

CONSTRUCTION OF CRIMINAL SETTLEMENT LAW THROUGH PENAL MEDIATION IN PERSPECTIVE RESTORATIVE JUSTICE

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Abstract

Restorative justice is a preventive response to understanding crime in a social context. It is a challenge to unearth the roots of offence and crime to be able to break the cycle. This restorative justice is based on the assumption that the crime originated in a social situation and recognizes that the perpetrator of the crime has also been injured. Therefore, the community must take over the responsibility to improve the condition that has triggered the onset of evil and also work to cure it. International developments in the concept of criminal justice and procedures for handling criminal cases in several countries have been known penal mediation (penal mediation, mediation penal, mediation in criminal matters, Victim - Offender Mediation) which is part of the criminal justice system. Mediation, previously known only in civil law, has been frequently used in some countries to resolve criminal cases. Penal mediation is a manifestation of the concept of restorative justice, which seeks to restore the rights of victims. Thus, restorative justice is based on holistic philosophy. The application of holistic thinking can help strengthen the capacity of the existing justice system. The main challenge in its application in the modern world is how to promote community participation, and at the same time protect the rights and interests of victims and perpetrators who commit offenders. This legal research is normative juridical research, through statute approach, conceptual approach, so that it can get a comprehensive understanding of the construction of criminal case resolution law through penal mediation in the perspective of Restorative Justice.

Keywords: construction law, restorative justice, penal mediation, criminal law.

JEL Classification: K14

1. Introduction

In resolving a criminal case it is not fair to solve a criminal problem only considering one of the interests, both the perpetrator and the victim. Therefore, a theory of criminalization purposes that represents all aspects in the settlement of a case both victims, perpetrators and society therefore required a combination of one theory and another theory. The same thing was also expressed by Muladi in Zulfa⁵ who stated that the problem of criminalization becomes very complex as a result of efforts to pay attention to factors related to human rights, as well as make criminal is operational and functional. Therefore, a multidimensional approach that is fundamental to the impact of criminalization, both concerning individual impacts and the necessity to choose integrative theories about the purpose of criminalization that can affect its function in order to overcome the damage caused by a criminal act.

Restorative Justice is a new legal philosophy that is a combination of existing criminalization theories. Restorative Justice is a solution-oriented one that focuses attention on perpetrators, victims, and the community. Here Restorative justice contains the value of classic criminalization theory focused on the recovery of victims contained in the theory of criminalization Retributive Deterrence, Rehabilitation, Re-socialization. In addition to focusing on the recovery of perpetrators, Restorative justice also pays attention to the interests of victims (restitution theory, compensation, and reparation) and society (Incapacitation). Restorative Justice as the concept of criminalization is not only limited to the provisions of criminal law (formal and material).

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⁵ Zulfa, E.A., *Keadilan Restoratif di Indonesia (Studi tentang Kemungkinan Penerapan Pendekatan Keadilan Restoratif dalam Praktek Penegakan Hukum Pidana)*, Jakarta, Indonesia University, 2009, p. 78.

Restorative Justice should also be observed in terms of criminology and correctional systems⁶. Restorative Justice contains 2 (two) meanings, namely⁷:

1. Understanding justice in an ethical perspective, i.e. referring to the concept of moral balance of truth and error, the advantages and burdens of the parties. In Retributive justice, this balance is actualized in the form of suffering inflicted on the perpetrator as retaliation while in Restorative justice, the balance is realized by efforts to repair through a number of compensation or other compensation in an effort to heal or repair the losses incurred by the crime committed. The purpose of Restorative justice is to encourage the creation of a fair trial and encourage the parties involved in it.

2. The understanding of justice in a juridical perspective, namely legal justice is usually aligned with legal guarantees or certainty. Restorative Justice in its implementation must still respect the applicable law. Including it is the result of the existing process and its implementation. The approach to justice cannot be implemented as long as it is contrary to the prevailing legal system and laws and regulations. This becomes important because the legitimacy of the results of the process and the guarantee of its implementation will depend heavily on a rule that becomes the basis of the existence of guarantees and legal certainty.

