



Penal Mediation: A New Paradigm in Indonesia's Criminal Justice System

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ABSTRACT

The effective implementation of the law is essential to achieving justice, legal certainty and societal benefits. The criminal justice system plays a crucial role in upholding these principles. In Indonesia, despite various reform efforts, rigid and traditional legal concepts continue to hinder inclusive justice. This study examines penal mediation as an alternative approach to resolving criminal cases, aiming to address key weaknesses such as case backlogs and the limited role of individuals in legal proceedings. This research identifies theoretical and knowledge gaps in previous studies, primarily focusing on penal mediation's role within Indonesia's legal framework, particularly in customary and domestic violence cases. In contrast, this study conceptualizes penal mediation as "the third way" in the Indonesian criminal justice system, exploring its implementation through an international comparative analysis. Integrating restorative justice theory, evaluates the strengths and weaknesses of penal mediation within Indonesia's legal system and proposes a comprehensive model for its application. Using a normative-judicial approach with statutory, conceptual, and comparative methods, this study analyzes penal mediation's position in both Indonesian and international legal contexts. The findings contribute to legal scholarship and serve as a reference for policymakers in developing more comprehensive regulations. Ultimately, this study seeks to promote a more just and effective criminal justice system in Indonesia.



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INTRODUCTION

The application of law in society has a very important role in realizing justice, certainty, and benefits for every citizen. When the law is implemented in accordance with existing provisions and followed by everyone, justice can be realized. Every citizen is obliged to participate in implementing and respecting the law, and must be treated fairly before the law. If everyone obeys the law, then the law will provide a sense of justice, certainty, and positive benefits for society. The importance of implementing the law lies not only in the justice it produces, but also in building public trust in legal institutions (Wirjono Projodikoro, 2003). When the law is enforced consistently, the public will be more confident that the legal system can protect their rights and guarantee justice. The application of the law based on the principles of justice, certainty, and benefits can reduce conflict and create a harmonious atmosphere in society (Sutrisno, 2020). In the long term, of course, this will support sustainable social and economic development. Therefore, the commitment of all parties, including the government and society, is very necessary to ensure that the law (especially criminal law) is not just a scribble on paper, but must be implemented comprehensively in national life.

The criminal justice system (hereinafter referred to as the criminal justice system) as one of the scopes of public law plays an important role and is a reflection of the success of realizing the principles of certainty, justice, and legal benefits for every citizen (Faissal Malik & Muhammad Amin Hanafi, 2023). The existing discourse to support changes in the criminal justice system in Indonesia continues to adapt to the patterns and dynamics of people's lives that are increasingly developing

rapidly along with the development of the era and technology (Gani Hamaminata, 2023). The emergence of various ideas also occurs along with the complexity of the perspectives that underlie the arguments presented. This diversity is certainly influenced by the background of the proponents of these ideas. Even so, until now, these ideas and discourses have not brought about fundamental changes to the "traditional characteristics" that exist in the criminal justice system in various parts of the international world. The difficulty in changing these traditional characteristics, both in countries that adopt the civil law and common law legal systems, is basically caused by criminal law that has been agreed upon and standardized from generation to generation as part of public law (Nafi' Mubarok, 2024). Changes in the legal system often reflect the needs of a developing society. These diverse discourses show that there is room for exploration of new ideas in seeking justice. However, major challenges remain when confronting long-standing traditions. Criminal law is often considered sacred, making it difficult to make substantial modifications (Reski Anwar, 2023). This process certainly requires a more innovative and sustainable approach to facilitate the desired transformation in the progressiveness of Indonesian criminal justice in the future.

The rigid nature of criminal law results in law enforcement being more dependent on the state as the arbiter of justice, with little role for individuals (Failin, 2017). Plato's concept of justice focuses on the public interest, where community participation in the search for justice is highly emphasized. The state is positioned to establish norms of justice and is the main implementing actor in the process of seeking justice (Ismi Nurhayati, 2023). Within the scope of criminal law, criminal acts are considered to be detrimental to the interests of others, which provides a basis for victims to request a form of accountability. Within the scope of society, this responsibility is not only the victim's right, but also a collective obligation, and even society can feel responsible. The concept of justice that focuses on the state can create a gap between the law applied and the needs of individuals, thus showing how structural influences in law often override the role of society (Melisa, 2023). By involving collective responsibility, we can see the larger social dynamics in the context of seeking justice. However, often, legal mechanisms are unable to respond quickly to these needs. This requires deeper reflection on how the legal system can be more inclusive and responsive.

