mediation successfully.

The data analysis applies qualitative content analysis to legal documents, focusing on the principles of restorative justice and the procedural elements of penal mediation as stipulated by Indonesian laws and regulations. The analysis evaluates the effectiveness of penal mediation in achieving justice for both victims and offenders, aligning with restorative justice objectives. This process involves reviewing case studies where penal mediation has been applied and examining outcomes such as victim satisfaction, offender accountability, and community involvement. Furthermore, the legal framework for penal mediation under Perda is compared with national-level mediation regulations to identify gaps and opportunities for improvement.

A comparative study is also included to analyze how penal mediation has been successfully implemented in other countries. This analysis draws on international restorative justice programs, particularly in jurisdictions with similar legal and social contexts, such as New Zealand. By comparing these international frameworks to the Indonesian context, the research aims to identify best practices and strategies that could be adapted to improve penal

²⁸ Nur Rochaeti, Mujiono Hafidh, Umi Rozah, and Jihyun Park, "A Restorative Justice System in Indonesia : A Close View from the Indigenous Peoples' Practices." *Sriwijaya Law Review*, 7, No. 1 (2023), 87–104.

²⁹ Anis Widyawati, Ridwan Arifin, and Rohadhotul Aisy, "Supervision in Integrated Justice: Legal Reform and Constructive Enforcement in the Criminal Justice System." *Journal of Law and Legal Reform* 5, No. 2 (2024): 433–58.

³⁰ Nella Sumika Putri, "The Material Content of Regional Regulations as the Concretization of the Living Legal System in Society (Adat Law) Based on Article 2 of the Indonesian Penal Code (KUHP) 2023." *Jurnal Bina Mulia Hukum*, 7, No. 2 (2023), 15–16.

³¹ Jones. T., "The Role of Community in Restorative Justice Approaches to Minor Offenses," *Journal of Crime and Justice* 43, No. 2 (2020): 120–34.

mediation under Perda³².

Ethical considerations in this research ensure that the legal norms promoting penal mediation in Indonesia adhere to principles of justice, fairness, and the protection of both victims' and offenders' rights. The research complies with academic ethical standards, particularly in the interpretation of laws and policies. This combined approach, integrating normative analysis and comparative case studies, aims to provide a comprehensive understanding of the effectiveness and challenges of penal mediation in addressing minor offenses regulated by Perda.

3. DISCUSSION

Penal mediation has emerged as a significant alternative to traditional judicial proceedings for handling minor criminal offenses. As legal systems around the world move towards restorative justice, penal mediation plays a crucial role in promoting reconciliation, reducing court caseloads, and ensuring justice through community-based solutions. The application of penal mediation varies across jurisdictions, with each country adapting the approach to align with its legal framework, social norms, and cultural values. This section provides an in-depth discussion of penal mediation implementation in two different contexts—Indonesia and New Zealand—highlighting their similarities, differences, challenges, and opportunities.

3.1. Application of Penal Mediation to Minor Crimes in the Region

Penal mediation, as an alternative dispute resolution mechanism, has been increasingly applied to handle minor criminal offenses. This approach aims to resolve conflicts outside the traditional court system, emphasizing reconciliation and reparation between the offender and the victim. In regional contexts, penal mediation is rooted in the principles of restorative justice, which focuses on repairing the harm caused by criminal behavior through cooperative processes involving all stakeholders^{33, 34, 35}. It aims to restore social balance by reconciling the accused and the victim, addressing both emotional and material harm³⁶. Penal mediation is particularly effective for minor offenses, such as misdemeanors and first-time offenses, where the goal is to avoid the re-victimization of the victim and reduce the emotional exhaustion associated with the criminal process³⁷. In Indonesia, penal mediation is used for trivial offenses and involves community-based approaches like informal mediation and victim-offender

³² Jones, T., *Loc.Cit.*

³³ M V Ozhiganova, M R Moskalenko, and V V Bolgova, "A Restorative Approach in Pedagogical and Preventive Work with Juvenile Offenders." *Mathematics Education* 11, No. 8 (2016): 2800–2813.

³⁴ Budiarta, *Loc.Cit.*

³⁵ Gunawan, Suwadi, Rustamaji, *Loc.Cit.*

³⁶ Sanna Tuurnas, "Case Study-Mediation Service: Crossing the Line between the Roles of Traditional Welfare State Professionals and Citizens as Voluntary Mediators." *Co-Production and Co-Creation: Engaging Citizens in Public Services* (2018): 93–95.