Therefore, Restorative justice must be concentrated in the rule of law and integrated in the Criminal Justice System when it will be implemented. While Braithwaite, an Australian Criminologist, distinguishes Restorative Justice into 2 (two) concepts namely, First, focus on process and concept, namely bringing together all interests affected by a mistake. Second, focus on values, namely Restorative Justice as a value related to the recovery of victims and injustice and put victims before the occurrence of crimes including repair of the relationship between the perpetrator and the victim. Restorative Justice both as a process and as a value, is closely related to the reconciliation between the perpetrator and the victim⁸.

The essence of Restorative Justice is Healing, moral learning, community participation and attention, dialogue, forgiving, responsibility and making changes, all of which are guidelines for the restoration process in the perspective of Restorative Justice⁹. Restorative Justice aims to empower victims, perpetrators, families and communities to correct an act against the law, by using awareness and insity as the basis for improving people's lives¹⁰. According to Wright¹¹ the concept of Restorative Justice is basically simple. The measure of justice is no longer based on retaliation from the victim to the perpetrator (whether physical, psychological or punitive), but the painful act is healed by providing support to the victim and requiring the perpetrator to be held accountable, with the help of family and community when necessary.

According to Manan¹² the substance of Restorative Justice contains principles, as follows: "Building a sustainable participation between perpetrators, victims, and community groups resolves an event or criminal act. Placing perpetrators, victims, and the community as "stakeholders" who work together and immediately seek to find a solution that is seen as fair for all parties (win-win solutions)". While Mackay formulated a number of principles that must be adhered to in the implementation of the program that includes the principles attached to the interested parties, local communities, officials, the justice system and institutions that carry out the concept of Restorative

⁶ Manan, B., *Retorative Justice (Suatu Perkenalan.)*, dalam *Refleksi Dinamika Hukum Rangkaian Pemikiran dalam dekade Terakhir*. Jakarta, Perum Percetakan Negara RI, 2008, p. 121.

⁷ Walgrave, L., *Restoration in Youth Justice*. Chicago, University of Chicago, 2004, p. 85.

⁸ Atmasasmita, R., *Cita Keadilan Restoratif Dalam Pembaharuan Hukum Pidana Indonesia*. Paper presented at the National Seminar on the Role of Judges in Improving Professionalism Towards a Great Judiciary, Organized by IKAHI in the context of the 59th Anniversary of the IKAHI Tabun, 25 April 2012, p. 80.

⁹ Masyur, R., *Mediasi Penal Terhadap Perkara Pidana KDRT (Kekerasan Dalam Rumah Tangga)*. Jakarta, Yayasan Gema Yustisia Indonesia, 2010, p. 90.

¹⁰ Pavlich, G., *Towards an Ethics of Restorative Justice*, in L. Walgrave (Ed.), *Restorative Justice and The Law*, Oregon, Willan Publishing, 2002, p. 70.

¹¹ Wright, M., *Victim-Offender Mediation as A Step Towards A Restorative System of Justice*. Dordrecht, Kluwer Academic Publishers, 1999, p. 76.

¹² Manan, B., *op. cit.*, 2008, p. 121.

justice itself. The following principles¹³:

1. Voluntary participation and Informed Content;
2. Nondiscrimination, irrespective of the nature of the case
3. Accessibility to relevant helping agencies (including restorative practice agencies);
4. Protection of vulnerable parties in process;
5. Maintaining accessibility to conventional methods of dispute/case resolution (including court);
6. Privilege should apply to information disclosed before trial (subject to public interest qualification);
7. Civil right and dignity of individual should be respected;
8. Personal safety to be protected

2. Research methods

This research is normative legal research. Muhjadi and Nuswardani¹⁴, stated that "normative legal research is research that examines legal issues from the point of view of legal science in depth to established legal norms." Normative legal research is research conducted through normative juridical approach, statute approach and conceptual approach, so that it can get a comprehensive understanding of the legal construction of criminal case settlement through penal mediation in the perspective of Restorative Justice.

