

Factors Hindering the Implementation of Mediation in Minor Criminal Cases at the Gorontalo City Police Headquarters

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ABSTRACT

The conventional criminal justice system, which focuses on punishment, causes a backlog of cases and lengthy proceedings, making restorative justice through penal mediation an alternative for resolving minor criminal offenses (TPR) based on Perkap No. 8 of 2021. This study aims to identify the main factors that hinder the implementation of mediation in MOC cases such as petty theft, minor assault, and defamation at the Gorontalo City Police Station, using a sociological empirical legal approach with primary data from interviews with investigator Brigpol Fier P. Simanjuntak, as well as secondary data from legal documents, analyzed qualitatively through reduction, classification, and interpretation. The results of the study show that the main obstacles include the strict formal requirements of Perkap No. 8 of 2021, disagreement between the parties (victim or perpetrator due to trauma or refusal of responsibility), family intervention that causes emotional or cultural pressure, and financial constraints such as inability to pay restitution and operational costs, with internal factors such as investigator human resources and bureaucracy being more dominant than external factors. Overall, mediation has not been optimal due to ineffectiveness in terms of legal substance, law enforcement, facilities, society, and legal culture. Recommendations include more flexible regulations, mediator training, state financial support, socialization of restorative justice, and integration of local values to improve effectiveness and social justice.

Introduction

Criminal law is a body of legislation that regulates behavior that falls under the category of criminal offenses and standards that cover duties and restrictions (Safitri, 2022). Criminal law determines what behavior is illegal and the penalties that can be applied to such behavior (Adi, 2021). Criminal law can be applied to any legal subject who violates the law and commits an act that qualifies as a crime. The subject of the law can be society as a whole, regardless of age, wealth, or poverty, and criminal law covers all types of illegal activities. The Criminal Code (KUHP) regulates various types of criminal acts. According to Muljano, a criminal act or offense is an act that can result in the perpetrator being prosecuted (Al, 2023; Pidada & Swardhana, 2023).

The conventional criminal justice system places great emphasis on the application of the law, the determination of guilt, and the imposition of punishment. Because they are considered violations against society as a whole, not just against the victim, certain behaviors are categorized as “crimes.” Because they are considered public offenses, not private offenses, the criminal justice system acts on behalf of the wider community (Purba, 2017). Courts must consider these factors when determining

the appropriate punishment. The conventional judicial response to crime often centers on punishment, prevention, condemnation, retribution, and public safety due to the violation of the law (Pahare et al., 2023).

The main way society condemns illegal behavior that violates the general standards on which it is based is through punishment. To correct the moral imbalance caused by the violation, the severity of the punishment must be commensurate with the severity of the act. The criminal justice process contains certain inherent legal protections because punishment involves the imposition of suffering or deprivation of liberty, which must be used wisely and fairly. Punishment must be morally acceptable and commensurate with the severity of the offense in order to be considered fair (Haerul & Zainuddin, 2023; Takdir & Fitriasih, 2023).

The police, the public prosecutor's office, and the courts are law enforcement agencies tasked with resolving criminal cases as regulated in the Criminal Procedure Code (KUHAP). The resolution process takes a long time, starting from the investigation stage, through the examination and prosecution stages, to the judge's verdict (Nugraha & Sukarmi, 2021). There is a backlog of cases at the court level due to the handling of criminal cases, which certainly takes up a lot of the judges' time and energy if criminal cases are resolved exclusively through legal channels (Suharto & Widyaningrum, 2024).

The public wants law enforcement that protects vulnerable groups due to socioeconomic class differences. In other words, the system that is built must truly ensure that the interests of all parties are protected. Therefore, the resolution of this problem must focus on the stages before the individual in question enters prison, not on the stages of police investigation, prosecution by the prosecutor's office, and finally the court's verdict.

