

Penal Mediation as an Alternative Dispute Resolution for Indonesian Criminal Code

Ratri Novita Erdianti

Criminal Law Department, Faculty of Law, University of Muhammadiyah Malang, Malang, Indonesia
E-mail Coresponden: sholahuddin.alfath@gmail.com

Wasis Suprayitno

Criminal Law Department, Faculty of Law, University of Muhammadiyah Malang, Malang, Indonesia

Sholahuddin Al-Fatih

Criminal Law Department, Faculty of Law, University of Muhammadiyah Malang, Malang, Indonesia

Info Artikel

Received: 13/01/2020

Revised: 14/02/2020

Accepted: 09/03/2021

Keywords:

Penal Mediation; Alternative Dispute Resolution; Restorative Justice; Indonesian Criminal Code

Kata Kunci:

Penal Mediation; Alternative Dispute Resolution; Restorative Justice; Indonesian Criminal Code.

P-ISSN: 1412-310x

E-ISSN: 2656-3797

Abstract

A high level of criminality has caused several issues in upholding the criminal code. The issues include things that are related to the effective ways to tackle criminality, criminal cases accumulation, and over-capacity issue. These issues need a proper handle immediately. One of the resolution mechanisms of criminal cases is by using the restorative justice approach, namely penal mediation. This research is to analyze the penal mediation construction in Indonesia and its role as an attempt of criminal case policy as the update of Indonesian criminal law. This research conducted a normative juridical analysis of a variety of legislation and crime prevention theories. Penal mediation is an alternative dispute resolution (ADR) outside the court which commonly applies to civil cases. Unlike the juvenile criminal justice system, the positive criminal law in Indonesia cannot resolve the criminal cases outside the court; nevertheless, certain cases make it possible to have it settled outside the court. Apart from that, as a discrete, Indonesian law enforcement also settles some criminal cases outside the court. For civil cases, the mediation usually in the case relate to finance issue, as for criminal case, it is more on freedom and life of an individual. Mediation for civil cases is usually directly among parties of the dispute, or the second party of interest. As for criminal cases, the parties are more complex which include the actors, victims, but also the prosecutor and public.

Abstrak

Tingkat kriminalitas yang tinggi telah menyebabkan beberapa masalah dalam menegakkan hukum pidana. Masalah-masalah tersebut meliputi hal-hal yang terkait dengan cara-cara efektif untuk menangani kriminalitas, akumulasi kasus-kasus kriminal, dan masalah kelebihan kapasitas. Masalah-masalah ini perlu segera ditangani dengan tepat. Salah satu mekanisme penyelesaian kasus pidana adalah dengan menggunakan pendekatan keadilan restoratif, yaitu mediasi pidana. Penelitian ini adalah untuk menganalisis konstruksi mediasi pidana di Indonesia dan perannya sebagai upaya kebijakan kasus pidana sebagai pembaruan hukum pidana Indonesia. Penelitian ini melakukan analisis yuridis normatif dari berbagai teori perundang-undangan dan pencegahan kejahatan. Mediasi pidana adalah alternatif penyelesaian sengketa (ADR) di luar pengadilan yang umumnya berlaku untuk kasus perdata. Berbeda dengan sistem peradilan pidana anak, hukum pidana positif di Indonesia tidak dapat menyelesaikan kasus pidana di luar pengadilan; namun demikian, beberapa kasus memungkinkan untuk diselesaikan di luar pengadilan. Selain itu, sebagai diskrit, penegak hukum Indonesia juga menyelesaikan beberapa kasus pidana di luar pengadilan. Untuk kasus-kasus perdata, mediasi biasanya dalam kasus ini berkaitan dengan masalah keuangan, seperti untuk kasus kriminal, lebih pada kebebasan dan kehidupan individu. Mediasi untuk kasus perdata biasanya langsung di antara pihak-pihak yang berselisih, atau pihak kedua yang berkepentingan. Adapun kasus-kasus kriminal, partai-partai lebih kompleks yang meliputi aktor, korban, tetapi juga jaksa dan publik.

