

## THE IMPLEMENTATION OF RESTORATIVE JUSTICE IN THE RESOLUTION OF MINOR CRIMINAL OFFENSES BASED ON HUMAN RIGHTS IN THE JURISDICTION OF PURBALINGGA POLICE DEPARTMENT

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### ABSTRACT

*The resolution of minor criminal cases by the Purbalingga Police prioritizes restorative justice, emphasizing amicable, out-of-court (non-litigation) settlement processes. In handling minor criminal offenses, the Purbalingga Police facilitate a meeting between the victim and the reported party, acting as a neutral mediator, free from bias. The mediation process also involves family members and relevant community figures, such as neighborhood or village leaders, focusing on humane, family-oriented principles while ensuring the goals of the law: justice, legal certainty, and social benefit. Several factors hinder the success of this mediation process, including the lack of witnesses willing voluntarily provide testimony based on their observations and knowledge, resulting in insufficient legal evidence. Other challenges to include failure to reach an agreement during mediation between both parties, lingering resentment on the part of the complainant despite previous mediation attempts, and repeated occurrences of the same offense. These factors may necessitate resolution through litigation.*

**Keywords:** Restorative Justice, Minor Offenses, and Human Rights

### INTRODUCTION

As society progresses, so do the crimes that occur within it. Historically, the law has tended to act swiftly and decisively when dealing with smaller cases that challenge larger interests. However, when a case involves influential individuals or those in positions of power, the law often appears ineffective or lenient.

This imbalance can have detrimental effects on social harmony and ethical values, making it essential to hold accountable those responsible for creating such disparities. In a community setting, this imbalance may arise from criminal actions committed by suspects, including minor offenses.

Many minor criminal offenses (Tipiring) are regulated within the Indonesian Criminal Code (hereinafter referred to as "KUHP"). The validity of the Criminal Code is grounded in Law Number 1 of 1946, which, in turn, is based on Article II of the Transitional Provisions of the 1945 Constitution of the Republic of Indonesia. This article states, "All state institutions and existing regulations shall remain in effect until new ones are established under this Constitution." Furthermore, Article 1 of Law Number 1 of 1946 stipulates that the criminal law provisions currently in effect are those that were applicable as of March 8, 1942. In the Criminal Code, minor offenses, such as petty theft (Article 364 of the KUHP), minor embezzlement (Article 373), minor fraud (Article 379), minor fraud by a seller (Article 384), minor vandalism (Article 407(1)), and minor handling of stolen goods (Article 482), are often neglected in enforcement by law authorities. This lack of application raises concerns over the fairness extended to offenders, as minor thefts involving low-value goods tried in court have garnered significant public attention across various segments of society.

The public generally views it as highly unfair to impose prison sentences on minor theft offenders, given the disproportionate nature of the punishment relative to the low value of the stolen items. Additionally, the large number of such cases in the judicial system has placed a strain on courts, both in terms of budget and in shaping public perception of the judicial process. Minor offenses should ideally be resolved in a swift and straightforward manner while still upholding principles of legal certainty and justice. Thus, the legal process must also be purposeful, ensuring that it addresses current challenges in a way that fulfills the goals of the law: achieving fair, beneficial, and legally certain outcomes in criminal prosecution.

Moreover, when viewed more broadly, the laws governing community life continually evolve and are updated in response to social changes within society, resulting in various types of laws. Law can be studied from multiple perspectives, including functional aspects, as well as distinctions between public law and criminal law. Criminal law itself is further divided into substantive criminal law and procedural criminal law.

Judicial reform in criminal justice should be implemented within a policy-driven approach, as it is inherently part of a broader policy framework or policy initiative (namely, within the realms of law enforcement policy, criminal justice policy, penal policy, and social policy). Criminal justice is not merely a crime prevention system; rather, it is regarded as a social issue, much like crime itself. The enforcement of criminal sanctions should be aligned with human development policies aimed at fostering the comprehensive development of Indonesian citizens. The imposition of criminal sanctions on offenders should adhere to principles of civilized humanity. Furthermore, punishment should serve to enhance the human dignity of offenders and promote social values within society. Prioritizing peace through deliberation and consensus-building is a fundamental mechanism in the life of the Indonesian nation.

