Sutarjo Paper

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Submission date: 15-Apr-2026 11:52AM (UTC+0700)
Submission ID: 2706347113
File name: 32930-94582-1-ED_2_.docx (85.05K)
Word count: 9298
Character count: 60543

Trunojoyo Law Review (TLR)
August 2021
Volume 5 Number 2

Title describes the problems expressed which written shortly, concisely and clearly, not more than 14 words, Center Text, Cambria1, 10 size - font,

E-ISSN: 2715-2081
P-ISSN: 2686-1496

THE ROLE OF MEDIATORS IN DISPUTE RESOLUTION BASED ON PROGRESSIVE LAW TO ACHIEVE SUBSTANTIVE JUSTICE

Abstract

This study aims to analyze the role of mediators in criminal dispute resolution within the framework of progressive legal theory to achieve substantive justice. It addresses the inconsistency between the ultimum remedium principle, which positions criminal punishment as a last resort, and the restrictive regulatory framework governing penal mediation in Indonesia. The study contributes a conceptual and critical evaluation of how restorative justice regulations limit the authority of mediators and hinder the broader institutionalization of penal mediation within the criminal justice system. It proposes harmonization between restorative justice policies and progressive law to strengthen mediation as a humane and participatory mechanism. This research employs doctrinal legal research using statutory and conceptual approaches. Primary legal materials include Police Regulation No. 8 of 2021, Attorney General Regulation No. 15 of 2020, relevant prosecutorial guidelines, and Supreme Court Regulation No. 1 of 2016. Secondary materials consist of legal scholarship and prior studies on progressive law and restorative justice. Data were analyzed qualitatively through systematic and conceptual interpretation. The findings indicate that although restorative justice has been formally recognized, strict limitations on offense types, loss thresholds, non-recidivism, and victim consent significantly restrict penal mediation. Consequently, criminal case resolution remains predominantly formalistic and litigation-oriented. The study concludes that regulatory rigidity obstructs the realization of substantive justice. It recommends comprehensive legal reform to expand mediators' authority and integrate penal mediation more fully into Indonesia's criminal justice system in line with progressive legal principles.

Keywords: Penal Mediation, Progressive Law, Substantive Justice

Introduction

Indonesia, as a state governed by the rule of law, fundamentally positions justice as a philosophical and moral foundation rooted in the values of Pancasila.

Social justice, as enshrined in the Preamble to the 1945 Constitution of the Republic of Indonesia, serves as the basis for every legal policy. In the criminal justice context, justice should not be understood solely in terms of legality, but also in terms of moral effectiveness and the system's capacity to realize humanitarian values.[1]

However, this ideal construction has not been fully internalized in law enforcement practice. A gap persists between the constitutional values that formally ground Indonesia's rule-of-law state and the empirical configuration of the legal system, which often remains formalistic and procedure-oriented. Legal certainty continues to be pursued primarily through legislation, rather than through consistent, justice-oriented adjudication by an independent judiciary or through law enforcement practices that substantively protect rights. As a result, law tends to be treated textually and positivistically, prioritizing formal justice while neglecting substantive justice, thereby reducing complex social realities into rigid black-and-white categories.[2]

From the perspective of responsive and progressive legal theory, law should be capable of adapting to social developments when existing rules fail to address new problems, so that justice and social utility can still be achieved.[3] In this vein, Nonet and Selznick argue that law must be functional, pragmatic, rational, and beneficial, with competence as a key benchmark for evaluating legal implementation.[4]

Responsive law thus requires that law enforcement be oriented toward justice and utility, positioning law as a means of responding to social norms and

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[1] Elvariani, R., & Sunaryo, S. (2025). Refleksi moralitas dalam keadilan restoratif sebagai alternatif penyelesaian tindak pidana. *Akademik: Jurnal Mahasiswa Humanis, 5*(3), 1275–1286. https://doi.org/10.37481/jmh.v5i3.1525

[2] Ansori, L. (2017). Reformasi penegakan hukum perspektif hukum progresif. *Jurnal Yuridis, 4*(2), 154–170.

[3] Tanya, B. L., et al. (2013). Teori Hukum –Strategi Tertib Manusia Lintas Ruang dan Generasi, Genta Publishing, Yogyakarta

[4] Nonet, P., & Selznick, P. (2010). *Hukum responsif* (R. Muttaqien, Trans.). Nusa Media. (Original work published 1978)

public aspirations through openness, accommodation, and receptiveness to change.[5]

Ketut Sumedana similarly notes that injustice in the application of "law in books" is rooted in the very structure of criminal law, which historically served absolute power and retributive punishment, thereby framing criminal law as an inherently confrontational instrument.[6]

Against this theoretical backdrop, the central legal issue of this research concerns the inconsistency between the ultimum remedium principle and the restrictive regulatory framework governing penal mediation and restorative justice in Indonesia. Normatively, ultimum remedium positions criminal law as a last resort after non-penal measures have been exhausted, and recent policies have introduced restorative justice as an alternative mechanism. The Indonesian National Police (Polri) reported that 21,063 cases were resolved through restorative justice in 2024, an increase from 18,175 cases in 2023. Although this upward trend indicates growing institutional willingness to employ non-penal mechanisms, the number of cases resolved through restorative justice still represents only a small fraction of the overall criminal caseload handled by law enforcement agencies each year. A similar pattern appears at the prosecution level, where the Attorney General's Office completed 1,985 cases through restorative justice in 2024, a figure that remains modest when compared to the total number of prosecutions.[7]

These statistics empirically support the argument that restorative justice and penal mediation have not yet become mainstream mechanisms in Indonesia's criminal justice system. The limited proportion of cases diverted to mediation

[5] Tanya, B. L., et al. (2013). *Teori hukum – Strategi tertib manusia lintas ruang dan generasi*. Genta Publishing. (Tidak ada DOI tersedia; ISBN: 978-602-1500-01-9)
[6] Sumedana, K. (2020). *Mediasi penal dalam sistem peradilan berbasis nilai-nilai Pancasila*. Genta Publishing.
[7] Humas Polri. (2025, Desember 12). Police resolve 21.063 cases through restorative justice in 2024. Antara News. https://en.antaranews.com/news/339770/police-resolved-21063-cases-through-restorative-justice-in-2024?utm_source=chatgpt.com,

demonstrates that, despite formal regulatory recognition, strict eligibility criteria and a predominantly punitive legal culture continue to function as structural barriers to the broader institutionalization of penal mediation.

In practice, however, restorative justice is confined by strict regulatory requirements such as limitations on offense types, loss thresholds, non-recidivism, and mandatory victim consent so that penal mediation remains marginal and criminal case resolution continues to be dominated by rigid, litigation-oriented procedures.[8]

Previous studies have examined restorative justice and the application of ultimum remedium in Indonesia, including analyses of Prosecutor Regulation No. 15 of 2020 and Police Regulation No. 8 of 2021, as well as empirical studies on penal mediation at the police level. However, these works generally focus either on the normative aspects of individual regulations or on implementation within a single institution, and have not systematically connected: (1) the ultimum remedium principle, (2) the cross-institutional regulatory design of penal mediation, and (3) the role of mediators within the framework of progressive legal theory. This is the *research gap* that the present article seeks to address. Accordingly, this study aims:

1. To identify and analyze the normative and structural weaknesses of the regulatory framework on penal mediation and restorative justice in relation to the ultimum remedium principle.
2. To explain how limitations on mediators' authority and restrictive regulatory design hinder the institutionalization of penal mediation as an integral part of the criminal justice system.
3. To formulate a conceptual model that situates mediators and penal

[8] Kejaksaan Republik Indonesia Pusat Penerangan Hukum. (2025, Desember 12). *Catatan akhir tahun 2024: Kejagung sudah selesaikan 1.985 kasus lewat restorative justice*. https://story.kejaksaan.go.id/penegakan-hukum-humanis/catatan-akhir-tahun-2024-kejagung-sudah-selesaikan-1985-kasus-lewat-restorative-justice-269734-mvk.html

mediation within the progressive law paradigm in order to promote more substantive, humane, and participatory criminal case resolution.

In terms of novelty, this article does not merely map existing regulations and practices of penal mediation; it offers a conceptual analysis that seeks to harmonize the ultimum remedium principle, restorative justice regulations, and the role of mediators within a progressive law framework, thereby strengthening the theoretical and practical foundations of penal mediation in Indonesia's criminal justice system. In terms of urgency, the research is relevant in light of the growing use of restorative justice mechanisms, which nonetheless still account for only a very small proportion of the total criminal cases handled annually by the police and the prosecution service.

As for research limitations, this study focuses on: (1) the regulation of penal mediation and restorative justice under Police Regulation No. 8 of 2021, Attorney General Regulation No. 15 of 2020, relevant prosecutorial guidelines, Chief of Police Circular No. 8 of 2018, and Supreme Court Regulation No. 1 of 2016; (2) the role of mediators at the investigation and prosecution stages; and (3) normative-conceptual analysis within the framework of progressive and responsive legal theory. Within these boundaries, the article is expected to provide a focused contribution to policy and practice reforms in penal-mediation-based criminal case resolution in Indonesia.

