The Application of Mediation to Achieve Restorative Justice in Aggravated Theft within the Jurisdiction of the Medan Helvetia Police Sector

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Abstract

A criminal justice system that relies on imprisonment has not restored victims' losses or the social relationships of the parties, including in aggravated theft cases. This study aims to identify the legal basis of restorative justice in theft cases and to examine the application of mediation to achieve restorative justice in aggravated theft within the jurisdiction of the Medan Helvetia Police Sector (Polsek). It uses a normative juridical method with statutory, conceptual, and case approaches, with legal materials collected through library research and analysed qualitatively. The results show that the legal basis of restorative justice in theft cases is scattered across the Police Law, Police Regulation No. 8 of 2021, Prosecutor's Regulation No. 15 of 2020, Supreme Court Regulation No. 1 of 2024, and now Law No. 20 of 2025 on the Criminal Procedure Code, which limits the mechanism to offences punishable by a maximum of five years' imprisonment. At the Polsek level, mediation proceeds through a request, verification of material and formal requirements, an investigator-facilitated mediation meeting, a peace agreement accompanied by restoration of the victim's rights, a special case review, and termination of the case. The study recommends regulatory harmonisation and stronger mediation capacity of investigators so that mediation does not become a case transaction.

Keywords: Penal Mediation; Restorative Justice; Aggravated Theft; Medan Helvetia Police Sector; Criminal Procedure Code 2025

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Introduction

A criminal offence is an unlawful act committed by a person who deserves punishment in accordance with his or her culpability as formulated in statutory law. A person who commits a criminal act is held criminally liable only if he or she is at fault. Article 1 of the Indonesian Criminal Code (KUHP) affirms that an act is punishable only if it has been formulated in statutory provisions before the act was committed. In social life, norms regulate and control the behaviour of every member of society, including religious, moral, customary, and legal norms [1].

A norm is a rule that applies within society. The norm that carries firm and tangible sanctions is the legal norm, since the sanctions imposed on those who violate it are visible in everyday life. Indonesian law is divided into criminal law and civil law. Criminal law determines which acts are prohibited, imposes punishment on those who commit them, and regulates how cases are brought before the courts, for example theft, rape, and robbery. Civil law, by contrast, regulates the rights and obligations of individuals in society and is often referred to as private law [1].

Theft harms both the offender and others and contradicts religious and moral values. It is a crime against individual interests, namely a crime against property, regulated in Chapter XXII, Articles 362–367 of the KUHP [2], [3]. One form commonly encountered in urban law enforcement practice is aggravated theft, regulated in Article 363 of the KUHP and now reformulated in Article 477 of Law Number 1 of 2023 on the Criminal Code (the new KUHP), punishable by a maximum of seven years' imprisonment [2], [4]. A firm, consistent, and integrated effort to address theft can be pursued through the application of restorative justice [5].

Restorative justice is a sentencing concept that is not confined to formal and substantive criminal law; rather, it prioritises integrated justice, namely justice for the offender, the victim, and the community. As a means of resolving conflicts peacefully outside the courtroom, restorative justice remains difficult to implement; many Indonesian customary laws are inherently restorative, yet they are neither recognised by the state nor codified in national law [6]. The idea of restorative justice emerged as a critique of a criminal justice system that relies on imprisonment, which is considered ineffective in resolving social conflict because the parties to the conflict are excluded from its resolution: the victim remains a victim, while the offender's imprisonment creates new problems for his or her family. This approach emphasises justice and balance for both offenders and victims [7].

Through this approach, a punishment-oriented criminal justice mechanism is transformed into a process of dialogue and mediation that produces a fairer and more balanced settlement for victims and offenders. Restorative justice means justice that restores, a notion broader than restitution or compensation in conventional criminal justice [8]. Restorative justice may be understood as follows [9]:

> *"A restoration of relationships and atonement that the offender (and his or her family) wishes to make towards the victim (and his or her family) (a peace effort) outside the court, with the intention that the legal problems arising from the criminal act can be properly resolved through approval and agreement between the parties".*

The justice that has prevailed in the Indonesian criminal justice system is retributive justice, whereas what is expected is restorative justice, namely a process in which all parties involved in a particular offence jointly resolve the problem and address its consequences for the future. Its core principles are the participation of victims and offenders and the participation of community members as facilitators, ensuring that the offender no longer disturbs the harmony restored within society [10].

Within the National Police, the Head of the Criminal Investigation Agency issued Letter Number STR/583/VIII/2012 on the Application of Restorative Justice as a basis for investigators to resolve public complaints restoratively. This policy was followed by Chief of Police Circular Letter Number SE/8/VII/2018 on the Application of Restorative Justice in the Settlement of Criminal Cases, which aimed to prevent inconsistent inquiry and investigation administration, divergent interpretations among investigators, and deviations in implementation [11], and was eventually consolidated in Police Regulation (Perpol) Number 8 of 2021 on Handling Criminal Offences Based on Restorative Justice [12].

The Supreme Court likewise issued Decree of the Director General of the General Courts Agency Number 1691/DJU/SK/PS.00/12/2020 on the Enactment of Guidelines for the Application of Restorative Justice. The decree rests on two considerations: the need for guidelines to optimise the implementation of Supreme Court regulations and circulars on restorative justice, and the development of a sentencing system that no longer centres on the offender but on aligning the interests of victim restoration with offender accountability [13]. These guidelines were subsequently strengthened by Supreme Court Regulation (Perma) Number 1 of 2024 on Guidelines for Adjudicating Criminal Cases Based on Restorative Justice [14].

