Remodeling of Criminal Case Settlement in Indonesia

by Ahmad Syaufi

Submission date: 15-Mar-2023 12:01PM (UTC+0700)
Submission ID: 2037572690
File name: a405115-822.pdf (905.14K)
Word count: 7630
Character count: 41201

Remodeling of Criminal Case Settlement in Indonesia

AHMAD SYAUFI
Faculty of Law, Universitas Lambung Mangkurat,
Banjarmasin,
INDONESIA

Abstract: - The criminal justice process in Indonesia based on the Criminal Procedure Code can be said to have diminished or even removed the important role of individuals in attempts to settle criminal cases. The search for justice in criminal cases depends entirely on the ability of the integrated system built by the police, prosecutors, courts, and correctional institutions. In this context, of course, efforts to seek justice do not solely depend on the state alone, but must be accomplished through cooperation and competitive social relations. Seeing the existing reality in order to accomplish fair procedural justice and restorative justice in the renewal of criminal law in Indonesia, it is necessary to conduct a study regarding how to remodel the settlement of criminal cases in Indonesia in the future. This article performs qualitative research using normative legal research using a statutory approach and a conceptual approach. Efforts to seek justice in the settlement of criminal cases, of course, can no longer rely solely on the criminal justice process, but there must be an alternative settlement involving the conflicting parties and a neutral third party. In reforming the national criminal law, it is necessary to reconstruct the settlement of criminal cases that accommodates the settlement of criminal cases through the criminal justice process and penal mediation in order to improve the Indonesian criminal justice system to be effective and efficient. The criminal case settlement model can be formulated into the Draft Criminal Code and the Draft Criminal Procedure Code.

Key-Words: - Reconstruction, Legal Settlement, Sentencing Alternatives, Criminal Cases, Penal Mediation.

Received: September 14, 2022. Revised: January 18, 2023. Accepted: February 20, 2023. Published: March 10, 2023.

1 Introduction

The settlement of criminal cases through the criminal justice process as a method of distributing justice is commonly perceived as unfair to all parties. One of the contributing factors is that the criminal justice process is full of formalities, procedures, bureaucracy, and strict methodologies, and there is and is still one process for all kinds of issues (one for all mechanisms). Formal justice rests on the repressive actions of the police and is followed by a legal process through the judiciary. These formal litigation actions depend a lot on coercion and the authority of the law enforcement officers who carry out them. Even if there is a result, it will generally end in a “lost-lost” or “win-lose” situation. In criminal cases, such as fraud and theft, the judge's decision only imposes a prison sentence on the defendant who is proven guilty, without being accompanied by sanctions in the form of an obligation to the defendant to provide compensation to the victim. Although the Criminal Procedure Code (see Chapter XIII Articles 98-101 of the Criminal Procedure Code) allows the victim to file a (civil) lawsuit for all the suffering and losses suffered, this kind of lawsuit will take a long time which does not benefit the victim.

The criminal justice process in force in Indonesia currently still prioritizes retributive justice which is reconstructed in the administration of criminal justice as a rationalization or objectification of revenge against criminal law violators, causing permanent suffering and negative stigma to the perpetrators of criminal acts so that the perpetrators become people. ostracized in society, [1], [2]. This has an impact on the difficulty of perpetrators to improve their attitudes and behavior to become good and responsible citizens.

This condition is very contrary to the wishes of the people who crave restorative justice in every settlement of criminal cases which should be resolved peacefully, [3]. The operation of the criminal justice system in Indonesia is based on Law Number 8 of 1981 concerning the Criminal Procedure Code. Based on the Criminal Procedure Code, criminal justice is more focused on paying attention to the perpetrators of criminal acts, both in terms of their position from the time the suspect becomes a convict and also their rights as suspects or defendants are highly guarded by the Criminal Procedure Code. So it is possible to say that the criminal justice process in Indonesia is an

Offender-minded or Offender Oriented Criminal Justice Process. Because it is more focused on the interests of the perpetrators of the crime, the interests of the victims of the crime are not recognized in the Criminal Procedure Code.

Even though the Criminal Code has regulated and protected the concerns of the victim to acquire compensation for the perpetrator through a judge's resolution in the form of a conditional sentence, where compensation for the loss to the victim is used as a special condition. Since it is only a special requirement of a conditional sentence, judges often do not apply it in imposing a conditional sentence, so it is implementation is ineffective. This condition is one that underlies the emergence of various negative assumptions about the criminal justice process carried out by state institutions that only present formal justice (procedural) and retributive justice to justice seekers.

The criminal justice process in Indonesia based on the Criminal Procedure Code can be said to have decreased moreover removed the important role of individuals in an attempt to resolve criminal cases. The search for justice in criminal cases depends entirely on the competence of the integrated system built by the police, prosecutors, courts, and correctional institutions. In fact, after the enactment of Law Number 18 of 2003 concerning Advocates, which was originally expected to enlarge the role of individuals through assistance to victims and efforts outside the court, it did not change the 'rigid' nature of the criminal justice process in Indonesia. New advocates will be efficient and their actions assessed in order to seek justice only for their actions before the trial. Meanwhile, the results of efforts made outside the court, such as the results of negotiations and reconciliation do not have legal force to be assessed as material for consideration of a court decision.