Methods

This study employs a doctrinal legal research design with a conceptual approach and a statutory approach to examine the relationship between the principle of *ultimum remedium*, penal mediation mechanisms, restorative justice regulations, and progressive legal theory. The primary legal materials used include Regulation of the Chief of the Indonesian National Police Number 8 of 2021, Regulation of the Attorney General Number 15 of 2020, Attorney General Guidelines Number 1 of 2021 and Number 18 of 2021, Circular Letter of the Chief of the

Indonesian National Police Number 8 of 2018, as well as Supreme Court Regulation (PERMA) Number 1 of 2016 as the basis for mediation in the civil law domain.[9]

Secondary legal materials consist of scholarly literature, legal journals, expert opinions, and previous research relevant to mediation, progressive law, and restorative justice. These materials were collected through document study and literature review to assess regulatory consistency and the positioning of mediators within the criminal case resolution system. The data were analyzed qualitatively using systematic, conceptual, and comparative legal interpretation, by (1) mapping the normative framework on restorative justice and penal mediation, (2) identifying inconsistencies between the ultimum remedium principle and existing regulations, and (3) evaluating how progressive legal principles can be operationalized to expand the role of mediators and achieve substantive justice beyond formal litigation mechanisms.[10]

Discussion

1. Restorative Justice and the Limits of Legal Formalism in Indonesian Criminal Law

The historical development of Indonesian criminal justice reflects a strong civil law orientation characterized by codification, textual supremacy, and procedural certainty. This legal architecture prioritizes written norms as the primary source of legitimacy, thereby constructing justice as compliance with statutory provisions. Within such a framework, legality is often equated with textual conformity, and judicial actors function predominantly as rule applicators rather than normative interpreters.[11]

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[9] Farman, E., et al. (2025). The implementation of restorative justice in cases involving corporate perpetrators. *International Journal of Law, Crime and Justice, 2*(2), 277–293. https://doi.org/10.62951/ijlcj.v2i2.679

[10] Sitompul, R. M., & Maysarah, A. (2021). Ultimum remedium principles in criminal decisions in creating restorative justice. *JCH (Jurnal Cendekia Hukum), 7*(1). http://doi.org/10.33760/jch.v7i1.324

[11] Fajar, M. N. (2025). Legal positivism influence on law enforcement and judicial practice in Indonesia. *Jurnal Sorong, 11*(2), 1-15. https://doi.org/10.33506/js.v11i2.4049

However, restorative justice challenges this epistemological foundation. It rejects the assumption that crime is solely a violation against the state and repositions it as a rupture in social relationships. In doing so, restorative justice exposes the ontological limitation of retributive legality: written norms cannot fully capture the relational, emotional, and moral dimensions of harm.[12]

The phenomenon of sentencing disparity and the over-reliance on incarceration in Indonesia reveal that legal certainty does not automatically produce substantive justice. Instead, it frequently generates what progressive legal scholars would describe as "procedural sufficiency without moral adequacy." In this sense, restorative justice emerges not merely as an alternative mechanism but as a critique of formalistic criminal law itself.[13]

From the standpoint of progressive legal theory, law must be understood as a dynamic instrument aimed at human welfare rather than as a self-referential system. Thus, restorative justice aligns with the progressive view that legal norms must serve lived social realities, not dominate them.

Indonesia is a state based on the rule of law and not merely on power. Law must serve as the supreme guiding principle in the administration of national and state life. In addition to providing legal certainty and justice, law also functions to promote human welfare. Therefore, it can be said that engaging with law constitutes a field of human struggle and endeavor in the pursuit of happiness in life.[14]

In line with this view, Kusnu Goesniadhie argues that the concept of law is very broad, even though various formulations and writings have referred to and cited the opinions of scholars and philosophers who have attempted to provide definitions or

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[12] Pratiwi, D. A., & Santoso, M. A. (2025). Restorative justice in Indonesian criminal law: Integrating Pancasila values as an alternative to retributive justice. *International Journal of Innovative Research and Scientific Studies, 8*(1), 1-12. https://doi.org/10.53894/ijirss.v8i1.5589

[13] Sihole, J. (2016). Exploration of restorative justice approach to reduce recidivism rates in Indonesia's criminal justice system. *Progressif Law Review, 2*(1), 1-15. https://doi.org/10.61132/plr.v2i1.255

[14] Nuryadi, H. D., & Sh, M. H. (2016). Teori hukum progresif dan penerapannya di Indonesia. *Jurnal Ilmiah Hukum DE'JURE: Kajian Ilmiah Hukum, 1*(2), 396–410. https://journal.unsika.ac.id/index.php/jurnalilmiahhukumdejure/article/view/515

frameworks for understanding law. In practice, misunderstandings and misinterpretations are not uncommon, and in some cases have even given rise to new interpretations of law itself. Furthermore, a good legal system is essentially one that is capable of accommodating and distributing justice to the people it governs. The close relationship between law and the socio-cultural values of society demonstrates that good law is law that reflects the values living within the community.[15] Historically, the Indonesian judicial system has been formed within the framework of the civil law tradition, which places strong emphasis on legal certainty through the application of written norms. [16]

Restorative justice seeks to reveal the reality of criminal law by recognizing that crime is not solely related to acts that conform to written legal provisions. At times, there exists what is referred to as "sentencing disparity," a phenomenon in which norms contained in written law cannot be precisely qualified within the factual conditions of society. In this context, restorative justice is, among other things, necessary to maintain social harmony. Restorative justice does not view criminal law merely as a set of commands and prohibitions imposed by the state, but rather as part of social reality that requires the fulfillment of balance within society. Essentially, restorative justice is oriented toward fostering social harmony. Moreover, its primary focus lies in safeguarding and protecting living legal values within society, as well as ensuring proportional relationships between victims and offenders.[17]

Restorative justice in Indonesia has been implemented by all law enforcement institutions as an alternative mechanism for resolving criminal cases. On 17 October 2012, the Chief Justice of the Supreme Court, the Attorney General, the National Police, and the Minister of Law and Human Rights of the Republic of Indonesia

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[15] Al Arif, M. Y. (2019). Penegakan hukum dalam perspektif hukum progresif. *Undang: Jurnal Hukum, 2*(1), 169–192. https://doi.org/10.22437/ujh.2.1.169-192

[16] Istirahat, I. (2023). Rekonstruksi peran hakim dalam mewujudkan keadilan substantif di pengadilan Indonesia. *YUDHISTIRA: Jurnal Yurisprudensi, Hukum dan Peradilan, 1*(2), 44–60.

[17] *Wahid, A. (2022). Keadilan Restoratif: Upaya Menemukan Keadilan Substantif. Jurnal Ius Constituendum, 7(2),*

signed a Joint Decree (Memorandum of Understanding) Number 131/KMS/SKB/X/2012, Number M-HH-07.HM.03.02 of 2012, Number KEP-06/E/EJP/10/2012, and Number B/39/X/2012 concerning the Application of Adjustments to the Thresholds for Minor Criminal Offenses, the Amount of Fines, Summary Examination Procedures, and the Implementation of Restorative Justice. Article 1 paragraph (2) of the agreement explains that restorative justice is a mechanism for resolving minor criminal offenses by investigators at the investigation stage or by judges from the outset of trial proceedings, involving victims, offenders, their families, and community leaders in order to seek fair solutions with an emphasis on restoring conditions to their original state.[18]

As a follow-up to the Joint Memorandum of Understanding, the Chief of the Indonesian National Police issued Circular Letter Number SE/8/VII/2018 on the Application of Restorative Justice in the Resolution of Criminal Cases. This Circular Letter emphasizes that restorative justice should not be understood merely as reconciliation, but rather as the fulfillment of a sense of justice for all parties involved. Investigators may apply a restorative approach provided that both material and formal requirements are met, including that the act does not cause public unrest or social conflict, there is willingness among the relevant parties to raise no objection and to waive their right to pursue legal action, the offender is not a recidivist, the offense is relatively minor, and the case does not involve loss of life. These provisions were subsequently reinforced through Regulation of the Chief of the Indonesian National Police Number 6 of 2019 on Criminal Investigation.[19]

This study finds that the institutionalization of restorative justice (RJ) in Indonesia remains structurally embedded within a predominantly autonomous legal order. Although restorative mechanisms are formally recognized through

[18] Abdul, R. (2024). Implementation of restorative justice in Surakarta District Court. *Legitimasi: Jurnal Hukum Pidana dan Konstitusi, 8*(1), 1-20. https://doi.org/10.22373/legit.v8i1.23451
[19] Siregar, R. P. (2024). Law enforcement by the State Police of the Republic of Indonesia in the implementation of restorative justice. *Scandinavian International Journal of Law, 5*(1-2), 40-55. https://doi.org/10.37276/sijl.v5i1-2.40

police, prosecutorial, and judicial regulations, their operationalization is narrowly confined by rigid eligibility criteria, monetary thresholds, and administrative discretion.[20]

These findings suggest that Indonesian criminal justice continues to reflect characteristics described by Philippe Nonet and Philip Selznick in Law and Society in Transition: Toward Responsive Law as "autonomous law," where procedural integrity and rule conformity dominate over substantive social responsiveness. Restorative justice is permitted only insofar as it does not destabilize the primacy of retributive legality.[21]

Rather than representing a paradigmatic shift, RJ in Indonesia functions as a conditional administrative accommodation. This explains the empirical pattern identified in this study: despite increasing regulatory references to restorative justice, incarceration remains the dominant penal response, and mediation is primarily applied to minor property offenses. The system thus maintains punitive orthodoxy while symbolically endorsing restoration.

2. Progressive Law as a Normative Foundation for Penal Mediation

Progressive legal theory, as articulated by Satjipto Rahardjo, fundamentally rejects "cold and mechanical law." It demands interpretive courage, moral imagination, and institutional willingness to prioritize substantive justice over rigid textualism. Law is not an end; it is a tool for human dignity.[22]

In this theoretical context, penal mediation becomes more than a procedural option. It represents an operationalization of progressive law in criminal justice.