Restorative justice emphasises that offenders should not merely be punished but also guided and rehabilitated, and given the opportunity to take responsibility. Its application requires police policy in exercising discretion to determine whether a case proceeds or is discontinued. Many cases of petty theft (Article 364 of the KUHP) could in fact be resolved restoratively through mediation [15].

Previous studies have examined restorative justice in theft cases at the trial stage [6], in the settlement of minor theft after the new KUHP [15], and in theft offences generally under Law Number 1 of 2023 [5]. Other studies have assessed its implementation within the North Sumatra Regional Police [16] and the disharmony between Perpol 8/2021 and the 2025 Criminal Procedure Code [17]. However, studies that specifically address mediation at the level of a Police Sector (Polsek) for aggravated theft, whose penalty exceeds five years, remain limited. The issue has become even more pressing since Law Number 20 of 2025 on the Criminal Procedure Code (the new KUHAP), which regulates the restorative justice mechanism and its limitations, entered into force on 2 January 2026 [18], [19]. The novelty of this study therefore lies in analysing the legal basis and model of restorative mediation for aggravated theft within the jurisdiction of the Medan Helvetia Police Sector while taking account of this change in the criminal procedure regime.

Based on the foregoing, this study addresses two research questions: (1) what is the legal basis of restorative justice in theft cases; and (2) how is mediation applied to achieve restorative justice in aggravated theft within the jurisdiction of the Medan Helvetia Police Sector. Accordingly, the study aims to identify the legal basis of restorative justice in theft cases and to examine the application of mediation to achieve restorative justice in aggravated theft within the jurisdiction of the Medan Helvetia Police Sector.

Literature Review

2.1 Mediation and Penal Mediation

Etymologically, mediation derives from the Latin *mediare*, meaning to be in the middle. This implies that a mediator must remain neutral and impartial and must safeguard the interests of the parties fairly so as to build the trust of the disputing parties [20]. This etymological meaning stresses the presence of a third party who bridges the parties in resolving their dispute [20]. The English word *mediation* likewise denotes the settlement of a dispute by intervening between the parties [21]. In essence, mediation is an out-of-court dispute resolution method

based on negotiation involving a neutral (non-intervening) and impartial third party whose presence is accepted by the parties [22].

J. Folberg and A. Taylor define mediation as "*the process by which the participants, together with the assistance of a neutral person, systematically isolate disputed issues in order to develop options, consider alternatives, and reach a consensual settlement that will accommodate their needs*" [23]. Kimberlee K. Kovach describes mediation as facilitated negotiation, a process in which a neutral third party assists the disputing parties in reaching a mutually satisfactory resolution [24]. From these definitions, mediation is characterised by the intervention of a neutral and impartial third party who facilitates negotiation without decision-making authority, so that the settlement arises from the voluntary will of the parties themselves [22].

Supreme Court Regulation Number 1 of 2016 on Mediation Procedures in Court defines mediation as a means of resolving disputes through negotiation to reach an agreement between the parties with the assistance of a mediator, while a mediator is a neutral party who helps the parties explore possible settlements without deciding or imposing a resolution [25]. The elements of mediation include: a negotiation process between the disputing parties; a neutral mediator; the mediator's function of helping to explore possible settlements; the mediator's lack of authority to decide; and the aim of reaching an agreement acceptable to the parties [22].

Mediation is a good-faith procedure in which the parties entrust the manner of resolving their dispute to a mediator because they are unable to do so themselves [26]. Its success depends on the mediator's quality (training and professionalism), the parties' trust in the process and in the mediator, and the integrity of a neutral and service-oriented mediator [27]. Boulle classifies mediator skills into four types: organising mediation, negotiating, facilitating negotiation (transforming positions into issues, managing emotions, and overcoming deadlock), and communicating [27]. Communication skills comprise simple and clear verbal communication [20], active listening, reframing negative statements, restating, non-verbal communication, summarising, and note-taking, with notes to be destroyed in accordance with the principle of confidentiality [27]; they also include questioning [27] and paraphrasing, for instance turning "demanding damages" into "expecting compensation" [20]. In court-annexed mediation, mediators are required to be neutral, certified, trained, and experienced [22].

In criminal matters, mediation is known as penal mediation, an alternative out-of-court settlement of criminal cases that brings offenders and victims together with the assistance of a third party. Barda Nawawi Arief identifies several models of penal mediation, including *informal mediation* conducted by law enforcement officers in the course of their normal duties, *traditional village or tribal moots*, *victim-offender mediation*, *reparation negotiation programmes*, *community panels or courts*, and *family and community group conferences* [28]. The informal mediation model is relevant to the police stage because it can be carried out by investigators as part of their discretionary authority, provided that it remains voluntary, protects the victim from further harm, and is supervised by law enforcement officers [29].

2.2 Restorative Justice

Article 1 point 3 of Perpol Number 8 of 2021 defines restorative justice as the settlement of a criminal offence involving the offender, the victim, their families, community, religious and customary leaders, or other stakeholders in jointly seeking a fair resolution through peace, with an emphasis on restoration to the original state [12]. Such a settlement rests on dialogue and agreement to rebalance social conditions, and it shifts the paradigm of justice from retribution to justice founded on remorse and forgiveness. Eva Achjani Zulfa states [30]:

> *"Restorative justice is a way of resolving a criminal case through the involvement of many parties, such as the offender and his or her family, the victim and his or her family, and the relevant community. Restorative justice thus pursues good*

outcomes for victims, rather than resting solely on the welfare and interests of the offender, because it derives from values upheld in traditional communities".