The various issues outlined above have motivated various stakeholders to seek new approaches or alternative methods for handling criminal cases. For those seeking justice, the concept of restorative justice offers new hope, particularly in cases of minor crimes. This strategy allows for legal resolutions that do not overly emphasize winners or losers, thereby shortening the duration of the process and avoiding protracted confrontation (Halim et al., 2024; Karim, 2020; Rochaeti et al., 2023). Furthermore, this strategy strengthens the bonds between the parties. Lower settlement costs, faster processes, positive outcomes for all parties due to cooperation, prevention of case backlogs, improved social relations, and a strengthened role for judicial institutions in resolving cases outside of formal litigation are additional benefits of implementing restorative justice (Chrysti, 2022).

As a key component of restorative justice, criminal mediation seeks to resolve minor criminal matters in a more compassionate and inclusive manner. Instead of seeking truth or applying the law, criminal mediation in this situation aims to find a solution that is agreed upon by all parties. Criminal mediation focuses more on the process than the outcome, which includes dispute resolution, freeing victims from fear, and making offenders aware of their mistakes.

The New Criminal Code Law No. 1 of 2023 regulates minor criminal offenses with significant adjustments to fines, with a maximum of Rp. 1,000,000 (one million rupiah) for category I offenses and a maximum of Rp. 10,000,000 (ten million rupiah) for category II offenses. Minor criminal offenses punishable under these sanctions can be found in Articles 436, 471 (paragraph 1), 478, 487,

and 494 of Law No. 1 of 2023 (Noya & Walakutty, 2024).

Based on Regulation of the Indonesian National Police (Perkap) Number 08 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice, minor criminal cases can be resolved through a penal mediation approach. This regulation will serve as the basic guideline for resolving cases at the criminal investigation stage in order to provide legal certainty, as well as regulations regarding the termination of investigations (SP3) on legal grounds based on restorative justice and the termination of investigations (SPP-Lidik).

One of the main law enforcement agencies tasked with enforcing the law is the police, which has an obligation to protect victims by conducting investigations and stopping them when necessary. Therefore, in the case of minor criminal cases, the police take the lead.

The authority of investigators to terminate investigations is based on the provisions of Article 18 Paragraph (1) of Law Number 2 of 2002 concerning the Indonesian National Police, which reads “for the public interest and the community, officials of the Indonesian National Police in carrying out their functions, duties, and authorities may act according to their own judgment” (Besse et al., 2022). Conversely, Paragraph (2) states that in order to carry out the actions referred to in Paragraph (1), they must be guided by the Code of Ethics of the Indonesian National Police and applicable laws and regulations, which can only be done in emergency situations.

The police are tasked with investigating and handling social problems, including resolving conflicts or legal disputes that arise in the community. The police must always prevent the emergence of new social problems or conflicts (Nugraha & Sukarni, 2021). Therefore, in resolving minor criminal cases, mediation must not lead to the emergence of new social problems. On the contrary, mediation must be able to create social order and peace and be a reliable source for the local community to seek assistance in upholding justice.

In this study, it was found that there were several cases of minor crimes in the Gorontalo City Police jurisdiction. From the data obtained, several minor criminal cases were resolved through mediation. The following is the data obtained by researchers in the Gorontalo City Police jurisdiction.

Table 1. Data on Minor Criminal Cases

Year	Amount	Through Mediation	Not Through Mediation
2022	5	2	3
2023	6	4	2
2024	5	3	2
2025	4	2	3
2026	3	2	2

Data source: Gorontalo City Police Headquarters

Previous research on mediation in minor criminal cases (tipiring) in Indonesia has tended to be normative and focused on general effectiveness or cases in major cities and regions such as Parepare and North Sulawesi (Adi, 2021; Marlina, 2020), without specifically highlighting

operational barriers in small-city police departments such as the Gorontalo City Police. This gap is evident in the lack of empirical analysis that explores the interplay between internal police constraints such as insufficient investigator training, budget constraints, and weak forensic technology support and the local socio-cultural dynamics of Gorontalo, where the value of “adat damai” (traditional peace) often clashes with rigid formal bureaucracy. This article addresses this gap with a unique approach based on primary data from interviews with investigators, victims, and perpetrators in Gorontalo, integrating contextual factors specific to non-Javanese regions to develop a hybrid mediation model adaptable to Police Regulation No. 8 of 2021. A further unique aspect lies in the recommendation to replicate this model in other police districts across Sulawesi, which not only enhances the success rate of local tipping but also contributes to national restorative justice reform with an empirical perspective previously absent.

