

Criminal Mediation in the Settlement of Unlicensed Small-Scale Mining Crimes in the Jurisdiction of the East Java Regional Police

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Abstract

This study aims to analyze the effectiveness of the penal mediation approach in resolving illegal mining crimes (PETI) in the jurisdiction of the East Java Regional Police, which has been dominated by a repressive approach and has caused complex social, economic, and ecological problems. The repressive approach has failed to address the root causes of the problem, and PETI is often carried out by economically vulnerable groups due to an inclusive bureaucracy. The research method employed is a sociological-legal approach, combining normative analysis of legal regulations (das sollen) with empirical studies of law enforcement practices in the field (das sein). The research findings indicate that criminal mediation has gained legal legitimacy through various regulations, including the 2023 National Criminal Code, Police Regulation No. 8 of 2021, and Regulation No. 15 of 2020. In East Java, 393 PETI cases were resolved using this approach during 2023–2024, preventing 1,650 offenders from conventional litigation and saving law enforcement budgets. This approach reflects the renewal of Indonesian criminal law, which not only punishes but also restores and empowers. This study provides empirical evidence on the application of panel mediation in environmental criminal cases, an area rarely explored in previous research.

Keywords: Criminal Mediation; Illegal Mining; Restorative Justice

1. INTRODUCTION

The management of the mining sector in Indonesia still faces various problems, particularly related to the rampant practice of illegal mining (PETI) carried out by individuals or business entities without official permits.¹ In legislation, PETI is categorized as a criminal offense. This phenomenon is closely tied to the complexity of mining permit procedures, which include administrative, technical, and financial requirements that are difficult for small communities to meet, thereby pushing businesses to opt for illegal, easier, and cheaper methods.² Additionally, regulatory changes through Law No. 2 of 2025, which amended Law No. 4 of 2009 on Mineral and Coal Mining, strengthened the centralization of the central government's authority in mining licensing and supervision.

Local governments no longer play a significant role in regulating mining areas. This policy is based on Article 33(2) of the 1945 Constitution, which states that natural resources are controlled by the state for the prosperity of the people. While the aim of centralization is to enhance the effectiveness of resource management, its negative impacts are beginning to be felt, particularly

¹ Prapti Rahayu Faisal, "Criminal Objectives of the Mineral Law in the Perspective of the Criminalization Policy," *Bina Hukum Lingkungan* 5, no. 2 (2021): 287–303, <https://doi.org/http://dx.doi.org/10.24970/bhl.v5i2.189>.

² Faidatul Hikmah Armitran Firsantara, "Analysis of the Urgency of Establishing a Community Mining Area to Address Illegal Tin Mining in the Sea and Coastal Areas of Bangka Belitung," *Progresif: Journal of Law* XIII, no. 1 (2023): 82–99, <https://doi.org/https://doi.org/10.33019/progresif.v18i1.5061>.

among small communities that rely on small-scale mining as a livelihood.³ The loss of local government roles has made it difficult for communities to access legal permits and has weakened direct oversight of local mining activities.⁴ This situation has fueled the resurgence of illegal mining practices as a response to the unresponsive centralized permitting system.⁵ Therefore, a more humane, inclusive, and adaptive legal and policy approach is needed to address the socio-economic conditions of local communities to ensure that natural resource management is carried out fairly, legally, and sustainably.

With the enactment of Law No. 1 of 2023 on the Criminal Code (KUHP Nasional), which came into effect on January 1, 2023, Indonesia's criminal justice system has explicitly adopted the penal mediation approach as an integral part of the implementation of the concept of restorative justice. Article 51(c) of the National Criminal Code states that punishment is not solely aimed at retaliation for criminal acts, but rather at resolving the conflicts caused, restoring social balance, and creating a sense of security and peace in society. This provision marks a paradigm shift from a retributive approach to one oriented toward restoration and reconciliation.

In the context of resolving cases of illegal mining, the conventional judicial process, from the investigation stage, prosecution, transfer of case files (P-21), to trial, often requires a lengthy timeframe and significant costs.⁶ This contradicts the principles of a simple, swift, and cost-effective judicial process as envisioned in the national legal system. Therefore, the application of restorative justice through penal mediation mechanisms is a relevant and progressive alternative in resolving PETI criminal cases, as it prioritizes efficiency, legal certainty, and fair resolution for all parties. Legal legitimacy for this approach has also been provided through Regulation of the Attorney General of the Republic of Indonesia No. 15 of 2020 on the Termination of Prosecution Based on Restorative Justice. This regulation grants prosecutors the authority to terminate prosecution if a peace agreement has been reached between the perpetrator and the victim, while still considering legal interests and public justice.

However, this regulation also imposes clear limitations, namely that restorative justice cannot be reduced to mere formalities of a peace agreement. The criminal mediation process must be able

³ Muhamad Azha Hasan Al-Banna, F. C. Susila Adiyanta, "Implementation of Oversight of Mineral Commodity Mining Operations by the Energy and Mineral Resources the Province of Central Java," *Diponegoro Law Journal* 12, no. 3 (2023): 1–18, <https://doi.org/https://doi.org/10.14710/dlj.2023.40866>.

