



---

## **Independence of Penal Mediators: Efforts to Realize Impartial Restorative Justice in Indonesia**

### **Independensi Mediator Penal: Upaya Mewujudkan Keadilan Restoratif yang Imparsial di Indonesia**

I Wayan Prema Ardhaxena<sup>1</sup>, Prija Djatmika<sup>2</sup>

---

<sup>1</sup>Corresponding author: [ardhaxena@gmail.com](mailto:ardhaxena@gmail.com)

<sup>12</sup> Faculty of Law, Brawijaya University Malang  
East Java-Indonesia - 65145

---

**Abstract:** Restorative justice in Indonesia aims to shift the legal paradigm from retributive to restorative, emphasizing rehabilitation rather than merely imprisonment. However, its current implementation is still hampered by the lack of specific regulations regarding the qualifications and independence of criminal mediators. This study analyzes the urgency of independent criminal mediators and formulates regulatory alternatives to ensure impartiality within the criminal justice system. Employing a normative legal research methodology with legislative, conceptual, and comparative approaches, this study examines the legal gaps between existing sectoral regulations and international standards. The research findings indicate that current practices, in which law enforcement officials simultaneously serve as mediators, create role conflicts that threaten neutrality and public trust. Unlike the comprehensive standards in civil mediation, criminal mediation in Indonesia lacks adequate professional certification and oversight. Therefore, this study concludes that the establishment of a model for certified independent mediators is essential. This model must be integrated into the revision of the Criminal Procedure Code (Draft Criminal Procedure Code) to prevent institutional interference and ensure that the restorative justice process achieves genuine healing for victims, offenders, and the community while upholding the principle of fair trial.

**Keywords:** Restorative Justice; Independent Mediator; Impartiality; Criminal Justice System; Penal Mediation.

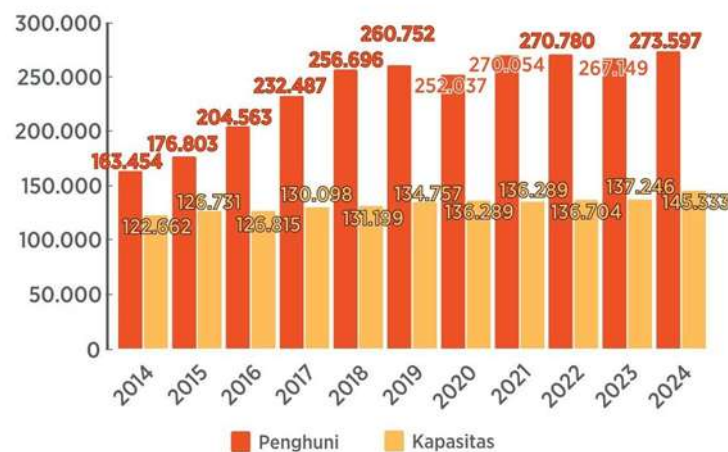
DOI : 10.47006/ijlres.v%25vi%25i.28949

---

## INTRODUCTION

Justice is a fundamental principle in every civilized legal system, and the 1945 Constitution of the Republic of Indonesia explicitly mandates the realization of social justice for all the people. (Triyudiana & Neneng, 2024, p. 3). However, in practice, Indonesia's criminal justice system is still dominated by a retributive approach that emphasizes prison sentences, often neglecting both victim restitution and the social reintegration of offenders (Wibowo, 2021, p. 10). This paradigm has led to systemic issues such as overcrowding in correctional facilities, where data from the Directorate General of Corrections shows that the average annual increase in the inmate population is 5.5%, while capacity has only increased by 1.7% per year (ditjenpas, 2024). These sociological conditions indicate that law enforcement that focuses solely on formal legal aspects is no longer effective in achieving substantive justice for the public (Afdhali & Syahuri, 2023, p. 555).