Criminal law, as a branch of public law, has continuously evolved and undergone significant reforms. One notable area of development within criminal law, particularly relevant to law enforcement, has been significantly updated in line with the changing legal needs of society. Criminal law reform follows a political approach, as it constitutes an essential component of legal policy in general and criminal policy specifically.

One approach to modernizing Indonesia's criminal law is the application of restorative justice. Restorative justice represents a form of criminal justice that occurs outside the formal judicial process in court. This approach involves the victim, offender, their

families, the community, and other relevant parties in a crime to reach an agreement and resolution. Restorative justice seeks a fair resolution that engages the offender, victim, their families, and other related parties in addressing the criminal act and its impacts, focusing on restoration rather than retribution.

In Indonesia, restorative justice is recognized as an alternative dispute resolution method. Civil dispute resolution alternatives are governed by Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. However, in the field of criminal law, certain solutions emphasize restitution over court rulings. This approach to resolving criminal cases is known as the principle of restorative justice.

In practice, all law enforcement agencies in Indonesia, including the Supreme Court, the Attorney General's Office, the Indonesian National Police, and the Ministry of Law and Human Rights, have adopted the principle of remediation. Justice is now regarded as a means of resolving criminal cases. In 2012, these four institutions reached a memorandum of understanding between the Chief Justice of the Supreme Court of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, and the National Police Chief, under the respective agreements numbered No. 131/KMS/SKB/X/2012, No. M-HH-07.HM.03.02 of 2012, No. KEP-06/E/EJP/10/2012, and No. B/39/10/X/2012 dated January 17, 2012. The MOU addressed the application of criminal limits and fines, expeditious examination procedures, and the implementation of restorative justice, thus formalizing the use of restorative justice as a method for resolving criminal matters.

This memorandum of agreement limits the application of restorative justice to minor offenses only. However, over time, it has become evident that not only minor crimes can be addressed using the principles of restorative justice. Following the agreement, the Supreme Court of the Republic of Indonesia, the Attorney General's Office, and the National Police have issued additional regulations for their respective agencies as guidelines for resolving criminal cases in accordance with the principles of restorative justice, as follows:

1. The Regulation of the Indonesian National Police Number 8 of 2021 concerning the Handling of Criminal Offenses Based on Restorative Justice.
2. The Regulation of the Chief of the Indonesian National Police Number 6 of 2019 regarding the Investigation of Criminal Offenses ("Perkapolri 6/2019").
3. The Regulation of the Indonesian Prosecutor General Number 15 of 2020 regarding the Termination of Prosecutions Based on Restorative Justice ("Perkejaksaan 15/2020").
4. The Decree of the Director General of the General Court Body of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020 regarding the Implementation of Guidelines for the Application of Restorative Justice ("Kepdirjenbadilum 1691/2020").

The recent reform opens up significant opportunities for the growth of values within society, making criminal law more flexible and reaffirming it as the ultimate fallback. However, the issue with the implementation of restorative justice is that the positive legal framework (*ius constitutum*) does not regulate such mechanisms.

Whether restorative justice can be applied depends on the values that have evolved and developed in Indonesian society. It is important to remember that Indonesia has core values that serve as guidelines for resolving its social issues. If restorative justice is based on the development of values within society, it can be adequately developed to meet the community's needs in addressing the problems they face.