INTRODUCTION

The increase rate of the criminal act does not only occur in Indonesia. Law enforcement has conducted many attempts to overcome the issues, yet the efforts only occur in the courtroom. For the juvenile criminal justice system, there has been case settlement outside the courtroom, namely diversion. It is an effort to achieve the goal of restorative justice as a way to resolve issues outside the courtroom by involving the victim and the victim's family.¹ The application of restorative justice in the criminal case system is in line with the Declaration of the United Nations the year 2000 on the Basic Principles on the Use of Restorative Justice Program in Criminal Matters. This principles suggest the utilization of restorative justice widely within the criminal matter court system. The declaration marked a strong recommendation in applying restorative justice. The Vienna Declaration on Crime and Justice also strengthens the urge to apply restorative justice.²

Article 27 of the declaration says : We decided to introduce action plans to support crime victims in national, regional, and international scale on the form of mediation and restorative justice mechanisms. We established the year 2002 as the target year for countries members to review relevant practices that can undergo further improvement to support buffering services for the victims. We also start awareness campaigns towards victims' right and to condider the funding enactment for victims and to develop victims' protection policies. Article 28 states : We encourage the development of restorative justice policies procedures and programs that are respectful of the rights, needs, and interests of victims, offenders, communities, and all other parties.³

The two declarations prove that the justice crime system must start to maximize the efficiency of the restorative justice system. Indonesia has applied restorative justice in the juvenile criminal justice system. Regulatin Number 11 the year 2012 states in the Juvenile Court that restorative justice is the criminal matter dispute settlement by involving the perpetrators, victims, family of victim/perpetrator, and other related parties to settle a fair and just agreement by emphasizing to the normal situation instead of the act of revenge. As restorative justice uses diversion, it diverts juvenile cases from the courtroom to the non-court process. Diversion between the victims and perpetrator aims at peace arrangement, resolving juvenile crime cases out of the courtroom, avoiding children from losing their freedom, supporting the society to have active participation, and embedding the sense of responsibility within the children.⁴

As a consideration, diversion is a resolution attempt whose final goal is to achieve a win-win-solution agreement. In line with diversion, penal mediation is a resolution attempt that involves the victim and victim's family. Penal mediation is also known as mediation in criminal cases, mediation in penal matters, victim offenders mediation, offender victim arrangement (British), strafbemiddeling (Dutch), der AuBergerichtliche Tatausgleich (German), de mediation penale (France). In principle, penal mediation is a form of alternative dispute resolution, which is a common practice for civil cases justice system. Apart from the juvenile justice system, Indonesian positive crime justice cannot take the non-courtroom resolution, even though there are several cases as an exception. Nevertheless, in practice, Indonesian law enforcement often settles particular crime resolutions through reconciliation, tribal council, and other similar mechanisms.

¹Abildanwa, T. (2016), *Mediasi Penal Sebagai Upaya Dalam Rangka Pembaharuan Hukum Pidana Di Indonesia Berbasis Nilai-Nilai Keseimbangan*, *Jurnal Pembaharuan Hukum*, 3(1)

²Arief, B. N. (2008), *Mediasi Penal: Penyelesaian Perkara Di Luar Pengadilan*, Semarang: Pustaka Magister.

³Flora, H. S. (2015), *Penal Mediation As An Alternative Model Of Restorative Justice In The Criminal Justice System Of Children*, *International Journal of Business, Economics And Law*

⁴Lasmadi, S. (2015), *Mediasi Penal Dalam Sistem Peradilan Pidana Indonesia*, *Jurnal Universitas Jambi*

Since there is no legal stand for reconciliation although there has been resolution informally through tribal council, the positive law must still prevail.⁵ The consequence of penal mediation application as an alternative dispute resolution for crime cases through restitution shows that there is no significant difference between criminal and civil cases; and that the difference does not have any bonded function.⁶