**Figure 1. Prison Overcrowding Data**



Sumber: Sistem Database Pemasyarakatan

Source: Sistem Database Pemasyarakatan, 2024

Various previous studies have examined the effectiveness of restorative justice in criminal cases in Indonesia, as well as its implementation at the police and prosecutor's office levels. Although regulations such as Police Regulation No. 8 of 2021 on the Handling of Criminal Offenses Based on Restorative Justice and Prosecutor's Office Regulation No. 15 of 2020 on the Discontinuation of Prosecution Based on Restorative Justice (Burhanuddin et al., 2022, p. 49) has provided a normative framework, but its implementation remains sectoral and has not yet been regulated by a national law with horizontal binding force. There is a significant legal gap (gap analysis) between civil case mediation which has been comprehensively regulated through PERMA No. 1 of 2016 and criminal mediation, which

lacks a strong foundation regarding mediator qualifications and oversight. The novelty of this study lies in its analytical focus on the independence of criminal mediators as the key to the integrity of restorative justice, a role that has often been filled by investigators or prosecutors who have institutional interests in the case.

The urgency of this research stems from the pressing need to safeguard the integrity of the philosophy of restorative justice from potential abuses of authority and conflicts of interest. Currently, mediators from law enforcement agencies are vulnerable to hierarchical pressure, resulting in mediation processes that often fail to proceed on a voluntary basis or maintain an equal footing between victims and offenders. From a legal perspective, provisions for independent criminal mediators must be integrated into reforms of criminal procedure law, such as the Criminal Procedure Code Bill, to ensure a process that is more humane, proportional, and accountable, and grounded in restorative justice (Rasiwan, 2025, p. 22). Without a clear separation of roles between investigators and mediators, public trust in a compassionate justice system will be difficult to achieve, and the risk of human rights violations will continue to loom over the law enforcement process.

Based on the background outlined above, this study focuses on two key legal issues: the urgency of establishing independent criminal mediators in the resolution of criminal cases through restorative justice in Indonesia, and how to formulate alternative regulations for such mediators to ensure a truly impartial process. This focus is crucial given that serious issues regarding mediator impartiality have recently emerged, which could threaten the integrity and primary objectives of the restorative justice concept itself. Furthermore, the vulnerability of institutional structures to institutional interference and the lack of a strong normative foundation regarding the competence and oversight of penal mediators necessitate an in-depth study to create a more just and accountable criminal justice system.

This study aims to analyze the urgency of establishing independent criminal mediators in the resolution of criminal cases through restorative justice in Indonesia. Furthermore, this study formulates alternative frameworks for independent criminal mediators to ensure the realization of impartial criminal case resolutions that align with the principles of restorative justice.

The research method used is normative legal research (*Normative Legal Research*) (Rizkia & Fardiansyah, 2023, p. 120). This method was chosen because it is highly relevant for objectively describing the challenges of mediator impartiality in restorative justice practices in Indonesia, which have previously been identified as still being sectoral in nature and

lacking a comprehensive legal foundation. Through the statutory approach and the conceptual approach (Ibrahim, 2012, p. 310), This study analyzes various technical regulations, such as Police Regulation No. 8 of 2021 on the Handling of Criminal Offenses Based on Restorative Justice (K. N. R. I. Indonesia, 2021) and Attorney General's Regulation No. 15 of 2020 on the Discontinuation of Prosecution Based on Restorative Justice (K. N. R. I. Indonesia, 2020) to identify solutions to potential conflicts of interest involving mediators from law enforcement agencies. Additionally, a comparative approach was employed by comparing mediator regulations in Indonesia and the Netherlands both of which share a civil law system to formulate appropriate rules for the advancement of the national criminal justice system (Benuf & Azhar, 2020, p. 26). All primary and secondary legal materials collected through the literature review were then analyzed using prescriptive and theological interpretation techniques to provide concrete recommendations for improving the criminal mediation system so that it becomes more independent and accountable in the future.

## **RESULTS AND DISCUSSION**

### **The Importance of Establishing Independent Criminal Mediators for the Resolution of Criminal Cases Through Restorative Justice in the Indonesian Criminal Justice System**

The Indonesian government is currently actively shifting the paradigm of law enforcement from a retributive approach focused on imprisonment toward restorative justice, which places greater emphasis on rehabilitation. This spirit of change is clearly reflected in two recent laws: Law No. 1 of 2023 on the Criminal Code and Law No. 20 of 2025 on the National Criminal Procedure Code. These regulations offer new hope for addressing the chronic problem of overcrowding in correctional facilities by providing more effective and humane avenues for resolving cases outside of formal incarceration (Afifah, 2024, p. 3007).