Although criminal law has undergone reform from its original retributive nature to a restorative justice approach, its implementation has yet to achieve optimal results. This is evidenced by data released by the Central Statistics Agency (BPS) in 2020 regarding the Number of Criminal Offenses According to Regional Police from 2018 to 2020. On a national level, a total of 810,823 criminal cases were reported. However, the number of cases resolved through out-of-court mechanisms (restorative justice) remains disproportionately low compared to the total number of cases. Only 823 minor criminal cases were resolved through restorative justice. This data indicates that the implementation of restorative justice still requires intensive efforts to function effectively.

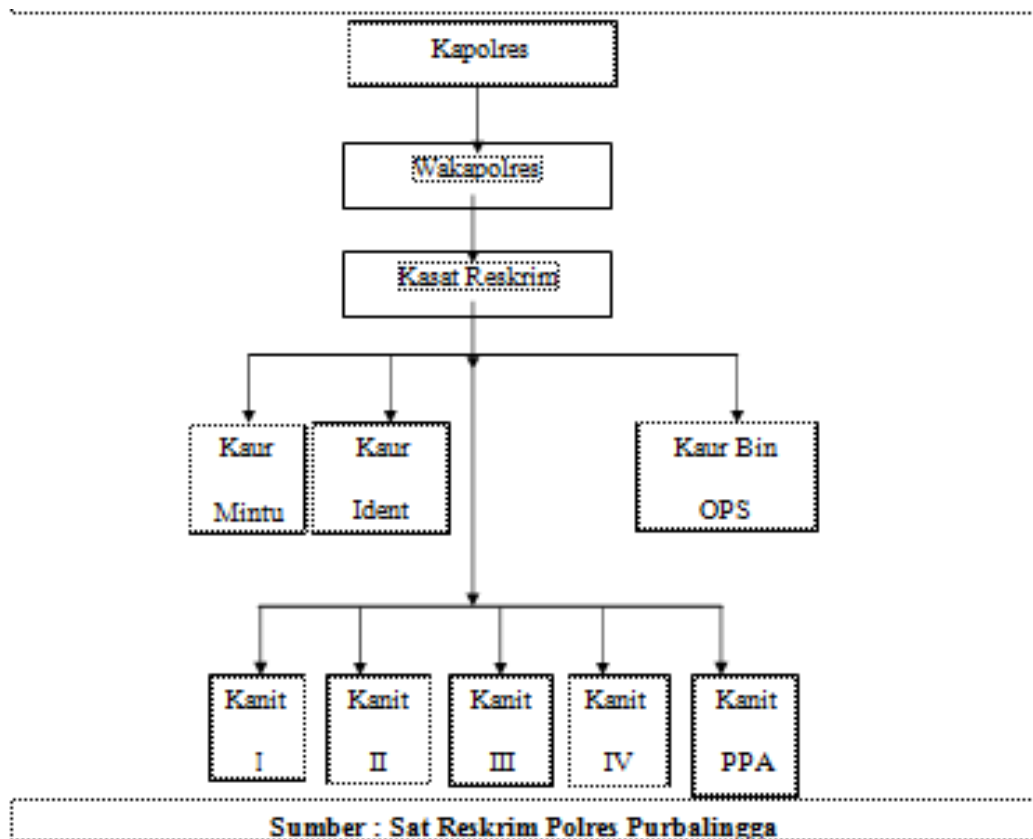
## **RESEARCH METHOD**

This study is a descriptive research. Qualitative Descriptive Research is designed to investigate the state, condition, or other aspects that have been previously mentioned, with the findings presented in the form of a research report. The researcher does not alter, add, or manipulate the objects or areas under study. Instead, the researcher simply captures what is happening within the objects or areas being investigated and presents the findings in a straightforward research report, reflecting the situation as it is.