Muladi regards restorative justice as an approach grounded in the philosophy and values of responsibility, openness, trust, and restoration, focusing on reducing the harm caused by crime by holding offenders accountable and empowering victims, offenders, and communities to find solutions through restoration, reintegration, and the prevention of further harm [31]. In a similar vein, Zehr asserts that crime is fundamentally a violation of people and interpersonal relationships, which creates an obligation to repair the harm through the active engagement of those with a stake in it [8].

Not every criminal case can be resolved restoratively. Perpol Number 8 of 2021 sets general requirements comprising material and formal requirements. The material requirements (Article 5) are that the offence does not cause public unrest and/or rejection; does not result in social conflict; does not have the potential to divide the nation; is not radical or separatist in nature; is not committed by a repeat offender as established by a court decision; and is not an offence of terrorism, against state security, of corruption, or against human life. The formal requirements (Article 6) are a peace agreement between both parties, evidenced by a written agreement signed by them, and the fulfilment of the victim's rights and the offender's responsibilities, including the return of property, compensation for losses, or reimbursement of costs arising from the offence [12].

2.3 Aggravated Theft

The Indonesian word *pencurian* (theft) derives from the root *curi* (steal) with the affix *pe-an*, denoting the process or act of stealing, namely taking another person's property unlawfully [3]. The KUHP distinguishes basic theft (Article 362), aggravated theft (Article 363), petty theft (Article 364), theft with violence (Article 365), and theft within the family (Article 367) [2], [32]. Basic theft is punishable by a maximum of five years' imprisonment, whereas aggravated theft is basic theft accompanied by aggravating elements and therefore carries a heavier penalty [32].

Article 363 paragraph (1) of the KUHP prescribes a maximum of seven years' imprisonment for: (1) theft of livestock; (2) theft committed during a fire, explosion, flood, earthquake, shipwreck, railway accident, riot, rebellion, or danger of war; (3) theft at night in a dwelling or an enclosed yard containing a dwelling by a person present there without the knowledge or against the will of the rightful person; (4) theft committed jointly by two or more persons; and (5) theft in which access to the place of the crime or to the property is gained by breaking, damaging, climbing, or using a false key, false order, or false uniform. Article 363 paragraph (2) increases the penalty to nine years where the theft under item (3) is accompanied by the circumstances in item (4) or (5) [2]. In the new KUHP, basic theft is regulated in Article 476, punishable by a maximum of five years' imprisonment or a category V fine, whereas aggravated theft is regulated in Article 477, punishable by a maximum of seven years' imprisonment or a category V fine, and nine years in aggravated circumstances [4].

Research Methodology

This study is normative juridical research, conducted on the basis of primary legal materials by examining theories, concepts, legal principles, and statutory provisions relevant to the research problems [33]. It employs a statute approach to examine regulations on restorative justice and theft, a conceptual approach to examine the concepts of penal mediation and restorative justice, and a case approach to examine the handling of aggravated theft within the jurisdiction of the Medan Helvetia Police Sector, which operates under the Medan Metropolitan Police (Polrestabes Medan) [34].

The study relies on secondary data consisting of three types of legal materials [33]. Primary legal materials include the 1945 Constitution of the Republic of Indonesia; the KUHP;

Law Number 1 of 2023 on the Criminal Code; Law Number 8 of 1981 on Criminal Procedure; Law Number 20 of 2025 on the Criminal Procedure Code; Law Number 2 of 2002 on the Indonesian National Police; Letter of the Head of the Criminal Investigation Agency Number STR/583/VIII/2012; Chief of Police Circular Letter Number SE/8/VII/2018; Perpol Number 8 of 2021; Prosecutor's Regulation (Perja) Number 15 of 2020; Decree of the Director General of the General Courts Agency Number 1691/DJU/SK/PS.00/12/2020; Supreme Court Regulation Number 1 of 2016; and Supreme Court Regulation Number 1 of 2024. Secondary legal materials comprise books, journals, papers, articles, and online sources on mediation, restorative justice, and theft. Tertiary legal materials comprise legal dictionaries, language dictionaries, and encyclopaedias.

Legal materials were collected through library research, the starting point of legal research that proceeds from normative premises, by reading, quoting, and noting books, documents, theses, journals, and other information concerning restorative justice and theft within the jurisdiction of the Medan Helvetia Police Sector [34]. The materials were analysed qualitatively using deductive reasoning through grammatical and systematic interpretation, applying the principles of *lex superior derogat legi inferiori*, *lex specialis derogat legi generali*, and *lex posterior derogat legi priori* to resolve inconsistencies between regulations. The results are presented descriptively and prescriptively.

Results

4.1 The Legal Basis of Restorative Justice in Theft Cases

The legal basis of restorative justice in theft cases is multi-layered and dispersed across each subsystem of criminal justice. At the statutory level, police authority to pursue restorative settlement derives from Article 16 paragraph (1) letter l and Article 18 paragraph (1) of Law Number 2 of 2002, which grant the authority to take other lawful and responsible actions and to act on one's own judgement (discretion) in the public interest [35]; in practice, however, the exercise of such discretion still lacks consistent field standards and adequate internal supervision [36]. A similar provision appears in Article 7 paragraph (1) letter j of Law Number 8 of 1981, while the termination of investigations is regulated in Article 109 paragraph (2) [37]. Neither law explicitly mentions restorative justice, so its implementation has been derived through internal regulations.

