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The Effectiveness of Penal Mediation as an Alternative Dispute Resolution Mechanism in the Criminal Justice System

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ABSTRACT

Criminal mediation has emerged as an alternative dispute resolution mechanism that emphasizes restorative justice, victim protection, and offender accountability within the criminal justice system. This study aims to analyze the effectiveness of criminal mediation by examining its legal foundations, procedural safeguards, and institutional implementation, particularly within Indonesia's criminal justice framework. The research employs a normative juridical method using statutory, conceptual, and comparative approaches. Legal materials are analyzed qualitatively through systematic interpretation of national regulations and international restorative justice principles. The findings indicate that criminal mediation has significant normative potential to promote substantive justice by facilitating victim restoration, offender accountability, and proportional dispute resolution. Indonesia's legal framework, particularly Law Number 20 of 2025 concerning the Criminal Procedure Code, provides a stronger statutory foundation for restorative mechanisms. However, regulatory fragmentation, unequal bargaining power, procedural inconsistencies, and limitations in institutional supervision remain significant challenges. The effectiveness of criminal mediation depends on five interconnected dimensions: legal legitimacy, procedural fairness, substantive justice, institutional accountability, and enforceability of agreements. This study concludes that criminal mediation can function as a legitimate alternative or complementary mechanism for eligible criminal cases when supported by coherent regulations, voluntary participation, adequate legal safeguards, and coordinated institutional oversight.

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1. INTRODUCTION

The criminal justice system plays a fundamental role in maintaining public order, protecting individual rights, and ensuring legal accountability. Traditionally, criminal proceedings have emphasized investigation, prosecution, adjudication, and punishment as instruments for enforcing criminal law. Although this approach remains essential for maintaining legal certainty and protecting public interests, its punitive orientation does not always adequately address the material, psychological, and social consequences experienced by victims. These limitations

have encouraged the development of restorative justice as an approach emphasizing victim restoration, offender accountability, and meaningful participation in resolving criminal conflicts. [1] explains that restorative justice addresses wrongdoing through participation, accountability, and the restoration of relationships while recognizing challenges associated with its implementation. Within this framework, criminal mediation facilitates voluntary dialogue between victims and offenders to identify harm and formulate appropriate restorative measures. However, unlike civil mediation, criminal mediation operates within a public-law framework in which private agreements cannot automatically eliminate criminal responsibility. Its legitimacy therefore depends on balancing restorative objectives with procedural fairness, legal certainty, and the protection of fundamental rights.

International legal developments have strengthened the recognition of criminal mediation as a mechanism supporting restorative justice. United Nations Economic and Social Council Resolution 2002/12 emphasizes voluntary participation, informed consent, procedural safeguards, and the involvement of affected parties in restorative processes [2]. Similarly, Directive 2012/29/EU establishes minimum standards concerning victim protection, confidentiality, safety, and protection against coercion in restorative justice services (European Parliament and Council, 2012). These principles demonstrate that mediation effectiveness cannot be determined solely through settlement agreements or procedural efficiency but must also consider substantive justice, proportionality, and enforceability. [1] highlights conceptual and institutional limitations of restorative justice, while [3] demonstrate the importance of evaluating restorative interventions through observable outcomes. Nevertheless, empirical findings from particular restorative programs cannot automatically be generalized across different criminal justice systems because institutional structures, eligibility requirements, and procedural consequences vary between jurisdictions.

In Indonesia, restorative justice has progressively been integrated into criminal law enforcement through Regulation of the Attorney General Number 15 of 2020, Regulation of the Indonesian National Police Number 8 of 2021, and Supreme Court Regulation Number 1 of 2024. Law Number 1 of 2023 concerning the Criminal Code and Law Number 20 of 2025 concerning the Criminal Procedure Code, both effective January 2, 2026, further strengthen the statutory foundation for restorative mechanisms and emphasize rehabilitation, victim restoration, and conflict resolution [4], [5]. However, overlapping regulatory provisions and inconsistent eligibility requirements create challenges for legal certainty and uniform implementation [6], [7]. Differences in institutional authority and coordination among law enforcement agencies may further undermine procedural consistency [6], [8]. Moreover, unequal bargaining power between victims and offenders may compromise voluntary participation and increase the risk of coercion [4], [5]. Addressing these challenges requires regulatory harmonization, clear procedural safeguards, and institutional capacity building to strengthen professional competence and accountability [5], [7], [8].

