



Comparison of penal mediation regulations in the criminal justice system of Indonesia
and other countries

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Abstract:

Penal mediation is a formal victim offender mediation mechanism within the criminal justice system, grounded in restorative justice principles. Several European countries such as Germany, France, Austria, Poland, and particularly the Netherlands have institutionalized it through clear statutory frameworks, professional accreditation, and dedicated mediation bodies. In contrast, Indonesia still relies on fragmented administrative regulations at police and prosecutorial levels, lacking a comprehensive legislative foundation. This article compares the legal authority and institutional design of penal mediation in Indonesia and selected European jurisdictions, with emphasis on the Dutch model. Using a normative juridical and structured comparative socio-legal approach, it analyzes three dimensions: legal basis and scope, institutional architecture and mediator accreditation, and procedural safeguards for victims and offenders. The study identifies structural conditions for context-sensitive transplantation of elements of the Dutch model into Indonesia's pluralistic legal system to enhance consistency and public trust.

Keywords:

Penal mediation, restorative justice, comparative law, criminal justice system, legal reform.

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Resumen:

La mediación penal es un mecanismo formal de mediación entre la víctima y el delincuente dentro del sistema de justicia penal, basado en los principios de la justicia restaurativa. Varios países europeos, como Alemania, Francia, Austria, Polonia y, en particular, los Países Bajos, lo han institucionalizado mediante marcos legales claros, acreditación profesional y organismos de mediación especializados. Por el contrario, Indonesia sigue dependiendo de normativas administrativas fragmentadas a nivel policial y fiscal, careciendo de una base legislativa integral. Este artículo compara la autoridad jurídica y el diseño institucional de la mediación penal en Indonesia y en determinadas jurisdicciones europeas, haciendo hincapié en el modelo neerlandés. Utilizando un enfoque jurídico normativo y socio-jurídico comparativo estructurado, analiza tres dimensiones: la base jurídica y el alcance, la arquitectura institucional y la acreditación de los mediadores, y las garantías procesales para las víctimas y los delincuentes. El estudio identifica las condiciones estructurales para la trasposición, adaptada al contexto, de elementos del modelo neerlandés al sistema jurídico pluralista de Indonesia, con el fin de mejorar la coherencia y la confianza pública.

Palabras clave:

Mediación penal, justicia restaurativa, derecho comparado, sistema de justicia penal, reforma legal.

TABLE OF CONTENTS

1. Introduction	115
2. Theoretical framework	118
2.1. The theory of restorative justice	119
2.2. Responsive law theory	120
2.3. Legal pluralism.....	120
3. Research methodology	121
3.1. Case selection and jurisdictional scope	122
3.2. Data collection and analysis	123
3.3. Methodological limitations and reflexivity	123
4. Results	124
4.1. Penal mediation in Indonesian criminal law	124
4.2. International practices of penal mediation	125
4.3. Comparative analysis and interpretation.....	125
5. Discussion	127
5.1. Penal mediation beyond instrumental benefits	127
5.2. Institutional design and the logic of responsive law.....	127
5.3. Legal pluralism and contextual constraints	128
5.4. Analytical implications.....	128
6. Conclusion	129
References.....	130

1. INTRODUCTION

Penal mediation refers to a formal mechanism for resolving criminal cases that brings victims and offenders together through the facilitation of a neutral third party within the framework of the criminal justice system. Unlike purely informal or customary dispute resolution, penal mediation is positioned as part of the state's legal response to crime, with the primary objectives of repairing harm, ensuring victim participation, and facilitating the reintegration of offenders into society in accordance with restorative justice principles (Zehr 2002). Over the past two decades, penal mediation has increasingly gained recognition as a complementary instrument within criminal justice reform, particularly in jurisdictions seeking to enhance effectiveness, proportionality, and procedural justice. (Van Ness and Strong 2015).

In several European countries, penal mediation has been systematically institutionalized through clear statutory bases, integrated institutional designs, and professional standards for mediators. Germany, France, Austria, Poland, and especially the Netherlands explicitly regulate penal mediation in legislation or criminal procedure codes and embed it within the functions of courts, prosecution services, and independent mediation institutions (Marshall 2001). These models demonstrate that penal mediation is not treated merely as a discretionary practice, but rather as an integral component of the criminal justice architecture, subject to procedural safeguards, judicial oversight, and institutional accountability.

By contrast, the regulation of penal mediation in Indonesia remains limited and fragmented. The implementation of restorative justice in adult criminal cases largely relies on Police Regulation No. 8 of 2021 and Prosecutor Regulation No. 15 of 2020, which normatively function only as internal administrative instruments. The absence of a dedicated statute or explicit incorporation into the Criminal Procedure Code has resulted in inconsistent application, heavy reliance on law enforcement discretion, and weak guarantees of legal certainty and procedural equality. This regulatory condition places Indonesia in sharp contrast to European jurisdictions that have institutionalized penal mediation through comprehensive legislative and institutional frameworks (Nababan 2023, Febriani *et al.* 2023).

To provide an initial empirical grounding for this comparative inquiry, Table 1 summarizes key regulatory and institutional features of penal mediation across six jurisdictions: Indonesia, Germany, France, Austria, Poland, and the Netherlands along four analytical dimensions: (1) legal basis and scope of application, (2) institutional architecture and mediator accreditation mechanisms, (3) procedural safeguards for victims and offenders, and (4) illustrative landmark cases.

The table reveals a clear structural divergence between Indonesia and the selected European jurisdictions. In Germany, France, Austria, Poland, and particularly the Netherlands, penal mediation is anchored in statutory provisions or criminal procedure codes and implemented through dedicated or semi-independent institutional arrangements, often supported by professional accreditation schemes for mediators and judicial or prosecutorial oversight. These frameworks provide clearer guarantees of

voluntariness, informed consent, and procedural equality for both victims and offenders, while situating mediation as a formally recognized component of the criminal justice process rather than an ad hoc alternative.