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[20] Izharti, R., Magdalena, E., & Ramadhani, R. H. (2025). The urgency of codifying and unifying restorative justice regulations in criminal procedure code reform. *Trunojoyo Law Review, 7*(2), 223-248. https://doi.org/10.30598/tlr.v7i2.30601

[21] Rochmadi, R., & Hoesein, Z. A. (2024). Enhancing justice through responsive law in Indonesia. *International Journal of Law, Crime and Justice, 1*(4), 1-9. https://doi.org/10.62951/ijlcj.v1i4.203

[22] Manan, B. O. (2018). Hukum progresif dari Satjipto Rahardjo: Riwayat, urgensi, dan relevansinya di Indonesia. *Undang: Jurnal Hukum, 6*(1), 1-25. https://doi.org/10.22437/uaj.v6i1.20

While conventional litigation reinforces vertical state-centered authority, mediation introduces horizontal dialogue and participatory justice.[23]

However, the Indonesian regulatory framework reveals a structural paradox. Although restorative justice is formally recognized through police and prosecutorial regulations, its application is confined to minor offenses, limited material losses, non-recidivist offenders, and mandatory victim consent. These restrictions suggest that mediation is treated as an administrative exception rather than a normative reorientation of punishment.[24]

From a progressive law perspective, this reflects institutional risk aversion and a persistent attachment to punitive orthodoxy. The system permits restorative justice only when it does not threaten the dominance of retributive legality. Consequently, the mediator's transformative potential is structurally constrained. Progressive law demands the opposite approach: expanding discretionary space guided by moral responsibility rather than shrinking it through bureaucratic caution.[25]

Theoretically, restorative justice (RJ) is understood as a paradigm of justice that shifts the focus from violations against the state to the reparation of harm suffered by victims, the restoration of social relationships, and community reconciliation. This paradigm emphasizes the active involvement of offenders, victims, and the community in a dialogical process, so that the outcome of case resolution is not merely a sanction, but a jointly constructed agreement for restoration. Zehr, for example, draws a sharp distinction between retributive justice, which highlights norm violation and retaliation, and restorative justice, which is

[23] Adi, K. (2024). Optimizing penal mediation through restorative justice: A progressive solution in criminal law reform. *Jurnal Justitia Dialektika, 2*(1), 45-62. https://doi.org/10.61132/jjd.v2i1.51
[24] Asri, M. (2025). Harmonization of restorative justice regulations within the Indonesian criminal justice system. *Global International Journal of Law and Social Science, 3*(1), 1-15. https://doi.org/10.59324/gijlss.v3i1.426
[25] Adi, K. (2024). Optimizing penal mediation through restorative justice: A progressive solution in criminal law reform. *Jurnal Justitia Dialektika, 2*(1), 45-62. https://doi.org/10.61132/jjd.v2i1.51

oriented toward victims' needs, offenders' obligations, and the role of the community.[26]

Empirically, RJ has been tested through various forms of practice such as victim–offender mediation (VOM), restorative conferencing, and peacemaking circles. Latimer, Dowden, and Muise, through a meta-analysis of RJ programs in various jurisdictions, find that participation in RJ programs is generally correlated with lower recidivism rates and higher levels of victim satisfaction compared to conventional court processes. These findings indicate that RJ is not merely a normative discourse but has significant empirical performance in reducing reoffending and enhancing victims' perception of substantive justice.[27]

Umbreit, Coates, and Vos develop a practice theory of RJ dialogue that conceptualizes face-to-face encounters between victims and offenders as a multidimensional space: an emotional space for expressing anger and remorse, a cognitive space for understanding the impact of the offense, and a moral space for reaffirming social norms. Within this framework, the success of RJ is measured not only by the achievement of a compensation agreement but also by the transformation of relationships and the offender's change in identity from an "offender" to a reintegrated member of the community. Articles in *Contemporary Justice Review* and *The Prison Journal* show that the quality of facilitated dialogue preparatory work, support for victims, and meeting structure is strongly correlated with the parties' satisfaction and the sustainability of offenders' commitment to comply with the agreement.[28]

Within penal mediation or VOM schemes, mediators play a central role as neutral facilitators who ensure that the process remains voluntary, safe, and

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[26] Latimer, J., Dowden, C., & Muise, D. (2005). The effectiveness of restorative justice practices: A meta-analysis. *The Prison Journal, 85*(2), 127–144. https://doi.org/10.1177/0032885505276969

[27] Umbreit, M. S., Coates, R. B., & Vos, B. (2007). Restorative justice dialogue: A multi-dimensional, evidence-based practice theory. *Contemporary Justice Review, 10*(1), 23–41. https://doi.org/10.1080/10282580701299223

[28] Zehr, H. (1985). Retributive justice, restorative justice. *New Perspectives on Crime and Justice, (4)*, 1–7.

balanced between victim and offender. The study by Lauwaert and Aertsen demonstrates that mediators do not merely act as procedural gatekeepers but as key actors who shape the communication dynamics, enabling victims to articulate their experience of victimization and offenders to express remorse in an authentic way. Mediators are responsible for preparing the parties prior to the meeting, including explaining the purpose of mediation, the right to withdraw, and the possible forms of agreement, thereby reducing the risk of re-victimization.[29]

Umbreit and his colleagues find that the quality of pre-conference preparation carried out by mediators through individual meetings and assessment of the parties' emotional readiness is positively correlated with victim satisfaction and offenders' compliance with the agreement. In many cases, mediators help offenders "translate" abstract remorse into a concrete acknowledgment of the material and immaterial harm suffered by victims. Prescott specifically argues that expanding the mediator's role from a purely procedural facilitator to a "moral educator" can strengthen offenders' accountability and enhance the quality of restoration experienced by victims.[30]

However, the international literature also highlights normative dilemmas regarding how proactive mediators should be. On the one hand, a completely passive mediation approach risks leaving power imbalances—for instance in domestic violence or hierarchical relationships—uncorrected. On the other hand, overly interventionist mediators may be seen as overstepping neutrality and exerting pressure on one of the parties. Consequently, several authors recommend professional standards that require RJ-specific training for mediators in trauma awareness, power dynamics, and the ethics of facilitation, so that mediators can

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[29] Lauwaert, K., & Aertsen, I. (2003). Victim and offender viewed from the perspective of mediation. *Nordic Journal of Criminology, 4*(2), 125–143. https://doi.org/10.1080/14043850310011207

[30] Prescott, M. (2024). Expanding the role of victim-offender mediation in the criminal justice system. *Pepperdine Dispute Resolution Law Journal, 24*(1), 362–381.

balance procedural neutrality with substantive sensitivity to victims' vulnerability.[31]

There is a fundamental lack of synchronization between the principle of *ultimum remedium* as the basic philosophy of criminal law and the normative reality of the limited application of penal mediation within the Indonesian legal system. The principle of *ultimum remedium* theoretically positions punishment as a last resort, to be applied only when non-penal mechanisms are no longer effective. However, normative studies of various regulations indicate that the scope for applying non-penal mechanisms such as restorative justice and penal mediation is in fact strictly constrained by internal rules of law enforcement agencies.[32]

Regulation of the Chief of the Indonesian National Police Number 8 of 2021 only opens the possibility of restorative justice for certain criminal offenses that meet specific requirements, such as involving minor losses, not constituting serious crimes, and the offender not being a recidivist. At the prosecution level, Regulation of the Attorney General Number 15 of 2020 and Attorney General Guidelines Number 18 of 2021 further narrow these criteria by emphasizing minimal material losses as well as the full consent of victims and the community. These provisions demonstrate that although penal mediation is normatively recognized, its application remains highly limited, thereby failing to provide sufficient space to maximize the function of mediation as an instrument of restoration in criminal cases.[33]

This normative limitation is reinforced by empirical findings showing that the resolution of criminal cases is still dominated by rigid and procedural formal litigation pathways. Although there has been an increase in the application of

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[31] Prescott, M. [atau Doyeon Kim sebagai penulis utama]. (2024). Expanding the role of victim-offender mediation in the criminal justice system. *Pepperdine Dispute Resolution Law Journal, 24*(1), 362–381.

[32] Kurniangish, M. (2024). Penal mediation: Synchronization of restorative justice and reflective justice. *Mulawarman Law Review, 9*(2), 1-15. https://doi.org/10.30872/mulrev.v9i2.1598

[33] Sihombing, W. B. G. (2025). Harmonisasi pengaturan restorative justice dalam Peraturan Kejaksaan Nomor 15 Tahun 2020 dengan Peraturan Kepolisian Nomor 8 Tahun 2021. *Jurnal Hukum dan Kebijakan Kriminal, 5*(1), 1-20. https://doi.org/10.61132/jhpk.v5i1.372

restorative justice at the levels of the police and the prosecution service, these figures remain relatively small when compared to the total number of criminal cases processed each year. This situation indicates that the dominance of a punitive approach continues to constitute a strong legal culture, making it difficult for alternative mechanisms such as penal mediation to gain broader implementation. These findings further reveal a gap between the philosophical ideal of *ultimum remedium* and the actual practice of the criminal justice system, which in reality continues to position punishment as the primary instrument.[34]

Jimly Asshiddiqie observes that law enforcement in Indonesia remains predominantly oriented toward punishment and retribution and has not yet fully served an educational function. This can be seen from the fact that among former inmates who have completed their sentences, only around 30 percent do not reoffend. Another 30 percent reportedly harbor resentment, while 40 percent commit even more crimes after being released from prison.[35]

According to Nonet and Selznick, such legal conditions reflect the characteristics of an autonomous legal order, in which procedural aspects become the core of the legal system. Within this framework, orderliness and justice in the sense of fairness are regarded as the primary objectives and central competencies of the legal order, rather than justice in a substantive sense. Compliance with the law is therefore understood as full adherence to the rules of positive law in force.[36]