## **DISCUSSION**

### **A. DESKRIPSI POLRES PURBALINGGA**

- 1. The Organizational Structure of the Criminal Investigation Unit of the Purbalingga Police in Section 4.1: Structure of the Criminal Investigation Unit of the Purbalingga Police.**



The Criminal Investigation Unit (Sat Reskrim) is responsible for developing functions and conducting activities related to the investigation and inquiry of criminal offenses, including identification functions for law enforcement purposes. This also encompasses the coordination and supervision of the operational and administrative aspects of the investigations conducted by Public Civil Servant Investigators (PPNS) in accordance with applicable laws and regulations. In the performance of its duties, the Head of the Criminal Investigation Unit (Kasat Reskrim) is assisted by the Head of Sub-Unit (Kanit) and the Head of Division (Kasubnit). The Kasat Reskrim is accountable for the execution of these duties to the Chief of Police (Kapolres), and in the daily conduct of operations, they are under the supervision of the Deputy Chief of Police (Waka Polres).

The job description of the Head of the Criminal Investigation Unit (Kasat Reskrim) is as follows:

1. Responsible for all matters related to the execution of tasks within the CRIMINAL INVESTIGATION UNIT.
2. Performing duties related to planning, organizing, and controlling the tasks of members.
3. Coordinating with other units and affiliated agencies.
4. Conducting staff supervision.
5. Managing special tasks, particularly operations assigned.

The job description for the KBO Reskrim is as follows:

1. Assisting the Head of the Criminal Investigation Unit (Kasat Reskrim) in overseeing the members of the Criminal Investigation Unit, the Investigation Subdivision (Urmindik), the Identification Subdivision (Urmin), the Tactics and Techniques Subdivision (Ur Tahti), and the Identification Unit (Ur Identifikasi).
2. Assisting the Head of the Criminal Investigation Unit (Kasat Reskrim) in preparing the required administrative tasks and forms for the execution of criminal investigation duties.
3. Assisting the Head of the Criminal Investigation Unit (Kasat Reskrim) in ensuring order and compliance in the completion of forms and investigation registers.
4. Providing data input to the Head of the Criminal Investigation Unit (Kasat Reskrim) through the Investigation Subdivision (Urmindik), the Identification Subdivision (Urmin), the Tactics and Techniques Subdivision (Ur Tahti), and the Identification Unit (Ur Identifikasi) in Pulahjianta.
5. Assisting the Head of the Criminal Investigation Unit (Kasat Reskrim) in streamlining, monitoring, and enforcing the correct procedure for completing registers required for investigation administration.

The main duties of the Unit Head are as follows:

1. Carrying out the summoning, examination, and filing of cases or criminal offenses that are about to occur, are currently occurring, or have already occurred.
2. Organizing the list of people and goods to be searched for investigation purposes.
3. Resolving cases under investigation to the fullest extent and collaborating with the Operations Supervision Unit (Unbin Ops) in summoning, issuing the Notice of Commencement of Investigation (SPDP), and handling other administrative tasks.
4. Preparing the case files and submitting them to the Operations Supervision Unit (Ur Bin Ops) for correction before sending them to the Public Prosecutor's Office (Kejari).

5. Preparing the data related to ongoing cases.

Restorative Justice in the resolution of minor criminal offenses based on Human Rights within the legal jurisdiction of the Purbalingga Police Resort, Indonesian National Police, recognizes the institution's role not only in law enforcement but also as a service provider, protector, and guardian of the public against threats and criminal acts that disrupt safety and cause both psychological and material harm. This is achieved through maintaining social order and justice, ensuring the rule of law, and, more specifically, upholding justice in society in accordance with the law. One of the legal foundations employed in law enforcement is criminal law.

Criminal law, by definition, is recognized as part of public law (*algemene belangen*). Given this nature, when an individual commits a criminal act that harms another's interests, the legal consequences for the offender extend beyond the rights of the victim. The repercussions become a collective responsibility shared by the family, the community, and ultimately, the state. Legal provisions within a country serve as the sole instrument for addressing criminal cases, following the established procedures and regulations.