By contrast, Indonesia's regulatory framework remains predominantly administrative and sectoral, relying on internal police and prosecutorial regulations without a unified statutory basis or standardized accreditation mechanisms. As reflected in the Indonesian examples summarized in Table 1, the practical operation of penal mediation is highly dependent on institutional discretion, resulting in uneven procedural safeguards and limited legal certainty. The comparative overview thus illustrates, at an early stage, how differences in legal foundation and institutional design shape not only the scope of penal mediation but also its legitimacy, consistency, and reform potential within different legal systems.

TABLE 1

Country	(1) Legal basis and scope of application	(2) Institutional architecture and mediator accreditation	(3) Procedural safeguards for victims and offenders	(4) Illustrative landmark cases / practices
Indonesia	No specific Penal Mediation Act. Penal mediation is regulated through Police Regulation No. 8 of 2021 and Prosecutor Regulation No. 15 of 2020, which function as sectoral administrative instruments. Application is limited and discretionary.	No independent or centralized mediation institution. Mediators are usually police officers or prosecutors acting as facilitators. There is no national accreditation or certification scheme for penal mediators.	Procedural safeguards are weak and inconsistent. Voluntariness, informed consent, and equality of arms depend largely on institutional discretion. Judicial oversight is minimal.	Penal mediation is commonly applied in minor cases such as traffic accidents, where agreements on compensation and reconciliation are reached outside formal court proceedings.
Germany	Penal mediation is regulated under Section 46a of the German Criminal Code (StGB) through the <i>Täter-Opfer-Ausgleich</i> (Victim-Offender Mediation) mechanism. It may affect sentencing and can be applied at pre-trial and trial stages.	Mediation is conducted by certified professionals, often through regional mediation centers cooperating with courts and prosecution offices. Institutional support varies across federal states (<i>Länder</i>).	Strong procedural safeguards, including voluntariness, victim participation, offender acknowledgment of responsibility, and judicial consideration of mediation outcomes.	Landmark practices include long-standing <i>Täter-Opfer-Ausgleich</i> programs, such as the Waage mediation services, widely applied in property and interpersonal offenses.
France	Penal mediation (<i>médiation pénale</i>) is regulated under Article 41-1 of the French Code of Criminal	Mediation is coordinated by the Public Prosecutor's Office and implemented by accredited	Procedural safeguards include victim consent, offender participation,	Penal mediation has been widely used in minor assault and neighborhood conflict cases as

	Procedure and is primarily applied at the pre-trial stage upon the initiative of the prosecutor.	mediators, often affiliated with victim support organizations or non-governmental bodies.	proportionality, and prosecutorial supervision. Mediation outcomes aim at reparation and social pacification.	an alternative to prosecution.
Austria	Penal mediation is regulated under Article 90 of the Austrian Code of Criminal Procedure as part of a formal diversion scheme applicable to both juvenile and adult offenders.	Mediation is conducted by professionally trained and accredited mediators under specialized mediation agencies, operating in cooperation with prosecutors and courts.	Strong safeguards ensure voluntariness, neutrality, confidentiality, and informed consent, supported by quality control mechanisms.	Austria pioneered victim-offender mediation in the late 1980s, particularly in juvenile justice cases, later expanding to adult criminal cases.
Poland	Penal mediation is regulated under Article 23a of the Polish Code of Criminal Procedure and may be applied at any stage of criminal proceedings with judicial approval.	Mediators are state-certified and operate under court supervision. Mediation services are institutionally linked to the judiciary.	Procedural safeguards include voluntariness, confidentiality, victim consent, and judicial oversight of mediation outcomes.	Penal mediation is frequently applied in minor offenses and social conflicts, serving as a restorative justice mechanism within court proceedings.
Netherlands	Penal mediation (<i>strafbemiddeling</i>) is integrated into the criminal justice system through a comprehensive legal and institutional framework applicable at all stages of proceedings.	The Netherlands Mediation Institute (NMI) oversees mediator accreditation, professional standards, and training. Mediation is supported by courts, prosecutors, and legal aid institutions.	Strong procedural safeguards include voluntariness, informed consent, legal assistance, and judicial supervision, ensuring procedural fairness and legitimacy.	The Dutch model represents one of the most comprehensive penal mediation systems in Europe, widely applied in both juvenile and adult criminal cases.

Table 1. Comparative features of penal mediation in Indonesia and selected European jurisdictions.

From an academic perspective, much of the existing scholarship on penal mediation in Indonesia focuses either on normative discussions of restorative justice or on sectoral evaluations of police and prosecutorial policies. Conversely, international literature tends to examine victim-offender mediation in Europe through descriptive accounts or single-country case studies. To date, there remains a lack of systematic comparative legal analysis examining how differences in legal bases, institutional architectures, and procedural safeguards shape the legitimacy and sustainability of penal mediation, particularly with

regard to the feasibility of transplanting European models into a pluralistic legal system such as Indonesia's (Sumedana 2020).

This article seeks to address this gap by comparatively examining the regulation of penal mediation in the criminal justice systems of Indonesia, Germany, France, Austria, Poland, and, most notably, the Netherlands (Griffiths 1986). The analysis focuses on three core dimensions: (1) the legal basis and scope of application of penal mediation, (2) institutional architecture and mediator accreditation mechanisms, and (3) procedural safeguards for victims and offenders (Griffiths 1986). Employing a normative juridical approach enriched by structured socio-legal comparative analysis (Nonet and Selznick 2010), the article not only maps regulatory differences across jurisdictions but also assesses the structural preconditions for context-sensitive adaptation of penal mediation in Indonesia (Zehr 2002).

