

## **Community-Based Restorative Justice for Offenders With Mental Disorders in Indonesia**

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### **Abstract**

*This study analyzes the implementation of restorative justice in handling theft committed by individuals with mental disorders in rural Indonesia, focusing on its compatibility with human rights and social rehabilitation principles. The research was motivated by the recurring challenge of criminalizing mentally disordered offenders without adequate medical and social considerations, leading to ineffective deterrence and recurring offenses. Using a normative juridical method with a qualitative descriptive approach, the study examines statutory provisions, legal doctrines, and empirical practices involving the prosecution and correctional systems. The findings reveal that restorative justice offers an alternative framework that emphasizes accountability, rehabilitation, and social reintegration rather than punitive measures. However, its application remains inconsistent due to limited institutional understanding, a lack of coordination between law enforcement and mental health institutions, and inadequate legal infrastructure in rural areas. The novelty of this research lies in its integration of restorative justice with mental health protection as a model for humanizing criminal law enforcement. The study concludes that the restorative justice approach can effectively bridge the gap between criminal responsibility and medical treatment, thereby promoting a more humane, inclusive, and community-based justice system in Indonesia.*

**Keywords:** *Alternative Dispute Resolution; Criminal Responsibility; Restorative Justice*

### **1. INTRODUCTION**

Criminal law issues are not always related to major crimes such as murder, robbery, or corruption.<sup>1</sup> In everyday life, people are also faced with minor crimes that seem simple, such as taking items without permission or petty theft. The issue becomes more complex when the perpetrator is a person with a mental disorder (ODGJ).<sup>2</sup> This situation creates a dilemma because, on the one hand, the victim suffers a loss, but on the other hand, the perpetrator is not fully aware of their actions due to their mental limitations.

ODGJ are members of society who medically suffer from mental disorders that can affect their thoughts, feelings, and behavior.<sup>3</sup> Many of them live in the community without proper supervision from their families.<sup>4</sup> In fact, to prevent them from causing a disturbance, they are often shackled.<sup>5</sup> In some cases, ODGJ may commit acts that are legally categorized

<sup>1</sup> Wiliam Aldo Caesar Najoan, "Penerapan Restorative Justice Dalam Penyelesaian Perkara Pencurian Ringan Di Indonesia," *Lex Crimen* 10, no. 5 (2021): 89, <https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/33427>.

<sup>2</sup> Irmawan Ahjar et al., "Upaya Pemerintah Terhadap Penanganan Tindak Pidana Yang Dilakukan Oleh Orang Dengan Gangguan Jiwa (ODGJ)," *Sultra Law Review*, 2023, 2681, <https://jurnal-unsultra.ac.id/index.php/sulrev/article/view/1056>.

<sup>3</sup> Winaholisah Winaholisah and Romziatussaadah Romziatussaadah, "Tinjauan Fiqih Jinayah Terhadap Pemasangan Orang Dalam Gangguan Jiwa (ODGJ)," *Ta'zir: Jurnal Hukum Pidana* 5, no. 1 (2021): 3, <https://doi.org/10.19109/tazir.v5i1.9234>.

<sup>4</sup> Agus, "Dinsos Ambon Kembali Evakuasi Tiga ODGJ Dari Lokasi Berbeda," *Gakorpan News* (Ambon), January 15, 2025, [https://gakorpan.com/dinsos-ambon-kembali-evakuasi-tiga-odgj-dari-lokasi-berbeda/#google\\_vignette](https://gakorpan.com/dinsos-ambon-kembali-evakuasi-tiga-odgj-dari-lokasi-berbeda/#google_vignette).

<sup>5</sup> *Sejak 2014, Dinsos Jatim Bebaskan 1.594 ODGJ Dari Pasung*, (Jawa Timur), January 15, 2025, <https://jatim.antaranews.com/berita/869958/sejak-2014-dinsos-jatim-bebaskan-1594-odgj-dari-pasung>.

as criminal offenses that harm the community,<sup>6,7,8</sup> including taking other people's belongings.<sup>9</sup>

This phenomenon can be found in Summersari Village, Moyudan District, Sleman Regency. A woman with mental disorders took items belonging to residents, even though their value was relatively small. This incident caused unrest, but some members of the community understood the perpetrator's condition, leading to a debate about whether or not it was necessary to seek a resolution through formal legal channels. This situation reflects the tension between the need to protect the rights of victims and the state's obligation to provide special treatment to people with mental disabilities as stipulated in Article 44 of the Criminal Code.<sup>10</sup>

In response to this, restorative justice provides a more humane and effective approach.<sup>11</sup> Restorative justice does not focus on punishment, but rather on restoring relationships between the perpetrator, the victim, and the community. The principles of dialogue, mediation, and deliberation are in line with the social values that are still alive in rural communities, including in Summersari, which upholds mutual cooperation and problem-solving through consensus.<sup>12</sup> In this way, victims still receive justice, perpetrators receive protection and medical treatment, and the community is actively involved in maintaining social harmony.

In Summersari Village, the community has a spirit of mutual cooperation, and local wisdom values are still quite strong. The community is accustomed to resolving social problems through deliberation to reach consensus. In some cases, residents, together with village officials and Bhabinkamtibmas officers, have begun to try a dialogical approach, especially if the perpetrator is a person with mental disorders. They invite them to discuss, apologize to the victim, and agree to supervise the perpetrator so that they do not repeat their actions.<sup>13</sup> The Indonesian National Police, as a state institution, has the authority to

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<sup>6</sup> Burham Pranawa et al., "Pertanggungjawaban Pidana Terhadap ODGJ Yang Melakukan Tindak Pidana Penganiayaan Yang Menyebabkan Kematian:(Studi Kasus Di Polsek Sambu Boyolali)," *Jurnal Bedah Hukum* 7, no. 2 (2023): 161, <https://doi.org/10.36596/jbh.v7i2.1144>.