The concept has been in effect in Indonesia since the enactment of Law Number 8 of 1981 concerning the Indonesian Criminal Procedure Code (KUHP). With the introduction of this legislation, law enforcement has been primarily reliant on the state as the provider of justice, which has led to minimal involvement of individuals in seeking resolutions for criminal cases. The pursuit of justice in criminal matters has been entirely dependent on the system or structure established by the Police, the Prosecutor's Office, the Courts, and the Correctional Institutions. However, the justice provided by the state may not necessarily align with the expectations of those seeking justice, as each individual has different needs and levels of acceptability when it comes to their sense of justice.

Minor offenses (*Tipiring*) are crimes of a less serious nature or those that can be categorized as light offenses. These crimes are not merely violations but also encompass minor offenses listed in Book II of the Criminal Code, including light insults, minor animal abuse, light assault, petty embezzlement, minor theft, light fraud, receiving stolen goods, and minor destruction. In the criminal justice system, there are four components: the Police, the Prosecutor's Office, the Courts, and the Correctional Institutions. These components are expected to work together to form an integrated criminal justice system. This integrated system of criminal justice represents a unified approach to criminal law enforcement.

The criminal justice system is fundamentally a system for the enforcement of criminal law or a judicial authority in the domain of criminal law. Subsequently, determining the objective of punishment is a particularly contentious issue, especially in deciding whether punishment is aimed at retribution for the crime committed or whether the legitimate purpose of the criminal process is the prevention of antisocial behavior.

When reconciling these two viewpoints is not achieved, it requires a new formulation within the criminal punishment system or its objectives. Punishment serves various purposes that can be classified according to theories of punishment. These purposes, which vary in their foundational ideological approaches to punishment, can be viewed from several perspectives. Within this framework, it is important to understand that restorative justice focuses on crime as harm or damage, with justice representing an effort to repair this damage. Its vision aims to elevate the roles of victims, offenders, and society as three essential dimensions in the criminal justice system, contributing to the welfare and security of the community. In this context, the objectives of the criminal justice system are: short-term socialization, medium-term crime prevention, and long-term community welfare and security.

In the enforcement of criminal law, a person may be subject to legal measures if all elements of the criminal offense are fulfilled. For minor offenses, individuals must also meet all the requirements specified within the elements of the offense. However, the application of law enforcement in this case can differ from the general criminal offenses (excluding minor offenses).

The Regulation of the Indonesian National Police, often referred to as Perpol, regarding the Handling of Criminal Acts Based on Restorative Justice is an initiative by the Police to address criminal offenses with an emphasis on Restorative Justice. This approach prioritizes restoring the situation to its original state and ensuring a balance in protecting the interests of both the victim and the perpetrator, without focusing solely on punishment. It represents a legal necessity within society.

The Police Regulation on Handling Criminal Acts Based on Restorative Justice introduces a new concept in criminal law enforcement. It accommodates prevailing norms and values within society, offering a solution while ensuring legal certainty, particularly in terms of the benefits and sense of justice for the public. This regulation is designed to meet the evolving legal needs of society, fulfilling the sense of justice for all parties involved. It embodies the authority of the Police as stipulated in Articles 16 and 18 of Law No. 2 of 2002 concerning the Indonesian National Police.

The discussion of law enforcement, when detached from the human actors involved in its execution, remains sterile. If law enforcement is solely based on the obligations outlined in legal provisions, it leads to a superficial and empty understanding. Law enforcement becomes meaningful when it is linked to its concrete implementation by individuals. The purpose of law enforcement is not merely to impose retribution for actions committed or omitted by offenders, but rather to serve broader goals that carry specific benefits. In a rule-of-law state like Indonesia, law enforcement is crucial for achieving justice within society, in alignment with the goals of national development. The judiciary is the appropriate institution for this enforcement, as courts are the judicial bodies that provide hope for justice and serve as the best avenue for resolving legal matters within a rule-of-law framework.

Restorative justice refers to a process of resolving criminal offenses by involving the offender, the victim, the offender's family, the victim's family, community leaders, religious figures, traditional leaders, or other stakeholders to collectively seek a fair resolution through reconciliation, with an emphasis on restoring the situation to its original state.