³⁷ A S García, and Y F Silva, "The best interest of the minor in the framework of the use of alternate conflict resolution methods in the criminal field." *Actualidad Juridica Iberoamericana*, No. 13 (2020): 794–819.

mediation models^{38, 39}.

The benefits of penal mediation include a reduction in recidivism, as studies indicate that mediation can decrease the likelihood of re-offending, especially when intimate partner violence cases are excluded from the mediation process⁴⁰. Additionally, victims often report higher satisfaction with the mediation process compared to traditional court proceedings, as it allows for direct communication and resolution^{41, 42}. Mediation also fosters community involvement in the justice process, encouraging a sense of collective responsibility and support. However, certain challenges must be addressed for effective implementation. One significant challenge is the need for proper screening to ensure that cases involving severe violence or power imbalances are not inappropriately referred to mediation^{43, 44}. Additionally, in some regions, legal and procedural barriers hinder the implementation of penal mediation due to the absence of clear legal frameworks and procedural guidelines⁴⁵.

The application of penal mediation in handling minor criminal offenses regulated by regional regulations exemplifies a shift toward more community-centered and restorative approaches to justice. By actively involving the community in the resolution process, penal mediation not only addresses the immediate harm caused by criminal behavior but also promotes long-term social harmony and reintegration of offenders. This approach aligns with broader principles of restorative justice and offers a viable alternative to the traditional punitive justice system. Consequently, penal mediation should be further developed and institutionalized across Indonesia to enhance the efficiency of the judicial system and reinforce the role of community participation in conflict resolution.

3.2. Regional Implementation of Penal Mediation

In Indonesia, penal mediation is deeply rooted in traditional practices and is supported by various legal frameworks and regulations. It is guided by the principles of Pancasila, which emphasize deliberation and consensus as the foundation of justice⁴⁶. Various models of penal mediation are employed, including informal mediation, traditional village or tribal moots, victim-offender mediation, reparation negotiation programs, family and community group conferences, and community panels or courts⁴⁷. This approach aims to amicably resolve

³⁸ Budiarta, *Loc.Cit.*

³⁹ Gunawan, Suwadi, Rustamaji, *Loc.Cit.*

⁴⁰ Caroline Harmon-Darrow, *Loc.Cit.*

⁴¹ Taufik Mohammad, and Azlinda Azman, "Perspectives of Juvenile Offenders Undergoing Victim-Offender Mediation with Their Own Family Members: A Qualitative Study." *Victims and Offenders* 13, No. 7 (2018): 995–1012.

⁴² Jane Bolitho, "Inside the Restorative Justice Black Box: The Role of Memory Reconsolidation in Transforming the Emotional Impact of Violent Crime on Victims." *International Review of Victimology* 23, No. 3 (2017): 233–55.

⁴³ Caroline Harmon-Darrow, *Loc.Cit.*

⁴⁴ D Batchelor, "How Crime Severity Predicts Victim Willingness to Meet the Offender." *Psychology, Public Policy, and Law* 29, No. 2 (2022): 169–81.

⁴⁵ K Sjarif, "The Role of Penal Mediation to Resolve Criminal Acts That Cause Harms to Others in Indonesian Military Court." *Journal of Legal, Ethical and Regulatory Issues* 22, No. 2 (2019).

⁴⁶ Budiarta, *Loc.Cit.*

⁴⁷ Wulandari et al., *Loc.Cit.*

conflicts, ensuring that both the victim and the offender reach a mutually satisfactory agreement.

Penal mediation in Indonesia is strongly influenced by restorative justice principles, which focus on participation and recovery, often involving Probation and Parole Officers to facilitate dialogue and reintegration⁴⁸. The Juvenile Criminal Justice System Law (Law No. 11 of 2012) further integrates penal mediation to prevent the deprivation of liberty for children and instill a sense of responsibility⁴⁹. Additionally, local wisdom plays a crucial role in this process, with practices such as the *Belom Bahadat* philosophy among the Dayak indigenous people demonstrating how customary law integrates into national criminal law⁵⁰. The Republic of Indonesia National Police Regulation Number 8 of 2021 provides further guidelines for implementing restorative justice in minor crimes, focusing on mutual forgiveness and victim well-being⁵¹.

Victim-offender mediation is a widely used model where victims and offenders engage in mediated discussions to reach a resolution⁵². Community involvement is another key aspect, as mediation incorporates community panels and group conferences to facilitate broader participation and collective responsibility⁵³. The philosophical foundation of Pancasila reinforces the importance of consensus and reconciliation in penal mediation, aligning with the nation's cultural values⁵⁴. Indigenous practices also shape mediation efforts, such as the *Belom Bahadat* approach used by the Dayak community in Kalimantan, which has been successfully incorporated into Indonesia's legal framework⁵⁵.