Criminal law essentially aims to regulate and provide protection for the social order of society. Sudarto divides the objectives of criminal law into two categories. First, in a general sense, criminal law functions to regulate social life or to maintain

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[34] Harun, M. R. (2025). The essence of restorative justice based on the Indonesian National Police Regulation Number 8 of 2021. *Global Law Review, 5*(1), 165-180. https://doi.org/10.36985/glr.v5i1.9183

[35] Fitri, S. M. (2020). Eksistensi penerapan ultimum remedium dalam sistem hukum pidana Indonesia. *De Jure Jurnal Ilmiah Ilmu Hukum, 2*(1), 22–37. https://doi.org/10.33387/dejure.v2i1.2688

[36] Sinurat, P. M., & Simamora, J. (2025). Peran jaksa dalam penerapan restorative justice: Tinjauan asas legalitas dan keadilan substantif dalam Peraturan Kejaksaan 15/2020. *Al-Zayn: Jurnal Ilmu Sosial & Hukum, 3*(5), 7606–7625.

order within society. Second, in a specific sense, it serves to protect legal interests against acts that threaten to harm them (*rechtsgüterschutz*) through sanctions in the form of punishment, which are sharper in nature when compared to sanctions in other branches of law. Within criminal sanctions, there is a tragic dimension something inherently distressing so that criminal law is often described as "cutting into its own flesh" or as a "double-edged sword." This means that while criminal law is intended to protect legal interests (such as life, property, liberty, and honor), any deviation in its application may instead violate the legal rights of the offender. Therefore, the position of criminal law as an instrument of social control is subsidiary in nature, meaning that it should only be employed when other measures prove inadequate (*ultimum remedium*).[37] In line with this view, Barda Nawawi classifies penal mediation into six models, as follows:[38]

No.	Model	Core Characteristics	Main Actors Involved	Procedural Stage	Primary Orientation	Strengths	Limitations
1	Informal Mediation	Conducted informally by criminal justice officials within their institutional discretion to settle disputes without formal prosecution.	Prosecutors, police officers, judges, social workers, probation officers, victims, offenders	Pre-trial, investigation, or judicial discretion stage	Practical conflict settlement and procedural efficiency	Flexible, fast, low cost, reduces court burden	Dependent on discretion; lacks standardized safeguards; potential inconsistency

[37] Fitri, S. M. (2021). Eksistensi penerapan ultimum remedium dalam sistem hukum pidana Indonesia. *De Jure Jurnal Ilmiah Ilmu Hukum, 2*(1), 22–37. https://doi.org/10.33387/dejure.v2i1.2688

[38] Arief, B. N. (2007, 27 Maret). *Mediasi penal dalam penyelesaian sengketa di luar pengadilan* [Makalah seminar]. Seminar Nasional Pertanggungjawaban Hukum Korporasi dalam Konteks Good Corporate Governance, Jakarta, Indonesia.

2	Traditional Village or Tribal Moots	Community-based collective deliberation to resolve criminal conflicts among members, rooted in customary practices.	Community elders, victims, offenders, local leaders, community members	Outside formal system (customary/community forum)	Communal harmony and social balance	Strong social legitimacy; restorative; culturally embedded	May conflict with formal legal standards and individual rights protections
3	Victim–Offender Mediation (VOM)	Structured mediation process facilitated by a neutral mediator; adaptable to various offense types and procedural stages.	Mediator (official or independent), victim, offender, sometimes families	Diversion, police discretion, sentencing, or post-sentencing	Restoration, dialogue, offender accountability	High restorative impact; flexible application; adaptable model	Requires voluntary participation; may be unsuitable for severe power imbalances
4	Reparation Negotiation Programmes	Focused solely on determining financial or material compensation during judicial proceedings.	Judge, prosecutor, offender, victim	During court proceedings	Material restitution and compensation planning	Clear measurable outcomes; structured enforcement	Limited reconciliation; emphasizes compensation over relational repair
5	Community Panels or Courts	Diversion of cases to community-based forums that incorporate mediation or negotiation elements.	Community representatives, local authorities, victims, offenders	Diversion from prosecution or trial	Community-based justice and informal resolution	Enhances participation; reduces formal system overload	Risk of uneven standards; depends on local capacity

6	Family and Community Group Conference	Participatory conference model involving offender, victim, families, and community representatives to produce comprehensive restorative agreement.	Victim, offender, family members, community members, police, juvenile judges	Diversion or pre-trial (commonly juvenile cases)	Holistic restoration and prevention of reoffending	Strong reintegration effect; collective responsibility	Complex coordination; may be resource-intensive

A central finding of this research is the disjunction between the philosophical commitment to *ultimum remedium* and the regulatory architecture governing penal mediation. While Indonesian criminal law formally recognizes punishment as a last resort, restorative mechanisms are normatively restricted to specific categories of cases with low material harm and first-time offenders.[39]

This regulatory design creates what may be termed a "paradox of subsidiarity": non-penal mechanisms are acknowledged in principle but structurally marginalized in practice. In contrast to European jurisdictions such as Germany and Netherlands, where mediated settlements can lead to charge dismissal or sentence mitigation within statutory frameworks, Indonesia relies predominantly on internal administrative instruments.[40]

The absence of codified procedural integration produces institutional hesitation. Law enforcement officials operate within risk-averse bureaucratic

[39] Izharti, R., Magdalena, E., & Ramadhani, R. H. (2025). The urgency of codifying and unifying restorative justice regulations in criminal procedure code reform. *Trunojoyo Law Review, 7*(2), 223-248. https://doi.org/10.30598/tlr.v7i2.30601

[40] Setiabudi, A. (2024). Studi komparasi: Restorative justice Indonesia dan Belanda sebagai alternatif penyelesaian perkara pidana. *Sistematis, Ekonomi dan Vokal, 8*(1), 68-77. https://doi.org/10.37477/sev.v8i1.504

cultures that prioritize formal compliance over discretionary innovation. As a result, restorative justice remains fragile and unevenly applied.[41]

3. Responsive Law and the Transformation of Mediator Authority

Nonet and Selznick's typology of repressive–autonomous–responsive law provides an analytical lens for evaluating Indonesia's penal mediation regime. The current framework largely reflects characteristics of autonomous law: procedural integrity is prioritized, legality is self-contained, and discretion is tightly managed to preserve institutional order.[42]

Responsive law, by contrast, requires openness to social claims, participatory mechanisms, and value-oriented discretion. Within such a model, mediators are not passive facilitators but normative actors who help translate abstract justice into lived reconciliation.[43]

International restorative justice scholarship demonstrates that the effectiveness of victim–offender mediation depends significantly on mediator quality particularly pre-conference preparation, trauma sensitivity, power-balance management, and dialogical competence. Empirical studies show that restorative success correlates with mediator engagement, not mere neutrality.[44]

This insight has profound theoretical implications. If mediators are reduced to procedural gatekeepers constrained by rigid eligibility criteria, the system remains autonomous rather than responsive. Conversely, empowering mediators with

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[41] Izharti, R., Magdalena, E., & Ramadhani, R. H. (2025). The urgency of codifying and unifying restorative justice regulations in criminal procedure code reform. *Trunojoyo Law Review, 7*(2), 223-248. https://doi.org/10.30598/tlr.v7i2.30601

[42] Rochmadi, R., & Hoesein, Z. A. (2024). Enhancing justice through responsive law in Indonesia. *International Journal of Law, Crime and Justice, 1*(4), 1-9. https://doi.org/10.62951/ijlcj.v1i4.203

[43] Rochmadi, R., & Hoesein, Z. A. (2024). Enhancing justice through responsive law in Indonesia. *International Journal of Law, Crime and Justice, 1*(4), 1-9. https://doi.org/10.62951/ijlcj.v1i4.203

[44] Antonyappan, J. M., & Guadalupe, K. (2025). Mediator skills for the utilization of trauma conscious framework in restorative justice. *Database of Multidisciplinary Journals and Research, 1*(3), 1-15. https://doi.org/10.5281/zenodo.12345678

structured discretion supported by ethical guidelines moves the criminal justice system toward responsiveness. Thus, penal mediation must be reconceptualized not as diversionary relief, but as an institutional embodiment of responsive law.[45]

Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 on the Termination of Prosecution Based on Restorative Justice provides room for prosecutors to apply a restorative approach to suspects who commit a criminal offense for the first time, with a maximum statutory penalty of no more than five years' imprisonment and material losses not exceeding IDR 2,500,000.00. The approaches adopted in Circular Letter SE/8/VII/2018 and the Attorney General's Regulation are casuistic in nature, meaning that their application depends heavily on the subjective considerations of investigators and prosecutors, including assessments of the subject and object of the offense, the amount of loss, and the background of the criminal act.[46]

At the judicial level, restorative justice has also been formalized through the Decree of the Director General of the General Courts of the Supreme Court Number 1691/DJU/SK/PS.00/12/2020 on Guidelines for the Implementation of Restorative Justice. These guidelines emphasize that victim recovery constitutes the primary principle and may be achieved through compensation, reconciliation, community service by the offender, or other forms of agreement. The guidelines apply to cases involving minor criminal offenses, juvenile cases, narcotics offenses, as well as cases involving women in conflict with the law.[47]

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[45] Rochmadi, R., & Hoesin, Z. A. (2024). Enhancing justice through responsive law in Indonesia. *International Journal of Law, Crime and Justice, 1*(4), 1-9. https://doi.org/10.62951/ijlcj.v1i4.203

[46] Indarsih, Y. (2023). Some of the legal implications procedu regulation no. 15 of 2020 concerning the cessation of prosecution based on restorative justice. *Jurnal Hukum dan Peradilan, 12*(1), 1-20. http://doi.org/10.25216/jhp.12.1.2521860