Within the National Police, the operational basis began with Letter Number STR/583/VIII/2012 and Circular Letter Number SE/8/VII/2018 [11] and was refined in Perpol Number 8 of 2021. The regulation applies to criminal investigation functions, inquiries, and investigations, and allows an inquiry or investigation to be terminated once the general (material and formal) requirements are met [12]. Crucially for aggravated theft, Perpol 8/2021 does not restrict restorative justice according to the severity of the penalty but according to the social impact of the act, the offender's status as a non-recidivist, and the achievement of peace accompanied by restoration of the victim's rights [17]. Practice within the North Sumatra Regional Police likewise shows that restorative settlement has been applied at the police stage, albeit with non-uniform procedures and heavy reliance on investigators' discretion [16]. Thus, under the former procedural regime, aggravated theft punishable by seven years remained open to restorative settlement at the police stage.

At the prosecution stage, Perja Number 15 of 2020 requires that the suspect be a first-time offender, that the penalty not exceed five years, and that the loss not exceed IDR 2,500,000. For property offences, the first requirement may be combined with either of the other two, so that aggravated theft involving a small loss may still have its prosecution terminated [15], [38]. At the trial stage, Perma Number 1 of 2024 guides judges to apply restorative justice on alternative grounds, including petty offences or offences causing a loss not exceeding IDR 2,500,000 or the local provincial minimum wage, complaint-based offences, or offences

punishable by a maximum of five years' imprisonment, subject to several exceptions such as the refusal of peace by the victim or defendant and the existence of a power relation [14], [15].

A fundamental change occurred on 2 January 2026, when the new KUHP and Law Number 20 of 2025 on the Criminal Procedure Code entered into force. For the first time, the restorative justice mechanism is regulated by statute. Article 79 of the new KUHAP sets out forms of restoration, including the victim's forgiveness, the return of proceeds of crime, compensation, and repair of damage, and requires the agreement to be fulfilled within seven days; once fulfilled, the case must be terminated and a court determination sought. Article 80 paragraph (1) limits the mechanism to offences punishable by a maximum of five years' imprisonment or a category III fine, committed for the first time, and/or not constituting recidivism, while Article 82 excludes, among others, offences whose penalties exceed that threshold except those committed through negligence. Article 80 paragraph (2) allows a peace agreement at the inquiry stage based on the victim's report before an offence has been established, while Articles 83 and 84 require the agreement to be made before the inquirer or investigator, followed by a letter terminating the inquiry or investigation for which a determination from the Chief of the District Court must be requested within three days [18], [19], [39].

On the substantive side, Article 54 of the new KUHP treats forgiveness by the victim and/or the victim's family as a sentencing consideration, and paragraph (2) allows judges to refrain from imposing punishment in view of the minor nature of the act, the offender's personal circumstances, and considerations of justice and humanity [4]. Nevertheless, the new KUHP recognises restorative justice only implicitly and without clear procedural standards, which risks inconsistent enforcement [7]. A comparison of the requirements for restorative justice under each instrument is presented in Table 1.

Table 1. Comparison of restorative justice requirements for aggravated theft

Instrument	Main requirements	Position of aggravated theft (7-year penalty)
Perpol No. 8 of 2021	Material requirements (social impact, non-recidivist, not a specified offence) and formal requirements (peace agreement, restoration of victim's rights)	Applicable; no penalty threshold
Perja No. 15 of 2020	First offence; penalty ≤ 5 years; loss ≤ IDR 2,500,000 (property offences: first offence + one other requirement)	Limited; applicable where loss ≤ IDR 2,500,000
Perma No. 1 of 2024	Alternative grounds: petty offence/small loss, complaint-based offence, penalty ≤ 5 years, etc.	Limited; through the small-loss criterion
Law No. 20 of 2025 (KUHAP)	Penalty ≤ 5 years or fine ≤ category III; first offence/non-recidivist; exceptions under Article 82	In principle beyond the threshold; residual room via Article 80(2) and sentencing considerations

Source: compiled from [12], [14], [38], and [18].

Table 1 reveals both vertical and horizontal inconsistencies. Horizontally, the Police apply social-impact criteria, whereas the Prosecutor's Office, the Supreme Court, and the new KUHAP apply penalty and loss-value criteria. Vertically, under the principle of *lex superior derogat legi inferiori*, the new KUHAP overrides Perpol 8/2021 to the extent that they conflict [17]. Consequently, since 2 January 2026 the termination of an investigation into aggravated theft on restorative grounds can no longer rest solely on Perpol 8/2021. The remaining room consists of: (a) a peace agreement at the inquiry stage under Article 80 paragraph (2) before an offence has been established; (b) application at the trial stage through a court decision, as permitted by Article 87 of the new KUHAP; and (c) a peace agreement serving as a basis for mitigation or judicial pardon under Article 54 of the new KUHP. The government regulation

implementing Article 88 of the new KUHAP has not yet been issued, and the Supreme Court itself acknowledges continuing technical confusion in applying the mechanism [19], [40]. The legal basis of restorative justice in theft cases is therefore in a transitional phase that requires harmonisation.