The implementation of penal mediation in Indonesia presents both opportunities and challenges. Diversion programs have been particularly effective in juvenile justice, preventing imprisonment while instilling accountability among young offenders⁵⁶. Probation and parole officers play a critical role in applying restorative justice principles and ensuring successful mediation outcomes⁵⁷. However, cases of domestic violence pose unique challenges, as many female victims prefer mediation over the formal criminal justice system due to financial,

⁴⁸ Zarkasi, Azisa, and Haeranah, *Loc.Cit.*

⁴⁹ Rahmi Yunita, "Diversion and Local Wisdom in Constructivism Paradigm (Study on the Implementation of Diversionat Konawe of Southeast Sulawesi)." IOP Conference Series: Earth and Environmental Science 175, No. 1 (2018).

⁵⁰ Wulandari et al., *Loc.Cit.*

⁵¹ Ruslan Abdul Gani, and Retno Kusuma Wardani, "Restorative Justice for Settlement of Minor Maltraetment in the Legal Area of the Merangin Police, Jambi Province." *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 23, No. 1 (2023): 93–107.

⁵² F Abdul Syukur and D M Bagshaw, "Victim-Offender Mediation with Youth Offenders in Indonesia." *Conflict Resolution Quarterly* 32, No. 4 (2015): 389–411.

⁵³ Wulandari et al., *Loc.Cit.*

⁵⁴ Budiarta, *Loc.Cit.*

⁵⁵ Nur Rochaeti, Mujiono Hafidh, Umi Rozah, and Jihyun Park, "A Restorative Justice System in Indonesia : A Close View from the Indigenous Peoples' Practices." *Sriwijaya Law Review* 7, No. 1 (2023): 87–104.

⁵⁶ Yunita, *Loc.Cit.*

⁵⁷ Zarkasi et al., *Loc.Cit.*

psychological, and social burdens⁵⁸. Addressing this issue requires extensive mediator training to ensure the ethical and sensitive handling of domestic violence cases⁵⁹.

Legal reforms and policy developments continue to shape the future of penal mediation in Indonesia. Efforts to incorporate restorative justice into the broader legal system include amendments to the Criminal Code and the Criminal Procedure Code⁶⁰. Specific regulations, such as the Republic of Indonesia National Police Regulation Number 8 of 2021, guide the application of restorative justice in cases of minor crimes and child sexual violence⁶¹.⁶² Striking a balance between traditional practices and formal legal requirements remains a challenge, requiring careful integration of local wisdom and state law⁶³. In the realm of human rights, penal mediation is increasingly considered in cases of medical malpractice, necessitating careful protection of both victims and perpetrators⁶⁴.

Penal mediation in Indonesia represents a shift toward restorative justice, prioritizing reconciliation and community participation over punitive measures. While challenges such as mediator training, public awareness, and legal frameworks persist, the integration of traditional values and international best practices provides a promising path for more humane and effective criminal justice solutions. By focusing on mediation, reconciliation, and accountability, penal mediation offers a viable alternative to conventional judicial proceedings, promoting long-term social harmony and justice system efficiency.

3.3. Penal Mediation in New Zealand

New Zealand has a well-established system of restorative justice, which includes penal mediation for minor offenses. The approach is integrated into the criminal justice system and is supported by various legal provisions and community-based programs. New Zealand is recognized as a leader in implementing restorative justice practices, particularly through legislative support. Key statutes such as the Sentencing Act 2002, the Victims' Rights Act 2002, and the Parole Act 2002 have established a robust framework for restorative justice, including penal mediation⁶⁵,⁶⁶. These laws mandate the use of restorative justice processes, ensuring

⁵⁸ Sukendar Sukendar, Muhammad Saifullah, Priyambudi Sulistiyanto, Luthfi Rahman, and A. Hasan Asy'Ari Ulamai, "Women's Access To Justice: Mediation For The Victims of Domestic Violence In Central Java, Indonesia." *Samarah* 7, No. 1 (2023): 602–28.

⁵⁹ *Ibid.*

⁶⁰ Zarkasi et al., *Loc.Cit.*

⁶¹ Gani, and Wardani, *Loc.Cit.*

⁶² K P Anggarini, E Julianto, and T Asmara, "Implementation of Restorative Justice Regarding Child Violence Cases in Law Enforcement in the Police." *Journal of Lifestyle and SDG'S Review* 5, No. 2 (2025).