Despite increasing recognition of restorative justice, a significant research gap remains concerning the normative criteria for evaluating the effectiveness of criminal mediation within formal criminal proceedings. Existing discussions frequently emphasize reconciliation, procedural simplification, offender rehabilitation, and alternatives to imprisonment without adequately examining whether mediation satisfies legality, proportionality, substantive justice, and procedural fairness. Furthermore, the existence of restorative regulations does not automatically ensure consistent institutional authority, enforceable agreements, adequate victim protection, or protection against arbitrary decisions. Regulatory harmonization remains necessary to establish coherent procedural standards

and prevent inconsistent application across criminal justice institutions [6], [7]. Criminal mediation also raises important questions regarding the relationship between individual autonomy and the state's responsibility to uphold criminal law and protect public interests. Consequently, the central analytical gap concerns how legal legitimacy, regulatory coherence, procedural safeguards, institutional accountability, and agreement enforceability interact in determining the normative effectiveness of criminal mediation, particularly following recent developments in Indonesia's criminal legislation.

Accordingly, this study aims to analyze the effectiveness of criminal mediation as an alternative dispute resolution mechanism within the criminal justice system through a normative juridical approach integrating statutory, conceptual, and comparative legal analysis. Specifically, the research examines the theoretical foundations of criminal mediation within restorative justice, the adequacy of existing legal regulations, and the procedural and institutional requirements necessary to ensure substantive justice, legal certainty, and individual rights protection. The analysis focuses on Indonesia's criminal justice framework while considering international restorative justice standards as comparative references. Rather than measuring empirical outcomes such as settlement rates, recidivism reduction, or litigation costs, this study evaluates normative effectiveness through legal legitimacy, procedural fairness, proportionality, institutional accountability, and enforceability of restorative agreements. The study contributes to criminal law scholarship by developing an integrated normative framework for assessing the conditions under which criminal mediation can operate as a legally justified alternative or complementary mechanism without compromising criminal accountability, due process, or public interests.

2. METHODS

This study employs a normative juridical research method with a qualitative approach to examine the effectiveness of criminal mediation as an alternative dispute resolution mechanism within the criminal justice system. The research integrates statutory, conceptual, and comparative approaches to evaluate the legal legitimacy, regulatory coherence, and implementation of restorative justice. The statutory approach examines Indonesian legal instruments, including Law Number 1 of 2023 concerning the Criminal Code, Law Number 20 of 2025 concerning the Criminal Procedure Code, Regulation of the Attorney General Number 15 of 2020, Regulation of the Indonesian National Police Number 8 of 2021, and Supreme Court Regulation Number 1 of 2024. The conceptual approach explores the principles of restorative justice, criminal responsibility, and procedural fairness, while the comparative approach considers international standards, particularly United Nations Economic and Social Council Resolution 2002/12 and Directive 2012/29/EU.

The research utilizes documentary data consisting of primary, secondary, and tertiary legal materials. Primary materials include legislation, institutional regulations, and relevant international legal instruments, while secondary materials comprise scholarly articles, academic books, and legal commentaries addressing criminal mediation and restorative justice. Tertiary materials, including legal dictionaries and encyclopedias, support conceptual clarification. Legal materials are collected through library research and documentary analysis, involving the identification, classification, and examination of relevant legal sources according to their authority, relevance, and relationship to the research objectives. Priority is given to authoritative legislation and official regulatory documents to ensure the reliability of legal interpretation.

The collected materials are analyzed using qualitative juridical analysis supported by grammatical, systematic, and teleological interpretation, combined with deductive legal reasoning. The effectiveness of criminal mediation is assessed through five normative

dimensions: legal legitimacy, procedural fairness, substantive justice, institutional accountability, and enforceability of mediation agreements. The analysis examines whether existing regulations provide adequate legal authority, voluntary participation, victim protection, offender accountability, and mechanisms for monitoring restorative obligations. Research validity is maintained through source verification, consistent legal interpretation, and comparison of relevant legal frameworks. As a normative legal study, the research does not involve interviews, surveys, or statistical measurements; therefore, its conclusions focus on the legal adequacy and institutional requirements of criminal mediation rather than empirically measured outcomes.

3. RESULTS AND DISCUSSION

3.1 The Normative Foundation of Criminal Mediation within the Criminal Justice System

The normative legal analysis demonstrates that criminal mediation represents a shift from predominantly punitive criminal justice toward a restorative approach emphasizing victim protection, offender accountability, and the restoration of harm. Unlike conventional criminal proceedings, which primarily focus on determining guilt and imposing sanctions, criminal mediation facilitates voluntary dialogue between victims and offenders to identify appropriate remedies, including restitution, compensation, and acknowledgment of wrongdoing. Its legitimacy depends on substantive justice, procedural fairness, proportionality, and legal certainty. United Nations Economic and Social Council Resolution 2002/12 reinforces these principles by emphasizing voluntary participation, procedural safeguards, and the integration of restorative mechanisms into formal criminal justice systems (United Nations Economic and Social Council, 2002).