4.2 The Application of Mediation to Achieve Restorative Justice in Aggravated Theft within the Jurisdiction of the Medan Helvetia Police Sector

The Medan Helvetia Police Sector is a territorial unit under Polrestabes Medan that handles theft cases within its jurisdiction through its Criminal Investigation Unit. Under Perpol 8/2021, a request to terminate an inquiry or investigation at the Police Sector level is submitted in writing to the Chief of the Resort Police, and approval for a special case review is likewise sought from the Chief of the Resort Police for both Resort and Sector levels [12]. Mediation conducted by Medan Helvetia investigators is therefore not autonomous but subject to tiered supervision by the Chief of Polrestabes Medan. The procedure, adjusted to the new KUHAP, is illustrated in Figure 1.

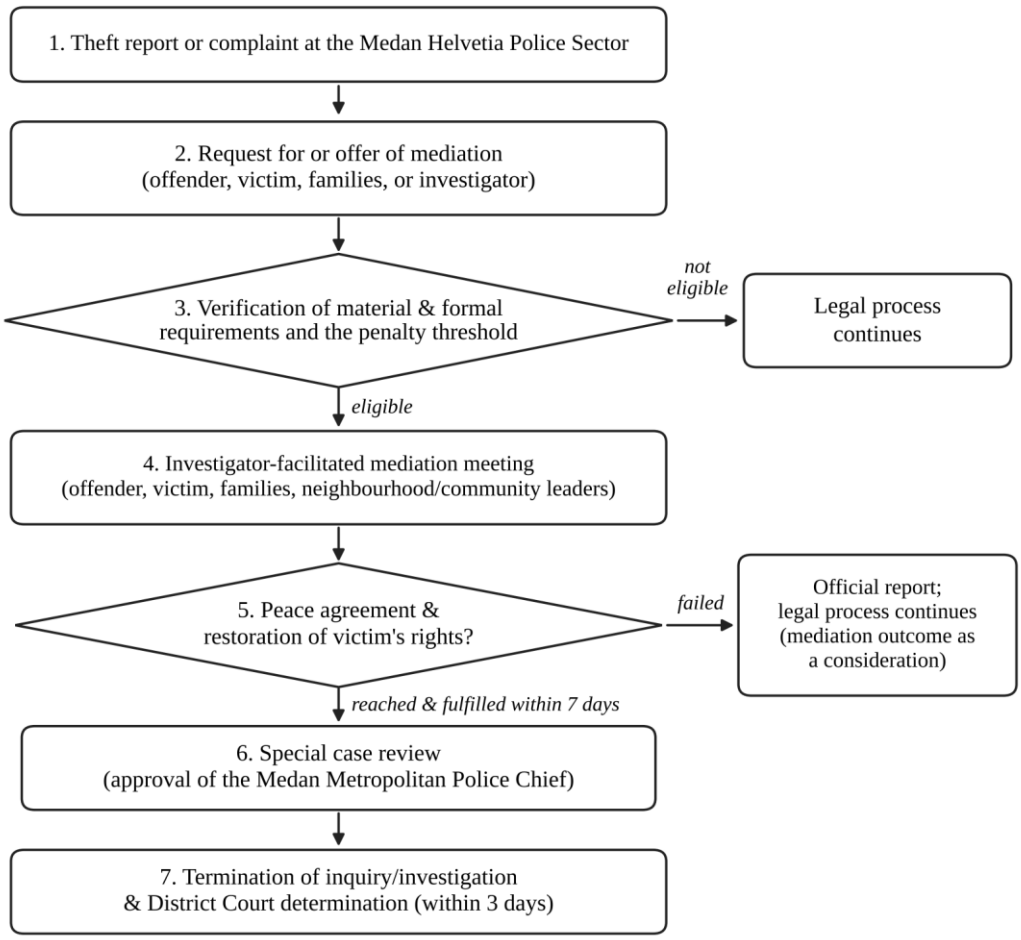

Figure 1. Restorative mediation flow for theft cases at the Police Sector level

Source: compiled from [12] and [18].

The first stage is initiation. Mediation may begin with a request from the offender or his or her family, the victim or his or her family, or an offer from the inquirer or investigator, provided that the process is free from violence, coercion, intimidation, deception, and threats [19], [41]. The investigator then verifies the material and formal requirements: whether the act causes public unrest, whether the offender is a recidivist, and whether the victim is willing to

reconcile [12]. At this stage, the investigator must also classify the form of aggravation involved, since each form has a different degree of suitability, as shown in Table 2.

Table 2. Suitability of mediation by form of aggravation under Article 363 of the KUHP

Form of aggravation	Considerations	Suitability for mediation
Para. (1) item 1: theft of livestock	Value of loss; social relationship between offender and victim	Relatively suitable if property is returned and loss restored
Para. (1) item 2: during disaster/riot	Exploitation of emergency; potential public unrest	Less suitable, given the potential for public rejection
Para. (1) item 3: at night in a dwelling	Sense of security of the victim and neighbourhood	Conditional; depends on restored security and community acceptance
Para. (1) item 4: committed jointly	Role, age, and record of each offender	Relatively suitable for first-time offenders with small losses
Para. (1) item 5: breaking/damaging	Additional damage beyond the stolen property	Conditional; offender must repair the damage
Para. (2): item 3 with item 4/5	Nine-year penalty; high degree of danger	Not suitable for termination; peace only as a sentencing consideration

Source: author's analysis based on [2], [12], and [32].