Drawing on the perspectives of restorative justice, responsive law, and legal pluralism, this article argues that strengthening penal mediation in Indonesia cannot be achieved solely through the expansion of administrative discretion. Rather, it requires a clear legislative foundation, coherent institutional arrangements, and sensitivity to social and cultural contexts. The principal contribution of this article lies in developing an analytical framework for evaluating the feasibility of penal mediation reform in Indonesia, using the Dutch model as a primary comparative reference while remaining attentive to the pluralistic character of the national legal system.

2. THEORETICAL FRAMEWORK

In this article, *penal mediation* is understood as a formal victim-offender mediation mechanism embedded within the criminal justice process and conducted under the authority or supervision of state institutions. It is analytically distinguished from informal or customary dispute resolution and from *diversion* as mandated under juvenile justice legislation. The term *diversion* is used exclusively in reference to mandatory juvenile diversion under Law No. 11 of 2012 and is not conflated with adult penal mediation, which operates within a different normative, institutional, and procedural context (Zehr 2002, Van Ness and Strong 2015). The conceptual foundation of this study is restorative justice, which reconceptualizes crime not merely as a violation of legal norms but as harm inflicted upon individuals, relationships, and social cohesion. Restorative justice emphasizes accountability through reparation, victim participation, and offender reintegration, rather than punishment alone.

Within this framework, penal mediation represents an institutionalized restorative justice mechanism, characterized by voluntary participation, dialogical processes, and negotiated outcomes facilitated by a neutral third party. Its legitimacy therefore depends not only on outcomes, but also on the procedural and institutional conditions under which it operates (Marshall 2001, Strang and Braithwaite 2001). To move beyond purely normative or descriptive accounts, this study employs three interrelated theoretical perspectives: restorative justice theory, responsive law, and legal pluralism as an integrated analytical framework for comparative evaluation.

First, restorative justice theory functions as the primary normative benchmark. It provides criteria for assessing whether penal mediation frameworks genuinely prioritize victim participation, meaningful reparation, offender responsibility, and social reintegration. In

the comparative analysis, restorative justice theory is used to evaluate the substantive orientation of legal provisions and procedural safeguards, particularly in determining whether mediation is treated as a marginal discretionary option or as a principled component of the criminal justice system. Second, responsive law theory, as developed by Nonet and Selznick, offers an institutional and regulatory lens for examining how legal systems structure penal mediation. Responsive law emphasizes adaptability, participation, accountability, and problem-solving over rigid formalism or purely administrative control. In this study, responsive law informs the assessment of legal bases and institutional architectures governing penal mediation, including the role of statutory regulation, judicial or prosecutorial oversight, and mediator accreditation mechanisms. This perspective is particularly relevant for distinguishing between jurisdictions where penal mediation is embedded in coherent legislative frameworks and those, such as Indonesia, where it remains regulated predominantly through internal administrative instruments with limited external accountability. Third, legal pluralism provides the contextual framework for analyzing the feasibility of adapting or transplanting penal mediation models across jurisdictions. Indonesia's legal system is characterized by the coexistence of state law, customary norms, and religious values, which shapes societal perceptions of justice, authority, and conflict resolution. Legal pluralism is therefore employed to assess whether institutional models of penal mediation developed in European jurisdictions especially the Dutch model can be contextually adapted without undermining social legitimacy, procedural fairness, or local normative expectations. Rather than assuming direct legal transplantation, this perspective foregrounds the need for context-sensitive institutional design.

Analytically, these three theoretical perspectives are operationalized through the core dimensions examined in this study: (1) the legal basis and scope of application of penal mediation, (2) institutional architecture and mediator accreditation mechanisms, and (3) procedural safeguards for victims and offenders. By linking theory directly to these dimensions, the framework enables a structured comparative analysis that explains not only how penal mediation is regulated across jurisdictions, but why certain regulatory configurations are more likely to produce legitimacy, consistency, and sustainability. The theoretical framework thus supports the article's central argument that strengthening penal mediation in Indonesia requires more than expanding administrative discretion; it necessitates a coherent legislative foundation, responsive institutional arrangements, and sensitivity to the country's plural legal context.

2.1. THE THEORY OF RESTORATIVE JUSTICE

Restorative justice provides the primary normative foundation for penal mediation by reconceptualizing crime as harm to individuals, relationships, and social cohesion rather than merely a violation of legal rules. Pioneered by scholars such as Howard Zehr, Daniel Van Ness, and Karen Strong, restorative justice shifts the central questions of criminal justice from determining guilt and punishment to identifying harms, needs, and responsibilities arising from criminal conduct (Zehr 2002, Van Ness and Strong 2015). This normative reorientation places victims, offenders, and affected communities at the center of the justice process.

Within this framework, penal mediation is understood as an institutionalized restorative mechanism through which victims and offenders engage in a structured, voluntary dialogue facilitated by a neutral third party. Its objectives extend beyond case disposal to include

acknowledgment of responsibility, reparation of harm, and the social reintegration of offenders. However, restorative justice theory does not presume that mediation is inherently restorative. Rather, the extent to which penal mediation fulfills restorative aims depends on the legal and institutional conditions under which it operates, including guarantees of voluntariness, informed consent, procedural equality, and meaningful victim participation (Latimer *et al.* 2005, Sherman and Strang 2007). In this study, restorative justice theory is employed not to measure outcome effectiveness alone such as reductions in recidivism or increases in victim satisfaction but to evaluate whether penal mediation frameworks are normatively and procedurally aligned with restorative principles. Accordingly, restorative justice serves as the evaluative benchmark for assessing the substantive orientation of legal bases and procedural safeguards governing penal mediation across jurisdictions. This approach enables a critical examination of whether mediation is treated as a principled component of the criminal justice system or merely as a discretionary alternative lacking firm legal guarantees.