Before the National Criminal Procedure Code was enacted, regulations regarding restorative justice tended to be fragmented, as each law enforcement agency including the police, the Attorney General's Office, and the Supreme Court had its own internal rules. Although the Criminal Procedure Code No. 20 of 2025 has now become the overarching legal framework that comprehensively unifies these procedures, there are still critical gaps in the regulations (Bagaskoro, 2021, p. 190). To date, there are no uniform and binding regulations regarding who is authorized to serve as a criminal mediator, what qualifications they must possess, or what competency standards and code of ethics they must adhere to.

The current situation in Indonesia is still far from the international standards set forth in (unodc.org, 2002, pp. 39–42). These international guidelines emphasize that states should

establish strict standards for the qualifications, training, and evaluation of mediators to ensure a fair process for both victims and perpetrators. Furthermore, the fundamental principles of mediation require mediators to act impartially and ensure that no party is coerced or unduly pressured into reaching an agreement.

The reality on the ground shows that the role of criminal mediators in our judicial system remains functional in nature and has not yet been specifically certified (Purnomo, 2019, p. 187). Under Articles 83 and 85 of the Criminal Procedure Code No. 20 of 2025, the role of mediator is still performed directly by the investigator, the examining magistrate, or the public prosecutor handling the case (P. P. Indonesia, 2025). This is reinforced by sector-specific regulations such as Attorney General's Regulation No. 15 of 2020 and Police Regulation No. 8 of 2021, which designate law enforcement officials as the primary facilitators in the peace process (K. N. R. I. Indonesia, 2020).

The appointment of law enforcement officials as penal mediators raises serious concerns regarding the principles of independence and neutrality. Structurally, the police and prosecutors possess coercive authority and institutional interests in proving guilt and enforcing the law. This situation has the potential to create an imbalance of power, where dialogue between the victim and the perpetrator may be distorted by implicit pressure or the mediator's tendency to steer the outcome of the agreement toward the efficiency of their institution's performance.

This role ambiguity aligns with the theory of *role conflict*, in which an individual must fulfill two conflicting roles simultaneously (T. A. Putri, 2024). On the one hand, law enforcement officials must act as gentle and neutral facilitators; on the other hand, they represent state power and possess the authority to use force. If this situation continues, the legitimacy of the resulting agreements will erode, and public trust in the integrity of restorative justice will be threatened, as the process will be viewed as still part of an oppressive system.

This disparity is clearly evident when compared to mediation in civil matters, where regulations are already highly developed under PERMA No. 1 of 2016 (M. A. Indonesia, 2016). In civil cases, a mediator is required to hold an official certificate obtained through training accredited by the Supreme Court to ensure their technical competence and professional ethics. Meanwhile, in criminal cases—which carry the risk of depriving an individual of their liberty—there is currently no such certification requirement, meaning any appointed law enforcement official can immediately serve as a mediator.

Therefore, there is a great urgency to regulate the status of penal mediators as independent third parties outside the formal structure of law enforcement authority. Although there are currently many nationally recognized certification bodies for non-judicial mediators, all of them still focus on the civil sphere and have not yet addressed the specialization of penal mediation. The establishment of a legal framework requiring criminal mediators to hold specialized certification is essential to ensure a process that is impartial, accountable, and truly reflects the values of substantive justice for the public.

### **An Alternative Framework for Independent Criminal Mediators to Ensure the Resolution of Criminal Cases Through Impartial Restorative Justice**

Efforts to achieve genuine restorative justice in Indonesia require concrete steps to design a mediator model capable of maintaining independence from the interests of law enforcement institutions. The primary focus of this section is to formulate alternative arrangements that position mediators as independent pillars to ensure impartiality throughout the case resolution process. This is crucial to ensure that the outcome of the agreement is not the result of pressure, but rather stems from a shared commitment to restoring the situation.