In theory and practice, penal mediation is new in the court system. Nevertheless, to consider the increase in the Indonesian criminal level, penal mediation has significant impact on the handling system of crime action through judiciary system. The high level of criminal acts in Indonesia has become a significant issue in the implementation of criminal cases. Besides, the stigma attached to a former prisoner also needs particular attention, for it may cause a non-positive effect that eventually turn the individual into becoming a recidivist. The judge verdict that tends to choose imprisonment has caused the overcapacity in prisons. With all existing issues, there is a need to take efforts in resolving criminal cases which can minimize the negative effects during the trial.⁷

Penal mediation is a breakthrough in law by law enforcement by referring to the Restorative Justice approach. The application of penal mediation is to consider the purpose of reconciliation the victim and perpetrator through mediation, settling cases, also to return and repair the damage and loss due to the criminal case. Thus, the mediation can unite both families of the victim and perpetrator, or by take into community leaders to find the best resolution. Based on the background, the writer wanted to examine the penal mediation functions to overcome criminal case as a breakthrough in criminal case jurisdiction.

RESEARCH METHODS

The method used in this paper is the normative legal research method. Normative legal research is research with a literature study through an approach based on the main legal material by examining theories, concepts of legal principles, norms, rules of legislation, and court decisions. In this study three types of approaches were carried out, namely the conceptual.⁸

DISCUSSION

Penal Mediation as an Alternative Dispute Resolution

Criminal case settlement through criminal judiciary is a small part of the thorough handling. The Criminal Court System attempts in the form of penal effort has the Criminal Case Regulation as the legal framework; besides that, the dispute settlement outside the courtroom emphasizes the cause of criminal acts. All these criminal countermeasures derive from criminal politics (Crime Eradication Policie).⁹ The Indonesian issue of crime eradication policies has become a significant discussion matter; whereas all criminal cases still focus on the litigation system that end up at the court. At the juridical process, the judge tends to refer to confinement sentenced for the perpetrator. In a more in-depth study, penal provision has a weak effect towards the criminal

⁵Mulyadi, L. (2013), *Mediasi Penal Dalam Sistem Peradilan Pidana Indonesia: Pengkajian Asas, Norma, Teori Dan Praktik*, *Yustisia*, 2(1)

⁶Mulyadi, L. (2015), *Mediasi Penal Dalam Sistem Peradilan Pidana Di Indonesia*, Bandung: Alumni.

⁷Rado, R. H., Arief, B. N., & Soponyono, E. (2016), Kebijakan Mediasi Penal Terhadap Penyelesaian Konflik Sara di Kepulauan Kei Dalam Upaya Pembaharuan Hukum Pidana Nasional *Jurnal Law Reform*, 12(2)

⁸Nurul Huda, "Indev Model sebagai Pilihan Diversi terhadap Anak yang Berhadapan dengan Hukum", *Jurnal Wacana Hukum*, Volume 25, Nomor 2, Tahun 2019.

⁹Orin Gusta Andini, "Tinjauan Hukum Pencemaran Nama Baik Terhadap Pejabat Negara: Kajian Atas Putusan Hakim Nomor 341/Pid.B/2014/Pn.Sgm", *Jurnal Wacana Hukum*, Volume 25, Nomor 2, Tahun 2019.

eradication efforts, primarily when it refers to a minor felony and misdemeanour. Therefore, the negative effect of the judiciary process is more significant than the purpose of sentence confinement.¹⁰

As stated before, sentence confinement has negative impact, such as enable the prisoners to exchange information and experience inside the prison about their crime. Besides that, the stigma of a former prisoner is often unacceptable in society. Therefore, the situation opens a chance to increase the rate of recidivism as the society cannot accept former prisoners in the community. The overcapacity in many prisons all over Indonesia also encourages the application of penal mediation. Therefore, dispute resolution outside the litigation can be a proper choice to overcome the issues in the judiciary system, especially for the minor felony and misdemeanour; the alternative of which is in the form of penal mediation.¹¹