In Indonesia itself, these concepts have existed since the ratification of the Criminal Procedure Code (hereinafter referred to as the KUHAP) in 1981 and even since the Dutch colonial era (Aria Zurnetti, 2021). The current criminal justice system tends to limit, if not eliminate, the role of individuals in resolving criminal cases. The search for justice depends entirely on the integration between the police, prosecutors, courts, and correctional institutions (Ni Ketut Andari Febijayanti & Anak Agung Ngurah Wirasila, 2022). Although the Advocates Law is expected to strengthen the role of individuals, in reality this system remains rigid. The efforts of advocates will only be considered effective in court, while actions outside the court have no significant legal effect. The historical journey of the application of law in Indonesia shows that change does not occur easily due to the colonial legacy. The limitations of individuals in the justice system add complexity to the search for justice. The expected reforms often do not materialize, creating a gap between public expectations and the reality of the existing legal system, thus demonstrating the importance of re-evaluating how individuals can contribute to the legal process. Thus, there is a need to redesign the system to be more responsive to the needs of the community.

Over time, criminal acts have become more complex, encompassing various forms and various consequences. Criminal codes are now no longer just public, but also began to move into the private realm. Therefore, the search for justice cannot only depend on formal legal procedures, but must involve work with broader social issues in society. In this context, the concept of justice fair through a balanced bargaining process, as proposed by John Rawls, becomes relevant. Justice should be achieved through agreement between the parties involved, not only provided by the state (Sunaryo, 2022). Social change that quickly requires the legal system to be able to adapt and remain relevant current development. A more inclusive approach encourages individuals to be involved in the legal process, increasing the sense of justice, certainty and usefulness law in society. By prioritizing dialogue and agreement, we can reduce public dissatisfaction with the existing system. Justice is sought by society is not always in line with what is determined by the state, emphasizes the importance of the individual perspective in the pursuit of justice. Legal system that is able to

accommodate a variety of sounds will be more likely to be created justice desired by all parties. This is where the term penal mediation emerged as a concept that brings together perpetrators of criminal acts and victims with the intention of resolving cases through deliberation to reach a consensus. Penal mediation was first introduced in the context of positive law in Indonesia through the Letter of the Chief of Police No. Pol: B/3022/XII /2009/SDEOPS issued on 14 December 2009 regarding Handling Cases Through Alternative Dispute Resolution (ADR), although its implementation is still limited (Teguh Hariyono, 2021). The core of the principles of penal mediation contained in the letter is that the resolution of criminal cases using ADR must be based on an agreement between the parties involved. If there is no agreement, the case will be resolved in accordance with applicable legal procedures in a professional and proportional manner.

The researcher analyzed several previous studies to analyze the differences with this study. First, Lilik Mulyadi in 2013 who studied "Penal Mediation in the Indonesian Criminal Justice System: Study of Principles, Norms, Theories, and Practices". This study analyzes and understands the role of penal mediation in the criminal justice system in Indonesia from the perspective of principles, norms, theories, and practices. The results of the study show that penal mediation in Indonesia is generally not formally facilitated by the state, but is resolved through customary institutional mechanisms, such as the Village Court, Bakar Batu culture, Begundem Institution, and customary awig-awig rules. This occurs because penal mediation has not been comprehensively regulated in law and is only recognized in a limited form through the discretion of law enforcement officers with partial implementation. This finding indicates the importance of formal recognition of penal mediation in order to provide a more optimal contribution to resolving criminal conflicts in Indonesia, especially through integration into a more inclusive legal framework (Lilik Mulyadi, 2013). Second, Emy Rosnawati in 2018 who studied "Penal Mediation as an Alternative to Settling Domestic Violence Cases". This study explains the mechanism of penal mediation which begins by bringing together the two disputing parties to discuss together, accompanied by an investigator as a mediator, with the aim of reaching a settlement agreement that meets the wishes of both parties. This study highlights that in practice, penal mediation often experiences various obstacles, such as the absence of a special institution that manages this process, low public trust in law enforcement officers, and limited time available for the parties to mediate. The results of this study indicate that penal mediation as an alternative to resolving domestic violence cases has proven to be more effective than simply imposing criminal penalties on perpetrators. This approach allows for more constructive recovery, creates opportunities to improve the relationship between perpetrators and victims, and reduces the risk of repeated acts of violence. This study concludes that penal mediation has the potential to be a more humane and sustainable solution in handling certain criminal cases (Emy Rosnawati, 2018).