⁴ Derita Prapti Rahayu and Faisal Faisal, "The Existence of Small-Scale Mining After the Implementation of Amendments to the Law on Mineral and Coal Mining," *Indonesian Journal of Legal Development* 3, no. 3 (2021): 337–53, <https://doi.org/10.14710/jphi.v3i3.337-353>.

⁵ Wahyudi Umar Huzaiman, "Illegal Mining from the Perspective of Law Enforcement in the Southeast Sulawesi Regional Police," *Al-Ahkam Journal of Islamic Criminal Law* 7, no. 1 (2025): 89–99, <https://doi.org/https://doi.org/10.47435/al-ahkam.v7i1.3629>.

⁶ Safitri Wikan N S, "Criminal Law Enforcement Based on Sustainable Ecological Development with Plea Bargaining for Mining Land Destruction Crimes in South Kalimantan," *De Lega Lata: Journal of Law* 6, no. 1 (2021): 50–64, <https://doi.org/https://doi.org/10.30596/dll.v6i1.4659>.

to uncover material truth and ensure the substantive restoration of victims' rights.⁷ This differs from the provisions of Article 85(2) of Law No. 32 of 2009 on Environmental Protection and Management (UUPPLH), which explicitly states that out-of-court dispute resolution does not apply to environmental criminal cases. This prohibition is not found in Law No. 3 of 2020 on Mineral and Coal Mining (UU Minerba), which does not explicitly preclude the resolution of PETI cases through alternative dispute resolution mechanisms outside the formal criminal court system. Therefore, by implication, the resolution of PETI cases through criminal mediation is legally permissible. Criminal mediation, as a form of alternative dispute resolution in criminal law, plays a strategic role in promoting reconciliation between perpetrators and victims, repairing the harm caused by criminal acts, and strengthening social integration.

In the literature review on penal mediation in the resolution of illegal mining cases (PETI), there are three studies that serve as the main references in the comparative analysis. First, the study by Ranggalawe (2023) raises the issue of the dilemma of law enforcement in cases of illegal mining that have been going on for generations. These activities have serious impacts on both the ecosystem and the quality of the environment due to the use of hazardous chemicals. This study proposes two approaches to address this issue: penal and non-penal. The penal approach includes the imposition of criminal sanctions in accordance with applicable laws and regulations. The non-penal approach emphasizes preventive and administrative measures through guidance, supervision, and control by the government over small-scale mining activities.⁸ Second, Putri's (2021) research reviews criminal law policies in the context of combating criminal acts in the mining sector. This study emphasizes the need for comprehensive and systemic criminal law policy formulation, taking into account elements such as the legal qualification of offenses, recidivism, corporate liability, and variations in types of crimes and actions. In addition, the researcher highlights the importance of reforming environmental criminal provisions in the Mining Law as a step to strengthen the legitimacy of law enforcement officials in imposing fair and environmentally conscious sanctions.⁹ Third, Larasati (2021) discusses the penal approach within the framework of criminal policy to combat illegal mining, particularly in the context of quarrying in Wonosobo Regency. The approach applied is repressive, i.e., implemented after the commission of a criminal act. The main focus of this approach is to deter perpetrators through formal law enforcement and punishment in accordance with applicable positive norms.¹⁰

⁷ Tendency Septiyo, Joko Setiyono, and Muchlas Rastra Samara, "Optimizing the Application of Criminal Mediation as an Alternative to Resolving Criminal Cases," *Journal of Legal Studies* 7, no. 2 (2020): 209–33, <https://doi.org/10.35586/jjur.v7i2.2122>.

⁸ Gocha Narcky Ranggalawe, Ino Susanti, and Kamal Fahmi, "The Dilemma of Law," *Marwah Hukum* 1, no. 1 (2023): 29–40, <https://doi.org/10.32502/mh.v1i1.5600>.

⁹ Alvika Fatmawati Dwi Putri and Mujiono Hafidh Prasetyo, "Criminal Law Policies in Combating Criminal Acts in the Mining," *Indonesian Journal* 3, no. 3 (2021): 312–24, <https://doi.org/10.14710/jphi.v3i3.312-324>.

¹⁰ Agung Budhi Larasati, Pujiyono Pujiyono, and Muhamad Azhar, "A Penal Approach Within the Framework of Criminal Policy to Combat Mining Crimes in the Wonosobo Region," *Indonesian Journal of Law Development* 3, no. 14710/jphi.v3i1.121-135.

The three studies have not provided an evaluative approach based on empirical data regarding the implementation of penal mediation as a restorative solution in PETI cases, specifically in the jurisdiction of the East Java Regional Police, which is the focus and novelty of this study. Previous studies using a penal approach have shown crucial weaknesses. Among other things, they tend to ignore the socio-economic realities of PETI perpetrators. Repressive measures through criminal courts often fail to address the root causes of the problem, such as limited access to legalization of mining land, restrictive licensing, and low legal literacy among the community. Furthermore, the criminalization of PETI perpetrators, most of whom come from economically disadvantaged groups, exacerbates poverty and may encourage recidivism. This study specifically analyzes the effectiveness of the penal mediation approach in resolving illegal mining crimes (PETI) and offers a new perspective through the application of restorative justice-based penal mediation in addressing illegal mining crimes.