The second stage is the mediation meeting. Under the *informal mediation* model [28], the investigator acts as a facilitator who brings together the offender, the victim, and their families, and involves relevant community figures such as the neighbourhood head (*kepala lingkungan*), religious or customary leaders, or the local community police officer (Bhabinkamtibmas), as envisaged by the definition of restorative justice in Perpol 8/2021 [12]. The success of this stage depends heavily on the mediator's skills, particularly in managing the parties' emotions, reframing excessive demands, and overcoming deadlock [27]. Investigators must remain neutral because criminal cases involve an imbalance of position between a victim who has suffered harm and an offender facing punishment; mediation must therefore rest on genuine voluntariness and must not expose the victim to further harm [29].

The third stage is the formulation of the agreement and the restoration of the victim's rights. The agreement is set out in a written peace agreement signed by the parties, specifying the forms of restoration, such as the return of stolen property, compensation for losses, and repair of damage caused by breaking or damaging [12]. Under the new KUHAP, the agreement must be fulfilled within seven days and the report may be withdrawn only after the agreement has been fully performed; if it is not performed, the investigator prepares an official report that forms part of the case file, and the legal process continues [18], [19].

The fourth stage is the special case review and termination of the case. Medan Helvetia investigators verify the completeness of documents, clarify matters with the parties, and request approval for a special case review from the Chief of Polrestabes Medan [12]. For cases within the threshold of the new KUHAP, the termination letter is notified to the public prosecutor and a determination is requested from the Chief of the Medan District Court within three days [18]. For aggravated theft exceeding that threshold, the outcome of mediation retains legal value: the peace agreement and restoration of losses are attached to the case file as considerations for the prosecutor and the judge, including for judicial pardon under Article 54 paragraph (2) of the new KUHP [4].

Mediation does not always succeed. Experience in Medan shows that mediation may fail when the victim's compensation demand far exceeds the offender's means; in a series of cases arising from the theft of a mobile phone in the Medan area, police-facilitated mediation failed to reach agreement because of a vast gap between the amount demanded and the amount the offender's family could afford (IDR 250 million against IDR 5 million), and the theft case

proceeded to a court verdict [42]. Moreover, the National Police Criminal Investigation Agency has warned that the restorative justice mechanism could be abused as a "money-making tool" if left unsupervised, while the Supreme Court has stressed that voluntariness is its principal requirement: a victim unwilling to reconcile must not be compelled [40]. These findings are consistent with the theory of mediation success, which places the parties' trust and the mediator's integrity as decisive factors [27].

Based on the foregoing, the ideal application of mediation to achieve restorative justice in aggravated theft within the jurisdiction of the Medan Helvetia Police Sector requires: (a) case screening based on the form of aggravation, the value of the loss, and the offender's record; (b) investigators trained as mediators who remain neutral; (c) the involvement of community leaders to secure social acceptance and prevent unrest; (d) transparent documentation of agreements and restoration, subject to tiered supervision by Polrestabes Medan; and (e) adjustment of procedures to the new KUHAP, including requests for court determinations. In this way, mediation does not merely terminate cases but genuinely restores the victim's losses, encourages offender accountability, and preserves social harmony, as restorative justice intends [8], [31]. This model is also in line with calls for harmonised regulation, clear operational guidelines, and better training of officers in applying restorative justice to theft cases [5], [16].

Conclusion

The legal basis of restorative justice in theft cases is multi-layered, ranging from the discretionary authority under Law Number 2 of 2002 and Law Number 8 of 1981, Letter Number STR/583/VIII/2012, Chief of Police Circular Letter Number SE/8/VII/2018, Perpol Number 8 of 2021, Perja Number 15 of 2020, Decree of the Director General of the General Courts Agency Number 1691/DJU/SK/PS.00/12/2020, and Perma Number 1 of 2024, to Law Number 20 of 2025 on the Criminal Procedure Code, in force since 2 January 2026. Perpol 8/2021 does not restrict restorative justice by penalty, whereas the new KUHAP limits it to offences punishable by a maximum of five years' imprisonment; consequently, aggravated theft punishable by seven years now in principle falls outside the case-termination mechanism, except through the room provided by Article 80 paragraph (2) of the new KUHAP and the sentencing considerations in Article 54 of the new KUHP.

Mediation to achieve restorative justice in aggravated theft within the jurisdiction of the Medan Helvetia Police Sector is carried out through initiation and verification of requirements, an investigator-facilitated mediation meeting involving community leaders, the formulation of an agreement and restoration of the victim's rights, and a special case review approved by the Chief of Polrestabes Medan before the case is either terminated or continued with the peace agreement serving as a consideration. Its success depends on the parties' voluntariness, the reasonableness of compensation demands, the quality of investigators as mediators, and supervision against potential abuse.

This study implies the need to harmonise Perpol 8/2021 with the new KUHAP through the government regulation implementing Article 88, to provide penal mediation training and certification for Police Sector investigators, and to develop standards for assessing the suitability of aggravated theft cases according to the form of aggravation. Further research using an empirical juridical approach, drawing on case data and interviews at the Medan Helvetia Police Sector, is recommended to measure the effectiveness of mediation after the new KUHAP came into force.

References

[1] Moeljatno, *Asas-Asas Hukum Pidana*, ed. rev. Jakarta: Rineka Cipta, 2008.

[2] *Kitab Undang-Undang Hukum Pidana* (*Wetboek van Strafrecht*).