In contrast to the two studies above, this study focuses more on the conceptualization of penal mediation as "the third way" in the Indonesian criminal justice system and aims to encourage the transformation of the Indonesian criminal justice system. This study explores the framework for implementing penal mediation through an international comparative study and examines aspects of justice, certainty, and legal benefits. The aim is to provide a conceptual reference for the government in forming more comprehensive regulations to support penal mediation as a method of resolving criminal cases, while the two previous studies focused more on analyzing the role of penal mediation in criminal justice in Indonesia using the perspectives of principles, norms, theories, and practices and focusing on the effectiveness of penal mediation in handling cases of domestic violence. The current study uses a broad approach by highlighting the concept of penal mediation from an international perspective, integrating restorative justice theory, and evaluating the weaknesses and strengths of penal mediation in the context of positive law in Indonesia. This study not only seeks to identify existing obstacles but also to develop a penal mediation model that can be applied effectively in the context of national law by referring to international practices, while the two previous studies only focused on how penal mediation is more often resolved informally through customary institutions, not through mechanisms facilitated by the state and are more oriented towards the practice of penal mediation as an alternative to criminalization which is considered more effective in resolving domestic violence conflicts.

Penal mediation that is only regulated partially and in the form of law enforcement discretion in Indonesia has encouraged researchers to compile this study. This study explains the concept of penal mediation which has a position as an alternative to resolving criminal cases and examines how the framework for implementing the concept of effective penal mediation is based on comparative studies with international countries and the principles of justice, certainty, and legal benefits. The study focuses on the problematic concept of penal mediation that has not been explicitly regulated in positive law in Indonesia. Penal mediation has not been fully integrated into Indonesia's legal system due to several factors. There is no comprehensive law or regulation that provides a unified framework, leaving its regulation to individual institutions, which leads to inconsistencies in implementation. As a result, differences in regulations and the scope of penal mediation are inevitable. Additionally, its application remains limited, as it is primarily used for criminal cases involving minors (Rico Nur Cahyo & Irma Cahyaningtyas, 2021). The results of this study are expected to be a reference that enriches knowledge regarding the implementation of the concept of penal mediation in the Indonesian criminal justice system. The results of this study are expected to encourage the role and synergy of the government in providing answers to several problems that are of concern to the author, such as 1) the accumulation of criminal case files in court; 2) the conceptualization of the integration of penal mediation by considering its advantages and disadvantages; and 3) the implementation of the concept of penal mediation in Indonesia which is not yet optimal. The results of the study are expected to be a reference for the government to create a firm regulatory substance regarding the concept of penal mediation because the Letter of the Chief of Police No. Pol: B/3022/XII/2009/SDEOPS has not been able to realize the implementation of comprehensive penal mediation.

Existing legal frameworks in Indonesia predominantly rely on retributive justice principles, emphasizing punishment over reconciliation. While restorative justice has gained global recognition, its theoretical foundation within Indonesian law remains underdeveloped. Previous studies, such as those by Lilik Mulyadi (2013) and Emy Rosnawati (2018), have explored penal mediation's role, but they primarily focus on customary practices and domestic violence cases. They do not establish a clear theoretical framework for penal mediation's systematic integration into positive law. This study aims to bridge this theoretical gap by conceptualizing penal mediation as "the third way" in Indonesia's criminal justice system, emphasizing justice, legal certainty, and social benefits. While penal mediation has been partially implemented through discretionary law enforcement mechanisms, there is no comprehensive legal framework governing its application. Previous studies have not addressed why penal mediation remains informal and unstandardized, nor have they proposed a structured legal model based on international best practices. This study fills the knowledge gap by conducting a comparative analysis with international legal systems and proposing a structured regulatory model to optimize penal mediation's role in resolving criminal cases in Indonesia. By addressing these gaps, this study provides a theoretical foundation for penal mediation's integration into Indonesia's legal system and offers practical recommendations for its formal implementation. The findings are expected to contribute to legal scholarship and guide policymakers in formulating more inclusive and effective regulations.