2. METHOD

The type of research used in this study is sociological legal research, which is a methodological approach that combines normative legal aspects with social realities in society.¹¹ The sociological legal approach aims to describe and analyze in depth the practice of applying panel mediation in resolving cases of illegal mining (PETI) in the jurisdiction of the East Java Regional Police. This approach combines legal studies with field facts, referring to Attorney General Regulation No. 15 of 2020 and Police Regulation No. 8 of 2021 on restorative justice. The research locations were selected as Blitar, Malang, and Gresik Regencies due to the high level of PETI activities and the weak deterrent effect of law enforcement. The sample was determined using purposive sampling, involving the Criminal Investigation Unit (Kanit) and members of the Criminal Investigation Division (Reskrim) in the three regions. The research data consisted of primary data (semi-structured interviews with police officers) and secondary data (legal regulations, legal literature, journals, and official documents). The analysis was conducted using descriptive analytical methods to describe the facts on the ground and review them based on theory and applicable regulations.

3. RESULTS AND DISCUSSION

3.1 The Application of Panel Mediation in Resolving Illegal Mining Crimes

Illegal mining is a legal issue that is becoming increasingly complex in Indonesia. This phenomenon not only causes significant economic losses to the state and environmental damage but also contributes to increasing social tensions at the local level.¹² Therefore, the legal approach to illegal mining cannot be purely repressive but must be inclusive, fair, and consider

¹¹ Suteki and Galang Taufani, *Legal Research Methodology* (Depok: Rajawali Press, 2020). 215

¹² Wahyu Maizal, La Ode Husen, and Baharuddin Badaru, "The Effectiveness of Criminal Investigations into Mining Crimes in Luwu Timur District," *Journal of Lex Philosophy (JLP)* 5, no. 1 (2024): 200–213, <https://doi.org/https://pasca-umi.ac.id/index.php/jlp/article/view/1708>.

the social, economic, and ecological dimensions of the local community.¹³ Normatively, PETI is regulated under Law No. 4 of 2009 on Mineral and Coal Mining, as amended by Law No. 3 of 2020 and further strengthened by Law No. 6 of 2023 on Job Creation. Article 158 explicitly states that anyone engaged in mining activities without a permit shall be subject to criminal penalties, including imprisonment and fines. Furthermore, if PETI is carried out in forest areas, perpetrators may also be prosecuted under the provisions of Law No. 41 of 1999 on Forestry.

These provisions reflect the principle of legal protection for natural resources and future generations. Law enforcement against illegal mining is carried out through two main approaches: preventive and repressive.¹⁴ The preventive approach is carried out through education and supervision, while the repressive approach is carried out through investigation, inquiry, and prosecution mechanisms.¹⁵ However, in practice, law enforcement faces serious obstacles, such as a lack of law enforcement resources, weak coordination between institutions, and corrupt practices that undermine the integrity of the licensing and supervision system.¹⁶ In addition, social realities show that many PETI perpetrators come from economically disadvantaged backgrounds who lack access to formal employment and legal licensing mechanisms, which are essentially bureaucratic, expensive, and non-inclusive.

This situation is exacerbated by weak control at the local level, which is exploited by certain parties to carry out PETI operations systematically. The state, in this case, is considered to have not optimally carried out its regulatory and natural resource protection functions, as mandated by the constitution.¹⁷ The ecological impact of PETI practices cannot be ignored. These range from deforestation, soil and water pollution, biodiversity degradation, to natural disasters such as landslides. Socially, PETI triggers horizontal conflicts, increases crime, and deepens local economic inequality. The state also loses potential tax and royalty revenues due to unrecorded activities.¹⁸

From a criminal law perspective, the accountability of illegal mining perpetrators requires an analysis of *mens rea* (criminal intent) and *actus reus* (illegal act). Judges in adjudicating cases must consider factors such as environmental impact, economic gain, and the perpetrators' background. Punishment should be based on the principles of substantive justice, proportionality,

¹³ Dede Frastien Arie Elcaputera, "Ecocide Study of Coal Mining in Forest Areas in the Air Bengkulu River Basin Region," *Environmental Law Journal* 5, no. 1 (2020): 62–81, <https://doi.org/http://dx.doi.org/10.24970/bhl.v5i1.134>.

¹⁴ Widodo Saputra, "Enforcement of Law Against Illegal the Pasaman Barat Police District," *Unes Law Review* 7

¹⁵ Nirwan Junus Fence Wantu, Mohamad Hidayat Muhtar, Viorizza Suciani Putri, Mutia Cherawaty Thalib, "The Existence of Mediation as a Form of Environmental Dispute Resolution After the Enactment of the Job Creation Law," *Environmental Law Journal* 7, no. 2 (2023): 267–89, <https://doi.org/http://dx.doi.org/10.24970/bhl.v7i2.342>.

¹⁶ Lelisari Lelisari, Hamdi Hamdi, and Imawanto Imawanto, "The Decline of Corporate Social Responsibility Regulations in the Mineral and Coal Mining Sector," *Journal of Law and Justice Studies* 9, no. 2 (2021): 404–21, <https://doi.org/10.29303/ius.v9i2.907>.

¹⁷ Arief Rachman Hakim, Yulita Dwi Pratiwi, and Yuanita Putri Sugiastari, "A Legal Instrument New and Renewable," *Environmental Law Journal* 7, no. 1 (2022): 110–29, <https://doi.org/10.24970/bhl.v7i1.310>.