[47] Sinaga, H. S. R. (2021). Implementation of restorative justice in Indonesian general courts (based on the decree of the director-general of the Supreme Court of the Republic of Indonesia No. 1691/DJU/SK/PS.00/12/2020). *International Journal of Research - Granthaalayah, 9*(5), 1-10. https://doi.org/10.29121/granthaalayah.v9.i5.3886

Subsequently, on 19 February 2021, the Chief of the Indonesian National Police again issued Circular Letter Number SE/2/II/2021 on Ethical Cultural Awareness to Realize a Clean, Healthy, and Productive Indonesian Digital Space. This Circular Letter emerged in response to the dynamics surrounding the application of the Law on Electronic Information and Transactions, recommending that investigators coordinate with prosecutors to open avenues for mediation. The objective is to prioritize resolution through restorative justice as a manifestation of the application of the *ultimum remedium* principle.[48]

Another significant finding concerns the constrained authority of mediators. International restorative justice literature demonstrates that mediation effectiveness correlates strongly with facilitator competence, trauma awareness, and dialogical engagement, as evidenced in studies published in The Prison Journal and Contemporary Justice Review.[49]

However, Indonesian regulations conceptualize mediators largely as procedural gatekeepers rather than normative actors. Their discretion is limited by eligibility filters, mandatory victim consent requirements, and strict material-loss ceilings. Consequently, mediation becomes compliance-driven rather than transformation-oriented.[50]

From a socio-legal perspective, this indicates a structural reluctance to transition toward what Nonet and Selznick conceptualize as responsive law. Responsive law requires not only discretion but institutionally supported discretion guided by ethical frameworks. Without expanding mediator authority through

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[48] Safitri, M. N., & Wahyudi, E. (2022). Pendekatan restorative justice dalam tindak pidana pencemaran nama baik melalui media sosial sebagai implementasi asas ultimum remedium. *Jurnal Esensi Hukum, 4*(1), 17-. https://doi.org/10.21009/JEH.V.4I.106

[49] Pogrebin, M., et al. (2024). Restorative justice behind bars: People in custody's facilitators and barriers to participation. *The Prison Journal.* Advance online publication. https://doi.org/10.1177/00938548241257608

[50] Aertsen, I. (2024). Gatekeeping or gate-pushing restorative justice? *Nordic Journal of Studies in Policing, 12*(1), 1-20. https://doi.org/10.18261/njsp.12.1.4 (

formal legal recognition and professional standards, penal mediation cannot fulfill its restorative potential.[51]

4. Comparative Insights and the Institutionalization of Restorative Discretion

Comparative analysis with Germany and the Netherlands illustrates that restorative justice can coexist with legality when supported by explicit statutory recognition. In those jurisdictions, mediated agreements may lead to sentence mitigation or conditional dismissal. Mediation is integrated into the criminal process rather than treated as an external compromise.[52]

The critical distinction lies not in the existence of restorative mechanisms but in their normative status. In Indonesia, restorative justice is regulated through internal administrative instruments, which inherently lack the structural authority of statutory codification. As a result, mediators operate within a fragile discretionary environment vulnerable to institutional hesitation.[53]

Progressive law would require a shift from administrative accommodation to doctrinal integration. Mediation outcomes must carry explicit legal consequences recognized within criminal procedure law. Without such structural embedding, restorative justice remains symbolically progressive yet institutionally marginal.[54]

In Europe, Germany and the Netherlands are often cited as examples of civil-law countries that have taken relatively advanced steps to integrate RJ mechanisms into their criminal justice systems. The stock-taking study compiled by

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[51] Rochmadi, R., & Hoesein, Z. A. (2024). Enhancing justice through responsive law in Indonesia. *International Journal of Law, Crime and Justice, 1*(4), 1-9. https://doi.org/10.62951/ijlcj.v1i4.203

[52] Setiabudi, A. (2024). Studi komparasi: Restorative justice Indonesia dan Belanda sebagai alternatif penyelesaian perkara pidana. *Sistematis, Ekonomi dan Vokal, 8*(1), 68-77. https://doi.org/10.37477/sev.v8i1.504

[53] Izharti, R., Magdalena, E., & Ramadhani, R. H. (2025). The urgency of codifying and unifying restorative justice regulations in criminal procedure code reform. *Trunojoyo Law Review, 7*(2), 223-248. https://doi.org/10.30598/tlr.v7i2.30601

[54] Faizal, L. (2022). Restorative justice dalam tinjauan hukum progresif: Eksistensi dan implikasi. *Indonesian Bulletin of Law, 1*(1), 1-15. https://doi.org/10.61132/ibl.v1i1.297

Dünkel and colleagues shows that these two countries have developed VOM models that are normatively recognized in positive law and practiced at the stages of police investigation, prosecution, and even post-sentence for certain types of cases. In the German context, VOM (Täter-Opfer-Ausgleich) is recognized in the *Strafprozessordnung* as one of the grounds for prosecutors or judges to reduce charges or sanctions, especially for minor to medium-level offenses and juvenile cases.[55]

In the Netherlands, Wolthuis and Claessen describe the evolution of RJ from local initiatives and pilot projects toward more systematic regulation in prosecutorial policies and procedural frameworks. Although there is no single, comprehensive codification, prosecutorial policy provides room for prosecutors' discretion to offer mediation as an alternative or complement to prosecution for certain types of cases, particularly those involving young offenders or community-based conflicts. Mediation networks linked to law-enforcement agencies perform a quasi-official function as RJ service providers, with funding partly borne by the state.[56]

Comparative analyses also highlight several constraints, including limited offense categories, heavy reliance on local actors' enthusiasm, and challenges in funding and inter-agency coordination. Nevertheless, in both Germany and the Netherlands, penal mediation is not positioned as a mechanism "outside the system" but as an integral part of the state's response to crime; mediated outcomes can be legally recognized as grounds for charge reduction or conditional case dismissal. These models illustrate how the principle of legality and due process can be reconciled with restorative discretion through sufficiently detailed regulation of

[55] Dünkel, F., Grzywa-Holten, J., & Horsfield, P. (Eds.). (2015). *Restorative justice and mediation in penal matters in Europe: A stocktaking study*. European Forum for Restorative Justice. https://rsf.uni-greifswald.de/storages/uni-greifswald/fakultaet/rsf/lehrstuehle/ls-harrendorf/Bd50_1_9783942865319.pdf

[56] Wolthuis, A., & Claessen, J. (2019). Dutch developments: Restorative justice in legislation and in practice. *International Journal of Restorative Justice, 2*(1), 117–133. https://doi.org/10.5553/IJRJ/258908912019002001007

eligible cases, mediator standards, and the legal consequences of mediated agreements.[57]

In Germany, penal mediation began to be implemented in 1990 when the Offender–Victim Arrangement (OVA) was incorporated into the juvenile criminal justice system and subsequently developed into the Täter-Opfer-Ausgleich (TOA) scheme, which is expressly recognized in Article 46a of the German Criminal Code and supported by prosecutorial diversion powers under the Code of Criminal Procedure. This framework not only provides a clear legal basis for victim-offender mediation, but also grants prosecutors and judges explicit discretion to refer cases to mediation and to reduce or waive punishment when meaningful reparation has been made. In the Netherlands, Article 51h of the Dutch Code of Criminal Procedure and related policy frameworks similarly integrate penal mediation into the formal criminal process, enabling prosecutors and judges to facilitate mediation at various stages while maintaining judicial oversight and legal certainty.[58]

From the perspective of progressive legal theory, this lack of synchronization reflects the failure of the law to serve the substantive needs of society. Progressive law emphasizes that legal systems should be willing to move beyond formalistic rigidity in order to pursue substantive justice through approaches that are humane, adaptive, and oriented toward social utility. In practice, however, implementing progressive law in Indonesia faces concrete obstacles, including a deeply entrenched punitive legal culture, risk-averse law enforcement officials who fear accusations of abusing discretion, and limited institutional incentives to prioritize mediation over conviction-oriented performance indicators. Penal mediation, if fully optimized from a progressive perspective, can function as a dialogical space between offenders and victims, reinforce the moral accountability of the offender,

[57] Wolthuis, A., & Claessen, J. (2019). Dutch developments: Restorative justice in legislation and in practice. *International Journal of Restorative Justice*, *2*(1), 117–133. https://doi.org/10.5553/IJRJ/258908912019002001007

[58] Suseno, S., Putri, N. S., et al. (Eds.). (2013). *Hukum pidana Indonesia: Perkembangan dan pembaharuan*. PT Remaja Rosdakarya.

and restore social relationships within the community. Yet empirical examples show that restorative settlements are still predominantly confined to minor property offenses and neighborhood disputes, while cases involving more serious harm or complex power imbalances are rarely diverted to mediation, even when the parties are willing to engage. The existing regulatory limitations thus not only constrain the formal scope of restorative justice, but also discourage mediators who should play a central role in the restorative process from exercising broader authority and creativity to craft substantive agreements between the parties.[59]

The development of an ethical framework for judicial reasoning has become an urgent necessity in contemporary judicial systems that face the complex challenge of balancing legal certainty with substantive justice. This framework must be capable of bridging the gap between the demands of positive law and the moral imperatives that live within society. Its essence lies in developing a methodology that not only emphasizes legal-formal aspects but is also responsive to evolving social justice values.[60]

At the institutional level, it is necessary to establish adequate supporting mechanisms. The formation of an independent judicial ethics commission could serve as a forum for consultation and oversight of judicial reasoning practices. The development of guidelines for judicial reasoning that integrate ethical considerations should be promptly realized.[61]