As a first step, it is important to compare criminal mediation practices in Indonesia and the Netherlands in order to assess our current position. In the Netherlands, criminal mediation has been strongly institutionalized, with the role of mediator being carried out by officially registered professionals (such as MfN mediators) (S. A. Putri, 2024, p. 2). They act autonomously and have no coercive authority over the parties involved, so the dialogue that ensues is truly genuine and free from any sense of coercive law enforcement.

In contrast to this situation, criminal mediation in Indonesia is currently still dominated by law enforcement officials, such as police investigators or prosecutors, who also serve as facilitators. Although the involvement of external parties, such as community leaders or social workers, is permitted, administratively and operationally, control of the mediation process remains under the coordination of the relevant law enforcement agencies. This flexibility, on the one hand, simplifies procedures, but on the other hand, blurs the standards of professionalism expected of mediators, who should remain neutral (Maknun & Widiyaswara, 2023, p. 101).

Another fundamental issue lies in the absence of uniform national standards for training and certification of criminal mediators. Currently, law enforcement officials receive only internal training on restorative justice, while community-based mediators often carry out their

roles based on local wisdom without the benefit of legally standardized mediation techniques. This stands in stark contrast to the Netherlands, which mandates specialized training for mediators to ensure an accountable and professional process.

This uncertainty regarding qualifications poses significant risks, particularly regarding the handling of victims' trauma and the power imbalance between perpetrators and victims. Without adequate technical and psychological competencies, there is concern that the mediation process will merely become an administrative formality to dismiss cases. In fact, criminal mediation involves aspects of an individual's liberty that are far more sensitive than economic disputes in the civil sphere, making the need for expert mediators urgently necessary.

The first alternative proposed in this study is to adopt a certified independent mediator model that has been successfully implemented in civil matters through PERMA No. 1 of 2016 (M. A. Indonesia, 2016). Under this model, the state must make room for non-judicial mediators or third parties outside the police and prosecution services to take on a leading role as facilitators of criminal mediation. With official, nationally recognized certification, these mediators will be subject to legally enforceable standards of professional conduct and integrity.

The implementation of this model aims to break the cycle of role conflict that law enforcement officials have long experienced. When the role of mediator is separated from that of investigator or prosecutor, the potential for institutional interference can be minimized. This will provide a sense of security and trust for the public that the restorative justice process they undergo is truly grounded in the principles of substantive justice, not merely the state's efficiency in handling cases.

Furthermore, a repositioning of the roles of law enforcement officials in the penal mediation process is necessary. Police and prosecutors should no longer act as "players" or direct facilitators in negotiations, but rather as "legal supervisors." Their role is to ensure that the resulting agreement does not conflict with the law and the public interest, while the communication process is fully entrusted to competent independent mediators.

This separation of functions is crucial to maintaining a balance between the state's coercive authority and the private rights of the disputing parties. With an independent mediator, the risk of intimidation or covert pressure against the victim can be minimized. Conversely, the perpetrator also feels more open to expressing remorse without feeling

interrogated within the framework of a formal investigation, thereby allowing the essence of healing or recovery to be achieved optimally.

From a regulatory perspective, this alternative framework must be immediately integrated into the revision of the national criminal procedure law, particularly in the Draft Criminal Procedure Code (RUU KUHAP). A strong legal framework is necessary to ensure that the status of independent mediators holds equal legal standing within the criminal justice system. Without legislation at the level of a law, the appointment of independent mediators will remain optional and difficult to implement uniformly across all regions of Indonesia.

Certification for criminal mediators must also include a specialized curriculum distinct from civil mediation. Criminal mediators must understand aspects of victimology, criminal psychology, and mechanisms for fair restitution of losses to victims. This aligns with practices in the Netherlands, where the success of restorative justice heavily depends on the extent to which mediators can manage emotions and conflicts among parties involved in criminal offenses.

Additionally, oversight of these independent mediators' performance can be conducted through a specialized agency or a national ethics council. Such oversight is crucial to ensure that every mediator remains grounded in the principle of neutrality and avoids transactional practices during the mediation process. With clear accountability mechanisms in place, the quality of restorative justice in Indonesia will improve and align with international standards set by the United Nations.

To conclude this section, the transition toward independent penal mediators does not mean eliminating the state's role in law enforcement, but rather an effort to humanize the criminal justice system itself. Through synergy between independent professional mediators and law enforcement officials acting as guardians of the law, Indonesia can create a case resolution system that is more inclusive, peaceful, and truly reflects the mandate of justice for all citizens.