The handling of criminal offenses based on restorative justice must meet both general and specific requirements. The general requirements apply to the activities of criminal investigation functions, including inquiry or investigation, while the specific requirements are applicable solely to criminal offenses handled through restorative justice during the investigation or inquiry phase.

The general requirements for handling criminal offenses based on restorative justice principles encompass both material and formal aspects. The material requirements include conditions such as the absence of public unrest or rejection, no potential for social conflict, no risk of dividing the nation, freedom from radicalism and separatism, no involvement in recidivist offenses as indicated by court rulings, and exclusion from crimes related to terrorism, national security offenses, corruption, or crimes that endanger human life. On the other hand, the formal requirements involve the existence of a peace agreement between the parties,

as evidenced by a signed peace agreement, except in the case of narcotic offenses. Additionally, the fulfillment of victims' rights and the perpetrator's responsibilities are also formal requirements. This includes the return of property, compensation for damages, reimbursement of costs incurred due to the criminal act, and/or repair of damages caused by the offense. These must be evidenced by a statement letter in accordance with the signed agreement by the victim, except for narcotic offenses.

The rights of victims must also be safeguarded by law, as this protection embodies human rights, which are guaranteed under Law No. 39 of 1999 on Human Rights. Article 18, paragraph (1) of Law No. 39 of 1999 states: "Every person who is arrested, detained, or prosecuted on suspicion of committing a criminal offense shall be presumed innocent until proven guilty in a lawful trial and shall be entitled to all the necessary legal protections for their defense, in accordance with the relevant laws and regulations."

In Law No. 26 of 2000 concerning the Human Rights Court, Article 10 implicitly states that the Indonesian criminal justice system must guarantee human rights. Article 27, paragraph (1) of the 1945 Constitution of the Republic of Indonesia asserts that "All citizens are equal before the law and government, and are obliged to respect the law and government without exception." This provision suggests a fundamental legal principle, namely the principle of equality before the law, also known as *égalité devant la loi* or *equality before the law*. This principle was further reinforced after the second amendment to the 1945 Constitution, specifically in Articles 28D, paragraph (1), and 28I, paragraphs (1) and (2). These provisions signify that all individuals, in their roles as both holders of rights and responsibilities, are equal before the law. Although not explicitly stated in the 1945 Constitution, this principle can be derived from the following legal foundation:

All citizens are equal before the law and government (Article 27, paragraph (1)): This article emphasizes the principle of equality before the law, asserting that every citizen has the same standing before the law without exception. It underlines a fundamental legal principle that each individual holds an equal position before the law. Furthermore, this principle is reiterated in the second amendment to the 1945 Constitution, particularly in Articles 28D, paragraph (1), and 28I, paragraphs (1) and (2). These provisions assert that all individuals, as bearers of rights and obligations, are treated equally under the law. Even though this is not explicitly stipulated in the 1945 Constitution, it can still be regarded as a legal basis for the principle of equality before the law.

1. All citizens are equal before the law and the government (Article 27, paragraph (1)).
2. The provision of legal protection to all Indonesian citizens and the entire Indonesian territory is a fundamental principle. Legal protection refers to efforts made to safeguard the rights of legal subjects. In Indonesia, legal protection is implemented through various laws and regulations. The forms and categories of legal protection are diverse, including civil law protection, consumer protection, child protection, and more.
3. Indonesia is a state governed by law, not one based on power (as per the authentic explanation of the 1945 Constitution). It is neither a police nor military state, nor a state where power is exercised arbitrarily. Every action must be based on law and legal regulations.

The people can only be governed based on laws and regulations, with the obligation to equally comply with these laws without exception. As a state governed by law, Indonesia applies its own set of rules in the administration of government, society, nation, and state. Generally, law is characterized by commands and prohibitions that must be followed by everyone within it. There are at least four essential elements of law: regulations concerning human behavior within society, these regulations are established by official bodies or authorities, they are compulsory in nature, and there are clear sanctions for violations of these regulations.