Another problem, if all criminal cases must be resolved through the criminal justice process, it will affect the increase in the number of prisoners and detainees. Currently, the percentage of detainees and prisoners in Indonesia has exceeded the capacity of the Correctional Institutions and State Detention Center. Derived on data from the Directorate General of Corrections at the Ministry of Law and Human Rights of the Republic of Indonesia, as of September 2, 2021, the number of prisoners and detainees in 439 prisons and detention centers in Indonesia has reached 266,663 people from the supposed capacity of 132,107 people, so there is over capacity of 134,556 people or around 201% people, [4]. As a result of this condition, in the vulnerability of prisons or detention centers to disturbances in safety and order, prisoners, and detainees escape illegal levies, extortion, drug trafficking, disease, and sexual deviation threats. This condition is certainly very concerning because there has been an excess of 2 times the capacity it should have. As a result, the process of sentencing and coaching prisoners in prisons does not run effectively, so there needs to be solutions and appropriate and strategic steps to overcome these problems.

As time goes by, there is a high possibility of enhancement in the volume of criminal cases with all their type and forms that go to court, so the effect becomes a burden for the courts in case examination and determination, so it is hard to avoid the accumulation of criminal cases in the judiciary. And it does not rule out the possibility of influencing the length of the criminal justice process and the quality of a judge's decision. This situation is of course contrary to the principle of a simple, fast, and low-cost trial. This is due to the misperception of law enforcers, especially in the operation of criminal law as the main weapon (primum remedium) in every settlement of criminal cases or cases that enter the realm or fall under the authority of law enforcers starting from the investigation authorized by the police, prosecution by the prosecutor's office, and the examination authority and that decide cases by judges, [5]. While, criminal law functions as the last weapon (ultimum remedium), interpreted that if a different method to accomplish the problem or criminal case is deadlocked or unsuccessful, then the settlement can be completed through criminal law.

In this context, of course, attempts to seek for justice do not anymore, depend solely only on the state but must be handled through competitive social relations and cooperation. Because the justice prepared by the state is not necessarily even suitable for the desire of those seeking justice themselves, because fundamentally every person needs and chases their interests as well as various acceptability of the sense of justice. This type of justice will never be discovered in the current grand design of the criminal justice process in Indonesia.

Observing the existing fact in order to accomplish fair procedural justice and restorative justice in the renewal of criminal law in Indonesia, it is necessary to conduct an assessment regarding how to remodel criminal case settlements in Indonesia in the future. This model is expected to be applied at every stage of the criminal justice process.

2 Research Methodology

This research is qualitative research using normative legal research. Normative legal research is a scientific research procedure to find the truth based on the logic of legal scholarship from the normative side, [6].

In order to accomplish the research objectives that have been set, this research uses a statutory and a conceptual approach. The statutory approach method involves an analysis of applicable laws, including identifying and analyzing the contents of these laws. This method also involves research on cases related to the law under study. The conceptual approach method involves an analysis of existing legal concepts, including identifying and analyzing the contents of these concepts. This method also involves research on cases related to the legal concepts studied.

3 Penal Mediation as an Alternative to Resolve Criminal Cases

The idea of penal mediation as an alternative to resolving criminal cases outside the court has never been known before, both in the criminal justice system with the due process of law model and the crime control model. Even if there are efforts to settle a criminal case outside the court, especially in the context of criminal law enforcement in Indonesia, all of them are solely or through the discretion of law enforcement officers such as the police. For example, with preliminary efforts to seek peace through the settlement of customary institutions and so on. These efforts are carried out only to the extent of "preliminary efforts" that do not have binding legal force, while the case may continue to be resolved through the criminal justice process, [7]. Even if an agreement or decision of a customary institution is obtained, it will only be used as the basis for non-binding considerations by the judge in his decision. This means that efforts to settle out of court do not stop the criminal justice process. In contrast to the more sensitive legal optics, this has actually violated the principle of nebis in idem in a broad sense. This is because a person has to experience more than one 'judgment' in a case that is not justified by the rules of criminal law.

Thoughts about the settlement of criminal cases through penal mediation are relatively new because the Criminal Code and the Criminal Procedure Code as well as other regulations and laws in the field of criminal law do not yet regulate the settlement through penal mediation of criminal cases so that if there is a desire to resolve criminal cases through penal mediation then there is a vacuum of legal norms.

The settlement of criminal cases through the criminal justice process is not a simple process, because it encompasses numerous components of the criminal justice system, a lot of stages that must be passed, and a lot of time and money is needed to resolve criminal cases. This is in line with the opinion of [8], that the settlement of criminal cases through the criminal justice process has many weaknesses, including:

> *The settlement of cases that are attached to the judicial system is very long (the delay inherent in a system) in ways that are very detrimental, namely a waste of time (a waste of time), very expensive costs, making people hostile (enemy) questioning the future. past, instead of solving future problems and paralyzing the parties (paralyzes people).*

Whereas the judiciary as a law enforcement institution in the criminal justice system is a hope for justice seekers who always want an easy, fast, and cheap trial as regulated in Article 2 paragraph (4) of Law Number 48 of 2009 concerning Judicial Power.

The settlement of criminal cases through the criminal justice process is more focused on the perpetrators of the criminal acts, without paying attention to or involving the interests of the victims who have been materially harmed by the perpetrators. The role of the victim in the settlement of criminal cases through the criminal justice process fully depends on the capability of the system integration created by the police, prosecutors, and courts, thereby reducing or even eliminating the important role of individuals in efforts to resolve criminal cases.

Efforts to seek justice in the settlement of criminal cases can no longer rely solely on the criminal justice process, but must also be pursued through a settlement involving the conflicting parties and a neutral third party, namely the settlement of cases through penal mediation.

The settlement of criminal cases through penal mediation, in principle, is no different from the peace process in conflict resolution which is commonly found in indigenous peoples in Indonesia. The penal mediation process is

relatively cheaper, faster, and more efficient because the penal mediation procedure is not as complicated as the bureaucratic criminal justice process. The commitment of perpetrators and victims of criminal acts to quickly resolve cases also makes penal mediation faster and more efficient.