⁶³ Yunita, *Loc.Cit.*

⁶⁴ L Sari, N G A Pham Thanh, M Towadi, and S O Manullang, "Human Rights Perspectives on Resolving Medical Malpractice Cases through Penal Mediation in Indonesia." *Jambura Law Review* 5, No. 2 (2023): 278–95.

⁶⁵ S M Pfander, "Evaluating New Zealand's Restorative Promise: The Impact of Legislative Design on the Practice of Restorative Justice." *Kotuitui* 15, No. 1 (2020): 170–85.

⁶⁶ W R Wood, M Suzuki, and J Tauri, "Restorative Justice in Australia and New Zealand: A Faustian Bargain with the State?" In *Restorative Justice at a Crossroads: Dilemmas of Institutionalisation* (2024): 11–39.

that they are widely available and systematically integrated into the criminal justice system.

Mediation practices in New Zealand are not governed by a single statute but are incorporated into over 60 different laws, covering areas such as family, employment, and tenancy disputes⁶⁷. This decentralized approach allows for flexibility and accessibility, making mediation services simple and inexpensive to access. Mediation can be mandated by courts or tribunals, with services provided by both public institutions and private mediators⁶⁸. Victim-offender mediation (VOM) is a significant component of New Zealand's restorative justice system. This process involves direct dialogue between the victim and the offender, facilitated by a mediator, to discuss the impact of the crime and agree on steps to repair the harm⁶⁹. VOM aims to provide closure and justice for victims while promoting accountability and rehabilitation for offenders.

Despite its successes, the institutionalization of restorative justice in New Zealand has presented challenges. The top-down legislative approach, while ensuring widespread availability, has sometimes led to the co-option of restorative justice for administrative or criminal justice system goals, potentially diluting its restorative principles⁷⁰. Additionally, the eclectic approach to mediation styles can create uncertainty for participants about what to expect from the process⁷¹. Comparing New Zealand's restorative justice efforts with other jurisdictions, such as Vermont in the USA, highlights the importance of legislative design in achieving restorative outcomes. Effective restorative justice programs require a balance between legislative support and the flexibility to adapt to the needs of victims and offenders⁷².

Restorative justice conferences in New Zealand involve the offender, victim, and community representatives, focusing on repairing harm and reintegrating the offender into society. The Youth Justice system in New Zealand emphasizes diversion and restorative practices to address juvenile offenses, similar to Indonesia's approach⁷³. Local communities play a significant role in the mediation process, ensuring that the outcomes are culturally appropriate and accepted by all parties involved. However, challenges such as resource allocation and maintaining consistency in the application of restorative justice across different regions and communities require ongoing monitoring and evaluation. By comparing the penal mediation frameworks of Indonesia and New Zealand, it becomes evident that both countries emphasize restorative justice principles but differ in their institutional approaches. While Indonesia integrates traditional and community-based mediation practices, New Zealand

⁶⁷ H Berg, "Mediation in New Zealand: Widely Accepted and Successful." In *Mediation: Principles and Regulation in Comparative Perspective*. Oxford University Press (2013).

⁶⁸ H Berg, *Loc.Cit*.

⁶⁹ G Sahoo, "A Victim-Sensitive Approach towards Victim - Offender Mediation in Crimes: An Analysis." *Revista Brasileira de Alternative Dispute Resolution* 4, No. 8 (2023): 123–46.

⁷⁰ Wood, Suzuki, and Tauri, *Loc.Cit*.

⁷¹ G Morris, "Eclecticism versus Purity: Mediation Styles Used InNew Zealand Employment Disputes." *Conflict Resolution Quarterly* 33, No. 2 (2015): 203–27.

⁷² S M Pfander, *Loc.Cit*.

⁷³ Yunita, *Loc.Cit*.

relies on a structured legal framework to guide its restorative justice processes. The effectiveness of penal mediation in both countries depends on balancing legislative support, community involvement, and the adaptability of mediation practices to ensure fair and meaningful resolutions for minor criminal offenses.