The criminal case judicature has reached the restorative justice that requires efforts to have it realized; one of the ways is through penal mediation. The Criminal Law System has improved in its practice by prioritizing the restorative justice. In restorative justice, criminal law regulation aims to achieve fairness in improvement and restoration after the crime occurred. Restorative justice is different from retributive and restitutive justice. The retributive justice emphasises more on the punishment. On the other hand, restitutive justice focuses more on compensation. Therefore, restorative justice wants to introduce and develop a relationship between the perpetrator and the victim. According to Muladi, restorative model has several characteristics in detail, namely:¹²

1. Crime is defined as a violation of the others and recognized as a conflict.
2. The focus on solving the problem of accountability and liability in future
3. The nature of normative built on the basis of dialogue and negotiation
4. Restitution as a means of improving the parties, reconciliation and restoration as the primary goal.
5. Justice formulated as relations rights, assessed on the basis of the results.
6. Target attention to the improvement of social disadvantage.
7. Community is a facilitator in the process of restorative.
8. The role of the victim and the perpetrator is recognized, both in the problem as well as the completion of the rights and needs of victims. Criminals are encouraged to be responsible
9. Accountability offender is defined as understanding the impact of the action and to help decide the best.
10. Crime thoroughly understood in the context of the moral, social and economic, and
11. Stigma can be removed through a restorative action

For more obvious explanation, the United Nations Office for Drug Control and Crime Prevention mentions that restorative justice is a new term used for the existing concept. The restorative justice approach existed in the conflict resolution among parties and peace recovery in society. The application of restorative justice is to replace the retributive or rehabilitation approach that no longer provides a satisfying result. Therefore, there is a high drive to switch to restorative

¹⁰Arvita Hastarini, "Keabsahan Perjanjian Kerja yang dilakukan Anak di Bawah Umur", *Jurnal Wacana Hukum*, Volume 25, Nomor 2, Tahun 2019.

¹¹Indah Putri Rahmawati, "Kontruksi Pajak Lingkungan di Indonesia", *Jurnal Wacana Hukum*, Volume 25, Nomor 2 (2019)

¹²Jaelani A.K, Basuki U, "Problematika Pelaksanaan Putusan Mahkamah Konstitusi Nomor 100/PUU-XI/2013 dalam Mendudukkan Pancasila Sebagai Dasar Negara", *Jurnal Wacana Hukum*, Volume 24, Nomor 2 Tahun 2018.

justice. The approach framework of restorative justice involves the perpetrator, victim, and society to create fairness between perpetrator and victim.¹³

Urgency Penal Mediation as an Alternative Dispute Resolution for Indonesian Criminal Code

As per regulation, penal mediation in Indonesia is still attached to the dispute resolution process of the civil court case. On the other hand, criminal law juridically does not set in concrete about the penal mediation. Nevertheless, the juvenile criminal court system already applies the penal mediation, which is known as diversion mechanism. Diversion is a dispute resolution process switch from the courtroom to the non-courtroom by reconciling the victim and family with the perpetrator and the family for a mediation. The criminal case law, theoretically, does not regulate penal mediation. . There is conventional thought that criminal cases cannot be settled outside the courtroom. Still, in practice, the penal mediation is often the proper choice to resolve issue through the police discrete in handling the minor felony and demeanour.¹⁴

Penal mediation is known as mediation in criminal cases, mediation in penal matters, victim offenders mediation, offender victim arrangement (British), *strafbemiddeling* (Dutch), *der AuBergerichtliche Tatausgleich* (Germany), *de mediation penale* (French). Penal mediation is a new dimension both for theoretical and practice. From the practical point of view, the penal mediation relates to the law practice achievement. Gradually, there is a significant increase in the volume of the case, both in the form and variant. As a consequence, it gives a particular load for the court in examining and settle the case in accordance to the simple law, the process of which requires a low budget and fast settlement without forfeiting the juridical purpose which includes the law certainty, benefit, and justice.¹⁵