RESEARCH METHODS

This study employs a normative legal approach, analyzing research issues through legal principles and referring to regulations in Indonesia (Kornelius Benuf, 2017). It relies on secondary data, typically sourced from library materials. The primary goal is to gather relevant theories, concepts, legal principles, and regulations connected to the research topic (Sigit Sapto Nugroho, 2020). Through analyzing these elements, the study aims to assess the legal implications of the issues and offer suitable recommendations or solutions. The research adopts a statutory, conceptual, and comparative approach. The statutory approach focuses on studying national and international regulations pertinent to the topic, exploring the ratio legis and ontological foundation of the regulations (Suhaimi, 2018). The conceptual approach builds the researcher's understanding on evolving legal theories and doctrines.

The comparative approach examines the differences between Indonesian regulations and those from other countries on the same issue, identifying gaps and discrepancies to assess whether there is a mismatch between legal provisions and their underlying philosophy (Muhammad Siddiq Armia, 2022). This study specifically compares penal mediation regulations and implementation in Canada, Germany, and New Zealand. These countries were selected based on their well-established legal frameworks and successful implementation of penal mediation, which have contributed to effective criminal justice systems. The comparative analysis was conducted by examining the statutory provisions governing penal mediation in these countries and assessing their practical application. By evaluating how these legal systems have successfully integrated penal mediation, this study aims to explore the feasibility of adopting similar policy approaches in Indonesia to enhance the effectiveness of its criminal justice system.

RESULTS AND DISCUSSION

Advantages of Integrating the Penal Mediation Concept in the Indonesian Criminal Justice System with Reference to Restorative Justice

The urgency echoed about the integration of the concept of penal mediation into the criminal justice system in Indonesia certainly starts from first examining several main principles contained in penal mediation. Penal mediation develops based on several important working principles, namely conflict handling, process orientation, and informal processes (Ahmad Ubbe, 2013). The main task of the mediator in penal mediation is to help the parties to leave their focus on the legal aspects alone and encourage them to actively participate in the communication process. This is based on the idea that the conflicts that arise are often rooted in mistakes or actions that have a negative impact on the personal relationships between the disputing parties. Therefore, mediation focuses on resolving the conflict, not only from a legal perspective, but also in terms of the relationships between the individuals involved. This principle is important because in penal mediation, what is emphasized is not formal punishment or sanctions, but rather how the parties involved can understand the root of the problem and improve their relationship. Conflict is not only viewed from the legal side, but also from the humanitarian aspect and communication between individuals.

Penal mediation prioritizes the quality of the conflict resolution process rather than the final result achieved. This mediation process aims to make the party who committed the violation (the perpetrator of the crime) aware of the mistakes they have made, and to fulfill the need for conflict resolution as a whole. In addition, the purpose of mediation also includes providing a sense of calm for victims who may feel afraid or threatened by the incident that occurred. This principle emphasizes that the success of mediation is not only seen from the achievement of a formal agreement or legal decision, but from how the process runs well, creates understanding, and heals the emotional wounds of both parties. Penal mediation provides an opportunity for the perpetrator to take responsibility and for the victim to feel safe, which is often not achieved in the formal justice system. Penal mediation is a process that is not tied to strict and bureaucratic legal procedures. The process is more informal and flexible, which allows both parties to speak directly and seek solutions more openly and free from the legal formalism that exists in court. This is also related to the culture of deliberation and consensus that has long been part of Indonesian tradition, pioneered by the Founding Fathers, and is known for its deliberative approach to joint decision-making. The advantage of informal penal mediation is that it provides space for both parties to resolve their problems without the pressure that is often felt in formal judicial processes.