Penal mediation is the resolution of criminal cases through deliberation with the help of a neutral penal mediator, attended by the perpetrators and victims, both individually and with their families and representatives of community leaders/customary leaders, which is carried out voluntarily with the aim of recovery for victims, perpetrators, and the community.

If it is associated with the values contained in Pancasila, it can be concluded that the value of deliberation in penal mediation is inspired and based on the 4th Precept which reads: "Population led by wisdom in deliberation/representation". The purpose of recovery for victims, perpetrators, and the community through the concept of restorative justice are values-oriented to the 2nd Precept, namely: "Just and civilized humanity". While the legal goal to be achieved through penal mediation is social justice which is reflected in the 5th Precept which reads: "Social justice for all Indonesian people".

Restorative justice is a way of thinking that reacts to the development of the criminal justice system by underlining the need for the involvement of victims, perpetrators, and the community who feel excluded from the mechanisms that work in the current criminal justice system. Besides that, restorative justice is also a new structure of thinking which can be utilized in responding to a crime for law enforcement. Handling criminal cases with a restorative justice approach offers different views and approaches in understanding and handling a criminal act. In the view of restorative justice, the meaning of crime is notably the same as the view of criminal law in general, namely assault on individuals and society and social relations. However, in the restorative justice approach, the state is not the main victim of the occurrence of a crime, as in the current criminal justice process. Therefore, crime makes a duty to repair the broken relationship because of the incident of a crime. Meanwhile, justice is interpreted as the process of looking for a solution to the matters that happen in a criminal case where the participation of victims, perpetrators, and the society is necessary for efforts to repair, reconcile and guarantee the continuity of these repair efforts.

Penal mediation is mediation in the settlement of criminal cases through deliberation with the help of a neutral mediator, attended by victims and perpetrators both individually and with their families and community representatives (religious leaders, community leaders, traditional leaders, etc.), which is carried out voluntarily, with the aim of recovering for victims, perpetrators and the community. Mediation in criminal cases can be carried out in a direct or indirect form, namely by bringing together the parties (victim and perpetrator) together or mediation carried out by a mediator separately (both parties are not met directly). This can be done by a professional mediator or a trained volunteer. Mediation can be carried out under the supervision of an independent criminal justice institution or community-based organization and subsequently the results of the penal mediation are reported to the criminal justice authorities.

The relationship between penal mediation and restorative justice is that the teachings of restorative justice are the teachings that underlie penal mediation. That is restorative justice as a paradigm that accommodates the penal mediation mechanism. On July 24, 2002, the UN ecosoc adopted the 2002/12 resolution on the "Basic Principles on the Use of Restorative Justice Programs in Criminal Matters". Through the Basic principles he has outlined, he assesses that the restorative justice approach is an approach that can be used in a rational criminal justice system. This is in line with the view of [9], "a rational total of the response to crime (criminal politics (criminal law policy) must be rational)". The restorative justice approach is a paradigm that can be used as a framework for a criminal case handling strategy that tries to answer concern about the way the criminal justice system is currently operating.

The term that described by Dignan on the concept of restorative justice as a form of new approach that can be utilize in manage as follows:

> *Restorative justice is a new framework for responding to wrongdoing and conflict that is rapidly gaining acceptance and support by educational, legal, social work, and counseling professionals and community groups. Restorative justice is a valued-based approach to responding to wrongdoing and conflict, with a balanced focus on the person harmed, the person causing the harm, and the affected community*.

This definition requires the existence of certain conditions that place restorative justice as the fundamental value in reacting to a criminal case. In this case, it is required to equalize the focus of attention between the interests of the perpetrator and the victim and also to take into account the effect of the resolution of a criminal case in society. The application of this requirement is not simply to determine the mainstream thinking of law enforcement officers who have been patterned with conventional thinking lines on the current criminal justice system. It's natural to remember the following point of view stating, [10]:

> *Restorative justice provides a very different framework for understanding and responding to crime. Crime is understood as harm to individuals and communities, rather than simply a violation of abstract laws against the state. Those most directly affected by crime -- victims, community members and offenders -- are therefore encouraged to play an active role in the justice process. Rather than the current focus on offender punishment, restoration of the emotional and material losses resulting from crime is far more important.*

The weakness of the current criminal justice system, as stated above, is in the role of victims and the community who have not yet received their roles so the interests of both are neglected. While in the model of settling criminal cases using a restorative justice approach, the active roles of these two parties are important. In the settlement of criminal cases, the idea of restorative justice can be applied by implementing a penal mediation mechanism, namely through deliberation with the help of a neutral penal mediator, attended by victims and perpetrators both individually and with their families and community representatives (religious leaders, community leaders, traditional leaders, etc.), which is carried out voluntarily, with the aim of rehabilitating victims, perpetrators and the community. The settlement of criminal cases through penal mediation can be positive, because:

1. It can resolve criminal cases quickly and relatively cheaply compared to settlement through the criminal justice process.
2. It is focusing attention on the real interests of victims and perpetrators and on their emotional or psychological needs, not only focusing on their legal rights and obligations, but also providing opportunities for victims and perpetrators to participate directly, and informally in resolving conflicts between them.
3. It provides consensus capabilities for perpetrators and victims to carry out the process and results.
4. It provides results that are tested and will be able to create a better mutual understanding between victims and perpetrators in conflict because they themselves decide.
5. It is able to eliminate conflict or hostility that often accompanies every coercive decision handed down by a judge in court.

Taking into account the development of thinking about penal mediation, it is necessary to reconstruct or remodel the settlement of criminal cases in Indonesia in order to improve the Indonesian criminal justice system so that it is effective and efficient. If penal mediation can be used as an alternative option for resolving criminal cases, there will be a remodel (reconstruction) of the settlement of criminal cases in Indonesia. This means that the construction of the settlement of criminal cases will be different in the future from the construction of the settlement of criminal cases at this time.