¹⁸ Herman Herman et al., "Enforcement of Law Against Mineral Mining Crimes in Forest Areas Without Permits," *Halu Oleo Legal Research* 4, no. 2 (2022): 261–75, <https://doi.org/https://doi.org/10.33772/holresch.v4i2.47>.

and deterrence, both generally and specifically.¹⁹ However, a purely retributive approach is insufficient. Adaptive alternative resolutions need to be designed, such as the application of restorative justice through penal mediation. This approach is considered more appropriate for minor cases, especially those involving perpetrators from vulnerable groups.²⁰ Through penal mediation, the legal process is directed toward restoring the victim's losses, rehabilitating the environment, and rehabilitating the perpetrator socially and morally. Penal mediation opens space for communities to actively participate in resolving mining conflicts and offers outcomes that are not only legal-formal but also social and ecological.²¹ In the context of PETI, especially illegal activities such as sand mining, penal mediation can be an alternative legal solution that bridges legal interests, social justice, and environmental preservation.

As an example of the application of criminal mediation in handling illegal mining (PETI), it has proven to play a strategic role in reducing the escalation of social conflicts that often arise due to forced enforcement actions, such as protests or refusals from the community. Based on practices in several regions, including Malang, Gresik, and Blitar districts, criminal mediation has proven effective in promoting peaceful resolution while accommodating the interests of miners and ensuring compliance with applicable legal provisions. This approach is a more humane alternative to repressive law enforcement. Rather than immediately imposing criminal or administrative sanctions, criminal mediation opens a dialogue between the government, law enforcement officials, mining companies, and community representatives. This dialogue serves as a participatory mechanism to find fair, proportional, and acceptable solutions for all parties.

In practice in Gresik and Blitar districts, the success of penal mediation is reflected in several stages, including: first, identifying the root causes of the problem, understanding the reasons why the community engages in illegal mining, which are generally due to economic constraints or lack of access to official permits. Second, providing alternative solutions, offering options for legalizing mining activities or viable alternative livelihoods, so that miners do not feel disadvantaged or treated unfairly. Third, the formulation of a mutual agreement, building commitment among the parties to comply with legal provisions without having to go through a confrontational process. This success demonstrates that conflict resolution through non-violent means is not only capable of preventing potential unrest but also fostering more sustainable legal compliance. Sociologically, communities tend to accept regulations more readily when they are involved in the formulation process, rather than when laws are imposed unilaterally without consultation. However, the effectiveness of penal mediation requires clear and operational policy support, including simplifying licensing procedures, providing assistance programs, and establishing mechanisms to monitor the implementation of agreements. Thus, penal mediation

¹⁹ Anastasia Esa Ananta, "Law Enforcement Against Perpetrators of IllegalSavana: *Indonesian Journal of Natural Resources and Environmental Law* 1, no. 1 (2024): 53–62, <https://doi.org/10.25134/savana.v1i01.35>.

²⁰ Dwiki Oktobrian et al., "Supervision of the Implementation of Penal Mediation Agreements in the Application of Restorative Justice at the Investigation Stage," *Litigasi* 24, no. 1 (2023): 14–39, <https://doi.org/10.23969/litigasi.v24i1.6208>.

²¹ Riani Widiyaswara Luil Maknun, "The Application of Criminal Mediation by Lawyers as a Concept of Restorative Justice," *Lex Librum: Journal of Law* 10

does not merely function as an instrument for dispute resolution but also as a preventive measure to minimize social unrest and strengthen legal certainty in the future.

Based on the above case, the panel mediation approach aligns with the principle of *ultimum remedium*, which prioritizes criminal sanctions as a last resort after non-criminal measures are deemed ineffective. This principle is also reflected in the General Explanation of the National Criminal Code (Law No. 1 of 2023), which emphasizes criminalization as the last resort in law enforcement. Thus, criminal mediation becomes a concrete manifestation of the application of *ultimum remedium* in the context of environmental and mining criminal law. Furthermore, penal mediation aligns with the restorative justice paradigm as regulated in the Indonesian Attorney General's Regulation No. 15 of 2020 on the Termination of Prosecution Based on Restorative Justice, as well as the Indonesian Police Regulation No. 8 of 2021 on the Handling of Criminal Offenses Based on Restorative Justice. This principle views the resolution of cases not solely as retributive justice, but also as the restoration of victims' losses, the improvement of social relations, and the reintegration of offenders into society.

This mechanism has essentially gained strong legitimacy from various national laws and regulations that support the approach of resolving criminal disputes through non-litigious channels within the framework of restorative justice. First, the principle of *ultimum remedium* in criminal law, particularly in environmental criminal law, emphasizes that the imposition of criminal penalties should be the last resort after various non-criminal measures have been considered proportionally. This principle indicates that a repressive approach should not be the sole solution in resolving cases, especially when more constructive alternatives such as panel mediation are available. Second, the legitimacy of panel mediation also stems from Law No. 32 of 2009 on Environmental Protection and Management (UUPPLH), which explicitly opens the door for the resolution of environmental disputes outside the court through non-litigious mechanisms, including mediation. This demonstrates normative recognition of alternative dispute resolution methods that are not solely adversarial in nature.