<sup>7</sup> "Viral ODGJ Di Ampelgading Malang Bacok 8 Pengendara Motor," *Metrotv News* (Malang), January 2, 2025, <https://www.metrotvnews.com/read/kqYCYVdx-viral-odgj-di-ampelgading-malang-bacok-8-pengendara-motor>.

<sup>8</sup> "Gangguan Jiwa Seringkali Picu Terjadinya Tindak Pidana," *RRI News* (Ampana), February 26, 2025, <https://www.rri.co.id/daerah/1351491/gangguan-jiwa-seringkali-picu-terjadinya-tindak-pidana>.

<sup>9</sup> Yudi R, "Viral ODGJ Diamuk Massa Usai Tertangkap Mencuri Spion Mobil Di Sekitar Masjid Cintaraja Singaparna," *News Tasikmalaya.Com* (Tasikmalaya), October 5, 2025, <https://www.newstasikmalaya.com/viral-odgj-diamuk-massa-usai-tertangkap-mencuri-spion-mobil-di-sekitar-masjid-cintaraja-singaparna>.

<sup>10</sup> Novita Ayu Nafisa Rachman et al., "Perlindungan Hukum Terhadap Korban Tindak Pidana Yang Dilakukan Oleh Orang Dengan Gangguan Jiwa," *Journal Scientific of Mandalika (JSM) e-ISSN 2745-5955/ p-ISSN 2809-0543* 6, no. 3 (2025): 723, <https://doi.org/10.36312/10.36312/vol6iss3pp722-731>.

<sup>11</sup> Debi Triyani Murdiyambroto, "Penyelesaian Kasus Tersangka Odgj Melalui Restorative Justice," *Jurnal Impresi Indonesia* 2, no. 9 (2023): 846, <https://doi.org/10.58344/jii.v2i9.3505>.

<sup>12</sup> Armunanto Hutahaean, "Penerapan Restorative Justice Oleh Kepolisian Negara Republik Indonesia Untuk Mewujudkan Tujuan Hukum," *Jurnal Hukum To-Ra: Hukum Untuk Mengatur Dan Melindungi Masyarakat* 8, no. 2 (2022): 144, <https://doi.org/10.55809/tora.v8i2.119>.

<sup>13</sup> Hasil observasi peneliti yang dilakukan tahun 2022

enforce criminal law as stipulated in the Criminal Code (KUHP), the Criminal Procedure Code (KUHAP), and various other criminal laws and regulations. This authority is a mandate from the state to uphold justice, maintain public order, and protect the rights of citizens.<sup>14</sup>

The criminal justice system in Indonesia has slowly begun to change, shifting from a retributive model towards the application of restorative justice principles. This shift reflects a growing awareness of the limitations of a legal approach that focuses solely on punishment, especially when it comes to addressing the social and psychological dimensions of crime. Restorative justice offers a more inclusive and reconciliatory approach, with an emphasis on efforts to repair the damage caused, restore relationships between the parties involved, and involve all stakeholders, such as victims, perpetrators, and the community. This approach is effective in the context of law enforcement at the community level, where the role of Bhabinkamtibmas is crucial in dialogue-based, deliberative, and social recovery solutions when compared to approaches that are purely punitive in nature.<sup>15</sup>

This study is based on the need to understand how a restorative justice approach can be applied in resolving minor criminal cases committed by people with mental disorders (ODGJ) in rural communities, particularly in Summersari Village, Moyudan District, Sleman Regency. Therefore, the main problem formulation in this study is: How can the resolution of criminal acts of theft committed by ODGJ be analyzed through a restorative justice approach? To maintain focus and depth of analysis, this study is limited to cases of petty theft involving ODGJ perpetrators that did not cause serious physical injury or loss of life. In addition, the scope of this study does not cover formal juridical discussions related to the criminal responsibility of ODGJ in the criminal justice system at large, but rather focuses on socio-legal aspects, namely community-based resolution practices through mediation, deliberation, and social intervention that reflect the principles of restorative justice.

Previous studies generally place ODGJ as victims of crime or highlight normative-formal aspects related to criminal responsibility. For example, Pradea et al. (2024) emphasize legal protection for ODGJ as victims,<sup>16</sup> while Ramadhan et al. (2023) and Darto et al. (2022) discuss the criminal responsibility of ODGJ with a normative legal approach

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<sup>14</sup> Ruby Nur Adila et al., "The Authority of the Republic of Indonesia Police (POLRI) in Handling Cases Based on Restorative Justice," *Articles, Jurnal USM Law Review* 7, no. 3 (2024): 1068, <https://doi.org/10.26623/julr.v7i3.8983>.

<sup>15</sup> M. Rafsan Jzani, "The Effectiveness of Restorative Justice in Resolving Criminal Acts: Interaction Between Ocu Customary Law and Positive Law," *Articles, Jurnal Ius Constituendum* 10, no. 3 (2025): 394, <https://doi.org/10.26623/jic.v10i3.12234>.