The findings further indicate that criminal mediation must operate within established legal boundaries and cannot automatically eliminate criminal responsibility through private agreements. Its implementation requires clear institutional authority, appropriate eligibility criteria, judicial supervision, and protection of participants' rights. Moreover, reconciliation should not be treated as the sole indicator of effectiveness, as meaningful restoration may occur without forgiveness or personal reconciliation. Instead, effectiveness should be evaluated through fair procedures, proportional restorative obligations, and compliance with legal requirements. Therefore, criminal mediation constitutes a legitimate alternative or complementary mechanism for eligible criminal cases, provided that it preserves accountability, protects public interests, and addresses harm that conventional punishment may leave unresolved.

3.2 The Legal Framework Governing Criminal Mediation in Indonesia

The statutory analysis demonstrates that Indonesia has established a comprehensive legal framework for restorative justice across different stages of criminal proceedings. Law Number 1 of 2023 concerning the Criminal Code, effective January 2, 2026, incorporates restorative principles through Article 51, which emphasizes offender rehabilitation, conflict resolution, and social harmony, while Article 54 considers victim-related consequences and forgiveness in sentencing. Law Number 20 of 2025 concerning the Criminal Procedure Code further strengthens this framework by expressly regulating restorative justice at the preliminary inquiry, investigation, prosecution, and trial stages. Article 79 governs restorative agreements, compensation, restitution, and compliance requirements, while Articles 80–82 establish eligibility criteria, voluntary participation, procedural safeguards, and exclusions for certain offenses, including terrorism, corruption, sexual violence, and offenses against life. These provisions strengthen the legal legitimacy of criminal mediation while maintaining judicial oversight and criminal accountability.

At the institutional level, Regulation of the Indonesian National Police Number 8 of 2021 provides guidance for restorative justice during police procedures, while Regulation of the Attorney General Number 15 of 2020 regulates the termination of prosecution based on restorative principles. Supreme Court Regulation Number 1 of 2024 further establishes judicial guidelines emphasizing victim protection, offender accountability, voluntary participation, and procedural transparency without automatically eliminating criminal responsibility. Although these regulations demonstrate Indonesia's commitment to restorative criminal justice, their implementation requires harmonization with Law Number 20 of 2025 to prevent inconsistencies in eligibility requirements, institutional authority, and the legal consequences of mediation agreements. Therefore, the effectiveness of criminal mediation depends on regulatory coherence, coordinated institutional procedures, clear legal standards, and consistent protection of the rights of victims and offenders.

3.3 The Effectiveness of Criminal Mediation in Achieving Substantive Justice

The analysis demonstrates that criminal mediation has significant potential to promote substantive justice by addressing victims' needs and encouraging offender accountability beyond conventional punishment. Through restorative mechanisms, victims can participate in determining appropriate remedies, including compensation, restitution, property recovery, and reimbursement of treatment expenses, as recognized under Article 79 of Indonesia's Criminal Procedure Code. However, substantive justice cannot be measured solely through financial settlements or reconciliation, as victims may have different expectations and experience varying forms of harm. Effective mediation must therefore ensure voluntary participation, meaningful restoration, and appropriate restorative obligations that reflect victims' circumstances while protecting their fundamental rights.

Offender accountability and proportionality are equally essential to achieving substantive justice through criminal mediation. Offenders must acknowledge the consequences of their conduct and fulfill reasonable restorative obligations without coercion or violations of the presumption of innocence. Restorative agreements should correspond to the seriousness of the offense, the extent of harm, and the legitimate interests of society. Moreover, Article 82 of Indonesia's Criminal Procedure Code excludes certain offenses, including corruption, terrorism, and offenses against life, from restorative resolution to protect broader public interests. Accordingly, the effectiveness of criminal mediation depends on legally permissible procedures, proportional agreements, enforceable obligations, and adequate safeguards rather than merely achieving settlements. These conditions ensure that restorative justice complements criminal accountability without compromising legal certainty or public protection.

3.4 Procedural Fairness and the Protection of Victims' and Offenders' Rights

Procedural fairness is fundamental to the legitimacy of criminal mediation, particularly when participants face unequal bargaining power, financial resources, or legal knowledge. Voluntary participation, informed consent, impartial facilitation, and protection against coercion are essential safeguards. Article 12 of Directive 2012/29/EU emphasizes victim protection, confidentiality, and voluntary agreements [9]. These principles also require protection against secondary victimization while preserving suspects' rights, including the presumption of innocence and access to legal assistance.

In Indonesia, Article 81 of Law Number 20 of 2025 prohibits coercion, intimidation, deception, and violence, while Supreme Court Regulation Number 1 of 2024 restricts mediation involving involuntary participation or prohibited power relationships. However, inconsistent judicial interpretations, limited enforcement, and

persistent retributive approaches may undermine restorative objectives [6], [7], [8]. Therefore, effective criminal mediation requires transparent procedures, independent facilitation, institutional supervision, and consistent protection of individual rights to ensure substantive justice.