4 Remodeling of the Settlement of Criminal Cases

Reconstruction or remodeling of the settlement of criminal cases is basically to build or rearrange the existing criminal case settlement model, with the aim of updating or improving it so that it is more in line with the development and community necessity, [11].

Reconstructing is reshaping, rebuilding can be in the form of facts or ideas or remodeling, [12]. The concept of a criminal case settlement remodel is basically an effort to form or develop a criminal case settlement model that is relatively different from the model in the existing criminal justice process, namely to build or organize a new model that is relatively different from the model that has been used to resolve conflicts that have existed in the past arising from the occurrence of a criminal case to be more in line with the development and community necessity.

For this reason, as the embodiment of the Indonesian legal state, a settlement model should be built based on the following characteristics:

1. The compatibility of the relationship between the perpetrator and the victim is

based on the principle of kinship.
2. The principle of conflict or dispute resolution prioritizes deliberation, and the judiciary is a last resort.
3. There is a balance between rights and obligations between the perpetrator and the victim.
4. Perpetrators and victims must be both sincere and forgive each other.

The existence of a criminal case settlement model will form a new criminal case settlement model. The remodeling of the settlement of criminal cases in Indonesia is quite urgent, considering the current criminal justice process is full of formality and procedural burdens so that in general the process takes a long time and requires large costs, is very focused on the perpetrator, and eliminating the important role of individuals in efforts to resolve criminal cases, while the end result is often not satisfying for victims, perpetrators and the community.

[13] stated, that "the settlement of cases (disputes/conflicts) in a society can be done anywhere, not only by judicial institutions but can be resolved by various forums in their social environment, which are based on what is called indigenous law".

The settlement of cases (disputes/conflicts) that occur in the community does not all have to be resolved through court procedures. The litigant parties can make choices in resolving cases whether through court or out of court which is influenced by the prevailing culture in the community concerned. The parties have the freedom to choose strategic actions to resolve cases (disputes/conflicts) to achieve the goals they expect. According to [14], "there are several possibilities for resolving cases that can be used in various societies in the world, namely through adjudication, negotiation, coercion, avoidance and lumping it. Meanwhile, there are four models of settlement of cases (disputes/conflicts), namely negotiation, mediation, arbitration, and adjudication in courts, [15].

Based on the case settlement model (dispute/conflict) as stated above, in general, the settlement of cases (disputes/conflicts) carried out by the community can be classified into two ways, namely through court (litigation) and out of court (non-litigation). When the criminal justice process cannot provide the expected justice, then those with problems can look for other alternatives that can provide that hope. In the settlement of criminal cases, the parties (perpetrators and victims) have the right to choose a settlement mechanism that is in accordance with their respective wishes to achieve the goals of justice they expect.

In the future reform of the national criminal law, it is necessary to remodel (reconstruct) the settlement of criminal cases that accommodates the settlement of criminal cases through the criminal justice process and penal mediation. The criminal case settlement model is formulated into the Draft Criminal Code and the Draft Criminal Procedure Code, in the form of:

1. The Criminal Code as a material criminal law rule will regulate the following matters:
    a. Criteria for criminal acts that can be resolved through penal mediation;
    b. The reason for the abolition of the crime, the death of the prosecution, and the death of serving the sentence, if the settlement is through penal mediation.

2. Draft Criminal Procedure Code as a formal criminal law rule will regulate the following matters:
    a. The function of the penal mediation agency
    b. The basis for the termination of investigations, prosecutions, examinations in court, and the implementation of court decisions due to the settlement of criminal cases through penal mediation;
    c. Procedure for resolving criminal cases through penal mediation.

Remodeling the settlement of criminal cases in the criminal justice system in the future can be pursued by providing alternative options that will be offered, whether through the criminal justice process or penal mediation. The resolution of criminal cases through penal mediation can be carried out on the following conditions:

1. Settlement is voluntary for all parties involved.
2. It is not a repetition of a crime.

If the requirements have been met, then the parties can make a choice of settlement through penal mediation. The parties are also still able to choose a settlement pattern that is suitable and in accordance with the conditions of the local community, whether penal mediation through customary law mechanisms or through positive legal mechanisms regulated by the state. In determining these alternative choices, it is entirely

dependent on the agreement between the victim and the perpetrator.

Settlement of criminal cases through penal mediation by using customary law mechanism aims to preserve and recognize the existence of customary law that still applies to indigenous peoples in Indonesia. This is in line with the provisions of Article 18B paragraph (2) of the 1945 Constitution, which recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with community development. The traditional leaders/customers of the local community who will serve as penal mediators are called customary mediators.

Peaceful conflict resolution and dispute resolution have been involved in the lives of Indonesia's indigenous and tribal peoples Customary law communities in Indonesia feel that the peaceful resolution of conflicts and disputes has guided them to a harmonious, just, balanced and sustained life (communal) values in society, [16]. If the settlement of the case uses a positive legal mechanism regulated by the state, the penal mediator is the investigator, public prosecutor/executor, judge, or professional mediator appointed in accordance with the rules of the applicable laws and regulations. The future criminal case settlement model can be seen in Figure 1.