## **CONCLUSION**

Although Indonesia's legal system has incorporated the spirit of restorative justice through the new codification of criminal law, the effectiveness of its implementation remains hampered by the dominance of law enforcement officials who also serve as mediators. This practice of dual roles risks creating conflicts of interest and undermining the principle of impartiality, resulting in criminal mediation often becoming merely a formal procedure to dismiss cases without addressing the essence of restoration for both victims and offenders. As a solution, the urgent need for professional, certified independent mediators is a key element in upcoming criminal procedure law reforms, to ensure that every case resolution is conducted fairly, transparently, and truly free from institutional pressure.

## REFERENCE

- 1) Afdhali, D. R., & Syahuri, T. (2023). Idealitas Penegakkan Hukum Ditinjau Dari Perspektif Teori Tujuan Hukum. *Collegium Studiosum Journal*, 6(2), 555–561. <https://doi.org/10.56301/csj.v6i2.1078>
- 2) Afifah, H. (2024). Keadilan Restoratif dalam Dinamika Pembaruan Hukum Pidana Indonesia. *Jurnal Syntax Admiration*, 5(8), 3007–3015. <https://doi.org/10.46799/jsa.v5i8.1392>
- 3) Bagaskoro, L. R. (2021). Rekoneptualisasi Jalur Khusus Dalam Rancangan KUHAP Sebagai Bentuk Reformasi Sistem Peradilan Pidana Indonesia. *Arena Hukum*, 14(1), 190–206. <https://doi.org/10.21776/ub.arenahukum.2021.01401.10>
- 4) Benuf, K., & Azhar, M. (2020). Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer. *Gema Keadilan*, 7(1), 20–33. <https://doi.org/10.14710/gk.2020.7504>
- 5) Burhanuddin, M., Wardhani, L. C., & Surya, F. A. (2022). Pelaksanaan Pendaftaran Tanah Sistematis Lengkap (Ptl) Sebagai Upaya Untuk Mencegah Sengketa Kepemilikan Dan Batas Tanah Di Kantor Pertanahan Kabupaten Kudus. *Jurnal Suara Keadilan*, 23(1), Article 1. <https://doi.org/10.24176/sk.v23i1.8555>
- 6) ditjenpas. (2024). *Penerapan Keadilan Restoratif Tekan Laju Over Kapasitas di Lapas/Rutan*. ditjenpas.go.id. Ditjenpas. <https://www.ditjenpas.go.id/penerapan-keadilan-restoratif-tekan-laju-over-kapasitas-di-lapasrutan>
- 7) Ibrahim, J. (2012). *Teori dan Metode Penelitian Hukum*. Bayu Media Publishing.
- 8) Indonesia, K. N. R. I. (2020). *Peraturan Kejaksaan Republik Indonesia Nomor 15 Tahun 2020 tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif*. <https://peraturan.bpk.go.id/Details/169939/peraturan-kejaksaan-no-15-tahun-2020>
- 9) Indonesia, K. N. R. I. (2021). *Peraturan Kepolisian Negara Republik Indonesia Nomor 8 Tahun 2021 tentang Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif*. <https://peraturan.bpk.go.id/Details/225020/perpol-no-8-tahun-2021>
- 10) Indonesia, M. A. (2016). *Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2016 tentang Prosedur Mediasi di Pengadilan*. <https://jdih.mahkamahagung.go.id/index.php/legal-product/perma-nomor-1-tahun-2016/detail>
- 11) Indonesia, P. P. (2025). *Undang-undang (UU) Nomor 20 Tahun 2025 tentang Kitab Undang-Undang Hukum Acara Pidana*. <http://peraturan.bpk.go.id/Details/337302/uu-no-20-tahun-2025>
- 12) Maknun, L., & Widiyaswara, R. (2023). Penerapan Mediasi Penal Oleh Advokat Sebagai Konsep Keadilan Restoratif. *Lex Librum: Jurnal Ilmu Hukum*, 10(1), 101–108. <https://doi.org/10.46839/ljih.v10i1.852>
- 13) Purnomo, B. S. H. (2019). Kedudukan Mediasi Penal Dalam Sistem Peradilan Di Indonesia. *Jurnal Ilmiah Ilmu Sosial*, 4(2). <https://doi.org/10.23887/jiis.v4i2.16535>
- 14) Putri, S. A. (2024). Rekonstruksi Paradigma Penyelesaian Sengketa Sebagai Optimalisasi Upaya Nonlitigasi. *ADHAPER: Jurnal Hukum Acara Perdata*, 10(01), 1–14. <https://doi.org/10.36913/adhaper.v10i01.39>
- 15) Putri, T. A. (2024, November 22). *Apa Itu Mediator dan Tugas-tugasnya* [Klinik Hukumonline]. <https://www.hukumonline.com/klinik/a/tugas-mediator-cl1945/>