2.2. RESPONSIVE LAW THEORY

Responsive law theory, as developed by Nonet and Selznick, provides an institutional and regulatory perspective for analyzing how legal systems structure and govern penal mediation. Responsive law is characterized by adaptability, participatory decision-making, and accountability to social needs, standing in contrast to repressive law, which relies on coercive authority, and autonomous law, which emphasizes formal legality detached from social outcomes (Nonet and Selznick 2010). This theory is particularly relevant for examining the legal foundations and institutional architectures of penal mediation.

From the standpoint of responsive law, the incorporation of penal mediation into the criminal justice system represents a normative shift toward problem-solving and participatory justice. However, such a shift requires more than policy endorsement; it demands coherent legislative frameworks, clearly defined institutional roles, and mechanisms of oversight that ensure transparency and accountability. Where penal mediation is regulated primarily through internal administrative instruments, responsiveness risks being reduced to discretionary flexibility without sufficient legal certainty or external control (Abildanwa 2016).

In this study, responsive law theory is operationalized to assess differences in statutory regulation, institutional design, and mediator accreditation mechanisms across jurisdictions. It provides the analytical basis for distinguishing between systems in which penal mediation is embedded in comprehensive legislative frameworks subject to judicial or prosecutorial supervision and systems, such as Indonesia's, where mediation remains largely governed by sectoral regulations. Through this lens, responsive law theory supports a critical evaluation of whether existing institutional arrangements facilitate genuinely participatory justice or merely extend administrative discretion under the guise of restorative reform (Nonet and Selznick 2010).

2.3. LEGAL PLURALISM

Legal pluralism offers a contextual framework for assessing the adaptability and legitimacy of penal mediation within diverse legal environments. As articulated by Griffiths, legal pluralism recognizes the coexistence of multiple normative orders state law, customary law, religious norms, and informal practices within a single social field (Griffiths 1986). This perspective is particularly salient in Indonesia, where formal criminal law operates

alongside adat law and religious norms that continue to shape social understandings of justice and conflict resolution.

From a pluralist standpoint, penal mediation presents both opportunities and challenges. On the one hand, restorative principles such as dialogue, consensus-building, and social reconciliation resonate strongly with Indonesia's communal dispute resolution traditions (Hermanto 2021). On the other hand, the absence of clear harmonization between state-led penal mediation and non-state normative orders risks legal uncertainty, institutional fragmentation, and unequal protection of procedural rights. Legal pluralism thus cautions against uncritical legal transplantation and highlights the importance of contextual adaptation.

In this study, legal pluralism is employed as an analytical filter for evaluating the feasibility of adapting European penal mediation models particularly the Dutch model to Indonesia's plural legal system. Rather than advocating direct replication, this perspective emphasizes context-sensitive institutional design that integrates restorative values while preserving legal certainty and procedural fairness. Legal pluralism therefore complements restorative justice and responsive law by ensuring that proposed reforms are not only normatively sound and institutionally coherent, but also socially legitimate within Indonesia's diverse legal landscape (Merry 1988, Santos 2002).

The foregoing theoretical framework establishes the analytical lenses through which penal mediation is examined in this study. By integrating restorative justice, responsive law, and legal pluralism, the framework delineates the normative objectives, institutional expectations, and contextual constraints that shape the evaluation of penal mediation across jurisdictions. These perspectives collectively require an approach capable of capturing not only formal legal arrangements, but also the institutional logic and contextual conditions underlying their operation.

Rather than treating methodology as a neutral technical choice, this study adopts a research design that is explicitly guided by the theoretical concerns identified above. The emphasis on legal bases, institutional architectures, and procedural safeguards reflects the operationalization of restorative justice principles, responsive legal structures, and plural normative environments into analytically comparable dimensions. The following section therefore outlines the methodological strategy through which these theoretically grounded dimensions are systematically examined across selected jurisdictions, enabling a structured and coherent comparative analysis.

3. RESEARCH METHODOLOGY

In line with its goal of evaluating and comparing the legal frameworks governing penal mediation in Indonesia and several other jurisdictions, this study employs a normative juridical research design supported by comparative legal analysis. Examining legal norms, policy documents, statutory provisions, and institutional structures pertinent to criminal mediation is the primary goal of the normative juridical method. When examining legal reform agendas and assessing the effectiveness of restorative mechanisms within current legal systems, this approach is particularly appropriate (Abildanwa 2016).

The comparative analysis is structured around three main analytical criteria. First, the formal legal basis and scope of penal mediation, including whether it is grounded in statutes, criminal procedure codes, or sub-legal administrative instruments, and at which stages of the criminal process it can be applied. Second, the institutional architecture, including the existence of dedicated mediation bodies, inter-agency coordination, and mediator accreditation or professional standards. Third, procedural safeguards for victims and offenders, such as voluntariness, informed consent, access to legal advice, and judicial oversight. These criteria make explicit how the article evaluates similarities and differences between jurisdictions.

Fundamentally, secondary legal sources, including laws, case law, regulatory frameworks, policy reports, and scholarly commentary, provide the foundation for normative juridical studies. To understand how various legal systems conceptualize and institutionalize criminal mediation as a component of restorative justice initiatives, this study critically examines these sources. Comparative legal reasoning, which looks for structural variations, best practices, and reform opportunities across jurisdictions, complements this doctrinal approach.