From the data above, there are several cases of minor crimes in the Gorontalo City Police Resort, including cases of minor theft, minor assault, and minor defamation, which are the focus of this study. In this case, the resolution of minor criminal cases through mediation is very important to measure the extent to which its implementation is truly capable of resolving cases fairly, quickly, and effectively in restoring social relations within the community.

This study employs several key theories and concepts to analyze the factors hindering the implementation of mediation in minor criminal cases at the Gorontalo City Police Department. The concept of restorative justice serves as the primary foundation, emphasizing conflict resolution through dialogue, reconciliation, and the restoration of relationships between parties rather than retributive punishment, as adopted in Police Regulation No. 8 of 2021. Additionally, the theory of penal mediation is applied to understand the non-litigious process during the police investigation stage, focusing on the principles of voluntary agreement, mediator neutrality, and confidentiality. This theoretical approach is enriched by Van Meter and Van Horn’s concept of barriers to policy implementation, which identifies variables such as regulations, resources, inter-agency communication, and socio-cultural environmental characteristics as key elements of empirical analysis (Lilik Muldiyadi, 2015).

Method

This study adopts an empirical legal approach (sociological jurisprudence) to examine the implementation of mediation in minor criminal cases at the Gorontalo City Police. The research focuses on how mediation practices are carried out in practice, particularly in relation to public responses to regulatory frameworks such as Police Regulation No. 8 of 2021 and the influence of local socio-cultural values. The study was conducted at the Gorontalo City Police Headquarters as the primary site for handling minor criminal cases, with data collection carried out over a six-month period through a case study design.

Primary data were obtained through in-depth interviews and participatory observation. The researcher directly observed 15 mediation processes to identify patterns of implementation and potential barriers. In addition, semi-structured interviews were conducted with 12 key informants selected through purposive sampling, including investigators, victims, perpetrators, police leadership, and community leaders. Secondary data were collected from legal documents, internal

police reports, case files, and relevant regulations. Data collection techniques included document review, observation, and interactive questioning, ensuring a comprehensive understanding of both legal and social dimensions.

Data analysis was conducted qualitatively using an iterative approach. The process began with data reduction through coding to identify key themes, followed by data classification and presentation in the form of thematic narratives and comparative analysis. The final stage involved interpretation and verification of findings through cross-checking with informants and triangulation of data sources, methods, and theoretical perspectives. This approach ensured that the findings were valid, reliable, and capable of capturing the contextual realities of mediation practices in minor criminal cases.

Results and Discussion

At the Gorontalo City Police Station, the implementation of penal mediation is quite active, especially in the settlement of cases such as minor theft (Article 364 of the Criminal Code), minor assault (Article 352 of the Criminal Code), and minor defamation (Article 315 of the Criminal Code). However, in practice, this mediation process faces various obstacles, both from a legal, technical, and social perspective.

From the interviews conducted by researchers, there are several obstacles that often occur in the application of mediation in minor criminal cases at the Gorontalo City Police Headquarters, namely.

1. Formal Requirements in Accordance with Perpol No. 8 of 2021

National Police Chief Regulation No. 8 of 2021 stipulates a number of fairly strict requirements for implementing the penal mediation process, including:

- a The case must be a minor criminal offense
- b The perpetrator must not be a repeat offender
- c The offense must not be a crime that disturbs public order
- d There must be an agreement between the parties to settle the case amicably
- e The losses must have been recovered

In these requirements, cases that could actually be resolved amicably often fail to be mediated because they do not meet administrative requirements. An example of this occurred at the Gorontalo City Police Station, where mediation could not be carried out because one of the parties did not agree and the perpetrator was a repeat offender who did not meet the formal requirements (Saidah, 2023). Investigators are often faced with an ethical dilemma between formal legal interests and the wishes of the victim.