3. Result and discussion

3.1. Legal construction concepts

One of the functions of law is as a means of social integration, which is the settlement of conflicts of interest in social relations in people's lives. The existence of the law as a social integration is realized with the institution of the court that serves to integrate and resolve the conflict, so that the social life of the community is again comfortable and peaceful. The work of the judiciary in the criminal justice process is based on Law No. 8 of 1981 on the Criminal Code. Criminal justice process based on the Law - Criminal Proceedings Law is very focused on the perpetrators of criminal acts, both regarding their position since the suspect until he becomes a convicted and his rights as a suspect or defendant is very protected by the Criminal Code, so it can be said that the criminal justice process in accordance with the Law - Criminal Event Law is Offender minded/Offender Oriented Criminal Justice Process. Because it is very focused on the interests of the perpetrators of crimes, the interests of victims (victim's interests) do not get a place in the Criminal Code. The Criminal Code Procedure actually regulates the interests of the victim to obtain compensation for the perpetrator through a judge's decision in the form of a conditional sentence, where compensation for the victim is made as a special condition. However, because only as a special conditional requirement of a conditional criminal, it is often not applied by the judge in imposing a conditional sentence, so it is not effective implementation.

Nowadays, International developments in the concept of criminal justice and procedures for handling criminal cases in several countries have been known penal mediation (penal mediation, mediation penal, mediation in criminal matters, Victim - Offender Mediation) which is part of the criminal justice system. Mediation, previously known only in civil law, has been frequently used in some countries to resolve criminal cases. Penal mediation is a manifestation of the concept of restorative justice, which seeks to restore the rights of victims. In penal mediation the settlement of criminal cases is carried out without going through formal/traditional criminal justice process, therefore known as Penal Mediation or Victim - Offender Mediation (VOM), Offender-victim

¹³ Mackay, R.E., *Ethics and Good Practice in Restorative Justice*, in The European Forum for Victim-Offender Mediation and Restorative Justice, Victim-Offender Mediation in Europe. Leuven, Leuven University Press, 2000.

¹⁴ Muhjadi, H. & Nuswardani, N., *Penelitian Hukum Indonesia Kontemporer*. Jogyakarta, Genta Publishing, 2012.

Arrangement (OVA), or Mediation in Criminal Matters, or in German *DerAubergerichtliche Tatausgleich*" (abbreviated as ATA) and in French terms called "de mediation penal".

In the handling of criminal cases, at first glance penal mediation is almost the same as we know discretionary owned by the institutions of our criminal justice system, such as the police and prosecutors to screen incoming cases not to forward certain cases through the criminal justice process. However, there is a different essence to the discretionary system. Penal mediation prioritizes the interests of perpetrators of crimes and at the same time the interests of victims, so that a win-win solution is achieved that benefits the perpetrators of crimes and their victims.

In mediation penal victims are met directly with the perpetrators of crimes and can bring charges so that the peace of the parties is produced. Given the many advantages that exist in penal mediation, as has been practiced in several countries, it is necessary to review efforts to implement penal mediation in the Indonesian criminal justice process as part of the criminal justice system in Indonesia. Policies to establish penal mediation as an alternative to the settlement of criminal cases that are part of the criminal justice process are urgently needed, so that penal mediation can be a means of solving legitimate criminal cases and the results of the agreement are binding on the parties, law enforcement officials, and the community so that the crimes resolved through penal mediation eliminate the authority to sue.

3.2. Penal Mediation Role in the Implementation of Justice for perpetrators and victims

In penal mediation, the highest justice to be achieved is the agreement of the parties involved in the criminal case, namely the perpetrators and victims. Both are expected to find and reach the best solutions and alternatives to solve the problem at hand¹⁵. Perpetrators and victims can apply for restitution offered, negotiated and mutually agreed so that a win-win is achieved. Through penal mediation, the philosophy of justice is fast, simple, and light costs can be achieved compared to the settlement of cases based on components of the criminal justice system. On the other hand, it must also be recognized that one of the functions of law is as a means of social integration, which is the settlement of conflicts of interest in social relations in people's lives. The existence of law as social integration is manifested in court institutions that function to integrate and resolve the conflict, so that social life is again comfortable and peaceful. Conflict in society can be in the form of acts or criminal acts, in the form of criminal acts that violate the rights or interests of the law or legal objects of the victim. Here the function of criminal law through criminal justice plays its part as a law that protects objects and interests of legal importance against acts that violate it¹⁶.