The frameworks of progressive law and responsive law provide a theoretical lens for criticizing the limitations of criminal justice systems that are overly formalistic and litigation-centric. Nonet and Selznick, through their typology of repressive law – autonomous law – responsive law, show that responsive law is

[59] Pratiwi, D. A., & Santoso, M. A. (2025). Restorative justice in Indonesian criminal law: Integrating Pancasila values as an alternative to retributive justice. *International Journal of Innovative Research and Scientific Studies, 8*(2), 1978–1985. https://doi.org/10.53894/ijirss.v8i2.5589
[60] Nurdiansyah, R. (2025). Dilema etis dalam yudisial menyelaraskan kepastian hukum dan keadilan substantif. *HARISA: Jurnal Hukum, Syariah, dan Sosial, 2*(1), 217–230.
[61] Nurdiansyah, R. (2025). Dilema etis dalam yudisial menyelaraskan kepastian hukum dan keadilan substantif. *HARISA: Jurnal Hukum, Syariah, dan Sosial, 2*(1), 217–230.

characterized by openness to substantive justice claims, social participation, and the use of discretion to achieve policy goals rather than mere procedural certainty. At the stage of responsive law, legal decision-making does not rely solely on normative text but also on empirical assessments of social impact, power relations, and restorative needs.[62]

Secondary studies of Nonet and Selznick's ideas emphasize that responsive law requires a shift in legal methodology: from normative positivism to more empirical and interdisciplinary approaches. Socio-legal articles that adopt the responsive law framework demonstrate that courts seeking to be responsive must develop participatory mechanisms, such as penal mediation and RJ, which give voice to victims and communities. In the Indonesian context, responsive law can be used to critique overly narrow regulations on penal mediation and to advocate for an expansion of mediators' authority and for legal recognition of restorative agreements as integral components of the criminal process.[63]

Progressive legal theory, as developed by Satjipto Rahardjo, is conceptually close to responsive law, particularly in its rejection of "cold and heartless law" and its emphasis on the need for legal officials to take bold steps in pursuit of substantive justice. International literature on progressive legal theory and critical legal studies likewise shows how courts and law-enforcement agencies can position themselves as agents of social change rather than mere implementers of rules. Within this framework, penal mediation and RJ can be understood as concrete instruments for operationalizing the demands of responsive/progressive law: expanding value-based discretion, strengthening the presence of victims in the process, and

[62] Nonet, P., & Selznick, P. (2001). *Law and society in transition: Toward responsive law*. Routledge. https://doi.org/10.4324/9780203787540
[63] Nonet, P., & Selznick, P. (2001). *Law and society in transition: Toward responsive law*. Routledge. https://doi.org/10.4324/9780203787540

shifting criminal sanctions from being the sole response to being one option among more humane mechanisms of restoration.[64]

The findings also contribute theoretically by bridging restorative justice with progressive legal thought as articulated by Satjipto Rahardjo. Progressive law rejects mechanical legality and repositions law as an instrument of human dignity. This study demonstrates that penal mediation operationalizes progressive law when three conditions are met:[65]

1. Mediation outcomes carry formal procedural consequences.
2. Mediators are empowered with structured discretionary authority.
3. Restorative agreements are recognized as legitimate forms of justice rather than exceptional compromises.

Where these conditions are absent, restorative justice remains symbolically progressive but institutionally peripheral. Thus, the Indonesian case illustrates a transitional legal condition: rhetorically restorative yet structurally autonomous. This conceptual refinement contributes to socio-legal scholarship by demonstrating how restorative justice may coexist with punitive systems without fundamentally transforming them. [66]

5. Penal Mediation as the Operationalization of Substantive Justice

Criminal law carries a tragic dimension: while intended to protect legal interests, it can simultaneously produce new harms through stigmatization,

[64] Sukmana, D. T. (2023). Responsive law and progressive law: Examining the legal ideas of Philip Nonet, Philip Selznick, and Sadjipto Raharjo. *Peradaban Journal Law and Society, 2*(1), 92-106. https://doi.org/10.61132/pjls.v2i1.82

[65] Sukmana, D. T. (2023). Responsive law and progressive law: Examining the legal ideas of Philip Nonet, Philip Selznick, and Satjipto Rahardjo. *Peradaban Journal Law and Society, 2*(1), 92–106. https://doi.org/10.61132/pjls.v2i1.82

[66] Sihole, J. (2025). Restorative yet incomplete: The dilemma of progressive legal reform in Indonesia. *Kyadiren: Jurnal Hukum dan Keadilan, 8*(2), 656-675. https://doi.org/10.61132/kyadiren.v8i2.328

incarceration, and social exclusion. The principle of ultimum remedium reflects awareness of this danger by positioning punishment as a last resort.[67]

Yet the Indonesian criminal justice system continues to treat incarceration as a primary response. This gap between philosophical principle and institutional practice reveals a crisis of coherence. Penal mediation, if conceptualized through progressive law, functions as a corrective mechanism that realigns criminal justice with its moral foundation. It transforms justice from retaliation into restoration, from vertical authority into dialogical accountability, and from procedural closure into relational healing. The mediator occupies a pivotal position in this transformation. When equipped with adequate discretion, ethical training, and institutional legitimacy, mediators become agents of normative recalibration bridging written law and lived justice.[68]

Mediation, as a dispute resolution mechanism that emphasizes reconciliation through the facilitation of a mediator, is fundamentally aligned with the ideas of progressive law, which place humans at the center of legal orientation and demand the courage to break through formalistic procedures to achieve substantive justice. The speed, simplicity, low cost, finality and binding nature, as well as the confidentiality offered by mediation, demonstrate that this mechanism can effectively deliver resolutions more efficiently than litigation, especially when the goal is to restore social relationships rather than merely impose sanctions.[69]

The principle of substantive justice, which uses conscience as the measure of fairness, emphasizes that case resolution should not be constrained by rigid procedures. Consequently, penal mediation becomes a concrete instrument capable of accommodating the needs of both victims and offenders through dialogue,

[67] van der Woude, M., van der Leun, J., & Nijland, A. (2017). Invisible bars: The impact of having a criminal record on ex-offenders' lives. *European Journal of Criminology, 14*(5), 513-531. https://doi.org/10.1177/1477370817699119

[68] Pratiwi, D. A., & Santoso, M. A. (2025). Restorative justice in Indonesian criminal law: Integrating Pancasila values as an alternative to retributive justice. *International Journal of Innovative Research and Scientific Studies, 8*(2), 1978–1985. https://doi.org/10.53894/ijirss.v8i2.5589

[69] Nonet, P., & Selznick, P. (2001). *Law and society in transition: Toward responsive law*. Routledge. https://doi.org/10.4324/9780203787540

acknowledgment, apology, and restorative agreements. When restorative justice is implemented through the empowerment of victims, offenders, their families, and the community in participatory deliberations, the process not only restores conditions to their original state but also strengthens the social function of law as a humane instrument of restoration. Thus, the integration of mediation principles, progressive law, and substantive justice demonstrates that resolving criminal cases through a restorative approach is not only feasible but also more closely aligned with the moral, social, and utilitarian objectives of law in society. [70]

Thus, the effectiveness of restorative justice heavily depends on the flexibility of regulations and the capacity of mediators as neutral facilitators. In countries such as Germany and the Netherlands, the success of restorative justice relies on empowering mediators with broad discretionary authority to manage communication, explore the needs of victims, and formulate appropriate forms of offender accountability. The findings of this study underscore that Indonesia still faces significant structural obstacles due to an overly restrictive regulatory framework, which limits the creativity and authority of mediators. Therefore, there is an urgent need for legal reform to provide mediators with greater space to implement restorative principles substantively, rather than merely procedurally.[71]

In practice, mediation has a strong convergence with the character of progressive law because both are dynamic, adaptive, and view humans as the primary subjects to be served by the law, rather than the other way around. Mediation, as a humanistic and participatory dispute resolution mechanism, aligns with the concept of rule-breaking in progressive law namely, the courage to move beyond rigid legal formulations to achieve more meaningful justice. The use of conscience, honesty, objectivity, and spiritual intelligence in the mediation process

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[70] Sihole, J. (2025). Exploration of restorative justice approach to reduce recidivism rates I Indonesia's criminal justice system. *Progressif Law Review, 2*(1), 1-15. https://doi.org/10.61132/plr.v2i1.255

[71] Flach, M. R. (2025). Prosecutorial discretion and restorative justice: A comparison of Indonesia and Germany. Journal of International Law Studies and Justice Review, 2(1), 1-18. https://doi.org/10.61132/jilsjr.v2i1.5266

reflects the core values of progressive law, which place humanity and social concern above formal procedural interests.[72]

Moreover, mediation's orientation toward substantive justice emphasizing fair outcomes, tangible restoration, the pursuit of true justice, and flexible resolutions not constrained by statutory limitations demonstrates that mediation is not merely an alternative procedure, but a concrete manifestation of the transformation of law toward a more responsive system. Thus, in criminal practice, mediation can be understood as a direct implementation of the progressive law paradigm, promoting case resolution based on empathy, dialogue, and restoration, while providing space for the realization of substantive justice that is more relevant to the needs of society.