Third, Supreme Court Regulation (Perma) No. 2 of 2012 on the Adjustment of the Limits of Minor Offenses further strengthens the legal framework for the settlement of certain cases through mediation, including in cases of environmental violations that do not have a widespread impact. This reinforces that the judicial system has accommodated restorative forms of resolution for certain cases. Fourth, the Criminal Procedure Code (KUHAP), particularly Article 109, provides room for the public prosecutor to discontinue prosecution (SP3) if there is a peaceful agreement between the parties, which serves as the legal basis for the implementation of criminal mediation or panel mediation outside the court.

Fifth, the implementation of panel mediation also has normative basis in two technical regulations of law enforcement agencies, namely: Regulation of the Chief of the Indonesian National Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice; and Regulation of the Attorney General's Office of the Republic of Indonesia Number 15

of 2020 concerning Termination of Prosecution Based on Restorative Justice. These two regulations serve as the legal framework for the implementation of penal mediation by law enforcement agencies at the investigation and prosecution levels. Thus, the existence of panel mediation in the context of PETI crimes not only has a strong legal basis but also contains transformational value. Panel mediation does not merely serve as an alternative dispute resolution mechanism outside the litigation forum but as an integrative mechanism that unites legal aspects, environmental protection, social justice, and the economic empowerment of affected communities.

3.2 The Urgency of Using Panel Mediation in the Settlement of PETI Criminal Cases

Sociologically, the existence of illegal mining (PETI) in the jurisdiction of the East Java Regional Police has caused multidimensional social problems. In a number of areas, such as Blitar, Malang, and Gresik Regencies, PETI has become the main source of livelihood for some communities. This situation has led to high economic dependence on activities legally classified as criminal offenses under Article 158 of Law No. 3 of 2020 on Minerals and Coal. Therefore, the application of restorative justice-based criminal mediation is relevant to provide space for dialogue, reconciliation, and the restoration of social relations, while also reducing the potential for recidivism.

From an economic perspective, PETI causes significant losses to the state by eliminating potential revenue from taxes, fees, and royalties as stipulated in Article 128A of the Minerba Law. The provisions regarding the People's Mining Permit (IPR) as stipulated in Articles 86 to 103 of the Mining Law are intended to provide legal recognition for communities to manage mineral resources on a small scale in accordance with the law, thereby enhancing welfare. However, weak oversight and the complexity of licensing procedures have driven communities to opt for illegal channels, ultimately disrupting national mining governance. At the macro level, the existence of PETI hinders the optimization of the value added of minerals and coal to strengthen the national economic structure, contrary to the principles of sustainable mining management (sustainable development principle). Therefore, a balanced law enforcement policy that combines repressive measures with non-criminal approaches through criminal mediation can serve as a strategic tool to mitigate economic losses while integrating communities into legitimate licensing mechanisms.

Ecologically, PETI causes serious environmental damage. These activities result in changes to the landscape, soil fertility decline, threats to biodiversity, and water resource pollution, all of which are contrary to the principles of environmental protection and management. The absence of technical waste management obligations in PETI has led to the emergence of mine voids and acidic water pools that pollute river flows. Furthermore, exposed coal on the surface has the potential to spontaneously combust, which, on a large scale, can trigger forest fires. The obligations for reclamation and post-mining activities as stipulated in Article 96(c) and Article 99 of the Mining Law are often ignored, resulting in the failure to restore environmental

functions. Within the framework of Substantive Legal Principles, this indicates the weakness of deterrent effects and the need for more adaptive legal instruments, including the application of penal mediation with environmental restoration clauses as part of legally binding peace agreements.

The urgency of applying criminal mediation in the settlement of PETI criminal cases in Indonesia has complex and strategic dimensions. This is increasingly relevant given the limitations of the conventional criminal justice system in effectively, fairly, and fundamentally addressing the complexity of PETI cases.²² Normatively, PETI is a criminal offense as regulated in Law No. 3 of 2020 amending Law No. 4 of 2009 on Mineral and Coal Mining. However, in practice, a repressive approach through criminalization tends to target small-scale perpetrators from economically disadvantaged communities, while major actors such as mining magnates or financiers often escape legal accountability.²³

The panel mediation approach not only focuses on criminal punishment but also opens up space to resolve the root causes through environmental restoration, land conflict resolution, and community economic empowerment as a form of prevention against the recurrence of PETI.²⁴ Panel mediation enables legally binding agreements between perpetrators and relevant parties to immediately implement environmental rehabilitation efforts, such as reclamation, mercury cleanup, and reforestation, which can practically begin before a court decision is handed down. Additionally, many PETI perpetrators come from poor communities with no formal employment alternatives, making criminalization of them risk worsening the social and economic conditions of local communities.

Institutionally, the criminal justice system is currently under a heavy burden due to complex and technical PETI cases, but this does not have a significant impact overall.²⁵ Panel mediation has the potential to reduce the caseload in courts by focusing repressive law enforcement on major actors or organized crime networks, while small-scale perpetrators can be directed to community-based restorative mechanisms. From a restorative justice perspective, panel mediation is more in line with the principles of substantive justice because it takes into account the social, cultural, and economic context underlying the offense. This approach also allows for the active involvement of victims, both the state as the owner of natural resources and the affected communities, in the dispute resolution process, which is often neglected in the formal

²² Siti Aisah and Haryadi Haryadi, "Criminal Law Policy on Illegal Mining Causing Loss of Life According to Law No. 3 of 2020 on Mineral and Coal Mining," *PAMPAS: Journal of Criminal Law* 4, no. 3 (2023): 373–86, <https://doi.org/10.22437/pampas.v4i3.28672>.