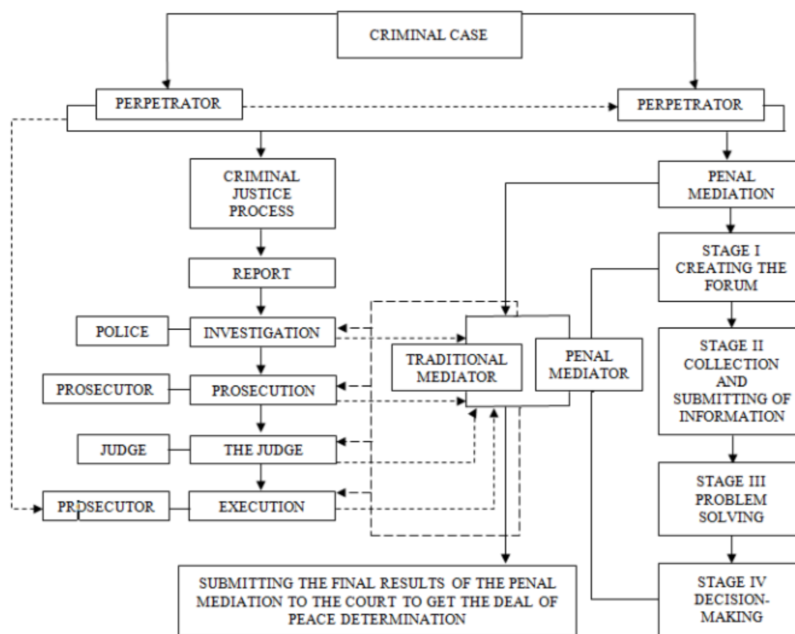

Fig. 1: Remodeling of Criminal Case Settlement in Indonesia

Based on Figure 1, it can be described that the future criminal case settlement model can be pursued through the criminal justice process or penal mediation (customary law or national law). In determining the decision of the case settlement model, it is entirely determined by the agreement between the perpetrator and the victim. The agreement between the perpetrator and the victim to select the process of resolving criminal cases through penal mediation can be carried out before or during or after the settlement of criminal cases through the criminal justice process. This means that the perpetrator and the victim can make an agreement to select a criminal case settlement model through penal mediation, namely before or throughout the investigation or prosecution process or examination in court, or after the implementation of a court decision. If the perpetrator and the victim agree to choose the settlement of their case through penal mediation, the settlement of the criminal case through the criminal justice process will be terminated on the basis of a judge's decision letter regarding the peace deed.

Resolution of criminal cases through penal mediation, perpetrators, and victims can make an agreement to choose the settlement of criminal cases through penal mediation during the stages of the investigation, prosecution, examination in court, and after the implementation of court decisions.

5 Formulating Strategies to Achieve Penal Mediation

In the settlement of criminal cases through penal mediation, it is possible to do by adjusting or combining the models of penal mediation contained in the Explanatory Memorandum of the European Council Recommendation No. R (99) which will be formulated into the upcoming Draft Criminal Procedure Code, namely in the following ways:

1. Penal mediation at the investigation stage
   Penal mediation at this stage of the investigation can use a combination of informal mediation models, traditional village or tribal moods, victim-offender mediation, and reparation negotiation programs in resolving criminal cases. At this stage, it can be determined how penal mediation works as follows:
   a. After seeing and studying the case or criminal act committed by the perpetrator with the criteria according to the provisions of the law, the investigator summons the perpetrator and the victim to offer alternative options for resolving their criminal case outside the criminal justice process, namely through penal mediation based on customary law or national law.
   b. Penal mediation must be carried out voluntarily by all parties involved. If there is an agreement between the perpetrator and the victim to mediate, then the investigator submits the criminal case to the victim by informing him about the customary mediator or professional mediator who will help resolve the case.
   c. Penal mediators are provided by investigators to be selected by the parties, either professional mediators or customary mediators (religious leaders, traditional leaders/tetuha adat, and others).
   d. Penal mediation is carried out in secret according to the principle of confidentiality. Everything that happens and statements that appear during the penal mediation process must be kept confidential by all parties, including the penal mediator. The penal mediator cannot be a witness in the criminal justice process for everything that happens during the penal mediation process and the reasons for the penal mediation not reaching an agreement if the penal mediation does not result in an agreement.
   e. It is during this penal mediation that the perpetrator and the victim are brought together to find mutually beneficial solutions. The victim can file a claim for compensation to the perpetrator according to the material loss he has suffered, facilitated by a mediator.
   f. If an agreement is reached in mediation, the penal mediator will notify the investigator that an agreement has been reached through penal mediation with the payment of compensation from the perpetrator to the victim.
   g. The result of the penal mediation agreement is a final decision and is submitted to the local district court to

obtain a settlement deed so that it can be used as an executorial basis and the reason for stopping the investigation.

h. If there is an agreement between the parties, the investigator will not continue the process of delegating the case to the public prosecutor.

2. Penal mediation at the prosecution stage
In the implementation of penal mediation at the prosecution stage, it is a combination of penal mediation models between informal mediation, traditional village or tribal moods, victim-offender mediation, and reparation negotiation programs. The implementation of penal mediation at the prosecution stage can be described as follows:

a. The Public Prosecutor by studying the criminal acts committed by the perpetrators based on the criteria for criminal acts determined by law can offer a settlement of cases through penal mediation to the perpetrators and victims.
b. Penal mediation is carried out based on the voluntary consent of the perpetrator and the victim. If the parties agree to carry out mediation, then the approval for penal mediation is submitted to the Public Prosecutor.
c. The Public Prosecutor can act as a mediator or can make appointments with customary mediators or certified professional mediators.
d. The penal mediator brings together the perpetrator and the victim.
e. The implementation of the mediation process is carried out in secret, in the sense that all events that occur and statements that appear during the penal mediation are not published by all parties involved.
f. In this penal mediation, reconciliation is held and the perpetrator is willing to take steps/methods to make compensation payments to the victim.
g. If the penal mediation does not reach an agreement, then the criminal case with the aspect of civil engagement will be continued with the process of delegating the case to the court for examination in court and prosecution. In this case, the penal mediator is not allowed to testify for the non-achievement of the penal mediation agreement or for everything that happens during the penal mediation process.
h. If the penal mediation reaches a peace agreement that is accepted by the parties (perpetrators and victims), then the deed of the agreement applies as a final decision after obtaining a judge's determination in the form of a peace deed to serve as the basis for execution and the basis for not prosecuting. The final result of the agreement can be used as a reason for the abolition of the prosecution.