The work of the judiciary in the criminal justice process in Indonesia is based on Law No. 8 of 1981 on the Criminal Code. In the law, it is as if all cases or legal conflicts must be resolved through the criminal justice system through the courts. In addition, in the Criminal Code Procedure also focuses on the perpetrators of criminal acts, both since his position as a suspect until he becomes a criminal and his rights at the time of becoming a suspect or defendant in the trial is very protected by Criminal Code Procedure. So, it is not superfluous to say that the criminal justice system based on Criminal Code Procedure only focuses on perpetrators mainded/offender oriented criminal justice system. Whereas in the general legal principle it is said that all people are treated equally before the law, meaning that in the criminal justice system must think in a balanced manner between the interests and legal protection for perpetrators of crimes and victims of crime. Then, if examined from the perspective of the loss of victims can be suffered by a person, community, or society at large. In addition, the loss of victims can also be material that is usually assessed with money and immaterial feelings of fear, pain, sadness, psychic surprise and so on¹⁷. That is, in the legal process of criminal proceedings must pay proportionate attention to the losses incurred. When

¹⁵ Cunneen, C., *Debating Restorative Justice*. Oxford Portland Oregon, Hart Publishing, 2010, p. 67.

¹⁶ Rozah, U., *Konstruksi Politik Hukum Mediasi Penal Sebagai Alternatif Penyelesaian Perkara Pidana*. Denpasar, Pustaka Larasan, 2012, p. 78.

¹⁷ Reksodiputro, M., *Kriminologi dan Sistem Peradilan Pidana*. Jakarta, Universitas Indonesia, 1994, p. 154.

viewed from a criminological and criminal law perspective, crime is a conflict between individuals that inflicts harm on the victim, society, and the offender himself¹⁸.

Among the three groups is essentially the interests of victims of crime as a major part of the crime, as Andrew Ashworth put it, that "primary an offence against the victim and only secondarily an offence against the wider community or state"¹⁹. The logical consequence of such dimensions is that the unbalanced protection of the victim has the psychological impact of going through the next life process after the crime that occurred. Muladi²⁰ further stated, that: "What is embraced is a realistic model that pays attention to the various interests that must be protected by criminal law, namely the interests of the state, the public interest, the interests of individuals, the interests of perpetrators of crimes and the interests of victims of crime". This model is called the balance of interest model.

One form of criminal settlement mechanism using restorative justice approach is penal mediation. From the perspective of terminology, penal mediation is known as mediation in criminal cases, mediation in penal matters, victim offender's mediation, offender victim arrangement (English), *strafbemiddeling* (Netherlands), *der AuBergerichtliche latausgleich* (Germany), *de mediation penale* (France)²¹. According to Ms. Toulemonde (French Minister of Justice) in Arief²² penal mediation is "As an alternative prosecution that provides a possible settlement of negotiations between the perpetrator of the crime and the victim". Martin Wright²³, meanwhile, defines penal mediation as "a process in which victim(s) and offender communicate with the help of an impartial third party, either directly (face-to-face) or indirectly via the third party, enabling victims to express their needs and feelings and offenders to accept and act on their responsibilities".

Penal mediation is a new dimension that is examined from theoretical and practical aspects. Reviewed from the practical dimension, penal mediation will correlate with the achievements of the judiciary. Over time where more and more days there is an increase in the volume of cases with all forms and variations that go to court, so that the consequences become a burden for the court in examining and deciding cases in accordance with the principles of simple, fast and light justice without having to sacrifice the achievement of the objectives of the judiciary, namely legal certainty, usefulness and justice.