Principally, penal mediation is one of the Alternatives of Dispute Resolution (ADR) commonly used in civil cases. In this case, the ADR is settled in Regulation Number 30 the year 1999 on Arbitration and Alternative Dispute Resolution. The ADR also relates to copyright and intellectual property, labour, business competition, consumer protection, environment, etc. In the Indonesian criminal law system, the case must be settled in the courtroom, yet in practice, some cases that have non-courtroom settlement. The settlement is usually through the discrete by law enforcement, peace mechanism, tribal council, etc. The arrangement does not have a formal stand yet. In practice, the legal stand for penal mediation comes from the police discrete. The Republic of Indonesia National Police issued a Letter of the National Police Chief of Indonesia No. Pol: B/3022/XII/2009/SDEOPS dated December 14, 2009, on the Case Settlement through Alternatice Dispute Resolution (ADR), which emphasises on the settelement criminal cases using ADR with the approval of related parties.¹⁶

Through the letter of the Police Chief of the Republic of Indonesia, law enforcement has the authority to conduct non-bonding penal mediation since it is not the law regulation. In addition to the National Police Chief's Letter, other conditions that allow for settlement with the ADR system are, among others, in the case of offences committed in the form of violations that are threatened with only criminal fines. In article 82 of KUHP, - 4 the right to prosecute effaces if the defendant

¹³Bambang Ali dan Abdul Kadir Jaelani, "Menggagas Constitutional Complaint dalam Konstitusi Indonesia dan Politik Hukum Islam", *Jurnal Wacana Hukum*, Volume 24, Nomor 1 Tahun 2018.

¹⁴Arifin Ma'ruf, "Kedudukan Asas Kebebasan Berkontrak dalam Kebijakan Kemitraan Kehutanan", *Jurnal Wacana Hukum*, Volume 25, Nomor 1 Tahun 2019.

¹⁵Nurul Huda, "Indev Model sebagai Pilihan Diversi terhadap Anak yang Berhadapan dengan Hukum", *Jurnal Wacana Hukum*, Volume 25, Nomor 2, Tahun 2019.

¹⁶*Ibid.*

pays the fine at maximum cost for the misconduct and other expenses due to the prosecution. The stipulation in the article is known as *afkoop* or reconciliation fine, which may release the prosecution. According to Mudzakkir, there are benchmark and scope of cases to settle outside the courtroom by penal mediation, namely:¹⁷

1. The violations of criminal which belong to offence warranting complaint category, both absolute and relative.
2. The violation has criminal fines, and the perpetrator has fulfilled it.
3. The act belongs to “violation category” instead of “felony” that only subject to criminal fines.
4. The violation is in the field of administrative with criminal convicted as the ultimium remedium.
5. The criminal violation is a minor felony/demeanour. and law enforcement applies its discrete authority.
6. Criminal violation process stops (*deponir*) by the attorney general per the statutory.
7. The criminal violation is against the customary law whose settlement is according to the tribal council regulation.

Penal mediation, as the alternative dispute resolution is necessary for several minor criminal felonies because :

1. It is expected to reduce cases accumulation at the court.
2. It is one of the processes of dispute resolution, which is faster, cheaper and simple.
3. It can provide more extensive access to all disputed parties to achieve justice.
4. It strengthens and maximizes the court function and dispute resolution besides the sentence of the verdict.

According to Gunawan Widjaja, mediation consists of several elements namely:

1. Mediation is a dispute resolution on compliance-based through a negotiation.
2. The mediator functions to assist all disputed parties for resolution.
3. The mediator for the agreement process must be by approval of disputed parties.
4. The mediator does not have the authority to give the right to take any decision during the negotiation.
5. Mediation aims at producing conclusion and settlement accepted and approved by all disputed parties.

Mediation in criminal cases common occurs not only in Indonesia but also in other countries which is a form of resolution of criminal cases instead of civil cases only. The occurrence of international meetings has produced various international documents concerning mediation issue. The Penal Reform Conference in 1999 in London concluded that one of the key elements of a new agenda for penal reform is the need to enrich the formal judiciary system through the informal mechanism in the form dispute resolution in accordance to the human rights standards The conference also identify nine development strategies in renewing the criminal case:¹⁸

¹⁷Orin Gusta Andini, “Tinjauan Hukum Pencemaran Nama Baik Terhadap Pejabat Negara: Kajian Atas Putusan Hakim Nomor 341/Pid.B/2014/Pn.Sgm”, *Jurnal Wacana Hukum*, Volume 25, Nomor 2, Tahun 2019.