[3] N. 'Aini, Sumarno, dan S. Ramadani, "Legal Review of the Crime of Theft Based on the Criminal Code," dalam *Proceedings of International Conference on Islamic Community Studies (ICIE)*, Medan: Universitas Pembangunan Panca Budi, 2025, pp. 5320–5326. [Daring]. Tersedia: https://proceeding.pancabudi.ac.id/index.php/ICIE/article/view/1193

[4] Republik Indonesia, *Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana*. Lembaran Negara Republik Indonesia Tahun 2023 Nomor 1.

[5] S. Anggita, Abdul Rahman Maulana Siregar, dan Sumarno, "The Application of Restorative Justice to Theft Offenses under Law Number 1 of 2023 concerning the Indonesian Criminal Code," dalam *Proceedings of the 3rd International Conference Epicentrum of Economic Global Framework (ICEEGLOF)*, Medan: Universitas Pembangunan Panca Budi, 2026, pp. 1059–1069. [Daring]. Tersedia: https://proceeding.pancabudi.ac.id/index.php/ICEEGLOF/article/view/1697

[6] E. Yulistiawati dan A. Awangga, "Restorative Justice dalam Perkara Tindak Pidana Pencurian (Studi Putusan Nomor 28/Pid.B/2022/PN.Lbb)," *Syntax Literate: Jurnal Ilmiah Indonesia*, vol. 8, no. 7, pp. 5397–5411, 2023, doi: 10.36418/syntax-literate.v8i7.13257.

[7] B. A. Hutasoit, H. Aspan, dan T. R. Zarzani, "Restorative Justice as an Instrument for Resolving Minor Criminal Offenses from the Perspective of Law Number 1 of 2023," dalam *Proceedings of the 3rd International Conference Epicentrum of Economic Global Framework (ICEEGLOF)*, Medan: Universitas Pembangunan Panca Budi, 2026, pp. 380–389. [Daring]. Tersedia: https://proceeding.pancabudi.ac.id/index.php/ICEEGLOF/article/view/1604

[8] H. Zehr, *The Little Book of Restorative Justice*. Intercourse, PA: Good Books, 2002.

[9] H. Arief dan N. Ambarsari, "Penerapan Prinsip Restorative Justice dalam Sistem Peradilan Pidana di Indonesia," *Al-Adl: Jurnal Hukum*, vol. 10, no. 2, pp. 173–190, 2018, doi: 10.31602/al-adl.v10i2.1362.

[10] A. Herlina *et al.*, *Perlindungan terhadap Anak yang Berhadapan dengan Hukum*. Jakarta: UNICEF, 2004.

[11] *Surat Edaran Kapolri Nomor SE/8/VII/2018 tentang Penerapan Keadilan Restoratif (Restorative Justice) dalam Penyelesaian Perkara Pidana*. Jakarta, 2018.

[12] *Peraturan Kepolisian Negara Republik Indonesia Nomor 8 Tahun 2021 tentang Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif*. Berita Negara Republik Indonesia Tahun 2021 Nomor 947.

[13] *Keputusan Direktur Jenderal Badan Peradilan Umum Nomor 1691/DJU/SK/PS.00/12/2020 tentang Pemberlakuan Pedoman Penerapan Keadilan Restoratif (Restorative Justice)*. Jakarta, 2020.

[14] *Peraturan Mahkamah Agung Nomor 1 Tahun 2024 tentang Pedoman Mengadili Perkara Pidana Berdasarkan Keadilan Restoratif*. Jakarta, 2024.

[15] E. F. Lestari, Ismaidar, dan Abdul Rahman Maulana Siregar, "Implementation of Restorative Justice in the Settlement of Mild Theft Criminal Acts after the Effectiveness of Law Number 1 of 2023 concerning the Criminal Code," dalam *Proceedings of the 3rd International Conference Epicentrum of Economic Global Framework (ICEEGLOF)*, Medan: Universitas Pembangunan Panca Budi, 2026, pp. 2293–2303. [Daring]. Tersedia: https://proceeding.pancabudi.ac.id/index.php/ICEEGLOF/article/view/1809

[16] A. A. B. W. Cherdika, M. A. Siregar, dan T. R. Zarzani, "Implementation of Restorative Justice in the Settlement of Criminal Cases in the Police Office of the North Sumatra Regional Police," dalam *Proceedings of International Conference on Islamic Community Studies (ICIE)*, Medan: Universitas Pembangunan Panca Budi, 2025, pp. 6501–6508. [Daring]. Tersedia: https://proceeding.pancabudi.ac.id/index.php/ICIE/article/view/1338

[17] D. Irawan, M. A. Siregar, dan F. Rafianti, "Disharmony and Transformation of Restorative Justice in the Criminal Justice System: A Comparative Study of Police Regulation No. 8 of 2021 and the 2025 Criminal Procedure Code," dalam *Proceedings of International Conference on Islamic Community Studies (ICIE)*, Medan: Universitas Pembangunan Panca Budi, 2025, pp. 6515–6522. [Daring]. Tersedia: https://proceeding.pancabudi.ac.id/index.php/ICIE/article/view/1340

[18] *Undang-Undang Nomor 20 Tahun 2025 tentang Kitab Undang-Undang Hukum Acara Pidana*. Jakarta, 2025.

[19] Hukumonline, "Restorative Justice dalam KUHAP Baru," *Klinik Hukumonline*. [Daring]. Tersedia: https://www.hukumonline.com/klinik/a/restorative-justice-dalam-kuhap-baru-lt519065e9ed0a9. Diakses: 25 Okt. 2026.