The ideas and principles of penal mediation, are²⁴:

1. Conflict Handling: The duty of the mediator is to make the parties forget the legal framework and encourage them to engage in the communication process. It is based on the idea, that evil has led to interpersonal conflict. That conflict is what the mediation process is about.

2. Process Orientation: Penal mediation is more oriented towards the quality of the process than the results, namely resuscitating the perpetrator of the crime of his mistakes, the need for conflict needs solved, the calmness of the victim from fear and so on.

3. Informal Proceedings: Penal mediation is an informal process, not bureaucratic, avoiding strict legal procedures.

4. Active and Autonomous Participation: The parties (perpetrators and victims) are not seen as objects of criminal law procedures, but more as subjects of personal responsibility and ability to do so.

In criminal law the process of settlement of cases outside the court process through

¹⁸ Ness, D.W.V., *New Wine in Old Wineskins: Four, Challenges of Restorative Justice*. „The Criminal Law Forum”, 1993, No. 4, p. 251-276.

¹⁹ Ashworth, A., *Victim Impact Statements and Sentencing*, „The Criminal Law Review”, 1993, p. 498-509.

²⁰ Muladi, *Kapita Selekt Sistem Peradilan Pidana*. Semarang, Universitas Diponegoro, 1995, p. 212.

²¹ Mulyadi, L., "Mediasi Penal" Dalam Sistem Peradilan Pidana Pengkajian Asas, Norma, dan Praktik. Seminar paper on research results on, "Penal Mediation in the Criminal Justice System in Indonesia", organized by the Research and Development Center for Law and Justice Research and Development Board of the Supreme Court of the Republic of Indonesia, on October 26, 2011, at Hotel Alila Pecenongan, Central Jakarta.

²² Arief, B.N., *Mediasi Penal dalam Penyelesaian sengketa di Luar Pengadilan*, Paper presented in the National Seminar on Corporate Legal Responsibility in the Context of Good Corporate Governance, 27 March 2007.

²³ Wright, M., *op. cit.*, 1999, p. 86.

²⁴ Trankle, S. *The Tension between Judicial Control and Autonomy in Victim Offender Mediation - a Micro sociological Study of a Paradoxical Procedure Based on Examples of the Mediation Process in Germany and France*, http://www.iuscrim.mpg.de/forsch/krimtraenkle_e.html, consulted on 1.10.2020.

mediation is different from the process of resolving disputes outside the court process through mediation using penal mediation. In civil law mediation is usually used in relation to money matters, while in criminal law in question more on the freedom and life of a person.

For the parties involved, civil mediation is usually the parties directly in dispute or the second interested party, while in the mediation of criminal law the parties involved are more complex not only the perpetrator, the victim, but also the public prosecutor, as well as the public at large. By Detlev Frehsee, the increasing use of restitution in criminal proceedings shows that the difference between criminal and civil law is not so great and the difference is not working.

Mediation in criminal law means the process of resolving criminal cases by bringing criminals together with victims to reach a mutual agreement with respect to the crimes committed by the perpetrators and restitution given to the victim²⁵. The meeting (Mediation) was mediated by a mediator who was better from law enforcement, the government, nongovernmental organizations, and community leaders.

Criminal justice is not really the best institution in resolving conflicts between victims and perpetrators. In reality, criminal justice has its own standards of justice related to perpetrators of crimes that do not pay attention to the interests of the victim. Resolving conflicts with criminal justice undermines the familial relationship between the victim and the perpetrator. The initially peaceful, peaceful, harmonious, and familial relationship was shattered by the presence of the criminal justice system²⁶.

Because of the weakness of criminal justice in resolving criminal cases, it can be recommended the settlement of penal mediation mechanisms (Penal Mediation), because it has advantages that are not found in criminal justice. The advantages of penal mediation, are as follows:

1. Penal mediation helps reduce feelings of revenge against the victim, more flexible because the procedure is simpler, cost-effective, the process is faster than the process through criminal justice.

2. Reduce the burden of case accumulation in the court and reduce the time required to settle a case by using penal mediation.