¹⁸Karjoko L, Nurjanah Y, “The Legality of Freehold Title and Legal Implications Against of Land Makers Officers (The Study of Freehold Title Issuance Number 1576/Nusukan Village, Banjarsari Sub-District, Surakarta City, Central Java)”, *International Journal of Scientific and Technology Research* 8(10), 2019.

1. *Restorative Justice*
2. *Alternative dispute resolution*
3. *Informal justice*
4. *Alternative to custody*
5. *Alternative ways of dealing with juveniles*
6. *Dealing with Violent crime*
7. *Reducing the prison population*
8. *The Proper Management of Prisons*
9. *The role of civil society in penal reform*

As a renewal, penal mediation is regulated in the Indonesian Criminal Code article 113 as follows:¹⁹

- 1) The investigator is entitled to stop the investigation if there is not enough evidence or that the incident is not a crime or the law closes the case.
- 2) The termination of an investigation as referred in article (1) is based on:
 - a. judge's verdict of pretrial by request of victim;
 - b. the achievement of mediation between the victim and perpetrator.
- 3) The case that suitable for mediation resolution as per article (2) consists of:
 - a. A minor felony/ demeanour;
 - b. Crime offenses that are threatened with imprisonment for a maximum of 4 (four years);
 - c. Crime actions that are threatened by paying fine ;
 - d. The perpetrator's age is over 70 (seventy) years old upon the criminal act occurred;
 - e. The perpetrator has paid all the compensation of the case;The regulation as per article (3) of item d and e only prevails for crime act with 5 (five) years confinement sentence at a maximum verdict.
- 4) As per investigation termination stated in the article (3), the investigator must report to the supervisor.
- 5) Further regulation on the settlement procedure through mediation, as mentioned in the article (3), is following the Government Regulation.

The Crime Case Policies in overcoming the criminal acts through non-courtroom dispute resolution is, in practice, aims at achieving a win-win solution. According to Covey, a win-win solution can fulfill all disputed parties with fair benefits. A win-win solution is a framework that seeks mutual benefit in every interaction among people. The win-win solution means that all parties get benefits due to negotiation or agreement. By using a win-win solution, all parties are satisfied by the decision and subject to the agreement. The win-win solution principle views that life is a mutual relationship and cooperation. The existence of penal mediation is viewed from philosophical, social, and juridical perspectives. According to Lilik Mulyadi, from philosophical perspective, penal mediation always makes the win-win solution as the ultimate goal instead of giving benefit only to one of the disputed parties as to the formal law enforcement process. Penal

¹⁹Jaelani A.K, Handayani I.G.A.K.R, Karjoko L, "Executability of the Constitutional Court Decision Regarding Grace Period In The Formulation Of Legislation", *International Journal of Advanced Science and Technology* Vol. 28, No. 15, (2019). Page. 816-823

mediation gives fair benefit to all disputed parties. On the other hand, penal mediation functions to stabilize the situation and produce the best solution and settlement for the resolution.²⁰

This mediation implies that both sides, the victim and perpetrator, make a mutual deal, negotiation, and agreement to achieve the win-win solution. Besides, philosophically, penal mediation has positive implications such as a fast, simple agreement with a low-cost budget because there are less involved parties compared to the courtroom process using Criminal Case Judiciary System. Further, from the sociological perspective, the aspect has orientation for Indonesian society where its cultural life is based on kinship and negotiation for consensus in settling arisen issues. In short, the customary law system can settle the issues by using local wisdom, for it is a reflection of the first and fundamental law that exists within the people of Indonesia. From the juridical perspective, the penal mediation in the dimensions of state law is not well known and still leaves controversy among those who agreed and disagree with its application. The non-court dispute resolution does not have any legal standing, which often causes the legal process to continue at the court level even though there has been a settlement due to negotiation through the customary law mechanism.²¹

Customary law-based penal mediation gives a good chance for criminal law policy in the future to pay more attention to the social values in the community. Criminal law policy on the termination of prosecution due to non-courtroom resolution also gives a chance for customary institutions in Indonesia to become an alternative of dispute resolution. In Memorandum Explanatory from the European Council No. R (99) 19 on Penal Mediation, there are six recommended forms as follows:²²

1. Informal Mediation.

This model requires the Prosecutor, as the criminal justice personnel in the formal function, to invite all related parties to have an informal settlement with the purpose of terminating the charge upon agreement. This model also allows social workers or probation officers, as well as law enforcement and judge, to take part in the implementation.