<sup>16</sup> Regina Pradea et al., "Orang Dengan Gangguan Jiwa (ODGJ) Sebagai Korban Tindak Pidana: Bagaimana Aturan Hukum Pidananya?," *PAMPAS: Journal of Criminal Law* 5, no. 1 (2024): 1–13, <https://mail.online-journal.unja.ac.id/Pampas/article/view/31794>.

and the obstacles to its implementation in the formal justice system.<sup>17,18</sup> Even the research by Pangestu et al. (2021), which reviews the rehabilitative approach, still places ODGJ within the framework of criminal punishment.<sup>19</sup>

Unlike these studies, this study presents something new by highlighting ODGJ as perpetrators of minor crimes and how their cases can be resolved through community-based restorative justice at the village level. This study is a more inclusive, humane, and locally-based alternative to resolving cases, thereby contributing to the development of a new model of criminal accountability for vulnerable groups outside the formal judicial system, because this study explores the roles of families, village officials, community police officers, and the community in deliberations and medical rehabilitation.

## 2. METHOD

This study uses empirical research methods. Legal research using empirical methods views law as a social phenomenon that lives and develops within society. This method does not aim to provide a normative assessment of the validity of a legal rule, but rather focuses on how the law works in social reality.<sup>20</sup> The approach taken is a sociological approach to law, which aims to examine law in the context of society. Through this approach, law is not only understood as a formally written norm, but also examined in terms of how it functions in everyday social life. In addition to the sociological approach, this study also uses a legal anthropological approach. This approach emphasizes understanding the various mechanisms for resolving conflicts and disputes in society.<sup>21</sup>

The primary data in this study were obtained directly from primary sources in the field through observation techniques. The secondary data used in this article refers to relevant sources, such as scientific journals, both national and international, book literature, and other documents relevant to the research context collected through a literature study method. The primary data collection technique was conducted through observation. The observation was carried out carefully to obtain accurate and scientifically accountable data.<sup>22</sup> The secondary data collection technique was carried out through a literature study of the legal materials used in this research to support the primary data.<sup>23</sup>

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<sup>17</sup> Fahmi Ramadhan and H.R. Adiarto Mardijono, "Kemampuan Bertanggung Jawab Orang Yang Mempunyai Gangguan Jiwa Akibat Melakukan Tindak Pidana Narkotika," *Harmonization: Jurnal Ilmu Sosial, Ilmu Hukum, Dan Ilmu Ekonom* 1, no. 2 (2023), <https://jurnal.erapublikasi.id/index.php/HN/article/view/309>.

<sup>18</sup> Afridus Darto et al., "Pertanggungjawaban Pidana Bagi Pelaku Tindak Pidana Pembunuhan Pengidap Gangguan Kejiwaan Dalam Prespektif Hukum Pidana," *Jurnal Ilmu Hukum Wijaya Putra* 1, no. 2 (2023): 257–64, <https://doi.org/10.38156/jihwp.v1i2.128>.

<sup>19</sup> Kevin Jerrick Pangestu et al., "Perlindungan Hukum Terhadap Pelaku Tindak Pidana Yang Mengalami Gangguan Jiwa," *Jurnal Analogi Hukum* 4, no. 3 (2022): 293–98, <https://doi.org/10.22225/ah.4.3.2022.293-298>.

<sup>20</sup> Nurul Qamar and Farah Syah Rezah, *Metode Penelitian Hukum: Doktrinal Dan Non-Doktrinal* (CV. Social Politic Genius (SIGn), 2020), 50.

<sup>21</sup> Nur Solikin, *Pengantar Metodologi Penelitian Hukum* (Qiara Media, 2021), 68.

<sup>22</sup> Muhaimin Muhaimin, *Metode Penelitian Hukum* (Mataram University Press, 2020), 90.

<sup>23</sup> Sigit Sapto Nugroho et al., *Metodologi Riset Hukum* (Oase Pustaka, 2020), 70.

The study employed a qualitative descriptive-analytical approach based on both primary and secondary data. Primary data were drawn from interviews, observations, and written responses, while secondary data included legal texts, scholarly works, and regulations. Rather than stopping at description, the analysis critically connected empirical findings with the legal framework, filtering only materials with strong analytical value. This allowed the research to present a coherent picture of the issue in its social and legal context.<sup>24</sup>

### 3. RESULT AND DISCUSSION

#### 3.1 Understanding the Criminal Responsibility of Persons with Mental Disorders Who Commit Crimes

Criminal responsibility is a fundamental concept in criminal law that serves as a benchmark for determining whether a person can be held legally responsible for an act that is classified as a criminal offense. In international legal literature, this term is often referred to as *toerekeningsvatbaarheid* in Dutch or criminal responsibility in English. This concept reflects the principle that not everyone who commits a criminal act can be automatically punished, because criminal law does not only focus on the existence of an unlawful act, but also on the aspect of the perpetrator's responsibility.<sup>25</sup> In criminal law, the assessment of criminal responsibility cannot be separated from two main elements, namely *actus reus* and *mens rea*. *Actus reus* refers to physical acts or consequences that are prohibited by law, while *mens rea* relates to the perpetrator's mental state or attitude at the time of committing the crime. *Mens rea* is often associated with malicious intent (*malafide*) or awareness of the act being committed, which can take the form of intent (*dolus*) or negligence (*culpa*). These two elements are important instruments in assessing whether a person can truly be held criminally responsible, because criminal punishment cannot be imposed solely on the basis of the occurrence of a criminal event without the accompanying element of fault.<sup>26</sup>

Sudarto emphasized that it is not enough for a person to simply commit an act that fulfills the elements of a crime as formulated in the law in order to be punished. There must be a fault in the form of moral reprehensibility attached to the perpetrator, so that the punishment has a normative and ethical basis. In other words, punishment can only be imposed if the perpetrator can truly be held personally responsible for their actions.<sup>27</sup> Moeljatno emphasizes that there are three main conditions for a person to be held criminally responsible, namely: first, the perpetrator must have the capacity to be held responsible (*toerekeningsvatbaarheid*); second, there must be a mental connection between the

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<sup>24</sup> Muhaimin, *Metode Penelitian Hukum*, 105.