3. Penal mediation provides an opportunity for victims and perpetrators to meet to discuss crimes that have harmed their lives, express their concerns and feelings and ask for restitution.

4. Penal mediation recreates the harmonious relationship between the victim and the perpetrator. This condition is not found in the settlement of cases with criminal justice. The victim's apology to the perpetrator will reduce the offender's guilt and create reconciliation between the two.

According to Mudzakkir²⁷ presented several categorizations as benchmarks and scope of cases that can be resolved outside the court through penal mediation are as follows:

1. Violation of criminal law belongs to the category of deliberation of complaints, both absolute complaints and relative complaints.

2. Violation of the criminal law has a criminal penalty as a criminal threat and the violator has paid the fine (Article 80 of the Criminal Code).

3. Violations of the criminal law fall into the category of "violations", not "crimes", which are only threatened with criminal fines.

4. Violations of the criminal law include criminal acts in the field of administrative law that place criminal sanctions as ultimum remedium.

5. Violations of the criminal law fall into the minor categories and law enforcement officers use their authority to conduct discretion.

6. Violations of ordinary criminal law that are stopped or not processed to the court (Deponir) by the Attorney General in accordance with his legal authority.

²⁵ Bakker, M.W., *Repairing the Breach and Reconciling the Discordant: Mediation in the Criminal Justice System*, in „North Carolina Law Review”, 1994, no. 72, p. 1479-1526.

²⁶ Weinstein, J.B., *Some Benefit and Risks of Privatization of Justice Through ADR*, „Ohio State Journal on Dispute Resolution”, 1996, vol. XI, no. 2, p. 243.

²⁷ Mudzakkir, *Alternative Dispute Resolution (ADR): Penyelesaian Perkara Pidana Dalam Sistem Peradilan Pidana Indonesia*. workshop, Jakarta, 18 January 2007.

7. Violations of the criminal law include categories of violations of customary criminal law that are resolved through customary institutions.

3.3. The application of restorative justice in the pursuit of justice

In restorative justice it is assumed that the guilty party will take responsibility for its actions, not only to the injured party but also to the wider community. In particular, restorative justice focuses on violations and offenders who violate, as well as proportionate sanctions. As such, restorative justice should not be viewed as being in the same way as retributive or rehabilitative justice, because restorative justice borrows and mixes many elements in retributive and rehabilitative justice. According to Kathleen Daly²⁸, the concept of punishment should remain a handle for the state in dealing with crime. In this case, restorative justice should be seen as an alternative punishment, not as an alternative to punishment.

The variety of models and forms that develop, restorative criminalization is also varied, which then gave birth to various terms, to describe it, such as communitarian justice, positive justice, relational justice, reparative justice, and community justice. Communitarian justice comes from the communitarian theory that developed in Europe today. These views place restorative justice in a position that carries the institution of deliberation as an effort that can be made in finding the best way to solve a problem arising from a criminal act²⁹.

The concept that the crime is a violation of the person and the relationship between people and the violation gives birth to obligations and responsibilities, the principles contained in restorative justice are³⁰:

- 1) Crime is an offence against human relationships;
- 2) Victims and the community are central to the justice process;
- 3) The first priority in the justice process is to help the victim;
- 4) The second priority is to restore the community to its fullest extent;
- 5) Offenders who violate have a personal responsibility to the victim and to the community for the crimes committed;
- 6) It is the responsibility of all stakeholders for restorative justice through partnerships for action.
- 7) The perpetrator will improve his competence and understanding as a result of his safety in restorative justice.

In the handling of criminal acts by using restorative criminalization aimed at restoring social relations between the parties, the main thing that becomes a requirement is a specific and dynamic interactive relationship between the parties involved. In this case, it is sought so that the process can run non-adversarial, free from the interests of certain parties and pay attention to the needs of perpetrators, victims, society and the environment as a whole. Meanwhile, in Indonesian criminal law, the mechanism outside the Court is also known, for example the formulation of Article 82 of the Criminal Code that a criminal offence in the form of an offence is only threatened with a fine and with the permission of the Public Prosecutor. Thus, settlements outside the Court can only be applied to minor crimes of a mild nature.