3.5 Institutional Effectiveness and the Integration of Criminal Mediation into Criminal Proceedings

The institutional effectiveness of criminal mediation depends on clear legal authority, coordinated procedures, and accountability among police, prosecutors, and courts. Law Number 20 of 2025 recognizes restorative justice at different stages of criminal proceedings, while Regulation of the Attorney General Number 15 of 2020 and Supreme Court Regulation Number 1 of 2024 provide institutional guidance for prosecution and judicial processes. However, differences in eligibility criteria, procedural authority, and legal consequences require regulatory harmonization to ensure consistency with the new Criminal Procedure Code. Article 79 further emphasizes the documentation and monitoring of restorative agreements to ensure compliance and legal certainty. Therefore, effective criminal mediation requires institutional coordination, professional competence, transparent decision-making, and adequate supervision to protect participants' rights while maintaining criminal accountability.

3.6 Legal and Practical Challenges Affecting the Effectiveness of Criminal Mediation

The analysis identifies several challenges affecting the effectiveness of criminal mediation, including regulatory fragmentation, unequal bargaining power, economic disparities, limited institutional capacity, and uncertainty regarding the enforcement of restorative agreements. Law Number 20 of 2025 establishes eligibility requirements and exclusions under Articles 80 and 82, while Article 79 regulates agreement implementation and compliance. However, inconsistent institutional procedures, coercion, and financial inequality may undermine procedural fairness and substantive justice. Furthermore, mediation involving vulnerable victims requires safeguards against intimidation and secondary victimization, as emphasized in Supreme Court Regulation Number 1 of 2024. Institutional discretion must also be supported by transparent criteria, professional competence, and effective supervision. Therefore, the effectiveness of criminal mediation should be evaluated through regulatory consistency, voluntary participation, proportional agreements, enforceability, and meaningful victim restoration rather than settlement rates or administrative efficiency alone.

3.7 Comparative Legal Perspectives on Criminal Mediation and Restorative Justice

Comparative legal analysis demonstrates that international restorative justice standards provide important guidance for strengthening criminal mediation in Indonesia. United Nations Economic and Social Council Resolution 2002/12 emphasizes voluntary participation, procedural safeguards, institutional coordination, and offender accountability. Similarly, Article 12 of Directive 2012/29/EU prioritizes victim protection, informed consent, confidentiality, and safety in restorative processes (European Parliament and Council, 2012). Indonesia has incorporated restorative principles through Law Number 20 of 2025 and Supreme Court Regulation Number 1 of 2024. However, effective implementation requires regulatory harmonization, impartial facilitation, professional competence, and consistent institutional supervision to ensure that restorative agreements protect individual rights and comply with criminal law.

The findings indicate that criminal mediation can promote victim restoration and offender accountability when supported by a coherent legal and institutional framework. Its normative effectiveness depends on five interconnected dimensions: legal legitimacy, procedural fairness, substantive justice,

institutional accountability, and enforceability of agreements. Strengthening these dimensions requires clear eligibility criteria, voluntary participation, proportional restorative obligations, transparent decision-making, and effective compliance monitoring. Criminal mediation should therefore function as a legally regulated alternative or complementary mechanism rather than a universal replacement for conventional criminal proceedings. Further institutional reform and evaluation are necessary to ensure that restorative justice promotes meaningful resolution while preserving legal certainty, criminal accountability, and public interests.

4. CONCLUSION

This study concludes that criminal mediation constitutes a legally relevant alternative dispute resolution mechanism capable of supporting restorative justice, victim protection, and offender accountability within the criminal justice system. Its normative effectiveness depends on legal legitimacy, procedural fairness, substantive justice, institutional accountability, and the enforceability of restorative agreements. Indonesia has strengthened its legal foundation through Law Number 1 of 2023 concerning the Criminal Code, Law Number 20 of 2025 concerning the Criminal Procedure Code, and institutional regulations governing restorative justice. Nevertheless, regulatory inconsistencies, unequal bargaining power, and limitations in procedural supervision may restrict effective implementation. Therefore, criminal mediation should be applied selectively to legally eligible cases through voluntary participation, proportional restorative obligations, and transparent institutional procedures. Strengthening regulatory harmonization, professional competence, and compliance monitoring is essential to ensuring that mediation promotes meaningful victim restoration without undermining criminal responsibility or public interests. Since this research employs a normative juridical approach, its findings concern legal and institutional adequacy rather than empirically measured effectiveness. Future research should examine practical implementation, participant experiences, and compliance with restorative agreements to provide further evidence of criminal mediation's effectiveness.

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