

## Mediation in the Settlement of Criminal Procedures in Indonesia

Rudy Heriyanto Adi Nugroho<sup>a</sup>

<sup>a</sup>Faculty of Law, Lampung University, Indonesia.

**Article History:** Received: 11 January 2021; Revised: 12 February 2021; Accepted: 27 March 2021; Published online: 10 May 2021

---

**Abstract:** Mediation is generally known as one of the forms of Alternative Settlement of Disputes in the law civil, but in the development of mediation can be done in the case of a criminal who is known by the mediation Penal. Mediation Penal can be used in several acts of crime are categorized as special. Application of mediation the completion of the case criminal aims in addition to not prolong a conflict between the perpetrator and the victim will however assist apparatus enforcement of law in reducing the buildup of file case. The purpose of writing this is to understand and know about how a mechanism of mediation can be used to resolve a case of criminal in Indonesia. In writing this, using the method of normative that is descriptive. The normative approach is legal research that uses secondary data sources, while the descriptive approach is a research method that seeks to describe and interpret objects according to what they are.

---

**Keywords:** Restorative Justice, Penal Mediation.

---

### 1. Introduction

One of the forms of Alternative Settlement of Disputes is Mediation. Mediation is one of the forms of settlement of disputes outside the institutions of justice (non litigation) with the help of another person or a third party that is neutral and not take sides and not as a decision -making are called mediators. The goal here is to reach an agreement settlement of disputes that were they faced<sup>1</sup> The completion of the issue of law through mediation is a win-win solution where the parties do not exist that winning and losing, so that the dispute does not lasted long and protracted, and can improve the relationship between the parties that the dispute, Advantages settlement of a dispute with the use of mediation is very many of which cost cheap, quick, satisfying the parties are in dispute as to be cooperative, preventing the buildup case in court, eliminate rancor, strengthen relationships friendship and to strengthen and maximize the function of the institution of justice in the settlement of disputes in addition to the court which is to decide (adjudicative).<sup>2</sup>

Case punishment on principle, not be resolved through the mechanism of mediation. However, in practice, is often also the case of criminal resolved through the mechanism of mediation, which is an initiative of enforcement of law as part of the settlement of the case. By thus, In fact, mediation is actually able to run in the System Justice Criminal. Country- the country which has been implementing things that are Austria, Germany, Belgium, France, Poland, Slovenia, Canada, United States, Norway, Denmark, and Finland. Mediation is this that is referred to as mediation Penal.<sup>3</sup> According to DS. Dewi and Fatahillah A. Gratitude, Mediation Penal is a settlement case criminal through deliberation with the help of a mediator neutral, attended by the victim and the offender together with the parents and representatives of the community, with the goal of recovery for victims, perpetrators, and the environmental community.<sup>4</sup>

### 2. Objectives of the Research

Study is aimed to understand and know about how a mechanism of mediation can be used to resolve a case of criminal in Indonesia.

---

<sup>1</sup>Ketut Artadi and Dewa Nyoman Rai Asmara Putra, 2009, General Introduction on Alternative Dispute Resolution and Contract Design, Faculty of Law, Udayana University, Denpasar), p. 12

<sup>2</sup>I Made Agus Mahendra Iswara, "The Role of Mediation Penal in Resolving Follow Criminal Violence in the Home Appliances (domestic violence) in Police Denpasar", Thesis, Faculty of Law of the University of Udayana, Denpasar, 2011, h.6

<sup>3</sup>Mansyur Ridwan, 2010, Mediation Penal Against Case of Domestic Violence (Violence In Home Appliances), Yayasan Gema Yustisia Indonesia, Jakarta, h.166

<sup>4</sup>DS. Dewi and Fatahillah A. Syukur, 2011, Penal Mediation: Application of Restorative Justice in Indonesian Children's Court, Indie-Publishing, Depok, p. 86

### 3. Strategy Methodology

In writing this, using the method of normative that is descriptive. The normative approach is legal research that uses secondary data sources, while the descriptive approach is a research method that seeks to describe and interpret objects in accordance with what they are.

### 4. Discussion

#### A. The Implementation of Mediation in the Settlement of Criminal Procedures in Indonesia

In Law Positive Indonesia case the criminal is not able to be resolved outside the court, will but in matters of certain possible implementation. In practice, criminal law enforcement in Indonesia, although there is no formal legal basis, criminal cases are often resolved outside the court process through the discretion of law enforcement officials, peace mechanisms, customary institutions and so on. Consequences increasingly applied to the existence of mediation penal as one of the alternative settlement of cases in the field of law of criminal through restitution in the criminal shows, that the difference between the law of criminal and civil is not so big and the difference it be not functioning.<sup>5</sup>

Mediation Penal who apply the values of Justice Restorative is not the stuff just for the people of Indonesia, even now justice is said to be as an approach that Progressive as that delivered by Marc Levin" approach which had declared obsolete, old-fashioned and traditional to say as the approach to the progressive".<sup>6</sup> According to Barda Nawawi Arief, the reason penal mediation is used in the settlement of criminal cases is because the idea of penal mediation is related to the problem of criminal law reform (Penal Reform), also related to the problem of pragmatism, other reasons are the idea of victim protection, the idea of harmonization, the idea of restorative justice, the idea of overcoming the rigidity (a formality) and effect negatively on the system justice criminal and system of sentencing that apply, as well as the efforts of search efforts to alternative sentencing (in addition to the prison).<sup>7</sup> In fact in society Indonesia settlement of a lawsuit either civil or criminal in Mediation Penal no matter new, stuff is evidenced by the completion of the approach to the deliberations. When viewed in historical culture (cultural) communities Indonesia is very upholds high approach to consensus<sup>8</sup>, which is more priority to making decisions in the traditional and settlement through the mechanism of customs.