The methodological design is informed by the integrated theoretical framework outlined in the preceding section, which combines restorative justice, responsive law, and legal pluralism to structure the comparative evaluation of legal bases, institutional architectures, and procedural safeguards governing penal mediation across jurisdictions (Griffiths 1986, Zehr 2002, Nonet and Selznick 2010).

3.1. CASE SELECTION AND JURISDICTIONAL SCOPE

Six jurisdictions—Indonesia, Germany, France, the Netherlands, Austria, and Poland—were chosen for this study via deliberate sampling. The legal traditions and degrees of institutionalization of penal mediation vary among these nations. Two primary factors served as the basis for the selection:

1. The presence of official or informal frameworks for punitive mediation,
2. The applicability of each nation's legal background and experience for possible Indonesian adoption.

Both France and Germany are examples of developed civil law systems with clear legal provisions for victim-offender mediation (mediation pénale and Täter-Opfer-Ausgleich, respectively). The Netherlands is notable for having a comprehensive and well-organized mediation system, which includes the Netherlands Mediation Institute and organized assistance for both adult and juvenile disputes. Other continental models with explicit legal mandates are Austria and Poland. As the focus jurisdiction, Indonesia illustrates a growing legal system in which institutional fragmentation persists despite the emergence of punitive mediation.

Germany and France were selected as mature civil law jurisdictions with long-standing statutory provisions on victim-offender mediation, providing examples of relatively centralized but mainstreamed models of penal mediation. Austria and Poland represent jurisdictions in which penal mediation is clearly embedded in the criminal procedure code yet implemented through somewhat different institutional arrangements, offering useful

contrast concerning mediator accreditation and court integration. The Netherlands was chosen as the primary reference model because of its particularly comprehensive and multi-agency mediation framework, which spans both juvenile and adult criminal proceedings. Indonesia serves as the focus jurisdiction, illustrating the challenges of introducing penal mediation in a pluralist legal system where the current regulatory basis remains predominantly administrative.

3.2. DATA COLLECTION AND ANALYSIS

Five essential phases of legal research and comparative synthesis were included in the study:

1. Identification of national rules, agency procedures, court guidelines, criminal process statutes, and other legislative and policy tools pertinent to penal mediation;
2. Classification of mediation processes, including eligibility requirements (offender's admittance, victim consent), procedural scheduling (pre-trial, post-trial), and scope of application (offense kinds);
3. Comparing institutional support mechanisms like legal aid, oversight bodies, mediator certification, and integration into court systems;
4. Assessing the practical implications of regulatory models through policy assessments, academic literature, and, when available, empirical findings;
5. Synthesizing findings to create recommendations for the Indonesian legal system that are sensitive to the context.

Peer-reviewed academic papers, official government publications, and national legal databases were the primary sources of legal texts and comparative data. Furthermore, jurisdictional views were supplemented by international sources, including the European Forum for Restorative Justice, UNODC recommendations, and manuals for implementing restorative justice (Strang and Braithwaite 2001, Van Ness and Strong 2015).

Coherence, consistency, and flexibility are the main focuses of the qualitative, interpretive legal reasoning analytical approach used. Victim participation, institutional viability, legal enforcement, and procedural safeguards were given special consideration. When feasible, legal models were evaluated based on their operational results and suitability for several legal systems in addition to their normative qualities.

3.3. METHODOLOGICAL LIMITATIONS AND REFLEXIVITY

This research admits its limitations. First, because of its normative and doctrinal orientation, it excludes quantitative empirical evidence, such as statistical assessments of recidivism or user satisfaction. Second, numerous textual and secondary sources are used in the examination of implementation in Indonesia, which might not adequately represent the dynamics of resistance or unofficial practices there. This study could be expanded upon in the future using empirical legal techniques such as stakeholder interviews, policy ethnographies, and regional fieldwork.

However, for studies focused on reform, the comparative legal technique remains a suitable approach. According to Legrand (1997), comparative law enables academics to challenge presumptions ingrained in national legal systems while also promoting transnational learning. This study aims to expose structural inadequacies, challenge prevailing criminal

paradigms, and contribute to a forward-looking justice discourse in Southeast Asia by comparing Indonesia with more developed restorative frameworks.

As a result, the conclusions reached in this article are primarily structural and institutional in nature; they do not claim to capture all local variations in practice or to measure the quantitative impact of penal mediation on outcomes such as recidivism or victim satisfaction. While this article adopts a socio-legal analytical lens, it does not claim to provide empirical ethnographic or quantitative accounts of penal mediation practices in each jurisdiction. Instead, its socio-legal contribution lies in examining institutional design, regulatory structures, and normative frameworks through which penal mediation operates within different legal systems. By focusing on law-in-context at the level of institutions and governance, the article aligns with socio-legal scholarship that emphasizes structural and systemic analysis rather than micro-level empirical outcomes.

4. RESULTS

4.1. PENAL MEDIATION IN INDONESIAN CRIMINAL LAW

The findings indicate that penal mediation in Indonesia remains institutionally fragile due to the absence of a comprehensive legislative foundation. Although restorative justice has been formally introduced through Police Regulation No. 8 of 2021 and Prosecutor Regulation No. 15 of 2020, these instruments function as internal administrative policies rather than binding statutory law. From the perspective of responsive law, this regulatory configuration reflects an early and incomplete form of institutional responsiveness one that allows flexibility but lacks sufficient mechanisms of accountability, legal certainty, and external oversight (Sumedana 2020, Nababan 2023).

The limited statutory anchoring of penal mediation results in fragmented and uneven implementation across jurisdictions. Because these administrative regulations do not establish enforceable procedural rights or standardized institutional obligations, the application of penal mediation is largely dependent on discretionary decisions by individual law enforcement officials. This discretion-oriented model undermines the procedural guarantees central to restorative justice theory, particularly voluntariness, informed consent, and equality of participation between victims and offenders (Kristiyadi and Setyawan 2022).