In resolving minor criminal offenses at the Purbalingga Police Resort through restorative justice, the process has been carried out in accordance with applicable regulations and directives from the leadership, with the aim of achieving justice for the community. As outlined in Article 10 of Law No. 26 of 2000 on Human Rights Courts, the Indonesian criminal justice system must guarantee human rights. Therefore, the application of restorative justice ensures the protection of human rights, particularly for both offenders and victims.

## CONCLUSION AND SUGGESTION

### A. CONCLUSION

1. Restorative Justice in the Resolution of Minor Criminal Offenses Based on Human Rights in the Jurisdiction of the Purbalingga Police Resort. In the settlement of criminal cases, the Purbalingga Police Resort prioritizes restorative justice, focusing on resolving minor criminal offenses through family-based approaches, outside of the courtroom (non-litigation). The process involves bringing together the victim and the accused, with the police acting as neutral mediators, ensuring impartiality without favoring either party. Families and relevant community members, such as the local neighborhood unit (RT) or community unit (RW), are also involved. This approach emphasizes humanitarian and familial values while still aligning with legal objectives, including justice, legal certainty, and the overall benefits of the law.
2. Barriers to Restorative Justice in the Resolution of Minor Offenses Based on Human Rights within the Jurisdiction of the Purbalingga Police Resort Factors impeding the effective implementation of mediation include the lack of voluntary witnesses who are willing to provide testimony based on their personal observations, experiences, and knowledge. This results in the inability to present the two required legal pieces of evidence. Furthermore, the mediation process fails to achieve a resolution between the two parties involved, primarily due to the complainant harboring a grudge. This occurs despite prior mediation efforts undertaken before filing the police report. As a result, the same incident repeats, necessitating that the case be resolved through litigation.
3. Efforts to overcome obstacles in the implementation of restorative justice in minor criminal cases within the jurisdiction of the Purbalingga Police Resort include conducting training for investigators and involving them in restorative justice education at the Dikbangspes training center, which is held at the Lemdiklat Mabes Polri. Additionally, external efforts focus on addressing the challenges in reaching an agreement between the victim and the juvenile offender. One of the

strategies is to hold separate meetings with both parties to find common ground and reach the best possible agreement for both the perpetrator and the victim.

## B. SUGGESTION

1. In the implementation of mediation for resolving minor criminal offenses, there should be a set timeframe for completing a case. Based on the process currently carried out by the Purbalingga Police Resort, it is evident that progress is being made, yet there is no clear deadline for when the mediation should be concluded. Therefore, it is recommended to re-evaluate and establish a time limit for mediation, so that cases do not drag on unnecessarily or appear rushed.
2. It would be beneficial for the investigators at the Purbalingga Police Resort to intensify their efforts in socializing the importance of applying restorative justice in the resolution of criminal cases. Given the challenges observed in handling minor criminal offenses, some of which remain unresolved, the police should pay greater attention to how the community views the law and its resolution. This ensures that both victims and offenders do not harbor grudges, promoting better reconciliation and eliminating hesitation among witnesses to provide their testimony.
3. It is important for the public to be aware that there are alternative methods for resolving minor criminal offenses, aside from the punitive (retributive) approach. One such alternative is restorative justice, where the resolution is achieved through dialogue and deliberation, aiming for a mutually agreed solution. This approach provides a more balanced and equitable outcome for both the victim and the offender, promoting peace and eliminating any lingering resentment between both parties.
4. Offenders of minor crimes should be encouraged not to repeat their offenses, as minor criminal offenses are regulated under the Criminal Code (KUHP), the Criminal Procedure Code (KUHAP), and PERMA and Police Regulation No. 8 of 2021 concerning the Handling of Criminal Offenses Based on Restorative Justice.

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