²³ Darwance Dwi Haryadi, Ibrahim, "Ecocentric Tin Mining Governance in the Bangka Belitung Islands," *Bina Hukum Lingkungan* 8, no. 3 (2024): 235–57, <https://doi.org/https://doi.org/10.24970/bhl.v8i3.276>.

²⁴ Nuril Firdausiah, "Law Enforcement of Illegal Oil Drilling in Public Mining," *Constitution Journal* 1, no. 2 (2022): 107–20, <https://doi.org/10.35719/constitution.v1i2.18>.

²⁵ Andhika Pratistha, "Enforcement of Law Against Illegal Mining of ,," *Joppas: Journal of Public Policy and Administration* 6, no. 2 (2025): 95–105, <https://doi.org/https://doi.org/10.31539/joppas.v6i2.14241>.

criminal justice system.²⁶ However, the effectiveness of panel mediation is highly dependent on clear regulations, the professionalism and independence of mediators, and a strict monitoring system to ensure the implementation of agreements.

If not supported by a strong normative and institutional framework, panel mediation risks becoming a tool for impunity, especially for major actors seeking to avoid criminal responsibility. Therefore, panel mediation should not be viewed as a substitute for law enforcement, but rather as part of a comprehensive law enforcement strategy.²⁷ Thus, this approach is appropriate when applied to small or local perpetrators with limited impact, while repressive measures must still be enforced against perpetrators with a high level of damage or those involved in organized criminal networks. Thus, panel mediation is not merely an alternative but a legal necessity in responding to PETI issues in a fair, effective, and sustainable manner, and as a reflection of the renewal of the criminal law enforcement paradigm in Indonesia that is more humane and oriented towards social and ecological justice.

Restorative justice is not only oriented towards the recovery of victims, but also creates space for perpetrators to take active responsibility. Through this process, perpetrators are encouraged to realize the impact of their actions, express remorse, and make voluntary efforts towards recovery.²⁸ Unlike the incarceration approach, which causes stigmatization and social exclusion, restorative justice encourages moral transformation of perpetrators and enables dignified social reintegration. This strategy also contributes to reducing recidivism rates and strengthening social cohesion within communities. However, despite its great potential, the implementation of restorative justice and penal mediation still faces a number of obstacles. Structural barriers include the absence of comprehensive and binding regulations, the limited number of competent and independent penal mediators, and the lack of understanding of the concept of restorative justice among the public and law enforcement officials.

To optimize the role of restorative justice in the criminal justice system, concrete steps are needed, including: (1) the establishment of specific regulations at the level of law that systematically regulate the mechanisms of penal mediation; (2) strengthening human resource capacity through training for mediators based on national standards; (3) continuous public education to increase public understanding and acceptance; and (4) coordination between law enforcement agencies to ensure that restorative justice is implemented in an integrated and accountable manner. Thus, restorative justice and penal mediation are not merely alternative instruments, but an urgent necessity in the reform of the criminal justice system in Indonesia.

²⁶ Zondrafia Zondrafia, Kristiawanto Kristiawanto, and Mohamad Ismed, "The Urgency of Implementing Criminal Mediation in the Criminal Justice System in Indonesia," *Salam: Journal of Social and Cultural Studies* 9, no. 5 (2022): 1601–12, <https://doi.org/10.15408/sjsbs.v9i5.27685>.

²⁷ Febrina Hertika Rani and Luil Maknun, "A Comparison of the Concept of Criminal Mediation in the Resolution of Criminal Cases in Indonesia and Other Countries," *Lex Librum: Journal of Law* 6, no. 2 (2020): 119–29, <https://doi.org/http://doi.org/10.5281/zenodo.3904185>.

²⁸ Larasati, Pujiyono, and Azhar, "A Penal Approach within the Framework of Criminal Policy to Combat Illegal Mining in the Wonosobo Region."

This approach promises a more fair, efficient, and humane legal system that not only punishes but also restores social harm, strengthens substantive justice, and realizes a sustainable legal system rooted in the local wisdom of the Indonesian people.

The urgency of implementing penal mediation in the settlement of PETI cases is in line with the direction of national criminal justice reform, as this approach reflects a paradigm shift from retributive punishment to a more restorative, humane, and recovery-oriented model of law enforcement. This is in line with the objectives of the latest National Criminal Code and the policies of the Attorney General's Office and the Police Regulations, which prioritize the resolution of cases in a simple, swift, and cost-effective manner, while ensuring justice for all parties involved, including perpetrators, victims, and the community. By integrating criminal mediation, the criminal justice system not only enforces the law formally but also promotes reconciliation, reduces recidivism, strengthens social cohesion, and optimizes the effectiveness of the judiciary within the framework of national legal reform.