<sup>25</sup> Ferdinandus Kila et al., "Pertanggungjawaban Pidana Tanpa Sifat Melawan Hukum Dalam Perspektif Pembaharuan Hukum Pidana," *Jurnal Konstruksi Hukum* 4, no. 1 (2023): 30, <https://doi.org/10.22225/jkh.4.1.6027.28-34>.

<sup>26</sup> Ahmad Sofian, "Konsepsi Subjek Hukum Dan Pertanggungjawaban Pidana Artificial Intelligence," *Articles, Halu Oleo Law Review* 9, no. 1 (2025): 21, <https://doi.org/10.33561/holrev.v9i1.129>.

<sup>27</sup> Fariaman Laia, "Pertanggungjawaban Pidana Terhadap Tindak Pidana Pencemaran Lingkungan Hidup," *Jurnal Indonesia Sosial Sains* 2, no. 4 (2021): 529, <https://doi.org/10.36418/jiss.v2i4.251>.

perpetrator and the act committed, in the form of intent (*dolus*) or negligence (*culpa*); and third, there are no justifying or exculpatory reasons that eliminate the unlawful nature or wrongfulness of the act.<sup>28</sup>

Article 44 of the Criminal Code provides a normative basis for the inability to be held responsible due to a mental disorder. This provision falls under the category of exculpatory reasons, namely, circumstances that eliminate fault even though the elements of a criminal act have been fulfilled. Normatively, Article 44 paragraph (1) of the Criminal Code states that a person cannot be punished if the act was committed in a state of mental disability (*gebrekkige ontwikkeling*) or disturbed due to mental illness. This shows that in the Indonesian criminal law system, criminal responsibility is not only assessed in terms of unlawful acts and elements of fault, but also requires the psychological ability of the perpetrator to understand and control their actions. This approach is in line with the views of Moeljatno and Roeslan Saleh mentioned earlier, that the ability to be held responsible is closely related to the perpetrator's awareness of their actions and their ability to determine their will. Article 44, paragraph (2) of the Criminal Code gives the judge the authority to order the perpetrator to be admitted to a mental hospital for one year as a probationary period.<sup>29</sup>

Based on the definition in Law Number 18 of 2014 concerning Mental Health, it can be emphasized that individuals who fall into the category of Persons with Mental Disorders (ODGJ) are, in principle, unable to perform basic functions as human beings in their entirety, whether in cognitive, affective, or conative aspects. These disorders not only hinder the individual's ability to understand reality, but also to assess the right and wrong of an action and to determine their will freely. Therefore, in criminal law, the principle of *geen straf zonder schuld* or no crime without guilt is a very important basis for assessing whether a person can be held criminally responsible. According to Moeljatno, the first requirement for criminal responsibility is the perpetrator's ability to be held responsible (*toerekeningsvatbaarheid*), which legally refers to a stable and healthy psychological condition.<sup>30</sup>

The existence of mental disorders that affect the perpetrator's mental capacity and volition is a crucial element in determining whether a person can be held criminally responsible. When the elements of responsibility, which include intellectual awareness (reason) and volitional control, are not met, the principle of *nullum crimen sine culpa*

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<sup>28</sup> Ganda Arisandi Wiranata et al., "Pertanggungjawaban Pidana Terhadap Pelaku Tindak Pidana Phishing," *Hukum Pidana, Court Review: Jurnal Penelitian Hukum* (e-ISSN: 2776-1916) 4, no. 02 (2024): 20, <https://doi.org/10.69957/cr.v4i02.1503>.

<sup>29</sup> R Arif Muljohadi, "Pertanggung Jawaban Pidana Oleh Pelaku Yang Mengalami Gangguan Kejiwaan Bipolar Dalam Perspektif Hukum Pidana Islam Dan Pasal 44 Kitab Undang-Undang Hukum Pidana," *The Jure: Journal of Islamic Law* 1, no. 1 (2023): 19, [https://journal.iaisyachona.ac.id/index.php/the\\_jure/article/view/70](https://journal.iaisyachona.ac.id/index.php/the_jure/article/view/70).

<sup>30</sup> Putu Wisesa Sagara et al., "Sanksi Pidana Terhadap Pelaku Tindak Pidana Yang Mengalami Gangguan Kejiwaan," *Jurnal Konstruksi Hukum* 4, no. 1 (2023): 122, <https://doi.org/10.22225/jkh.4.1.6036.118-124>.

cannot be applied absolutely. This is in line with the principle in criminal law that requires that every form of punishment must be based on guilt arising from the conscious will of the perpetrator.<sup>31</sup>