This approach is in accordance with local values and the culture of Indonesian society, which emphasizes the importance of mutual agreement through open discussion without involving complicated and lengthy legal procedures. It also provides a faster and more efficient alternative to formal courts. Penal mediation is a breakthrough in the Indonesian legal system that introduces a more humane way of resolving disputes, prioritizing communication and mutual agreement, and focusing on restoring relations between perpetrators and victims. In addition, the informal process and orientation towards the quality of the process make this mediation more in line with local wisdom values and provide benefits for both parties involved. Then, how is the link between the concept of penal mediation and restorative justice? In general, penal mediation reflects one of the manifestations

of innovation in the legal system as part of efforts to reform criminal law which is closely related to the concept of restorative justice.

The use of penal mediation as an alternative in resolving criminal cases, especially for minor crimes, is not something that is entirely new, and also cannot be considered as an obligation that must be implemented widely. However, as expressed by Savigny, law is a system that is always developing and changing over time. Therefore, penal mediation, as an innovative step in law, offers many benefits for both parties involved in the case, providing significant benefits for the perpetrator and the victim. Through penal mediation, the dispute resolution process is carried out in an open and transparent manner, which can reduce the possibility of irregularities that often occur in traditional criminal justice processes (Anggana Rahma Tiya & Hery Firmansyah, 2023). Penal mediation also invites the public to see the law as a means to resolve problems fairly and equitably, not just as a tool for punishment. This process provides an opportunity for the perpetrator to take responsibility and try to correct the mistake, while the victim is given space to express his or her feelings and demands, which ultimately has the potential to create reconciliation between the two.

In the context of handling criminal cases, if viewed in general, penal mediation actually has similarities with what is known as discretion in the Indonesian criminal justice system. Discretion is the authority held by institutions such as the police and prosecutors to decide whether a case will be forwarded to the judicial process or not. Although there are similarities in terms of case screening, penal mediation has fundamental differences with this discretion. Penal mediation does not only involve investigators or prosecutors, but also places both parties, both perpetrators and victims, as active parties in the settlement process. This approach emphasizes more on fulfilling the interests of both parties, with the aim of achieving a win-win solution, where both parties are satisfied with the results (Deni Pramono, 2021). In penal mediation, victims are given the opportunity to meet directly with the perpetrators of minor crimes, express their feelings or demands, and participate in reaching an agreement that brings peace between them. Through this approach, penal mediation does not only focus on the legal or punitive aspects, but rather on restoring relationships and social recovery, which is in accordance with the principles of restorative justice. This approach also has the potential to reduce the burden on the criminal justice system, reduce social costs, and accelerate the resolution of cases in a more humane and sustainable manner.

Penal mediation is believed to be able to reduce the number of cases piling up in court, by providing a faster alternative resolution than the formal judicial process. In this context, penal mediation functions as an effective alternative to filtering cases that can be resolved without going through the court process, thereby speeding up the overall judicial process. According to the theory of access to justice, easier and faster access to resolving cases can reduce the burden on the court, which in turn makes it easier for the parties to obtain a more efficient resolution. In this case, the efficiency principle is an important foundation that encourages the reduction of the burden of cases in court, by offering faster resolution and reducing delays that often occur in traditional judicial processes. Penal mediation is considered a more time and cost-efficient solution compared to the complicated and time-consuming judicial system. In the mediation process, both parties can directly negotiate to reach an agreement, without having to go through long and expensive legal procedures. This faster and cheaper dispute resolution is in line with the principle of accessible justice, which emphasizes the importance of providing a solution that is easily accessible to all parties regardless of economic or social background. This theory considers that the law should be accessible to everyone, and penal mediation offers a cheaper and simpler alternative, thus encouraging the achievement of more equitable justice. Penal mediation opens up opportunities for both parties involved in a case to interact directly and express their views. This gives the weaker party, such as the victim, the opportunity to feel heard and obtain justice. In addition, this mediation process allows for a resolution that is more in line with the needs of both parties, without being constrained by rigid legal procedures. Through the concept of restorative justice, which focuses on restoring the relationship between the perpetrator and the victim, and provides space for both parties to communicate and reach a mutually beneficial agreement, it is considered that justice is not only achieved through punishment, but also through restitution of the losses suffered by the victim and the responsibility taken by the perpetrator (Dewi & Fatahillah A. Syukur, 2011).