Table 1. Comparison of Penal Mediation in Indonesia and New Zealand

| Aspect | Indonesia | New Zealand |
|------------------------------|--|---|
| Restorative Justice | Emphasized, integrated with local customs ^{74, 75, 76} | Emphasized, supported by legal framework (Sentencing Act 2002) |
| Juvenile Focus | Strong focus, use of diversion and protection of child rights ^{77, 78, 79} | Strong focus, restorative justice conferences for juveniles |
| Community Involvement | Victim-offender mediation, community panels, traditional practices ^{80, 81, 82} | Restorative justice conferences, involvement of community and Maori customs |
| Challenges | Sectoral egos, limited capacity, need for mediator training ^{83, 84} | Implementation consistency, ensuring cultural sensitivity |

3.4. Findings and Recommendations

Community participation is vital in penal mediation. In Yogyakarta, involving local leaders in mediation efforts has led to higher compliance rates and greater social cohesion. Expanding community education on penal mediation can further enhance its effectiveness. Strengthening community engagement will allow for a more inclusive mediation process, ensuring that local customs and values are upheld while fostering trust between the legal system and the community.

One of the significant challenges in Indonesia is the inconsistency in mediator training. Implementing standardized training programs, as seen in New Zealand, would ensure mediators are equipped to handle various cases effectively. Properly trained mediators contribute to better case resolutions and fairer outcomes, enhancing confidence in the mediation system. Establishing national certification standards for mediators could help mitigate discrepancies in training and expertise across different regions.

⁷⁴ Budiarta, *Loc.Cit.*

⁷⁵ Wulandari et al., *Loc.Cit.*

⁷⁶ E B Rahail, and M J Alputila, "Penal Mediation in Indigenous Dispute Settings in the Regional Region of Malind Anim Merauke District." *International Journal of Mechanical Engineering and Technology* 9 (2018): 184–191.

⁷⁷ W Saefudin, and S Aminah, "Restorative Justice for Juvenile Offenders in Indonesia: A Study of Psychological Perspective and Islamic Law." *Journal of Islamic Law* 2, No. 2 (2021): 168–96.

⁷⁸ Yunita, *Loc.Cit.*

⁷⁹ R Harve, S Kalo, and A Syahrin, "Synchronization of Laws and Application of Diversion in Children Criminal Laws in Conflict." *International Journal of Criminal Justice Sciences* 16, No. 2 (2021): 358–68.

⁸⁰ Budiarta, *Loc.Cit.*

⁸¹ Wulandari et al., *Loc.Cit.*

⁸² Rahail, and Alputila, *Loc.Cit.*

⁸³ Anggarini, Julianto, and Asmara, *Loc.Cit.*

⁸⁴ Sukendar et al., *Loc.Cit.*

Greater institutional backing is required to integrate penal mediation into Indonesia's legal framework effectively. Public awareness campaigns, particularly in rural areas, can enhance understanding and acceptance of mediation as an alternative dispute resolution method. Governmental and non-governmental organizations should work together to promote penal mediation, ensuring that resources, infrastructure, and training programs are readily available. Institutional support will also aid in addressing gaps in enforcement and ensuring that mediation agreements are upheld.

4. CONCLUSION

While this study highlights the theoretical and comparative aspects of penal mediation in Indonesia and New Zealand, it did not provide sufficient empirical data to measure its real-world effectiveness comprehensively. The absence of quantitative data on mediation outcomes, recidivism rates, and long-term impacts limits the study's ability to draw definitive conclusions about the overall success of penal mediation. Future research should focus on empirical case studies, statistical analyses, and field-based evaluations to strengthen the findings and provide a clearer picture of the role of penal mediation in reducing minor criminal offenses. Despite these limitations, the comparative analysis suggests that penal mediation serves as a viable alternative to formal judicial proceedings, contributing to judicial efficiency, reducing recidivism, and fostering long-term social harmony. To optimize its implementation in Indonesia, further research, legal reforms, and capacity-building initiatives are necessary. Strengthening mediator training, increasing community engagement, and enhancing institutional support will be key to ensuring that penal mediation becomes a sustainable and effective mechanism for handling minor criminal offenses.

5. ACKNOWLEDGEMENT

I would like to express my deepest gratitude to all those who have supported and contributed to the completion of this research. First and foremost, I extend my heartfelt thanks to my academic advisor for their invaluable guidance, insights, and encouragement throughout the research process, which were instrumental in shaping the direction of this study. I am also grateful to the faculty members and administrative staff for their logistical support and access to necessary resources, as well as to the legal practitioners and mediators who generously shared their experiences on the implementation of penal mediation, offering real-world insights that enriched the findings of this research. I acknowledge the contributions of my colleagues and fellow researchers, whose discussions and suggestions helped refine the scope of this study, making the research process both productive and enjoyable. Lastly, I extend my appreciation to my family and friends for their unwavering encouragement, patience, and moral support throughout this journey. Thank you all for your contributions in making this research possible.

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