[20] S. Abbas, *Mediasi dalam Hukum Syariah, Hukum Adat, dan Hukum Nasional*. Jakarta: Kencana Prenada Media Group, 2011.

[21] J. M. Echols dan H. Shadily, *Kamus Inggris Indonesia*. Jakarta: Gramedia, 2003.

[22] R. Usman, *Mediasi di Pengadilan dalam Teori dan Praktik*. Jakarta: Sinar Grafika, 2012.

[23] D. R. S. Astarini, *Mediasi Pengadilan: Salah Satu Bentuk Penyelesaian Sengketa Berdasarkan Asas Peradilan Cepat, Sederhana, Biaya Ringan*. Bandung: Alumni, 2013.

[24] K. K. Kovach, *Mediation: Principles and Practice*. St. Paul, MN: West Publishing, 1994.

[25] *Peraturan Mahkamah Agung Nomor 1 Tahun 2016 tentang Prosedur Mediasi di Pengadilan*. Jakarta, 2016.

[26] P. Abdurrasyid, *Arbitrase dan Alternatif Penyelesaian Sengketa (APS)*. Jakarta: PT Fikahati Aneska, 2011.

[27] T. Rahmadi, *Mediasi: Penyelesaian Sengketa melalui Pendekatan Mufakat*. Jakarta: Rajawali Pers, 2010.

[28] B. N. Arief, *Mediasi Penal: Penyelesaian Perkara Pidana di Luar Pengadilan*. Semarang: Pustaka Magister, 2008.

[29] Abdul Rahman Maulana Siregar, "Legal Analysis of the Use of Mediation in Handling Domestic Violence Crimes," dalam *Proceedings of International Conference on Islamic Community Studies (ICIE)*, Medan: Universitas Pembangunan Panca Budi, 2025, pp. 1805–1810. [Daring]. Tersedia: https://proceeding.pancabudi.ac.id/index.php/ICIE/article/view/754

[30] E. A. Zulfa, "Keadilan Restoratif dan Revitalisasi Lembaga Adat di Indonesia," *Jurnal Kriminologi Indonesia*, vol. 6, no. 2, 2010.

[31] Muladi, *Kapita Selekta Sistem Peradilan Pidana*. Semarang: Badan Penerbit Universitas Diponegoro, 1995.

[32] P. A. F. Lamintang dan T. Lamintang, *Delik-Delik Khusus: Kejahatan terhadap Harta Kekayaan*, ed. 2. Jakarta: Sinar Grafika, 2009.

[33] S. Soekanto dan S. Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Jakarta: Rajawali Pers, 2015.

[34] P. M. Marzuki, *Penelitian Hukum*, ed. rev. Jakarta: Kencana, 2017.

[35] *Undang-Undang Nomor 2 Tahun 2002 tentang Kepolisian Negara Republik Indonesia*. Lembaran Negara Republik Indonesia Tahun 2002 Nomor 2.

[36] R. Doloksaribu, Ismaidar, dan Sumarno, "Police Discretion by Personnel of the Samapta Directorate in Handling Public Order and Security Disturbances in the Perspective of Law Number 2 of 2002," dalam *Proceedings of the 3rd International Conference Epicentrum of Economic Global Framework (ICEEGLOF)*, Medan: Universitas Pembangunan Panca Budi, 2026, pp. 690–701. [Daring]. Tersedia: https://proceeding.pancabudi.ac.id/index.php/ICEEGLOF/article/view/1647

[37] *Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana*. Lembaran Negara Republik Indonesia Tahun 1981 Nomor 76.

[38] *Peraturan Kejaksaan Nomor 15 Tahun 2020 tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif*. Berita Negara Republik Indonesia Tahun 2020 Nomor 811.

[39] Republika, "KUHAP Baru Atur Restorative Justice, Ini Sembilan Jenis Tindak Pidana yang Dikecualikan," 20 Nov. 2025. [Daring]. Tersedia: https://news.republika.co.id/berita/t60zyw409/kuhap-baru-atur-restorative-justice-ini-sembilan-jenis-tindak-pidana-yang-dikecualikan

[40] Firyalfatin, "Mekanisme Keadilan Restoratif Masih Bikin Bingung Hakim," *Hukumonline*, 22 Jun. 2026. [Daring]. Tersedia: https://www.hukumonline.com/berita/a/mekanisme-keadilan-restoratif-masih-bikin-bingung-hakim-lt6a38cfe51517e

[41] S. A. br. Tarigan, Abdul Rahman Maulana Siregar, dan Sumarno, "Settlement of Assault Offenses through Restorative Justice under the Indonesian Code of Criminal Procedure," dalam *Proceedings of the 3rd International Conference Epicentrum of Economic Global Framework (ICEEGLOF)*, Medan: Universitas Pembangunan Panca Budi, 2026, pp. 2702–2714. [Daring]. Tersedia: https://proceeding.pancabudi.ac.id/index.php/ICEEGLOF/article/view/1851

[42] CNN Indonesia, "Korban Pencurian di Medan Jadi Tersangka, Polisi Beber Duduk Perkara," 3 Feb. 2026. [Daring]. Tersedia: https://www.cnnindonesia.com/nasional/20260203103812-12-1323942/korban-pencurian-di-medan-jadi-tersangka-polisi-beber-duduk-perkara