Penal mediation not only helps to ease the burden on the courts, but also strengthens the judicial institution by providing an alternative path for dispute resolution. Thus, the courts can focus

more on more complex or serious cases, while minor cases can be resolved more efficiently through penal mediation. Referring to the theory of functionalism, each element in the legal system functions effectively to achieve the overall legal objectives. Penal mediation can be seen as an instrument that strengthens the function of the legal system by resolving cases more efficiently and reducing the burden on the courts, allowing the judicial institution to focus more on issues that require more in-depth attention. Penal mediation is very much in line with the principle of restorative justice, where the main goal is to restore the relationship between the perpetrator and the victim, not merely to punish the perpetrator. In this case, the basic value underlying penal mediation is restorative justice, which prioritizes the process of reconciliation and conflict resolution that is fair to both parties. The discretion of law enforcement officers, such as prosecutors and police, is also an important part of penal mediation. According to data from the Prosecutor's Office, as reported by the Attorney General, a total of 304 criminal cases had been successfully resolved through restorative justice as of August 1, 2021 (I Wayan Didik Prayoga & I Ketut Rai Setiabudi, 2021).

The Attorney General stated that the most common offenses resolved through penal mediation and restorative justice were assault, theft, and traffic-related crimes. On average, one case per day was successfully settled using these alternative resolution methods. Discretion gives the authority to the authorities to choose whether a case will be forwarded to court or resolved out of court through mediation. This discretion serves as the "spirit" that animates penal mediation in the context of the police investigation process (Priyo Santoso, 2020). Penal mediation can be implemented at the early stages of the investigation, where the police decide to use mediation as an alternative to resolving cases, especially for minor criminal cases that are more appropriately resolved through peaceful and restorative means. Thus, penal mediation is not only an alternative to resolving cases, but is also part of a strategy to realize a criminal justice system that is more humane, just, and in accordance with the social and cultural values prevailing in society. Through the application of penal mediation, the Indonesian criminal justice system can be more responsive to the needs of the community for fast, cheap, and effective justice.

The first stage in penal mediation is the input phase, where the mediator begins to study the conflict between the parties. At this stage, the mediator is tasked with assessing whether the conflict can be resolved through mediation. If it is found that mediation is not suitable, for example when the victim feels afraid to speak directly to the perpetrator, or if the victim feels hurt by the direct meeting, the mediator can decide not to continue the mediation process. In addition, if the perpetrator does not admit his actions or if there is a potential for revictimization (repeat actions that harm the victim), the mediator must stop the mediation to maintain the safety and well-being of the victim. The mediator also needs to ensure that the victim's physical and emotional condition is safe before continuing to the next process. This first step is crucial to ensure that mediation is truly appropriate for the situation, so that the parties involved are not further harmed or traumatized by the process. In this case, the precautionary principle is the basis for making decisions to ensure that the mediation process takes place safely and does not increase the victim's psychological burden. In the context of access to justice theory, this phase shows how penal mediation provides space for parties to have more control over their dispute resolution process, leading to more inclusive and equitable outcomes. The input phase emphasizes more intensive preparation, seeking to address the power imbalances between the parties involved (Russel E. Farbiarz, 2008).

The second stage is the confrontation preparation phase. In this stage, the mediator prepares the parties to meet and confront each other face to face. This preparation process can vary depending on the mediation model used. In the social work case development model, the mediator prepares the parties thoroughly, helping them identify their needs and goals, and advising them on what professional assistance they may need. Before the mediation session, the mediator will meet with the parties separately to help them understand their roles in the mediation process and prepare them for a more constructive confrontation (Djumardin, 2017). However, in the pure mediation model, the mediator chooses not to meet with the parties before the mediation, as this model believes that early meetings can create tension or poor relations between the mediator and the parties. Instead, the mediator may contact the parties by phone or letter to provide information about the mediation process and to schedule a meeting. This confrontation preparation process is essential to creating an environment conducive to direct communication between the parties. The choice of model used will depend on the level of trust between the parties involved and the ultimate goal of the mediation itself.

Each model brings a different approach to creating an atmosphere that supports effective and fair conflict resolution. This second phase focuses more on maintaining the neutrality of the mediator so that the mediation process continues without any detrimental external influence.