3. Penal mediation at the stage of examination in court
The implementation of penal mediation at the trial stage in court is a combination or combination of the victim-offender mediation model, traditional village or tribal moods, and reparation negotiation programs. The implementation of penal mediation can be done as follows:

a. After studying the cases and criminal acts committed by the defendant, whether they meet the criteria for criminal acts determined by law, the judge can offer penal mediation as an alternative to resolving criminal cases peacefully to the perpetrators and victims.
b. If the perpetrator and the victim agree, then an agreement is held voluntarily to participate in the settlement of the case by means of penal mediation by both the perpetrator and the victim.
c. Judges can act as penal mediators or appoint customary mediators or penal mediators from elements outside the court who have met the requirements and are certified.
d. Mediation brought together the perpetrator and the victim, on this occasion a reconciliation was held between the victim and the perpetrator, and an agreement was made to pay compensation for the loss suffered by the victim.
e. Penal mediation is carried out based on the principle of confidentiality so that all events that occur and all statements that appear in the penal mediation process must be kept confidential by

the parties including the penal mediator.

f. If the penal mediation does not reach an agreement, the examination process in front of the trial will continue until the judge's decision is read.
g. If an agreement is reached between the perpetrator and the victim who mutually accept the results of the agreement (reconciliation) and it is agreed to pay compensation by the perpetrator and the victim, then the final result of penal mediation is stated in the judge's determination in the form of a peace deed to serve as the basis for execution and the basis for the perpetrator can no longer be prosecuted and tried in the criminal justice process, unless the perpetrator does not carry out the peace deed.

4. Penal mediation at the stage of implementing court decisions

The implementation of penal mediation carried out at the stage of implementing court decisions or serving imprisonment is a combination of victim-offender mediation models, traditional villages or tribal moods, and reparation negotiation programs.

Penal mediation at this stage serves as an excuse to abolish the authority to carry out a crime. The implementation of penal mediation at the stage of implementing court decisions (execution), is as follows:

a. For criminal cases that meet the criteria of the law that can be resolved through penal mediation, the perpetrator can offer the victim to hold penal mediation in order to eliminate the implementation of the crime.
b. If the victim agrees to the perpetrator's request for penal mediation, then the approval for penal mediation is submitted to the Public Prosecutor as the executor.
c. The prosecutor as the executor will research the chance of approval of the penal mediation.
d. If an agreement has been agreed to carry out penal mediation, then penal mediation can be carried out with the help of a penal mediator appointed by the prosecutor or a penal mediator outside the prosecutor's office who has been recognized and certified or through a customary mediator.
e. Penal mediation implements the principle of confidentiality so that all events and statements that appear in penal mediation are confidential.
f. If the penal mediation achieves an agreement to make peace and the perpetrator agrees to pay compensation to the victim, then the final result of the agreement is submitted to the court to obtain a court decision.
g. The results of the reconciliation agreement and the payment of compensation by the perpetrator to the victim are poured into a judge's determination in the form of a final peace deed, and is used as an executorial basis and the basis for acquitting the perpetrator (convict) from the crime he has not served.

The criminal law formulation policy to make penal mediation an alternative for solving criminal cases in the future is a building on the implementation of penal mediation, namely planning/policy on penal mediation procedures or mechanisms in the settlement of criminal cases in the future criminal justice system. The policy of implementing penal mediation in the settlement of criminal cases in the criminal justice system, includes penal mediation at the stage of the investigation, prosecution, examination at trial, and implementation of court decisions.

The construction of penal mediation is an ideal alternative for solving criminal cases in the criminal justice system in Indonesia, it is time to prepare the legal basis and implement regulations. In order to provide a legal basis and implement regulations for penal mediation as a means of resolving criminal cases, it is important to renew and restructure the criminal justice system as part of criminal law reform. The renewal of the criminal justice system is needed to provide a place for penal mediation as an alternative for resolving cases. The reform of the criminal justice system can be started by providing a legal basis for penal mediation, namely making changes or revisions to laws and regulations relating to the process of resolving criminal cases by adding a new institution, namely penal mediation into the criminal justice system in Indonesia.

The renewal of the criminal justice system needs to be carried out through a comparative and comprehensive approach to the development of

thinking that develops at the global and local levels. At the global level, penal mediation as an alternative for resolving criminal cases is quite advanced. Several countries have recognized and implemented penal mediation as an alternative for resolving criminal cases that are integrated into the Criminal Code, Criminal Procedure Code, and special laws. At the local level, criminal law reform in Indonesia cannot be separated from the existence of laws that live and develop in indigenous peoples which are constitutionally recognized in Article 18B paragraph (2) of the 1945 Constitution, which reads: "The state recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law". In customary law in Indonesia, the process of resolving conflicts that occur among indigenous peoples is carried out by means of peace, this resembles or can be equated with the process of resolving criminal cases through penal mediation. In the context of reforming the criminal justice system with the intention to provide a place for penal mediation as an alternative for resolving criminal cases, it is necessary to make changes or revisions to several laws and regulations, namely the Criminal Code and the Criminal Procedure Code.