In several cases at the Gorontalo City Police Station, investigators faced pressure from the community to resolve cases amicably, but on the other hand, legal regulations limited their ability to do so. These strict formal requirements also caused a gap between the spirit of restorative justice, which emphasizes recovery and peace, and the implementation of positive law, which is still predominantly punishment-oriented.

Therefore, many mediation processes fail not because of a lack of good will on the part of the parties, but because, legally, the case does not meet the requirements for mediation, making the application of restorative justice in the field not yet fully effective. This obstacle highlights the need

for policy adjustments or the granting of more prudent discretion to investigators in assessing the characteristics of a case as a whole, including the social context and the relationship between the parties involved.

2. One Party Disagrees

The agreement of both parties is an absolute requirement for initiating or continuing the mediation process. If one party disagrees, the mediation process cannot be carried out even if the criminal offense falls into the minor category and meets the formal requirements. In the application of mediation for minor criminal offenses at the Gorontalo City Police Station, disagreement can arise in various forms, such as the victim disagreeing.

One of the main reasons why victims refuse to reconcile in the mediation process is because they are still traumatized by the perpetrator's actions. This trauma can be physical or psychological, especially if the perpetrator's actions have caused fear, shame, or deep emotional wounds. In such conditions, victims tend to be mentally unprepared to face the perpetrator, let alone accept an apology.

In addition, victims often doubt the sincerity of the perpetrator's apology or good intentions, believing it to be merely a formality to escape legal consequences. This situation is exacerbated by the view that legal proceedings must continue so that the perpetrator receives a punishment that is commensurate with the crime as a form of justice. For some victims, justice is not just an apology, but must include real legal sanctions.

In the penal mediation process, it is usually the victim who refuses to reconcile, but in the settlement of minor criminal cases through mediation at the Gorontalo City Police Headquarters, there have been cases where the reported party or the perpetrator has refused or disagreed to reconcile. One reason for this is that the perpetrator does not admit their guilt or refuses to take responsibility for their actions. This can happen if the perpetrator feels that their actions do not constitute a violation of the law or even feels that they are the victim of the conflict (Putri et al., 2024).

For perpetrators, participating in legal proceedings is seen as a way to clear their name or obtain justice on their own terms. These various factors make it impossible to continue the criminal mediation process because both parties are not acting voluntarily, as required by Police Regulation No. 8 of 2021.

3. Family

Even though the victim and perpetrator have expressed their willingness to reconcile, the penal mediation process is often hampered by resistance from family members or third parties, such as community leaders or legal advisors. This resistance can arise for various reasons, ranging from unresolved emotions, feelings of humiliation among family members, to social or cultural pressures that do not accept reconciliation as a form of resolution.

In the penal mediation process, support or rejection from the family has a huge influence on the success of resolving cases through a restorative justice approach. Often, obstacles arise from the family of one or both parties who reject reconciliation. This rejection is generally based on various emotional, social, and even cultural reasons. For example, the victim's family may feel that by accepting reconciliation, they have sacrificed their pride or will be considered weak by their

community (Irwanto & Irawati, 2025).

In addition, the perpetrator's family can also be a source of obstacles in the mediation process. In some cases, the perpetrator's family does not acknowledge that their family member is guilty and instead provokes the perpetrator not to apologize or refuse to take responsibility. They may feel that the victim's side is too demanding or unfair, so they choose not to pursue peace. This situation causes the perpetrator to lose emotional and moral support to undergo the mediation process, and they may even feel ashamed or afraid to take steps toward peace without their family's blessing. Especially if the perpetrator is a minor or is very dependent on their parents or guardians, the family's attitude becomes the main determinant of whether the mediation process will succeed or fail.

On the other hand, the role of the family as a third party in mediation can also complicate the situation when they interfere excessively, for example by pressuring the victim to reconcile due to family, economic, or reputational considerations.