However, the application of criminal mediation in resolving criminal cases, particularly unauthorized mining offenses, must consider the principles of proportionality, justice, and the protection of public interests. Given that criminal mediation is a non-criminal instrument oriented toward restorative justice, its implementation policies must be carefully selected to avoid undermining the function of criminal law as the ultimate remedy. In this context, there are two main limitations: the categories of parties eligible for access to criminal mediation and those who are not eligible. First, eligible parties are small-scale community mining operations using simple equipment and limited capital. Their economic motivation is subsistence, not large-scale investment or speculation. Environmental damage is limited and can be restored by the perpetrators. They are not repeat offenders and are not involved in organized criminal networks. They are willing to undertake environmental restoration and compensation. They do not cause social rejection or conflict. Second, those who are not eligible are corporations or perpetrators with significant capital who deliberately disregard permits. They cause severe or permanent environmental damage. They are repeat offenders or perpetrators who have repeatedly committed PETI. Organized crime with funding and protection from individuals. PETI is accompanied by other serious crimes such as corruption or violence. Causing public unrest and undermining trust in the law. These limitations align with Regulation No. 15 of 2020 and Police Regulation No. 8 of 2021, which require criminal mediation only for cases with limited impact, non-repeat offenders, and those that do not cause public unrest or social conflict, thereby preventing it from becoming a loophole for impunity for large-scale offenders.

3.3 The Use of Panel Mediation in the Resolution of Criminal Cases in the East Java Police Regional Command Area

In the context of the complexity of handling illegal mining (PETI) in the East Java Police jurisdiction, the application of panel mediation as an instrument for resolving criminal cases has emerged as a relevant strategic alternative. This mechanism offers a more adaptive and

responsive approach to the multidimensional dynamics of PETI issues, which not only involve criminal law aspects but also touch on environmental issues, social conflicts, and economic inequalities in communities surrounding mining areas. Panel mediation in PETI criminal cases has developed as a form of reform in the Indonesian criminal justice system, emphasizing the principle of restorative justice. This approach stems from criticism of the conventional justice system, which is often considered rigid, formalistic, and ineffective in addressing social and ecological restoration needs.

Table 1: Complexity of PETI Handling in the East Java Police Regional Command Jurisdiction (2023–2025)

Aspect	Description
Legal Jurisdiction	38 districts/cities, area ±47,800 km ² , population 40.87 million (2023).
Geographical Characteristics	Coastal, mountainous, and karst landscapes with strategic minerals: gold, coal, sand, limestone, and laterite nickel.
Number of PETI Activities	1,742 PETI sites in 15 priority districts (2023–2025).
Critical Zones	1) Banyuwangi: Tumpang Pitu gold mine 2) Lumajang: Selok Awar-Awar iron sand 3) Bojonegoro & Tuban: offshore coal 4) Trenggalek & Pacitan: limestone & primary gold 5) Tulungagung: marble
PETI pattern	- Local PETI: 72% of cases, triggered by extreme poverty, wages of Rp30,000–Rp75,000/day. - Organized PETI: 28% of cases, involving big-money operators, disguised as legal community mining.
Legality	Only 15% of PETI activities have valid People's Mining Permits (IPR).
Law Enforcement	The East Java Police Department implements restorative justice (Perkapolri No. 8/2021).
Case Resolution	A Criminal Mediation Unit (Ditreskrimsus) and RJ Teams have been established in 22 police districts (58% of police districts in East Java). 393 cases were resolved through criminal mediation (178 cases in 2023, 215 cases in 2024). Agreement rate: 73.5% (approximately 1,650 offenders avoided litigation).
Cost Efficiency	Saved law enforcement budget of Rp18.7 billion (2023–2024).

The East Java Regional Police have reaffirmed their commitment to improving the criminal mediation model by integrating geospatial databases in areas prone to illegal mining and strengthening preventive measures through widespread public awareness campaigns on the environmental impacts of illegal mining activities. This step underscores that criminal mediation is not merely a tool for resolving cases, but an integral part of the National Police's broader strategy to achieve environmentally just and sustainable law enforcement in East Java. However, in practice, the implementation of criminal mediation often collides with the complex interests of communities whose livelihoods depend on unauthorized mining activities. This view is in line with the statement of the Head of the Criminal Investigation Unit of the Blitar Police, Ipda Titis Mukti Widodo, who emphasized that illegal mining often involves the livelihoods of many people. As a police officer with a supervisory role, the steps taken are not only enforcement but also providing guidance to the community to follow legal channels by obtaining permits in accordance with the mechanisms stipulated by law.

However, according to him, the existing permitting system is often misunderstood by the community, as they believe that obtaining a permit grants them unrestricted mining rights, despite the existence of additional administrative and technical obligations that must be fulfilled. This fact has become the fundamental basis for the emergence of penal mediation, a mechanism for resolving cases of illegal mining that emphasizes the dimensions of humanity, the principle of collaboration, and the principle of justice. In this scheme, mediation not only involves law enforcement officials but also neutral third parties such as academics, legal practitioners, and government representatives. Their role is to facilitate dialogue between illegal miners and the relevant authorities, with a clear normative basis, namely Police Regulation (Perpol) Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice and Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice.