The existence of a Psychiatric Examination Report (VeRP) is a vital instrument in proving criminal cases involving suspects or defendants who are suspected of having mental disorders. VeRP is a means of expert evidence that serves to bridge the worlds of medicine and law, particularly in answering important questions regarding the perpetrator's ability to be held responsible for the criminal acts committed. In the Indonesian criminal justice system, as emphasized in Article 183 of the Criminal Procedure Code, the principle of evidence requires that a defendant can only be punished if their guilt is proven by at least two pieces of valid evidence and accompanied by the judge's conviction. In this context, VeRP is not only a legally valid piece of evidence but also has a strategic position in forming the judge's conviction about the perpetrator's mental status. Furthermore, VeRP can be valuable as two forms of evidence at once, namely expert testimony (Article 186 of the Criminal Procedure Code) and documentary evidence (Article 187, letter c of the Criminal Procedure Code). Although the Criminal Procedure Code does not explicitly mention the term *visum et repertum*, its recognition as valid evidence has been acknowledged in judicial practice and reinforced through legal provisions such as Article 133 paragraph (2) of the Criminal Procedure Code and technical implementation provisions through Minister of Health Regulation Number 77 of 2015. Psychological examinations for the purpose of preparing a VeRP are carried out by a multidisciplinary team chaired by a psychiatrist. This is intended to ensure that the results of the examination are comprehensive, objective, and have evidentiary value that is medically and legally accountable. The importance of VeRP lies in its function in assessing three main aspects: first, whether the suspect actually suffers from a mental disorder; second, whether there is a causal correlation between the mental disorder and the criminal act committed; and third, whether the suspect has the legal capacity to be held responsible at the time the crime was committed. Without VeRP, the judicial process risks convicting individuals who should not be criminally punished because they do not meet the elements of guilt due to their inability to be held responsible for their actions.<sup>32</sup>

In practice, the application of this article faces challenges, as seen in Summersari Village. Based on observations, there was a case of a person with mental disorders who took the property of a resident, but the victim's family chose not to pursue the case in court. The community considered that the perpetrator was not fully aware of his actions, so the

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<sup>31</sup> Dicky Fachrozy and Budi Sastra Panjaitan, "Pertanggungjawaban Pidana Terhadap Pelaku Penyakit Bipolar Dalam Penyebarluasan Tindak Pidana Pornografi," *Articles, Al-Manhaj: Jurnal Hukum Dan Pranata Sosial Islam* 5, no. 1 (2023): 639, <https://doi.org/10.37680/almanhaj.v5i1.2592>.

<sup>32</sup> Liya Maulidianti, "Perlindungan Hukum Dokter Dalam Memberikan Visum Et Repertum Psikiatrikum Pada Orang Dengan Gangguan Jiwa Yang Melakukan Tindak Pidana," *Jurnal Preferensi Hukum* 4, no. 3 (2023): 383.

case was resolved through village deliberation and the return of the property, rather than through formal legal proceedings. This shows that although Article 44 of the Criminal Code provides a normative basis for exempting ODGJ from criminal responsibility, the understanding of the community and officials at the village level is still very limited. They tend to prioritize amicable settlements over legal mechanisms, including the use of *Visum et Repertum Psikiatrikum* (VeRP). In fact, legally, VeRP is an important instrument to determine whether the perpetrator is truly incapable of being held responsible due to mental disorders. Thus, there is a gap between theory and practice. Normatively, Indonesian criminal law has provided a basis for the elimination of criminal liability for ODGJ through Article 44 of the Criminal Code, supported by the views of criminal law experts. However, at the community level, this provision is not fully understood and is often replaced by non-judicial settlements. This shows the need for stronger socialization and integration between law enforcement officials and the community in handling cases of ODGJ facing the law.

### **3.2 Analysis of Criminal Resolution by ODGJ through Restorative Justice**

In Summersari Village, Moyudan, Sleman, the Restorative Justice approach was implemented with the involvement of relevant parties such as the perpetrator's family, the victim, village officials, and the community as a whole. Through this approach, legal issues can be resolved effectively. This study will analyze how restorative justice is applied in cases involving ODGJ in Summersari Village, thereby clarifying how the cases are resolved. The following is an analysis of the points.<sup>33</sup>

Non-Penal Resolution of Problems. The approach used in the resolution is not through formal legal channels, such as criminal proceedings,<sup>34</sup> but by using a non-penal approach that focuses more on resolving legal problems amicably.<sup>35</sup> This choice has a strong and fundamental philosophical basis. Non-penal resolution begins with an initiative from the village head, who acts as a community leader and mediator. After an incident occurs, the village head identifies the reported news. Once the identification process is complete, the victim's family is visited to identify what items were taken, when they happened, and various other details necessary to resolve the issue. The village head also acts as a guardian of the community in resolving the problem, so that the perpetrator, the perpetrator's family, and the victim will receive guidance in the matter and feel that their complaints are being addressed properly and will obtain a favorable outcome without going through a criminal trial. This process has shown that the laws and values that exist in community life can be in harmony with the principles of restorative justice. When the formal legal approach is

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<sup>33</sup> Hasil observasi yang dilakukan oleh peneliti pada tahun 2024

<sup>34</sup> Jaenudin Jaenudin and Rasyida Rofi'atun Nisa, "Klasifikasi Penyelesaian Perkara Pidana Dengan Sistem Restorative Justice," *Articles, Journal of Mandalika Literature* 6, no. 1 (2024): 553, <https://doi.org/10.36312/jml.v6i1.3987>.