2. Traditional Village or Tribal Moots.

This model suggests that all community members gather in resolving the criminal issue(s) within their society. There are several under-developed countries and rural areas that practice this settlement model. Traditional village or tribal moots gives many benefits to a wide range of people. This model has advanced western law and inspired many modern mediation programs. The modern mediation program often introduces various benefits from the tribal moots in forms that are adjustable to the modern social structure and individual rights according to the law.

3. Victim-offender mediation

This model believes that the mediation between the victim and perpetrator is the most common idea in society. Victim-offender mediation involves many parties and an appointed mediator. There are many variations of this model. The mediator may come from formal functionaries, independent mediator, or a combination of both. This mediation can occur in each process, namely prosecution bias, law enforcement policy,

²⁰Lego Karjoko, "Aspek Keadilan Alih Fungsi Lahan Pertanian Ke Non Pertanian (Studi Kecamatan Nguter Kabupaten Sukoharjo)", *Jurnal Repertorium*, Volume IV No.2 Juli-Desember 2017.

²¹Lego Karjoko, Hasmonel, "Aspek Keadilan Pemberian Hak Guna Bangunan di Atas Hak Milik", *Prosiding Seminar Nasional*, Fakultas Ilmu Sosial dan Ilmu Politik, Universitas Terbuka UTCC, 26 Agustus 2015.

²²Lego Karjoko, I Gusti Ayu Ketut Rachmi Handayani & Adi Sulistiyono, "Setting of Plantation Land Area Limitation Based on Social Function Principles of Land Cultivation Rights to Realize Social Welfare-Promoting Plantation", *Jurnal Dinamika Hukum*, Volume 17, Nomor 1 Tahun 2017.

sentence settlement, or after the sentence settlement. This model applies to all types of perpetrators such as juvenile crime cases, robbery, treacherous violence, theft, and also child offenders, novice offenders, but it also applies to heavy offenses and recidivism. This model is applied to all types of criminal offenses, some are specific to children, some are for certain types of criminal acts (for example shoplifting, robbery and acts of violence), and some are mainly aimed at child offenders, novice offenders, but there are also heavy offenses and even for recidivists.

4. Reparation Negotiation Program

This model is to measure the compensation to charge to the offender, and usually occurs during the court trial. This program does not relate to reconciliation among parties, yet it only about material recovery plans. According to this model, the criminal offender can be charged with a work program to enable in saving some funds to pay the compensation.

5. Community Panels Or Courts

This model is a program that aims at bending the criminal case within the courtroom and switches it to a more flexible and informal social procedure, which often include mediation or negotiation.

6. Family and Community Group Conferences

Australia and New Zealand have been developing this model, which involves social participation in the criminal court system. This model requires involvement from all related parties, namely the victim, offender, the family members of both sides, the community members, related enforcement (such as the police and judge of the juvenile case), and the support system of the victim. The offender and his/her family also must make a comprehensive agreement for the victim and is willing to help the offender from getting in to further issues.

CONCLUSION

Penal mediation is an effort to resolve criminal cases outside the courtroom. Theoretically, penal mediation in Indonesia does not yet have any legal standing because of the diversity in the law system. In practice, penal mediation applies to the settlement of the criminal case. The fact that the mediation is usually for civil cases settlement, yet in practice, it also applies to the criminal case by the assistant of law enforcement discrete. Therefore, penal mediation as a breakthrough of the criminal law system in Indonesia requires a comprehensive discussion to handle criminal cases.

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