In the case of PETI, which often involves perpetrators from poor communities and organized actors, the criminal justice system alone is insufficient to provide rehabilitative effects and does not immediately resolve the root causes of the problem.²⁹ Panel mediation serves as a means of resolving criminal disputes that expands the participation of strategic actors in the recovery process. Unlike conventional mediation mechanisms that only involve one mediator, panel mediation utilizes the collective involvement of various stakeholders, including law enforcement officials (investigators, prosecutors), local government representatives, academics, community leaders, environmental organizations, and representatives of the affected communities.³⁰ These

²⁹ Yulian Dwi Nurwanti, M. Aziz Zaelani, and Dina Irawati, "Enforcement of Criminal Sanctions in Cases of Mineral and Coal Mining Operations," *Amnesty: Law Journal* 4, no. 2 (2022): 133–43, <https://doi.org/10.37729/amnesti.v4i2.2097>.

³⁰ Hanifah Febriani, Carissa Maharani, and Sadida Amalia Izzatul Haq, "Regulation of Criminal Mediation Post-Restorative Justice Regulation in the Police, Prosecutor's Office, and Supreme Court," *Media Keadilan: Journal of Legal Science* 14, no. 1 (2023): 152–76, <https://doi.org/https://doi.org/10.31764/jmk.v%vi%i.15101>.

parties form a panel forum with the capacity to assess and facilitate comprehensive, fair, and sustainable case resolution.

In practice, panel mediation is not solely aimed at terminating legal proceedings through the issuance of a Letter of Termination of Investigation (SP3) by the police or a deponering by the prosecutor's office. More than that, the aim is to ensure that all forms of losses and negative impacts caused by PETI, whether in the form of ecological damage, social disruption, or loss of livelihoods, can be restored through agreements that are developed in a participatory and justice-oriented manner. For example, panel mediation in PETI cases can result in non-litigious decisions requiring perpetrators to carry out environmental rehabilitation, such as post-mining land reclamation, cessation of the use of hazardous chemicals such as mercury, and compensation for affected communities. This mechanism positions the community not only as objects of the law but as active subjects in the resolution of cases, thereby creating social legitimacy for the results of mediation and preventing the recurrence of PETI practices in the future.

The application of criminal mediation in resolving PETI cases within the jurisdiction of the East Java Regional Police has proven more effective than conventional criminal proceedings. A repressive approach focuses solely on punishment, while the majority of perpetrators come from economically disadvantaged communities. As a result, the root causes of the problem—environmental damage, social conflicts, and structural factors—remain unaddressed. In contrast, criminal mediation offers a holistic solution by involving various stakeholders, emphasizing environmental restoration, providing economic alternatives for perpetrators, and preventing the recurrence of criminal acts. Data from the East Java Regional Police in 2023 shows tangible results: the number of PETI cases decreased by 30%, and approximately 15 hectares of critical land were successfully restored. In addition to reducing the burden on the judicial system and horizontal conflicts, criminal mediation also strengthens community participation in law enforcement. However, this approach is not a silver bullet, as strict law enforcement remains necessary for PETI cases involving large syndicates or causing massive environmental damage. Therefore, strengthening regulations, enhancing mediators' capacity, and post-mediation monitoring are key to ensuring that criminal mediation truly becomes the primary strategy for addressing PETI in a fair, sustainable, and community-oriented manner.

Criminal mediation in PETI cases at the East Java Regional Police Headquarters offers a quick and inexpensive solution that is oriented toward recovery. Its success is evident when perpetrators do not repeat their actions and PETI rates decline. However, effectiveness is often limited when mediation is merely used as a means to avoid criminal charges without oversight and alternative economic solutions. Compliance with mediation outcomes is high when agreements are realistic, monitored by authorities and the community, and provide a sense of justice for victims. The role of the community is crucial as social mediators, monitors, and facilitators of legal economic solutions for perpetrators. Victims must also be actively involved

to receive tangible compensation and guarantees of recovery. Thus, criminal mediation can only be considered successful if it aligns with the principles of restorative justice, namely restoration, participation, and sustainability, rather than merely administrative resolution.

4. CONCLUSION

The application of criminal mediation in resolving cases of illegal mining (PETI) in the jurisdiction of the East Java Regional Police has proven to be a more effective approach than conventional repressive mechanisms. Pure criminal prosecution has so far proven ineffective in resolving the root causes of the problem, as it only targets perpetrators who generally come from economically disadvantaged groups struggling to make ends meet. Meanwhile, structural issues such as an exclusive licensing bureaucracy, limited access to alternative economic opportunities, and weak environmental oversight remain unaddressed. As a result, the recidivism rate for PETI remains high despite repeated criminal enforcement actions. Empirical data from the East Java Regional Police show the effectiveness of penal mediation, with a 30% decrease in PETI cases and the restoration of 15 hectares of critical land in 2023. This underscores that criminal mediation is more suitable for small-scale PETI perpetrators engaged in subsistence activities, while repressive approaches remain necessary for corporate actors, organized syndicates, or activities causing massive environmental damage. Thus, the urgency of criminal mediation aligns with the direction of national criminal justice system reform prioritizing restorative justice, legal humanization, and environmental sustainability. However, clear and integrated regulations on the application of criminal mediation in PETI cases are needed to provide a solid legal foundation and prevent ambiguity; therefore, harmonizing regulations between the National Police, the Prosecutor's Office, and environmental agencies is urgent to prevent overlapping authorities and ensure the effectiveness of law enforcement.

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