Penal mediation has achieved comparatively greater recognition within Indonesia's juvenile justice system through the mandatory diversion regime under Law No. 11 of 2012. However, this framework is analytically distinct from adult penal mediation and cannot be treated as evidence of broader institutionalization. Even within juvenile justice, implementation remains inconsistent due to limited facilitator capacity, uneven institutional commitment, and residual resistance to non-punitive approaches. These findings suggest that restorative justice principles, while normatively endorsed, have not yet been translated into a coherent and rights-based institutional design for adult criminal cases (Lesmana 2020).

From a legal pluralism perspective, the Indonesian context further complicates institutionalization. While restorative practices resonate with customary and community-based dispute resolution traditions, the lack of formal integration between state-led penal

mediation and non-state normative orders generates legal ambiguity and weakens public trust. Rather than enhancing legitimacy, the current regulatory vacuum risks reinforcing perceptions of informal bargaining and unequal treatment, thereby constraining the transformative potential of penal mediation within Indonesia's criminal justice system (Hermanto 2021).

4.2. INTERNATIONAL PRACTICES OF PENAL MEDIATION

In contrast to Indonesia's predominantly administrative approach, the comparative findings reveal that penal mediation in Germany, France, Austria, Poland, and the Netherlands is characterized by statutory grounding, institutional integration, and professional standardization. These jurisdictions demonstrate varying degrees of institutional maturity, yet share a common commitment to embedding penal mediation within formal legal frameworks rather than treating it as an ad hoc alternative (

From a responsive law standpoint, the presence of explicit statutory provisions (Léonard 2021). such as Article 46a of the German Penal Code, Article 41-1 of the French Code of Criminal Procedure, and corresponding provisions in Austria and Poland signals a deliberate effort to align legal structures with participatory and problem-solving justice objectives. Penal mediation in these systems is not left solely to discretionary decision-making, but is instead governed by defined procedural stages, eligibility criteria, and institutional responsibilities.

Restorative justice theory further illuminates the significance of professional mediator accreditation and institutional support mechanisms evident in these jurisdictions. In Austria and the Netherlands in particular, mediator certification, quality control, and coordination with courts and prosecution services provide structural guarantees that mediation processes remain voluntary, balanced, and outcome-oriented. These institutional safeguards translate restorative ideals into enforceable procedural conditions, ensuring that victim participation and offender accountability are not merely aspirational principles (Febriani *et al.* 2023).

Among the jurisdictions examined, the Netherlands represents the most comprehensive model. Penal mediation is integrated across all stages of criminal proceedings and supported by a centralized accreditation body, the Netherlands Mediation Institute. This multi-agency framework illustrates how restorative justice can coexist with formal criminal adjudication without undermining legal authority. Rather than displacing the criminal justice system, mediation functions as a complementary mechanism that enhances efficiency, legitimacy, and stakeholder satisfaction.

4.3. COMPARATIVE ANALYSIS AND INTERPRETATION

When analyzed comparatively through the combined lenses of restorative justice, responsive law, and legal pluralism, the divergence between Indonesia and the European jurisdictions becomes structurally evident. European models have largely succeeded in moving penal mediation from discretionary policy instruments to institutionalized legal mechanisms, whereas Indonesia remains reliant on administrative norms with limited enforceability (Strang and Braithwaite 2001, Van Ness and Strong 2015).

From a restorative justice perspective, the comparative findings indicate that clearer legal bases and institutional architectures correlate with stronger guarantees of voluntariness, informed consent, and meaningful victim engagement. The absence of standardized mediator accreditation and independent oversight in Indonesia weakens these guarantees and limits the capacity of penal mediation to function as a principled restorative mechanism rather than a pragmatic case-management tool (Abildanwa 2016). Legal pluralism provides a critical interpretive layer for assessing reform feasibility. While European models offer valuable institutional lessons, direct legal transplantation would be inadequate in Indonesia's plural legal environment. The findings suggest that any effort to formalize penal mediation must engage constructively with existing customary and religious dispute-resolution practices, integrating them into a coherent statutory framework rather than marginalizing them through purely bureaucratic regulation.

Table 2 synthesizes these comparative findings by demonstrating how statutory foundations, institutional oversight, and mediator accreditation collectively contribute to the legitimacy and sustainability of penal mediation. The table underscores that institutional maturity is not determined by the mere existence of restorative policies, but by the extent to which restorative justice principles are embedded within enforceable legal and organizational structures (Griffiths 1986, Santos 2002).

Table 2 highlights important comparative aspects across six jurisdictions to provide a more readable summary of the institutional differences:

TABLE 2

Country	Legal basis	Applicable stage	Mediator accreditation	Institutional body
Indonesia	Reg. No.8/2021, No.15/2020	Pre-trial only	Not standarized	None
Germany	Penal Code §46a	Pre/post-trial	Certified	Regional Meditation Centers
France	Code Crim. Proc. Art. 41-1	Pre-trial	Yes	Presecutor's Office
Austria	CCP Art. 90	Pre/post-trial	Yes	Mediation Agency
Poland	CCP Art. 23a	Entire process	State-certified	Court-supervised Units
Netherlands	Integrated legal framework	All stages	NMI	Netherlands Mediation Inst.

Table 2. The comparative study of legal frameworks and criminal mediation institutions in selected countries.

(Source: Based on data processed by the researcher, drawing from national legal instruments of the respective countries and relevant international reports, such as the UNODC Handbook (2020), European Forum for Restorative Justice reports, and national mediation institutions' guidelines.)

Overall, the results indicate that Indonesia's current approach represents an important normative shift but remains structurally incomplete. Without a coherent legislative framework and responsive institutional design, penal mediation cannot fully realize its restorative potential or function as a sustainable component of broader criminal justice reform.