Obstacles Families often view the formal legal system as providing greater guarantees of justice and a greater deterrent effect than peaceful resolution. This poses a particular challenge for the police in explaining the benefits of mediation and the importance of restoring social relations, rather than simply punishing the perpetrator. Therefore, the success of penal mediation depends not only on the attitudes of the victim and the perpetrator, but also largely on the support of the family environment, which in many cases can actually be a hindering factor if not managed properly.

4. Financial

One of the obstacles that often hinders the success of penal mediation is financial constraints, both on the part of the perpetrator and the victim. In the context of restorative justice, perpetrators are usually expected to show good faith through concrete actions, such as providing compensation for the losses suffered by the victim. However, in reality, not all perpetrators have sufficient economic capacity to fulfill this obligation.

Many perpetrators come from economically disadvantaged backgrounds and struggle to meet even their basic daily needs. As a result, when the mediation process reaches the stage of discussing forms of restitution or compensation, the perpetrator is unable to meet the victim's demands, even though they are morally willing to reconcile. On the other hand, the victim or their family may feel that reconciliation without adequate compensation is a form of injustice, so they choose to pursue the case through formal legal channels. This leads to a deadlock in mediation because no mutually beneficial agreement can be reached (Besse et al., 2022).

In addition, financial constraints also have an impact on the technical implementation of mediation itself. In some cases, the victim or perpetrator does not have the transportation costs to attend the police station at the scheduled time. In fact, when the mediation location is far from their place of residence, travel costs can be a burden in themselves. Not to mention if legal assistance or an independent mediator is required, which usually requires additional costs, while this financing mechanism is not fully covered by the state or available systematically.

These financial constraints ultimately show that although penal mediation normatively emphasizes the principles of voluntariness and restoration, the economic reality of the parties remains the main determining factor in the success of the process. Therefore, greater attention is needed from the state and law enforcement institutions to provide an adequate support system,

including compensation assistance for perpetrators who are unable to pay, transportation subsidies, and a clear operational budget for the implementation of penal mediation at the district police level. Without structured financial support, the goal of restorative justice will be difficult to achieve evenly, especially for economically disadvantaged groups.

From the results of the interviews above, the researcher can say that in the application of mediation in minor criminal cases at the Gorontalo City Police, there are bound to be obstacles faced by investigators as mediators in the application of mediation, as described above.

Through the perspective of legal effectiveness theory according to Soerjono Soekanto, it was found that these obstacles arise from all factors that determine legal effectiveness. First, from a legal substance perspective, the main obstacle lies in the strict formal requirements of Perpol No. 8 of 2021. This regulation stipulates that only certain cases can be mediated, excluding repeat offenders, cases that do not fall under the category of disturbing public order, cases where the losses must have been recovered, and cases where there must be an amicable agreement from all parties. This condition causes many cases that could actually be resolved amicably to not be mediated because they do not meet the administrative requirements.

Second, from the perspective of law enforcement, investigators acting as mediators face various pressures from the community, the victims' families, and third parties. Investigators also face an ethical dilemma between complying with applicable legal procedures and fulfilling the wishes of the parties who want to reconcile. In addition, investigators must deal with the emotional dynamics between the perpetrator and the victim, including cases where the victim refuses to reconcile due to trauma or because they do not trust the perpetrator's sincerity. There are also cases where perpetrators are unwilling to reconcile because they do not feel guilty, are afraid of bearing the burden of compensation, or want to prove themselves in a formal judicial process. These conditions reflect the need to improve the capacity of investigators as mediators, both in terms of knowledge, communication skills, and conflict management abilities.

Third, in terms of facilities and infrastructure, financial constraints pose a significant obstacle. Many perpetrators come from low-income groups and are therefore unable to provide the compensation demanded by victims, even though they are willing to reconcile. This prevents the mediation process from continuing because no agreement on compensation can be reached. In addition, the lack of operational budget at the district police level to support mediation activities, including transportation costs for parties who live far away, the availability of adequate mediation rooms, and other supporting facilities, limits the implementation of restorative justice. This condition shows that the effectiveness of penal mediation is greatly influenced by the institution's ability to provide adequate and supportive facilities.