According Mudzakkir suggests some categorization as a yardstick measuring and space scope of the case that can be solved in the outer court through mediation Penal are as follows:

1. Violations of the law of criminal that included a category of offense complaint, both complaints which are absolute and complaints that are relative.
2. Violations of the law of criminal that have criminal penalties as threats of criminal and offenders have to pay a fine of these (Article 80 of the Criminal Code).
3. Violations of the law of criminal that included the category "offense", not a "crime", which is only punishable by criminal penalties.
4. Violations of the law of criminal that included acts of crime in the field of legal administration which put sanctions criminal as ultimum remedium.
5. Violations of the law of criminal that includes category light / round light and apparatus enforcement of law to use its authority to conduct discretion.
6. Violations of the law of criminal plain that terminated or not processed into court (Deponir) by the Attorney General in accordance with the authority of the law that he has.
7. Violations of criminal law are included in the category of violations of customary criminal law which are resolved through customary institutions.<sup>9</sup>

One of the efforts of the application of justice restorative that can be done by the police in maximizing completion by using a mechanism mediating Penal. Penyelesaian judge actions of this can be done by the police as the vanguard of a major system of justice criminal, with the authority that discretion in completing a case of criminal protection of consumers. Even the implementation of the values of justice Restorative by officers police had been given a basic law in the form of Telegram secret Kabareskrim Police of the State of the Republic of

---

<sup>5</sup>Barda Nawawi Arief, 2008, Penal Mediation for Out of Court Case Settlement, Pustaka Magister, Semarang, p. 4-5

<sup>6</sup>Marc Levin in Eva Achjani Zulfa, 2011, Shifting Criminal Paradigm, Lubuk Agung, Bandung, p. 67

<sup>7</sup>Barda Nawawi Arief, 2000, Policy Legislature in Combating Crimes with Criminal Prison, Body Publisher University of Diponegoro. Semarang, p. 169-171

<sup>8</sup>Mushadi, 2007, Mediation and Conflict Resolution in Indonesia, Walisongo Mediation Center, Semarang, p.

<sup>9</sup>Mudzakkir, In I Made Agus Mahendra Iswara, "Mediation Penal Application Values of Restorative Justice in the Settlement Acts of Criminal Traditional Bali", Thesis, Program Graduate School of Law of the University of Indonesia, Jakarta, in 2013, h.55-56

Indonesia No: STR / 583 / VII / 2012 Date 8-8-2012 About Sample Handling Cases are related to the concept of Restorative Justice, which essentially states that the Restorative Justice although not yet there is an umbrella law that clearly (already existing 1 Law System Justice Criminal children who adopt the values of restorative justice through the mechanism of diversion).<sup>10</sup>

## 5. Conclusions

From the explanation above, a conclusion can be drawn, namely: Mediation can be used in solving criminal cases. Will but not all cases of criminal that can be resolved through mediation, there is the category of acts of crime that can be resolved by mediation, application of mediation in the case of a criminal is a translation of the values of justice restorative that is oriented to the completion of cases that benefit all parties (victims, perpetrators, and the third, namely society.

## References

1. Barda Nawawi Arief, 2000, *Policy Legislature in Combating Crimes with Criminal Prison*, Body Publisher Universitas Diponogoro. Semarang,
2. Barda Nawawi Arief, 2008, *Mediation Penal Settlement Perkar a Excluding the Court*, Library, Magister, Semarang, h.
3. DS. Dewi and Fatahillah A. Syukur, 2011, *Penal Mediation: Implementation of Restorative Justice in Indonesian Children's Court*, Indie-Publishing, Depok.
4. I Ketut Artadi and Dewa Nyoman Rai Asmara Putra, 2009, *Introduction to General About Alternative Settlement of Disputes and Design Contract*, the Faculty of Law of the University of Udayana, Denpasar),
5. I Made Agus Mahendra Iswara, "*The Role of Mediation Penal in Resolving Follow Criminal Violence in the Home Appliances (domestic violence) in Police Denpasar*", Thesis, Faculty of Law of the University of Udayana, Denpasar, 2011,
6. I Made Agus Mahendra Iswara, "*Penal Mediation of the Application of Restorative Justice Values in Settlement Acts of Criminal Traditional Bali*", Thesis, Program Graduate School of Law of the University of Indonesia, Jakarta, in 2013,
7. S. and C. Zonyfar, "Social Media Marketing and Brand Awareness for Millennial Generation", *J Arch. Egyptol*, vol. 17, no. 1, pp. 131-140, Nov. 2020.
8. Mansyur Ridwan, 2010, *Mediation Penal Against Case of Domestic Violence (Violence in Home Appliances)*, Yayasan Gema Yustisia Indonesia, Jakarta.
9. Marc Levin in Eva Achjani Zulfa, 2011, *Shifting Criminal Paradigm*, Lubuk Agung, Bandung.
10. Mushadi, 2007, *Mediation and Conflict Resolution in Indonesia*, Walisongo Mediation Center, Semarang
11. Zonyfar, C., Maharina, Zayn, M. & Barack, E., 2020. Student Enrollment: Data Mining Using Naïve Bayes Algorithm. *Journal of Advanced Research in Dynamical and Control Systems*, pp. 1077-1083.

---

<sup>10</sup>Ibid, p. 208