5. DISCUSSION

This Discussion section interprets the comparative findings presented in Section 4 through the integrated theoretical framework of restorative justice, responsive law, and legal pluralism. Rather than reiterating descriptive results, the discussion focuses on explaining *why* penal mediation operates effectively in certain jurisdictions and *why* its institutionalization remains limited in Indonesia. In doing so, the section clarifies the structural, normative, and contextual conditions under which penal mediation can function as a legitimate component of the criminal justice system.

The analysis demonstrates that penal mediation is not inherently restorative or effective; its normative promise depends on legal design, institutional embedding, and procedural guarantees. This finding refines existing restorative justice scholarship by showing that mediation outcomes are shaped less by abstract principles than by the regulatory environments in which they are implemented.

5.1. PENAL MEDIATION BEYOND INSTRUMENTAL BENEFITS

Much of the restorative justice literature emphasizes the instrumental advantages of penal mediation, such as victim satisfaction, offender accountability, and reduced court caseloads. While these benefits are well documented in prior empirical studies (Zehr 2002, Latimer *et al.* 2005, Sherman and Strang 2007, Van Ness and Strong 2015), the comparative findings of this study suggest that such outcomes cannot be assumed across legal systems. (Latimer *et al.* 2005, Sherman and Strang 2007). From a restorative justice perspective, meaningful victim participation and offender accountability presuppose procedural voluntariness, informed consent, and institutional neutrality. These conditions are systematically secured in jurisdictions such as Austria and the Netherlands through statutory regulation and professional mediation standards, but remain contingent and discretionary in Indonesia. As a result, the restorative potential of penal mediation in Indonesia is structurally fragile rather than normatively deficient. This insight advances restorative justice theory by highlighting that restorative outcomes are institutionally produced rather than normatively guaranteed. Penal mediation functions as a restorative mechanism only when supported by enforceable legal norms and accountable institutional frameworks.

5.2. INSTITUTIONAL DESIGN AND THE LOGIC OF RESPONSIVE LAW

Viewed through the lens of responsive law, the comparative analysis reveals a clear divergence between Indonesia and the European jurisdictions examined. In Germany, Austria, France, Poland, and the Netherlands, penal mediation has evolved from a discretionary alternative into a structured institutional practice integrated within the criminal justice system. Legal responsiveness in these systems is expressed not through informality, but through legally authorized flexibility governed by clear procedural boundaries (Febriani *et al.* 2023).

Indonesia's reliance on administrative regulations and case-by-case discretion reflects an early, transitional stage of responsive law. While such flexibility may allow experimentation, the absence of statutory anchoring limits institutional learning, consistency, and accountability. Responsive law, as theorized by Nonet and Selznick (2010), presupposes a legal system capable of adapting to social needs without sacrificing procedural integrity. The

Indonesian framework currently struggles to meet this threshold (Sumedana 2020, Nababan 2023).

This analysis suggests that discretion alone does not constitute responsiveness. Without institutional coordination, mediator accreditation, and oversight mechanisms, discretion risks undermining predictability and equality before the law core elements of legal legitimacy in responsive systems (Lesmana 2020).

5.3. LEGAL PLURALISM AND CONTEXTUAL CONSTRAINTS

Legal pluralism provides a crucial interpretive lens for understanding why the transplantation of European penal mediation models into Indonesia cannot be purely formal or technical. Indonesia's legal order is characterized by the coexistence of state law, religious norms, and customary practices, which complicates the uniform application of criminal justice reforms (Griffiths 1986, Hermanto 2021).

The comparative findings indicate that successful penal mediation systems do not eliminate informal norms but instead regulate their interaction with formal legal institutions. In European contexts, this interaction is mediated through professional standards and judicial oversight. In Indonesia, by contrast, informal dispute resolution practices often operate outside the formal criminal justice system, without clear legal recognition or safeguards. (Merry 1988, Santos 2002).

Rather than treating legal pluralism as an obstacle, this study conceptualizes it as a structural condition that shapes the feasibility of penal mediation reform. The challenge lies not in incorporating customary practices per se, but in articulating a legal framework capable of integrating community-based norms while maintaining procedural protections for victims and offenders. This theoretical move contributes to socio-legal scholarship by demonstrating how penal mediation operates at the intersection of formal legality and social ordering, particularly in plural legal systems.

5.4. ANALYTICAL IMPLICATIONS

Taken together, the findings suggest that the primary barrier to penal mediation in Indonesia is not cultural resistance or normative incompatibility, but institutional underdevelopment. Penal mediation remains vulnerable to inconsistency and legitimacy deficits because it lacks a coherent legal status within the criminal justice system (Kristiyadi and Setyawan 2022).

Comparatively, European models demonstrate that mediation can coexist with retributive criminal law without eroding state authority. The key variable is not the presence of mediation, but the manner in which it is legally framed, institutionally supervised, and procedurally constrained. This reframes the debate from whether penal mediation is compatible with criminal justice to how legal systems structure restorative practices.

From a theoretical standpoint, the study contributes by integrating restorative justice, responsive law, and legal pluralism into a unified analytical framework capable of explaining cross-jurisdictional variation in penal mediation. Methodologically, it illustrates how normative legal analysis can be combined with comparative institutional analysis to assess

criminal justice reform beyond doctrinal evaluation (Zehr 2002, Van Ness and Strong 2015).

In Indonesia's plural legal context, informal practices such as *musyawarah* and *rembug warga* illustrate how restorative logics already operate at the community level. These practices reflect collective orientations toward social harmony and conflict de-escalation, aligning conceptually with core principles of penal mediation (Griffiths 1986, Hermanto 2021).