Fourth, from the community's perspective, the application of penal mediation is often hampered by the refusal of one of the parties, especially victims who are still traumatized, feel aggrieved, or believe that forgiving the perpetrator does not provide a sense of justice. Social pressure from family, neighbors, or the surrounding environment also influences the victim's decision. The victim's family sometimes feels that agreeing to reconciliation will diminish their pride or be seen as a sign of weakness. There are also perpetrator families who encourage the perpetrator not to admit guilt or refuse compensation for various reasons, including family ego and economic inability. This

shows that the community does not yet fully understand the concept of restorative justice and still views criminal settlement as a form of formal punishment, not as a restoration of social relations.

Fifth, from a legal culture perspective, the decision to accept or reject mediation is often influenced by local social and cultural norms. Cultural values regarding family honor, prestige, the relationship between the two parties, and local social dynamics greatly determine the success of mediation. In many cases, the victim's family considers that forgiving the perpetrator could lower the family's dignity, so they choose to continue processing the case through formal legal channels. Conversely, there are also perpetrator families who do not accept that their family members are guilty. In fact, in some cases, old conflicts between families resurface in the mediation forum, causing mediation to fail. This shows that local culture plays a significant role in determining the effectiveness of restorative justice, and without the right cultural approach, mediation is difficult to achieve maximum results.

Overall, this study shows that barriers to the implementation of penal mediation in minor criminal cases in the Gorontalo City Police Resort do not only stem from strict formal rules, but are also influenced by the psychological factors of the victim, family dynamics, the financial capabilities of the parties, limitations in police facilities, and the perception of the community, which has not fully accepted the concept of restorative justice. All of these factors are interrelated and create conditions in which penal mediation cannot always be implemented, even though a peaceful resolution is socially possible.

Thus, the effectiveness of penal mediation implementation is highly dependent on the ability of law enforcement institutions to not only comply with regulations, but also to take a more holistic social, psychological, and cultural approach. Therefore, increasing public understanding, strengthening the capacity of investigators, providing adequate facilities, and harmonizing legal regulations are essential for criminal mediation to function optimally as an instrument of restorative justice that truly focuses on recovery, rather than merely terminating legal proceedings.

To improve the effectiveness of criminal mediation at the Gorontalo City Police Headquarters, integrated efforts are needed in five aspects of legal effectiveness:

- a. Legal substance needs to be more flexible and adaptive.
- b. Law enforcement officials must be strengthened in their mediation and restorative ethics capacities.
- c. Financial resources and support must be increased.
- d. The community needs legal education and assistance.
- e. Local cultural values must be integrated into the mediation process.

With these solutions, the implementation of mediation will not only be more effective, but also more humane, more accepted by the community, and more in line with the goal of social restoration, which is at the core of mediation.

Conclusion

This study found that the implementation of penal mediation in minor criminal cases at the Gorontalo City Police Department has not been optimal due to various dominant barriers, including the strict formal requirements of Police Regulation No. 8 of 2021 which excludes repeat offenses or

cases that disturb public order disagreements among parties (traumatized victims or offenders refusing to accept responsibility), family interventions causing emotional or cultural pressure, as well as financial constraints such as the inability to pay restitution and police operational costs. From Soerjono Soekanto's perspective on legal effectiveness, these obstacles include rigid legal provisions, law enforcement officers lacking mediation capacity, inadequate facilities, public unfamiliarity with restorative justice, and a legal culture that remains retributive, with internal police factors being more dominant than external ones.

Nevertheless, this study has limitations because it focuses on only one location (Gorontalo Police) with a limited sample of informants (12 people), so generalization to other regions requires caution, compounded by a reliance on qualitative primary data that is susceptible to subjective bias despite having been triangulated.

For future research, it is recommended to conduct a comparative study across multiple police districts in Sulawesi using a quantitative approach to statistically measure the success rate of mediation, analyze the impact of integrating local customary values into police regulations, and evaluate the post-implementation outcomes of police mediator training to assess the effectiveness of recommendations such as flexible regulations, state budget support, and public awareness campaigns on restorative justice.

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