<sup>35</sup> Afdolul Anam and Masykurotus Syarifah, "Restorative Justice Terhadap Tindak Pidana Penganiayaan Melalui Mediasi Kekeluargaan," *Iqtisodina* 6, no. 2 (2023): 80, <https://doi.org/10.20884/1.jih.2022.8.1.235>.

considered ineffective in addressing humanitarian aspects, this non-penal approach becomes an effective means of maintaining social harmony and creating justice for the community. This non-penal approach is in line with the principle of restorative justice proposed by Howard Zehr, which brings together all parties with an interest in a particular case, including victims, perpetrators, and the community, to identify the harm that has occurred and seek a fair means of redress. This process expands the circle of parties involved in resolving cases, not only the government or law enforcement officials, but also victims and the community as direct stakeholders.<sup>36</sup>

**Recovery Efforts for Victims.** One important element in the restorative justice approach is recovery, both for victims and perpetrators.<sup>37</sup> In this case, recovery is crucial because the perpetrator has a condition that can be considered “abnormal,” which makes him unable to be held criminally responsible. On the other hand, the victim still suffers real losses that must be acknowledged and recovered. Therefore, a restorative approach is considered more appropriate because it provides space for both parties to be restored in a fair and humane manner. The victims in this case are citizens who have lost their belongings. Although minor, the consequences of the perpetrator's actions cannot be taken lightly. In this restorative approach, victims are not only listened to but also actively involved in the process of resolving the case. They are given space to express their feelings, losses, and hopes. This is the first step in the victim's emotional recovery, as they feel acknowledged and cared for, not only as objects of the law but as human beings who have been affected. This approach also involves village officials and the perpetrator's family to bridge the dialogue process between the victim and the perpetrator or their families. Furthermore, the perpetrator's family shows moral and social responsibility by expressing their willingness to better supervise the perpetrator. This action is not only a form of care but also a way of acknowledging the harm caused and trying to prevent similar incidents from happening again. In restorative justice, this form of responsibility is considered more meaningful than mere criminal punishment because it is able to repair damaged social relationships and prevent future conflicts. Recovery also applies to perpetrators who, in this case, are individuals with mental disorders. This is in line with what Howard Zehr said, that restorative justice is not merely about stopping the prosecution process, but about ensuring that all parties involved in the case obtain substantive justice. Therefore, this approach must take into account the recovery of victims, the moral accountability of perpetrators, and the balance in the legal system. This form of responsibility is in line with Zehr's view that

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<sup>36</sup> Muhammad Cakranegara and Milda Istiqomah, “The Urgency Of Restorative Justice In Imposing Criminal Sanction Under Law Number 1 Of 2023 Concerning The Criminal Code And Law Number 8 Of 1981 Concerning Criminal Procedure Law Viewed From The Judge’s Perspective,” *Articles, Asian Journal of Management, Entrepreneurship and Social Science* 4, no. 02 (2024): 827, <https://doi.org/10.63922/ajmesc.v4i02.783>.

<sup>37</sup> Lasmin Alfies Sihombing, “Restorative Justice, Kejahatan, Hukuman, Dan Peradilan Pidana: Sebuah Analisis Kesejarahan, Peluang Dan Tantangan,” *UNES Law Review* 6, no. 3 (2024): 8909, <https://doi.org/10.31933/unesrev.v6i3.1777>.

perpetrators in restorative justice are not merely measured by punishment, but by concrete efforts to repair social damage.<sup>38</sup> This proves that the concept of restoration in restorative justice, as emphasized by Zehr, is not an abstract idea, but a concrete action that can be effectively implemented through the cooperation of all parties.

**Active Role of the Community and Village Officials.** The active involvement of the community and village officials is a key factor in the success of the Restorative Justice process.<sup>39,40</sup> The community in Sumbersari Village provides an example of the real role of the community in responding to such cases. The role of the community includes collective supervision, educating fellow community members, and maintaining good relations between the victim and the perpetrator. Meanwhile, the role of the village officials is to act as mediators and guardians between all parties involved. The main role taken by the community is to maintain a conducive atmosphere after the incident. Actions that harm community members will clearly provoke anger among the community, especially if the perpetrator is not immediately prosecuted through the criminal justice system. In this case, the hamlet head plays a key role by persuasively approaching residents so that they do not rashly take actions that are not in accordance with existing regulations. The community also participates in providing moral support to the victim and his family. This social solidarity is manifested by showing empathy for the victim and participating in monitoring the situation to prevent it from happening again in the future. This form of social supervision reflects the spirit of collective responsibility that is characteristic of rural communities in Indonesia. Meanwhile, village officials have a moral responsibility to resolve criminal acts that occur in their area. The hamlet head, as the community leader, and Bhabinkamtibmas, as the representative of the state, work together to bridge communication between the victims, perpetrators, and their families. Village officials facilitate the deliberation process and document the results of the agreement reached. This is a form of social accountability and proof that the resolution process has been carried out fairly and transparently. Village officials also play a role in ensuring that perpetrators receive the necessary treatment. The involvement of the community and village officials also shows that the implementation of restorative justice cannot be effective if it relies on only one party. The participation of the community and village officials not only serves as a means of practical problem solving, but also embodies the ethical values of restorative justice as

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<sup>38</sup> Teuku Syahrani et al., "Reconstruction of Minor Criminal Case Settlement By The Prosecutor's Office Through Restorative Justice," *Asian Journal of Social and Humanities* 3, no. 6 (2025): 1307, <https://doi.org/10.59888/ajosh.v3i6.531>.

<sup>39</sup> Wildan Fikarudin and Ermania Widjajanti, "Efektivitas Penerapan Restorative Justice Dalam Penyelesaian Tindak Pidana Ringan Pasca Peraturan Kejaksaan No. 15 Tahun 2020," *Articles, Al-Zayn : Jurnal Ilmu Sosial & Hukum* 3, no. 2 (2025): 300, <https://doi.org/10.61104/alz.v3i2.1010>.