However, the comparative findings suggest that the existence of culturally embedded restorative practices does not automatically translate into effective penal mediation within the formal criminal justice system. In the absence of legal recognition and procedural safeguards, community-based dispute resolution remains institutionally disconnected from state criminal processes, limiting its capacity to contribute to systemic reform (Abildanwa 2016).

From a legal pluralism perspective, this disjunction highlights a structural tension rather than a normative incompatibility. The challenge lies in articulating regulatory interfaces capable of mediating between informal restorative practices and formal criminal law without collapsing one into the other. This reinforces the article's broader argument that penal mediation in Indonesia is constrained less by cultural resistance than by institutional design and legal integration (Nonet and Selznick 2010).

6. CONCLUSION

This article has argued that penal mediation should be understood not merely as an alternative criminal procedure, but as an institutionally contingent socio-legal practice whose legitimacy depends on legal design, governance arrangements, and procedural safeguards. Through a comparative analysis of Indonesia and selected European jurisdictions, the study demonstrates that penal mediation becomes meaningfully restorative only when embedded within a coherent statutory framework and supported by professionalized and accountable institutions.

The findings reveal a structural divergence between European systems, where penal mediation is legally mainstreamed within criminal justice, and Indonesia, where it remains fragmented and predominantly administrative. Crucially, this disparity is not rooted in cultural resistance or normative incompatibility, but in institutional underdevelopment within a plural legal order.

By integrating restorative justice, responsive law, and legal pluralism, this study contributes to socio-legal scholarship in two ways. First, it shows that restorative outcomes are institutionally produced rather than normatively assumed. Second, it reframes legal pluralism as a structural condition shaping the feasible design of penal mediation rather than an obstacle to reform. Future research may extend this analysis through empirical inquiry into how penal mediation operates across diverse local contexts.

References

- Abildanwa, T., 2016. Mediasi penal sebagai upaya dalam rangka pembaharuan hukum pidana di Indonesia berbasis nilai-nilai keseimbangan. *Jurnal Pembaharuan Hukum* [online], 3(1), 138-148. Available at: <https://doi.org/10.26532/jph.v3i1.1353>
- Febriani, H., Maharani, C., and Haq, S. A. I., 2023. Pengaturan mediasi penal pasca regulasi keadilan restoratif di kepolisian, kejaksaan, dan mahkamah agung. *Media Keadilan: Jurnal Ilmu Hukum* [online], 14(1), 152-176. Available at: <https://doi.org/10.31764/jmk.v14i1.15101>
- Griffiths, J., 1986. What is legal pluralism? *Journal of Legal Pluralism and Unofficial Law* [online], 18(24), 1-55. Available at: <https://doi.org/10.1080/07329113.1986.10756387>
- Hermanto, B., 2021. *Discovering the future prospect of Indonesian criminal law reform: Questioning adat criminal law in constitutional court decision frameworks*. Paper presented at International Seminar with theme "Challenges in Reforming Indonesian Criminal Law" at Faculty of Law Udayana University.
- Kristiyadi, K., and Setyawan, V. P., 2022. Keadilan restoratif dan mediasi penal dalam tindak pidana ringan. *Jurnal Kepastian Hukum dan Keadilan* [online], 4(1), 17-30. Available at: <https://doi.org/10.32502/khdk.v4i1.4622>
- Latimer, J., Dowden, C., and Muise, D., 2005. The effectiveness of restorative justice practices: A meta-analysis. *The Prison Journal* [online], 85(2), 127-144. Available at: <https://doi.org/10.1177/0032885505276969>
- Legrand, P., 1997. The impossibility of legal transplants. *Maastricht Journal of European and Comparative Law* [online], 4(2), 111-124. Available at: <https://doi.org/10.1177/1023263X9700400202>
- Léonard, A., 2021. Penal mediation in France: Challenges and perspectives. *Revue de science criminelle et de droit pénal comparé*, 3(4), 225-238.
- Lesmana, C. T., 2020. *Integrasi mediasi penal dalam pembaharuan sistem peradilan pidana Indonesia* [online]. Yogyakarta: Pena Persada. Available at: <https://doi.org/10.31237/osf.io/trg6u>
- Marshall, C. D., 2001. *Beyond retribution: A New Testament vision for justice, crime, and punishment*. Grand Rapids: Eerdmans.
- Merry, S. E., 1988. Legal pluralism. *Law & Society Review* [online], 22(5), 869-896. Available at: <https://doi.org/10.2307/3053638>

- Nababan, R. D., 2023. Urgensi penerapan mediasi penal dalam sistem peradilan pidana di Indonesia. *Supremasi Hukum: Jurnal Penelitian Hukum* [online], 32(1), 74-87. Available at: <https://doi.org/10.33369/jsh.32.1.74-87>
- Nonet, P., and Selznick, P., 2010. *Law and society in transition: Toward responsive law*. New Brunswick: Transaction.
- Santos, B. S., 2002. *Toward a new legal common sense: Law, globalization, and emancipation*. London: Butterworths.
- Sherman, L. W., and Strang, H., 2007. *Restorative justice: The evidence*. London: The Smith Institute.
- Strang, H., and Braithwaite, J., eds., 2001. *Restorative justice and civil society*. Cambridge University Press.
- Sumedana, K., 2020. *Mediasi penal dalam sistem peradilan berbasis nilai-nilai Pancasila*. Yogyakarta: Genta.
- Van Ness, D. W., and Strong, K. H., 2015. *Restoring justice: An introduction to restorative justice* [online]. 5th ed. London/New York: Routledge. Available at: <https://doi.org/10.4324/9781315721330>
- Zehr, H., 2002. *The little book of restorative justice*. Intercourse: Good Books.