Here are ten criteria that can determine success in efforts to resolve disputes/cases through restorative criminalization, as described by Howard Zehr and Harry Mika:

- 1) Efforts to be focused on the consequences of errors rather than broken rules;
- 2) Acting impartially by showing equal concern and commitment to victims and perpetrators, and involving both parties in the process;
- 3) Work to recover, empower and respond to the needs of victims;
- 4) Seek to support the perpetrator and convince him/her to understand, accept and perform

²⁸ Daly, K., *Revisiting the Relationship Between Restorative Justice and Rehabilitative Justice*, Paper presented at Restorative Justice and Ova Society Conference, Australian National University, Canberra, February 1999.

²⁹ Zulfa, E.A., *op. cit.*, 2009, p. 132.

³⁰ <http://www.ojp.usdo.gov/iniltopics/courts/restorativejustice/welcome.htm>, consulted on 1.10.2020.

his/her obligations;

5) Trying to realize the perpetrator that fulfilling the obligation is difficult, but it must be done because it is not intended to hurt him and must be achieved.

6) Seeking to provide opportunities for dialogue, both directly and indirectly between the victim and the perpetrator in due course;

7) Seek to engage and empower affected communities through the justice process and increase their capacity to respond to crimes against the community.

8) Encourage collaboration and reintegration rather than waging curses and isolation.

9) Pay attention to the unexpected consequences of the actions and programs carried out.

10) Show respect to all parties, including victims, perpetrators and those involved in dialogue.

Restorative funding is generally restitution which includes compensation to meet the needs of victims and eliminate injustice. Regret can also help build relationships between the disputing parties and help to reconcile. In some cases, disputes may end peacefully if the parties are willing to admit their wrongdoing and apologize to each other than be resolved through court proceedings.

4. Conclusion

Penal mediation from the perspective of basic assessment, norms, theories and practices of existence runs because of the fact that penal mediation practice is carried out by law enforcement, Indonesian society and its settlement through the mechanism of customary institutions (Gampong Judiciary, Bakar Batu Culture, Begundem Institute). Penal mediation is known through the discretion of law enforcement. At the level under the penal mediation law is regulated through the Letter of the Police Chief No. Pol: B/3022/XII/2009/SDEOPS dated December 14, 2009 concerning Case Handling Through Alternative Dispute Resolution (ADR) and The National Police Regulation Number 7 Year 2008 concerning The Basic Guidelines for Strategy and Implementation of Community Policing in the Implementation of Police Duties. Then in Presidential Decree No. 8 of 2002 concerning the provision of Legal Certainty Guarantees to Debtors Who Have Completed Their Obligations or Legal Actions to Debtors Who Have Not Completed Their Obligations Based on the Settlement of Shareholders' Obligations.

Penal mediation practice is currently carried out through the discretion of law enforcement so that in the future there is a limitative arrangement of cases that can be done penal mediation so that there is no abuse of power from the parties involved in the Criminal Justice System. Carried out and applied penal mediation, there has been a paradigm shift there is the nature of private law into the realm of public law. Therefore, it should be necessary the best alternative to the stage and process of mediation penal whether carried out in a closed examination process (Police/Prosecutor) or through an open examination process (Court).

Restorative criminalization has been applied generally to violations of property rights, both criminal and civil. In addition to the imprisonment that has consequences for the families of inmates, the current prison system is judged not to relieve or heal the victim. Moreover, the legal process takes a long time. On the contrary, restorative criminalization involves victims, families and other parties in solving problems. In addition, making the perpetrators of crimes responsible for repairing the losses incurred by their actions. In victims, the emphasis is on the recovery of asset losses, physical suffering, security, dignity and satisfaction or a sense of justice. With restorative criminalization, perpetrators do not need to go to jail if the victim's interests and losses have been restored, the victim and the community have forgiven, while the perpetrator has expressed regret.

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