6 Conclusion

The settlement of criminal cases through the criminal justice process is not an easy process, because it involves many components of the criminal justice system, many stages must be passed, a lot of time and money is needed to resolve criminal cases, very focused on the perpetrators of criminal acts, without paying attention to or involving the interests of the victim. harmed by the perpetrator. Efforts to seek justice in the settlement of criminal cases, of course, can no longer rely solely on the criminal justice process, but there must be an alternative settlement involving the conflicting parties and a neutral third party.

In reforming the national criminal law, it is necessary to remodel (reconstruct) the settlement of criminal cases that accommodates the settlement of criminal cases through the criminal justice process and penal mediation in order to improve the Indonesian criminal justice system to be effective and efficient. The criminal case settlement model can be formulated into the Draft Criminal Code and the Draft Criminal Procedure Code.

References:

[1] Packer, H. L. (1968). *Limits of the Criminal Process*. California: Stanford University Press.

[2] (*text in Indonesian*) Mudzakir. (2001). *Posisi Hukum Korban Kejahatan Dalam Sistem Peradilan Pidana* Dissertation, Postgraduate Program, University of Indonesia.

[3] Supaat, D. I. (2022). Restorative Justice for Juvenile Drugs Use in Indonesian Court: A Criminological Approach. *Lex Publica*, *9*(1), 94–110.

[4] (*text in Indonesian*) Herdian, L. (2021). *Dampak dan Penyebab Over Kapasitas Lapas di Indonesia*. Pontas.id, 10 September 2021. Available: https://pontas.id/2021/09/10/dampak-dan-penyebab-over-kapasitas-lapas-di-indonesia/. Accessed November 2, 2021.

[5] (*text in Indonesian*)Djatmika, P. (2009). *Mediasi Penal untuk Kasus Prita*. Available: https://gagasanhukum.wordpress.com/tag/prija-djatmika/. Accessed November 2, 2021.

[6] (*text in Indonesian*)Ibrahim, J. (2006). *Teori dan Metodologi Penelitian Hukum Normatif*. Malang: Bayumedia Publishing.

[7] (*text in Indonesian*)Atmasasmita, R. (2003). *Pengantar Hukum Kejahatan Bisnis*. Bogor: Predana Media.

[8] (*text in Indonesian*)Harahap, M. Y. (1997). *Beberapa Tinjauan Mengenai Sistem Peradilan dan Penyelesaian Sengketa*. Bandung: Citra Aditya Bakti.

[9] (*text in Indonesian*)Muladi & Arief, B. N. (1992). *Teori-Teori dan Kebijakan Pidana*. Bandung: Citra Aditya Bakti.

[10] Umbreit, M. S. (1999). *Avoiding the Marginalization and "McDonaldization" of Victim Offender Mediation: A Case Study in Moving toward the Mainstream (In Restorative Juvenile Justice)*. New York: Criminal Justice Press.

[11] (*text in Indonesian*)Hasan, A. (2001). *Kamus Besar Bahasa Indonesia*. Jakarta: Balai Pustaka.

[12] Black, H. C. (1990). *Black's Law Dictionary*, 6th ed. Minnesotta: West Publishing Co.

[13] Galanter, M. (1981). Justice in Many Rooms: Courts, Private Ordering, and Indigenous Law. *The Journal of Legal Pluralism and Unofficial Law*, *13*(19), 1-47.

[14] Nader, L., & Todd, H. F. (1978). *The Disputing Process: Law in Ten Societies*. New York: Columbia University Press.
[15] (*text in Indonesian*)Nurjaya, I. N. (2008). *Pengelolaan Sumber Daya Alam dalam Perspektif Antropologi Hukum*. Jakarta: Prestasi Pustaka Publisher.
[16] Syaufi, A., & Zahra, A. F., & Mursidah. (2021). The Criminal Settlement Through Customary Law from Restorative Justice Perspective. *Journal of Legal, Ethical and Regulatory Issues*, *24*(6), 1-7.

Creative Commons Attribution License 4.0 (Attribution 4.0 International, CC BY 4.0)
This article is published under the terms of the Creative Commons Attribution License 4.0
https://creativecommons.org/licenses/by/4.0/deed.en_US

Remodeling of Criminal Case Settlement in Indonesia

ORIGINALITY REPORT

17%	13%	10%	8%
SIMILARITY INDEX	INTERNET SOURCES	PUBLICATIONS	STUDENT PAPERS

PRIMARY SOURCES

#	Source	%
1	Ana Vulevic, Rui Alexandre Castanho, José Manuel Naranjo Gómez, José Cabezas et al. "Common Regional Development Strategies on Iberian Territories - A Framework for Comprehensive Border Corridors Governance: Establishing Integrated Territorial Development", IntechOpen, 2021 Publication	1%
2	Ardito Muwardi, Agus Surono, Hibnu Nugroho. "Restitution as a Requirement for the Implementation of Restorative Justice Against General Crimes Related to Property", KnE Social Sciences, 2023 Publication	1%
3	mahmudsapsalbrg2017.wordpress.com Internet Source	1%
4	annalsofrscb.ro Internet Source	1%
5	versita.com Internet Source	1%

#	Source	Type	Match
6	www.ijsrm.in	Internet Source	1 %
7	Submitted to Universitas 17 Agustus 1945 Surabaya	Student Paper	1 %
8	www.researchgate.net	Internet Source	1 %
9	eudl.eu	Internet Source	1 %
10	ijicc.net	Internet Source	<1 %
11	media.neliti.com	Internet Source	<1 %
12	journal.walisongo.ac.id	Internet Source	<1 %
13	Submitted to University of Queensland	Student Paper	<1 %
14	www.lawjournals.org	Internet Source	<1 %
15	Submitted to Southern New Hampshire University - Continuing Education	Student Paper	<1 %
16	publikationen.uni-tuebingen.de	Internet Source	<1 %