- 16) Rasiwan, I. (2025). *Dinamika Sistem Peradilan Pidana Indonesia - Welcome Takaza*.  
<https://bookstore.takaza.id/product/dinamika-sistem-peradilan/>
- 17) Rizkia, N. D., & Fardiansyah, H. (2023). *Metode Penelitian Hukum (Normatif dan Empiris)*.  
CV Widina Media Utama.  
<https://repository.penerbitwidina.com/publications/564622/>
- 18) Triyudiana, A., & Neneng, P. (2024). Penerapan Prinsip Keadilan Sebagai Fairness Menurut John Rawls Di Indonesia Sebagai Perwujudan Dari Pancasila. *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat*, 2(01).  
<https://doi.org/DOI:%2010.11111/dassollen.xxxxxxx>
- 19) unodc.org. (2002). *Basic Principles On The Use Of Restorative Justice Programmes In Criminal Matters oleh PBB - Penelusuran Google*.  
[https://www.google.com/search?q=Basic+Principles+On+The+Use+Of+Restorative+Justice+Programmes+In+Criminal+Matters+oleh+PBB&rlz=1C1CHBF\\_enID1066ID1066&oq=Basic+Principles+On+The+Use+Of+Restorative+Justice+Programmes+In+Criminal+Matters+oleh+PBB&gs\\_lcrp=EgZjaHJvbWUyBggAEEUYOdIBCTEyNzNqMGoxNagCCLACAFEDIU7cBxgcEE&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=Basic+Principles+On+The+Use+Of+Restorative+Justice+Programmes+In+Criminal+Matters+oleh+PBB&rlz=1C1CHBF_enID1066ID1066&oq=Basic+Principles+On+The+Use+Of+Restorative+Justice+Programmes+In+Criminal+Matters+oleh+PBB&gs_lcrp=EgZjaHJvbWUyBggAEEUYOdIBCTEyNzNqMGoxNagCCLACAFEDIU7cBxgcEE&sourceid=chrome&ie=UTF-8)
- 20) Wibowo, K. T. (2021). *Plea Bargaining Sebagai Pembaharuan Hukum Dalam Sistem Peradilan Pidana Indonesia*. Pustaka Aksara.  
[https://books.google.co.id/books?hl=id&lr=&id=8mENEQAAQBAJ&oi=fnd&pg=PA8&dq=sebagaimana+dijelaskan+oleh+Jeremy+Bentham,+harus+menjadi+pertimbangan+normatif+bahwa+hukum+harus+mendatangkan+manfaat+sebesar-besarnya+bagi+masyarakat&ots=RzzviLUne9&sig=ju5xod0S5si-NogG5cSvWQajyvo&redir\\_esc=y#v=onepage&q&f=false](https://books.google.co.id/books?hl=id&lr=&id=8mENEQAAQBAJ&oi=fnd&pg=PA8&dq=sebagaimana+dijelaskan+oleh+Jeremy+Bentham,+harus+menjadi+pertimbangan+normatif+bahwa+hukum+harus+mendatangkan+manfaat+sebesar-besarnya+bagi+masyarakat&ots=RzzviLUne9&sig=ju5xod0S5si-NogG5cSvWQajyvo&redir_esc=y#v=onepage&q&f=false)



Licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License  
<https://creativecommons.org/licenses/by-nc-sa/4.0/>