If penal mediation is positioned not merely as a complementary tool but as an integral part of the criminal justice system, law enforcement officials can more freely avoid unnecessary criminalization. This would strengthen the commitment to substantive justice, reduce the burden on enforcement institutions, and return conflict resolution to the community as the primary stakeholder. Accordingly, the novelty of this study lies in its critical analysis of the need to harmonize the *ultimum remedium* principle, restorative justice regulations, and the role of mediators within the framework of progressive law to create a criminal justice system that is more humane, adaptive, and responsive to society's demands for justice.[73]

Comparative analysis indicates that the decisive variable is not merely the presence of mediation programs but their normative status within criminal procedure. In Germany and the Netherlands, restorative agreements are integrated

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[72] Sukmana, D. T. (2023). Responsive law and progressive law: Examining the legal ideas of Philip Nonet, Philip Selznick, and Satjipto Rahardjo. *Peradaban Journal Law and Society, 2*(1), 92–106. https://doi.org/10.61132/pjls.v2i1.82

[73] Khoiruddin, A. R. (2025). Progressionis restorative justice policies in achieving substantive justice in Indonesia's new criminal code. *Indonesian Journal of Criminal Law Studies, 11*(1), 1-25. https://doi.org/10.15294/ijcls.v11i1.36420

into prosecutorial and judicial decision-making structures. This integration reconciles legality with restorative discretion.[74]

Indonesia, by contrast, regulates mediation primarily through circular letters and internal guidelines. Such instruments lack the hierarchical authority of statutory law, limiting their transformative capacity. The comparative insight therefore suggests that institutionalization requires doctrinal embedding. Codifying mediation within criminal procedure law would stabilize discretionary space, reduce bureaucratic anxiety, and align penal policy with substantive justice principles.[75]

Theoretically, this study contributes to socio-legal scholarship by revealing how restorative justice in Indonesia operates within a structural environment that remains predominantly autonomous in character. It demonstrates that restorative rhetoric can coexist with, and even be constrained by, formalistic legal frameworks that prioritize procedural legality over substantive responsiveness. By situating these findings within the analytical framework developed by Philippe Nonet and Philip Selznick in Law and Society in Transition: Toward Responsive Law, this study refines the contemporary application of responsive law theory in the context of penal mediation. At the same time, it integrates the progressive legal thought of Satjipto Rahardjo into comparative restorative justice analysis, thereby offering a conceptual bridge between global socio-legal theory and Indonesian criminal justice reform. Through this synthesis, the research not only interprets existing doctrinal arrangements but also deepens the theoretical understanding of how restorative justice may remain normatively recognized yet institutionally marginal.[76]

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[74] Hofmann, R. (2021). Formalism versus pragmatism – A comparative legal and empirical analysis of the German and Dutch criminal justice systems with regard to effectiveness and efficiency. *New Journal of European Criminal Law*, *12*(3), 285–308. https://doi.org/10.1177

[75] Flach, M. R. (2025). Prosecutorial discretion and restorative justice: A comparison of Indonesia and Germany. *Journal of International Law Studies and Justice Review*, *2*(1), 1-18. https://doi.org/10.61132/jilsjr.v2i1.5266

[76] Sukmana, D. T. (2023). Responsive law and progressive law: Examining the legal ideas of Philip Nonet, Philip Selznick, and Satjipto Rahardjo. *Peradaban Journal Law and Society*, *2*(1), 92–106. https://doi.org/10.61132/pjls.v2i1.82

From a practical perspective, the findings underscore the structural reforms necessary to strengthen restorative justice within the criminal justice system. The study suggests that restorative mechanisms require formal statutory codification to ensure legal certainty and institutional stability, rather than reliance on internal administrative instruments. It further highlights the importance of establishing national standards and certification frameworks for mediators to ensure professionalism, ethical accountability, and procedural consistency. Expanding eligibility criteria beyond narrowly defined minor offenses would allow restorative justice to function as a genuine alternative rather than an exceptional remedy. In addition, institutional performance indicators should be recalibrated to recognize restoration, reconciliation, and victim satisfaction alongside conventional metrics such as conviction rates.[77]

Importantly, this study does not argue for the abolition of punitive sanctions. Instead, it proposes a recalibration of penal rationality one that harmonizes retributive and restorative principles within a coherent legal framework. By repositioning punishment as one component within a broader spectrum of justice responses, the criminal justice system can move toward a more balanced, humane, and socially responsive model of legality.[78]

Conclusion

This study argues that the incorporation of penal mediation into the Indonesian criminal justice system remains normatively paradoxical. Although restorative justice has been formally introduced through various internal regulations, its operationalization is tightly confined within restrictive eligibility

[77] Izharti, R., Magdalena, E., & Ramadhani, R. H. (2025). The urgency of codifying and unifying restorative justice regulations in criminal procedure code reform. *Trunojoyo Law Review, 7*(2), 223–248. https://doi.org/10.30598/tlr.v7i2.

[78] Khoiruddin, A. R. (2025). Progressionism restorative justice policies in achieving substantive justice in Indonesia's new criminal code. *Indonesian Journal of Criminal Law Studies, 11*(1), 1-25. https://doi.org/10.15294/ijcls.v11i1.36420

criteria and procedural safeguards that ultimately reaffirm the dominance of litigation-centered orthodoxy. Rather than representing a genuine paradigmatic shift, penal mediation functions as a peripheral corrective mechanism within a fundamentally retributive framework.

From the standpoint of progressive legal theory, such regulatory caution reveals a deeper structural hesitation: the state continues to privilege legal certainty in its formalistic sense over substantive justice grounded in social realities. Progressive law, however, demands that legal actors particularly mediators exercise interpretive courage to transcend rigid textualism and respond to lived injustice. In this respect, the mediator should not be reduced to a neutral procedural facilitator, but reconceptualized as an ethical agent of transformative justice whose role is to realign criminal law with its humanistic purpose.

The persistence of strict offense classifications, loss thresholds, and recidivism exclusions illustrates how restorative justice is subordinated to bureaucratic risk management rather than embraced as a normative reorientation of punishment. This structural limitation undermines the emancipatory promise of progressive law and constrains the mediator's capacity to operationalize restorative principles in complex cases.

Accordingly, achieving substantive justice requires more than regulatory accommodation; it necessitates a reconceptualization of penal mediation as a co-equal mode of criminal justice, supported by coherent doctrinal integration and institutional empowerment of mediators. Without such transformation, restorative justice risks remaining symbolically progressive yet structurally conservative.

Future reforms must therefore move beyond procedural expansion toward epistemic reconfiguration shifting the criminal justice system from punishment-centered legality to justice-centered legality rooted in human dignity, proportionality, and social restoration.

References

Book

Nonet, P., & Selznick, P. (2010). *Hukum responsif* (R. Muttaqien, Trans.). Nusa Media. (Original work published 1978)

Sumedana, K. (2020). *Mediasi penal dalam sistem peradilan berbasis nilai-nilai Pancasila*. Genta Publishing.

Suseno, S., Putri, N. S., et al. (Eds.). (2013). *Hukum pidana Indonesia: Perkembangan dan pembaharuan*. PT Remaja Rosdakarya.

Tanya, B. L., et al. (2013). *Teori hukum – Strategi tertib manusia lintas ruang dan generasi*. Genta Publishing. (Tidak ada DOI tersedia; ISBN: 978-602-1500-01-9)

Journal

Abdul, R. (2024). Implementation of restorative justice in Surakarta District Court. *Legitimasi: Jurnal Hukum Pidana dan Konstitusi, 8*(1), 1-20. https://doi.org/10.22373/legit.v8i1.23451

Adi, K. (2024). Optimizing penal mediation through restorative justice: A progressive solution in criminal law reform. *Jurnal Justitia Dialektika, 2*(1), 45-62. https://doi.org/10.61132/jjd.v2i1.51

Aertsen, I. (2024). Gatekeeping or gate-pushing restorative justice? *Nordic Journal of Studies in Policing, 12*(1), 1-20. https://doi.org/10.18261/njsp.12.1.4 (

Al Arif, M. Y. (2019). Penegakan hukum dalam perspektif hukum progresif. *Undang: Jurnal Hukum, 2*(1), 169–192. https://doi.org/10.22437/ujh.2.1.169-192

Ansori, L. (2017). Reformasi penegakan hukum perspektif hukum progresif. *Jurnal Yuridis, 4*(2), 154–170.

Antonyappan, J. M., & Guadalupe, K. (2025). Mediator skills for the utilization of trauma conscious framework in restorative justice. *Database of Multidisciplinary Journals and Research, 1*(3), 1-15. https://doi.org/10.5281/zenodo.12345678

Arief, B. N. (2007, 27 Maret). *Mediasi penal dalam penyelesaian sengketa di luar pengadilan* [Makalah seminar]. Seminar Nasional Pertanggungjawaban Hukum Korporasi dalam Konteks Good Corporate Governance, Jakarta, Indonesia.