17	Submitted to University of Edinburgh Student Paper	<1 %
18	www.frontiersin.org Internet Source	<1 %
19	eprints.umm.ac.id Internet Source	<1 %
20	Tran Kim Chi. "Victim's Participation in Adversary Procedure of the Russian Federation's Criminal Procedure Code and Lessons for Vietnam", Vietnamese Journal of Legal Sciences, 2021 Publication	<1 %
21	bukupidana.blogspot.com Internet Source	<1 %
22	www.unswlawjournal.unsw.edu.au Internet Source	<1 %
23	Padmono Wibowo, Ghaneisya Anggareksi, Mulyani Rahayu, Maki Zaenudin Subarkah. "Resilience Capabilities of Female Inmates who are Covid-19 Survivors in the Pekanbaru Women's Correctional Institution", Jurnal Ilmiah Kebijakan Hukum, 2022 Publication	<1 %
24	seminar.uad.ac.id Internet Source	<1 %
	ejournal.uinsaizu.ac.id	

25	Internet Source	<1 %
26	sinovik.menpan.go.id Internet Source	<1 %
27	ojs3.unpatti.ac.id Internet Source	<1 %
28	diktis.kemenag.go.id Internet Source	<1 %
29	pasca.unhas.ac.id Internet Source	<1 %
30	repository.radenfatah.ac.id Internet Source	<1 %
31	skripsihukumindo.blogspot.com Internet Source	<1 %
32	Fajar Bima Alfian. "Reconstruction of Law Enforcement in Indonesia Through Strengthening the Embodiment of Pancasila Values of Justice to Realize Humane Law Enforcement", Pancasila and Law Review, 2022 Publication	<1 %
33	Hazar Kusmayanti, Sherly Ayuna Puteri. "Dispute Settlement Practices through the Religious Court's Mobile Court (Sidang Keliling)", FIAT JUSTISIA:Jurnal Ilmu Hukum, 2020	<1 %

Publication

34	Submitted to (school name not available) Student Paper	<1%
35	Nur Putri Hidayah, Sholahuddin Al-Fatih. "Recognition and Strengthening the Customary Land Ownership in Central Borneo Province", Jurnal Hukum Novelty, 2019 Publication	<1%
36	pub.nkumbauniversity.ac.ug Internet Source	<1%
37	Muh Malikul Mulki Nur, M. Syukri Akub, Hijriah Adhyanti Mirzana. "Law Enforcement in The Investigation of Criminal Acts of Destruction of Evidence", Daengku: Journal of Humanities and Social Sciences Innovation, 2022 Publication	<1%
38	www.jurnal-umbuton.ac.id Internet Source	<1%
39	Submitted to Universitas Slamet Riyadi Student Paper	<1%
40	jurnalmahasiswa.uma.ac.id Internet Source	<1%
41	ejurnal.ung.ac.id Internet Source	<1%

etd.repository.ugm.ac.id

42	Internet Source	<1 %
43	ojs.unm.ac.id Internet Source	<1 %
44	www.scilit.net Internet Source	<1 %
45	Brierly Napitupulu. "SUPREME COURT DECISIONS ON PUBLIC INFORMATION AND PERSONAL DATA PROTECTION", Indonesia Private Law Review, 2022 Publication	<1 %
46	E D Silambi, S A Yuldiana, J M Alputila, N Wijaya. "Sosio-legal analysis of forest cleaning process onMarind travel district Merauke", IOP Conference Series: Earth and Environmental Science, 2019 Publication	<1 %
47	Keisuke Taga, Yoshihiro Yamazaki. "A Tape-Peeling Model for Spatiotemporal Pattern Formation by Deformed Adhesives", Journal of the Physical Society of Japan, 2023 Publication	<1 %
48	careersdocbox.com Internet Source	<1 %
49	ijssrr.com Internet Source	<1 %

50	saudijournals.com Internet Source	<1%
51	www.publishing-widyagama.ac.id Internet Source	<1%
52	S Abdulajid, G A Tauda, M J Achmad. "Reafirmation of archipelagic state principle through the establishment of archipelagic region law in Indonesia", IOP Conference Series: Earth and Environmental Science, 2021 Publication	<1%
53	Submitted to Universitas Sebelas Maret Student Paper	<1%
54	download.atlantis-press.com Internet Source	<1%
55	e-journal.iainsalatiga.ac.id Internet Source	<1%
56	hukum.studentjournal.ub.ac.id Internet Source	<1%
57	jurnal.unej.ac.id Internet Source	<1%
58	pub.lex-localis.info Internet Source	<1%
59	repositori.uin-alauddin.ac.id Internet Source	<1%

60	rjoas.com Internet Source	<1 %
61	ÖZBEK, Mustafa Serdar. "THE PRINCIPLES AND PROCEDURE OF PENAL MEDIATION IN TURKISH CRIMINAL PROCEDURE LAW", Ankara Üniversitesi Hukuk Fakültesi, 2011. Publication	<1 %
62	Annga Alfiyan. "COMBINED WANPRESTASI LAWSUIT AND AGAINST THE LAW REVIEW OF THE JUSTICE SYSTEM IN INDONESIA", JIL : Journal of Indonesian Law, 2022 Publication	<1 %
63	Mulyadi, Lilik, and Ronald Hasudungan Sianturi. "Indonesian Customary Court Concept In The Future", Asian Social Science, 2015. Publication	<1 %
64	Victor Juzuf Sedubun. "Involvement of Indigenous People In The Utilization of Natural Resources For Investment Activities", SASI, 2022 Publication	<1 %

Exclude quotes	Off	Exclude matches	Off
Exclude bibliography	Off		