<sup>40</sup> Devina Anggelina, "Penerapan Konsep Keadilan Restorative Justice Pada Korban Tindak Pidana Ringan," *Articles, Innovative: Journal Of Social Science Research* 4, no. 1 (2024): 5, <https://j-innovative.org/index.php/Innovative/article/view/5979>.

outlined by Zehr. This collaboration builds social harmony, strengthens solidarity, and ensures that all parties feel valued and involved in the recovery process.<sup>41</sup>

**Prioritizing Substantive Justice over Formal Justice.** One of the main principles in the restorative justice approach is to prioritize substantive justice in its resolution, not merely formal procedural justice.<sup>42,43</sup> In the cases studied by the author, this principle was evident in the resolution methods used. Formal justice emphasizes compliance with the law, such as processing perpetrators through police reports, investigations, prosecutions, and criminal trials. However, in practice, this approach is not always sufficient in providing justice, especially in cases involving individuals with mental health conditions. Instead, the approach taken by the Summersari Village community focuses more on the substance of justice itself, namely restoring the situation that was disrupted by the criminal act, respecting the rights of the victim and the perpetrator, and ensuring that no harmful actions occur in the future. For example, the community and the hamlet head did not immediately bring the case to the police. They considered the perpetrator's unstable psychological condition and the emotional impact on the victim. This consideration is a form of social wisdom that takes into account the common good in society. This reflects the principle of restorative justice, which looks at the context and social needs rather than mere legal formalities. Substantive justice in this case is realized in the form of a dialogue that leads to a mutual agreement involving all parties. There is no standard procedure in this case, but rather a deliberative process between the parties involved. Victims are given the opportunity during the deliberation process to express their feelings, while the perpetrator's family is also invited to explain the perpetrator's background and circumstances. This process facilitates the exchange of information and builds empathy between the parties. From this deliberation, a fair agreement is reached based on a sense of kinship rather than revenge, but rather on restoration. The victim does not demand compensation or punishment from the perpetrator's family, but only hopes that similar incidents will not be repeated. As a form of responsibility, the perpetrator's family expressed their commitment to take the perpetrator for treatment and undergo better supervision. In this case, the resolution reached through deliberation and dialogue emphasized substantive justice rather than merely formal criminal procedures. This approach did not stop at the decision not to pursue the case through legal channels, but went further to ensure that the victim, the perpetrator, and the community

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<sup>41</sup> Risma Elvariani and Sidik Sunaryo, "Refleksi Moralitas Dalam Keadilan Restoratif Sebagai Alternatif Penyelesaian Tindak Pidana," *Articles, Akademik: Jurnal Mahasiswa Humanis* 5, no. 3 (2025): 1280, <https://doi.org/10.37481/jmh.v5i3.1525>.

<sup>42</sup> Fajar Seto Nugroho et al., "The Concept of Law Enforcement of the Crime of Theft through a Restorative Justice Approach," *Scholars International Journal of Law, Crime and Justice* 6, no. 08 (2023): 413, <https://doi.org/10.36348/sijlcj.2023.v06i08.005>.

<sup>43</sup> Rinda Philona and Awaludin Awaludin, "Constitutional Values and Restorative Justice: A Critical Analysis in the Indonesian Context," *Articles, KARSA Journal of Social and Islamic Culture* 33, no. 1 (2025): 247, <https://ejournal.iainmadura.ac.id/index.php/karsa/article/view/20264>.

obtained real and meaningful justice. This is in line with Howard Zehr's theory, which asserts that restorative justice is not just a matter of stopping prosecution, but about how all parties involved obtain substantial justice. The agreement that emerged from the deliberation process showed recognition of the victim's losses, provided space for the perpetrator to be rehabilitated through family support and health services, and guaranteed social security for the community.<sup>44</sup>

Legal education in the community is a form of stakeholder participation. In rural communities, people with mental disorders are often considered dangerous. This ignorance can cause greater tension when ODGJ are involved in criminal acts. Therefore, in a restorative justice approach, education can be provided to the community about the mental condition of the perpetrator so that the community does not react excessively or take actions that worsen the situation. In Summersari Village, this educational role is carried out by the village head and community police officers using a persuasive approach that is easy for residents to understand and accept. The first step is to explain to the community that the perpetrator has a mental disorder and that their actions were not based on malicious intent, so they cannot be held criminally responsible. This way, the community will better understand that the perpetrator needs medical treatment, not criminal punishment. In addition to education, another concrete step is to ensure that the perpetrator receives adequate medical care. By taking the perpetrator to a mental hospital, village officials and the perpetrator's family have shown that they are not simply standing idly by, but are taking social responsibility to prevent similar incidents in the future. This also sends a positive signal to the community that restorative justice does not mean allowing perpetrators to roam free in the community without any consequences, but rather taking the appropriate steps to address the issue. This will strengthen the community's trust in village officials and reduce the potential for conflict in the future. In addition, efforts to develop a collective monitoring system are part of the conflict prevention strategy. The hamlet head urged community members to participate in monitoring the ODGJ if they escape and cause problems in the community. If they commit another harmful act, community members can report it to the hamlet head and the perpetrator's family so that they can be taken home and monitored to prevent further problems. With this collective monitoring system in place, it can be understood that the problems that exist in the community are not only related to the victim and the perpetrator, but also to all community members, as this is a shared responsibility, so that the stigma attached to ODGJ can be gradually eliminated in the community. This education shows that recovery in restorative justice does not only focus on the perpetrator, but also on the conditions and needs of the victim and the social community involved. This is in line with the views of Howard Zehr and Ali Gohar, who emphasize that the needs of