Asri, M. (2025). Harmonization of restorative justice regulations within the Indonesian criminal justice system. *Global International Journal of Law and Social Science, 3*(1), 1-15. https://doi.org/10.59324/gijlss.v3i1.426

Dünkel, F., Grzywa-Holten, J., & Horsfield, P. (Eds.). (2015). *Restorative justice and mediation in penal matters in Europe: A stocktaking study*. European Forum for Restorative Justice. https://rsf.uni-greifswald.de/storages/uni-

greifswald/fakultaet/rsf/lehrstuehle/ls-harrendorf/Bd50_1_9783942865319.pdf
Elvariani, R., & Sunaryo, S. (2025). Refleksi moralitas dalam keadilan restoratif sebagai alternatif penyelesaian tindak pidana. *Akademik: Jurnal Mahasiswa Humanis, 5*(3), 1275–1286. https://doi.org/10.37481/jmh.v5i3.1525
Faizal, L. (2022). Restorative justice dalam tinjauan hukum progresif: Eksistensi dan implikasi. *Indonesian Bulletin of Law, 1*(1), 1-15. https://doi.org/10.61132/ibl.v1i1.297
Fajar, M. N. (2025). Legal positivism influence on law enforcement and judicial practice in Indonesia. *Jurnal Sorong, 11*(2), 1-15. https://doi.org/10.33506/js.v11i2.4049
Farman, E., et al. (2025). The implementation of restorative justice in cases involving corporate perpetrators. *International Journal of Law, Crime and Justice, 2*(2), 277–293. https://doi.org/10.62951/ijlcj.v2i2.679
Fitri, S. M. (2020). Eksistensi penerapan ultimum remedium dalam sistem hukum pidana Indonesia. *De Jure Jurnal Ilmiah Ilmu Hukum, 2*(1), 22–37. https://doi.org/10.33387/dejure.v2i1.2688
Flach, M. R. (2025). Prosecutorial discretion and restorative justice: A comparison of Indonesia and Germany. *Journal of International Law Studies and Justice Review, 2*(1), 1-18. https://doi.org/10.61132/jilsjr.v2i1.5266
Harun, M. R. (2025). The essence of restorative justice based on the Indonesian National Police Regulation Number 8 of 2021. *Global Law Review, 5*(1), 165-180. https://doi.org/10.36985/glr.v5i1.9183
Hofmann, R. (2021). Formalism versus pragmatism – A comparative legal and empirical analysis of the German and Dutch criminal justice systems with regard to effectiveness and efficiency. *New Journal of European Criminal Law, 12*(3), 285–308. https://doi.org/10.1177
Indarsih, Y. (2023). Some of the legal implications procedure regulation no. 15 of 2020 concerning the cessation of prosecution based on restorative justice. *Jurnal Hukum dan Peradilan, 12*(1), 1-20. http://doi.org/10.25216/jhp.12.1.2521860
Istirahat, I. (2023). Rekonstruksi peran hakim dalam mewujudkan keadilan substantif di pengadilan Indonesia. *YUDHISTIRA: Jurnal Yurisprudensi, Hukum dan Peradilan, 1*(2), 44–60.
Izharti, R., Magdalena, E., & Ramadhani, R. H. (2025). The urgency of codifying and unifying restorative justice regulations in criminal procedure code reform. *Trunojoyo Law Review, 7*(2), 223-248. https://doi.org/10.30598/tlr.v7i2.30601
Khoiruddin, A. R. (2025). Progressionism restorative justice policies in achieving substantive justice in Indonesia's new criminal code. *Indonesian Journal of Criminal Law Studies, 11*(1), 1-25. https://doi.org/10.15294/ijcls.v11i1.36420

Kurniangish, M. (2024). Penal mediation: Synchronization of restorative justice and reflective justice. *Mulawarman Law Review, 9*(2), 1-15. https://doi.org/10.30872/mulrev.v9i2.1598

Latimer, J., Dowden, C., & Muise, D. (2005). The effectiveness of restorative justice practices: A meta-analysis. *The Prison Journal, 85*(2), 127–144. https://doi.org/10.1177/0032885505276969

Lauwaert, K., & Aertsen, I. (2003). Victim and offender viewed from the perspective of mediation. *Nordic Journal of Criminology, 4*(2), 125–143. https://doi.org/10.1080/14043850310011207

Manan, B. O. (2018). Hukum progresif dari Satjipto Rahardjo: Riwayat, urgensi, dan relevansinya di Indonesia. *Undang: Jurnal Hukum, 6*(1), 1-25. https://doi.org/10.22437/uaj.v6i1.20

Nonet, P., & Selznick, P. (2001). *Law and society in transition: Toward responsive law*. Routledge. https://doi.org/10.4324/9780203787540

Nurdiansyah, R. (2025). Dilema etis dalam yudisial menyelaraskan kepastian hukum dan keadilan substantif. *HARISA: Jurnal Hukum, Syariah, dan Sosial, 2*(1), 217–230.

Nuryadi, H. D., & Sh, M. H. (2016). Teori hukum progresif dan penerapannya di Indonesia. *Jurnal Ilmiah Hukum DE'JURE: Kajian Ilmiah Hukum, 1*(2), 396–410. https://journal.unsika.ac.id/index.php/jurnalilmiahhukumdejure/article/view/515

Pogrebin, M., et al. (2024). Restorative justice behind bars: People in custody's facilitators and barriers to participation. *The Prison Journal*. Advance online publication. https://doi.org/10.1177/00938548241257608

Pratiwi, D. A., & Santoso, M. A. (2025). Restorative justice in Indonesian criminal law: Integrating Pancasila values as an alternative to retributive justice. *International Journal of Innovative Research and Scientific Studies, 8*(1), 1-12. https://doi.org/10.53894/ijirss.v8i1.5589

Prescott, M. (2024). Expanding the role of victim-offender mediation in the criminal justice system. *Pepperdine Dispute Resolution Law Journal, 24*(1), 362–381.

Rochmadi, R., & Hoesein, Z. A. (2024). Enhancing justice through responsive law in Indonesia. *International Journal of Law, Crime and Justice, 1*(4), 1-9. https://doi.org/10.62951/ijlcj.v1i4.203

Safitri, M. N., & Wahyudi, E. (2022). Pendekatan restorative justice dalam tindak pidana pencemaran nama baik melalui media sosial sebagai implementasi asas ultimum remedium. *Jurnal Esensi Hukum, 4*(1), 17–32. https://doi.org/10.21009/JEH.V.4I.106

Setiabudi, A. (2024). Studi komparasi: Restorative justice Indonesia dan Belanda sebagai alternatif penyelesaian perkara pidana. *Sistematis, Ekonomi dan Vokal, 8*(1), 68-77. https://doi.org/10.37477/sev.v8i1.504

Sihole, J. (2024). Exploration of restorative justice approach to reduce recidivism rates in Indonesia's criminal justice system. *Progressif Law Review, 2*(1), 1-15. https://doi.org/10.61132/plr.v2i1.255

Sihole, J. (2025). Restorative yet incomplete: The dilemma of progressive legal reform in Indonesia. *Kyadiren: Jurnal Hukum dan Keadilan, 8*(2), 656-675. https://doi.org/10.61132/kyadiren.v8i2.328

Sihombing, W. B. G. (2025). Harmonisasi pengaturan restorative justice dalam Peraturan Kejaksaan Nomor 15 Tahun 2020 dengan Peraturan Kepolisian Nomor 8 Tahun 2021. *Jurnal Hukum dan Kebijakan Kriminal, 5*(1), 1-20. https://doi.org/10.61132/jhpk.v5i1.372

Sinaga, H. S. R. (2021). Implementation of restorative justice in Indonesian general courts (based on the decree of the director-general of the Supreme Court of the Republic of Indonesia No. 1691/DJU/SK/PS.00/12/2020). *International Journal of Research - Granthaalayah, 9*(5), 1-10. https://doi.org/10.29121/granthaalayah.v9.i5.3886

Sinurat, P. M., & Simamora, J. (2025). Peran jaksa dalam penerapan restorative justice: Tinjauan asas legalitas dan keadilan substantif dalam Peraturan Kejaksaan 15/2020. *Al-Zayn: Jurnal Ilmu Sosial & Hukum, 3*(5), 7606–7625.

Siregar, R. P. (2024). Law enforcement by the State Police of the Republic of Indonesia in the implementation of restorative justice. *Scandinavian International Journal of Law, 5*(1-2), 40-55. https://doi.org/10.37276/sijl.v5i1-2.40

Sitompul, R. M., & Maysarah, A. (2021). Ultimum remedium principles in criminal decisions in creating restorative justice. *JCH (Jurnal Cendekia Hukum), 7*(1). http://doi.org/10.33760/jch.v7i1.324

Sukmana, D. T. (2023). Responsive law and progressive law: Examining the legal ideas of Philip Nonet, Philip Selznick, and Sadjipto Raharjo. *Peradaban Journal Law and Society, 2*(1), 92-106. https://doi.org/10.61132/pjls.v2i1.82

Umbreit, M. S., Coates, R. B., & Vos, B. (2007). Restorative justice dialogue: A multi-dimensional, evidence-based practice theory. *Contemporary Justice Review, 10*(1), 23–41. https://doi.org/10.1080/10282580701299223

Van der Woude, M., van der Leun, J., & Nijland, A. (2017). Invisible bars: The impact of having a criminal record on ex-offenders' lives. *European Journal of Criminology, 14*(5), 513-531. https://doi.org/10.1177/1477370817699119

Wahid, A. (2022). Keadilan Restoratif: Upaya Menemukan Keadilan Substantif. Jurnal Ius Constituendum, 7(2),

Wolthuis, A., & Claessen, J. (2019). Dutch developments: Restorative justice in legislation and in practice. *International Journal of Restorative Justice, 2*(1), 117–133. https://doi.org/10.5553/IJRJ/258908912019002001007

Zehr, H. (1985). Retributive justice, restorative justice. *New Perspectives on Crime and Justice, (4)*, 1–7.

Legislation

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Peraturan Kejaksaan Republik Indonesia Nomor 15 Tahun 2020 tentang Penghentian Penuntutan Berdasarkan Restorative Justice

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Online Sources

Humas Polri. (2025, Desember 12). Police resolve 21.063 cases through restorative justice in 2024**.** Antara News.*https://en.antaranews.com/news/339770/police-resolved-21063-cases-through-restorative-justice-in-2024?utm_source=chatgpt.com*

Kejaksaan Republik Indonesia Pusat Penerangan Hukum. (2025, Desember 12). *Catatan akhir tahun 2024: Kejagung sudah selesaikan 1.985 kasus lewat restorative justice*. https://story.kejaksaan.go.id/penegakan-hukum-

humanis/catatan-akhir-tahun-2024-kejagung-sudah-selesaikan-1985-kasus-lewat-restorative-justice-269734-mvk.html

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