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<sup>44</sup> Syahroni et al., "Reconstruction of Minor Criminal Case Settlement By The Prosecutor's Office Through Restorative Justice," 1307.

victims are not always material, but also include other needs. Through persuasive explanations from the village head and community police officers, the community gained an understanding that the perpetrator's actions were not the result of malicious intent, but rather a medical condition that required treatment. This process not only reduced the stigma against the perpetrator but also fostered a sense of security for the victim and the community.<sup>45</sup>

An important aspect of implementing restorative justice in cases involving theft by persons with mental disorders is the effort to avoid criminalizing the perpetrator.<sup>46</sup> Criminalizing persons with mental disorders not only affects the individuals concerned but also demonstrates that law enforcement is ineffective in understanding other dimensions, namely the humanitarian dimension. The approach used in addressing these cases demonstrates a strong commitment to the protection of human rights. It also shows respect for the dignity of perpetrators as individuals with specific mental conditions who require special medical treatment. Legally, the principle of non-criminalization of ODGJ has been recognized in both international and national law. The United Nations Convention on the Rights of Persons with Disabilities (CRPD) affirms that individuals with mental disabilities have the right to equal legal protection and should not be discriminated against or treated in a manner that is detrimental to them.<sup>47</sup> In national law, Law No. 18 of 2014 on Mental Health explains the need for a rehabilitative approach for people with mental disorders, rather than a repressive or purely criminal approach.<sup>48</sup>

The village of Summersari applied this principle by not continuing the criminal proceedings against the ODGJ perpetrator who committed a criminal act of theft. This step was taken after observation and understanding that the act was not driven solely by criminal motives, but due to the person's mental disorder. This fact became an important starting point for not bringing the case to criminal court, but rather seeking a more effective and fair solution. Criminalization of people with mental disorders will have long-term negative impacts on the perpetrator, the perpetrator's family, and the wider community. For the perpetrator, the judicial process can worsen their mental condition. In addition, the essence of punishment cannot be achieved because ODGJ will not understand why they are being punished and what the purpose is. If the perpetrator is punished, then society may develop a

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<sup>45</sup> Chiara Ayumi Syafrulian et al., "Penerapan Keadilan Restoratif Berdasarkan Undang-Undang Nomor 1 Tahun 2023," *Jurnal Inovasi Hukum* 5, no. 4 (2024): 8.

<sup>46</sup> Bitnara Sura Priambada, "Implementasi Sistem Peradilan Pidana Anak Di Indonesia Dengan Pendekatan Restoratif," *Articles, Jurnal Pendidikan Dasar Dan Sosial Humaniora* 3, no. 10 (2024): 865, <https://mail.bajangjournal.com/index.php/JPDSH/article/view/8464>.

<sup>47</sup> Siri H Eriksen et al., "On CRDPs and CRPD: Why the Rights of People with Disabilities Are Crucial for Understanding Climate-Resilient Development Pathways," *The Lancet Planetary Health* 5, no. 12 (2021): 931, [https://doi.org/10.1016/S2542-5196\(21\)00233-3](https://doi.org/10.1016/S2542-5196(21)00233-3).

<sup>48</sup> Susi Yuliandari et al., "Perlindungan Hukum Terhadap Pemegang Program Kesehatan Jiwa Di Puskesmas Dari Tindakan Kekerasan Oleh Orang Dengan Gangguan Jiwa," *Yustitiabelen* 10, no. 2 (2024): 155, <https://doi.org/10.36563/yustitiabelen.v10i2.1165>.

misguided mindset that ODGJ are criminals who deserve to be removed, or that they are so dangerous that they must be imprisoned. This is why avoiding criminalization is one effective way to maintain a harmonious society and guarantee the protection of human rights. In such cases, the approach focuses more on the recovery and mental health treatment of the perpetrator. The perpetrator is taken to a mental health facility (RSJ) to receive the necessary examination and treatment. This is in line with the principle of restorative justice, which prioritizes recovery over punishment. The decision not to pursue criminal charges does not mean abandoning responsibility in the case. Rather, responsibility in restorative justice is implemented in more effective forms, such as medical treatment for the perpetrator, assistance for the family, and collective community supervision. In this way, justice can still be upheld, but through a process that considers human dignity. The approach taken emphasizes recovery through medical treatment, family assistance, and community supervision, so that the perpetrator is not treated as a criminal, but as an individual in need of help. This step reflects Howard Zehr's view that restorative justice is a process that involves all parties in jointly identifying the impacts, needs, and obligations, with justice as the main goal. Victims are still involved in deliberations and are given space to express their feelings and hopes, the perpetrator's family takes responsibility by ensuring mental health care, and the community gains certainty that security is maintained.<sup>49</sup>

#### **4. CONCLUSION**

The results of this study confirm that the implementation of village-based restorative justice combined with medical rehabilitation efforts can provide substantive justice while preventing the criminalization of people with mental disorders (ODGJ). In the case of Summersari Village, a deliberative mechanism involving the perpetrator's family, the victim, village officials, and the community successfully replaced litigation, which was ineffective for perpetrators who were legally incapable of being held responsible as stipulated in Article 44 of the Criminal Code. This approach not only resolved legal issues peacefully but also restored social relations and community-based supervision in the community. The new finding of this research lies in the integration of local wisdom in dispute resolution, which makes the handling of ODGJ cases more humane, adaptive, and contextual at the community level. This research shows that community-based non-penal and mental health-based resolutions can be an alternative model in the enforcement of criminal law in Indonesia, especially for vulnerable groups.

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