The third phase in penal mediation is the mediation phase itself, where the main focus of the process is on the dialogue between the victim and the perpetrator, more than just fulfilling the agreement or providing restitution. At this stage, the mediator tries to build empathy and understanding between the two parties. Mediation begins with establishing the rules of the game that must be followed by both parties, so that the process is structured and fair. Then, the victim is given the opportunity to tell the story of what happened to him, with the aim that the perpetrator can hear directly the impact of his actions. Furthermore, the perpetrator is given the opportunity to respond to the victim's complaints, explain the background or reasons why the act occurred, and then apologize for the mistakes that have been made. This process is then continued with a discussion about the losses suffered by the victim and an agreement regarding reparations or recovery that can be accepted by both parties (Nurul Widhanita Y. Badilla, 2022). This phase is very important because it does not only aim to reach an agreement on compensation or damages, but rather to create space for both parties to communicate openly, which in turn can improve their interpersonal relationships. This open dialogue provides an opportunity for the victim to feel heard and for the perpetrator to take direct responsibility, which is part of the healing process for both parties. In the concept of restorative justice, this phase shows the importance of restoring the relationship between the victim and the perpetrator (Irfan Ramli, Wahab Aznul Hidayat & Muharuddin, 2023). Restorative justice does not only emphasize punishment for the perpetrator, but also social healing for the victim. Through dialogue and recognition of mistakes, both parties have the opportunity to reach an agreement that can restore the situation, improve relationships, and provide more equitable social justice. This process is also related to the principle of active participation in law, which provides space for the parties to be directly involved in resolving their disputes.

The final phase in penal mediation is the implementation phase of the agreement. After an agreement is reached between the victim and the perpetrator, the next stage is to ensure that the agreement is implemented properly and in full. In this phase, the perpetrator will be monitored to ensure that he complies with all the agreed provisions without any reduction or violation of the agreement. Monitoring is carried out to ensure that the improvements promised by the perpetrator are actually implemented, either in the form of compensation to the victim, improvements to the perpetrator's actions, or other forms of restitution. This implementation phase is also important to ensure that the mediation process does not just stop at an agreement, but continues with real changes in the perpetrator's actions. By monitoring the implementation of the agreement, both parties can feel that justice has been achieved in real terms and not just an agreement on paper (RR Dewi Anggraeni, Iman Imanuddin & Fridayani, 2022). This implementation phase is related to the concept of procedural and substantive justice. Procedural justice emphasizes the importance of a transparent and accountable process, while substantive justice is concerned with achieving real and beneficial results for the parties, especially the victim (Yunanto, 2019). In this case, the implementation phase ensures that the results of mediation are not only formal agreements, but also result in concrete changes in the lives of the parties, which is the essence of restorative justice. Monitoring of implementation also reflects the principle of supervision in law, which aims to ensure that the agreed obligations are carried out properly, so that justice can be achieved comprehensively. Overall, penal mediation through these four phases offers a more holistic approach to resolving criminal disputes, with special attention to restoring the relationship between the victim and the perpetrator. This process emphasizes the importance of communication, responsibility, and the fulfillment of mutually beneficial agreements for all parties involved.

Through the explanation above, it can be seen that penal mediation offers various benefits that can be felt by both parties, both the perpetrator and the victim. For the victim, this mediation provides an opportunity for the healing process, both emotionally and psychologically, through direct interaction and communication with the perpetrator. In addition, the victim has the right to demand restitution or compensation for the losses suffered, although this is not the main purpose of mediation. The main focus of penal mediation remains on efforts to restore relations and peaceful resolution between the victim and the perpetrator (Ludfi, Jumiati & Febriana Hidayati, 2018). This mediation model provides space for victims to feel empowered, because they can express their feelings and

needs directly to the perpetrator. Thus, the victim is not only a "passive" party, but is active in the reconciliation process, which supports their psychological recovery process. For the perpetrator, penal mediation provides an opportunity to admit the mistakes that have been made, and to feel the positive impact of honesty and justice in the mediation process. This process helps the perpetrator feel that he has a closer relationship with the victim, and this can be the first step for the perpetrator to take responsibility for his actions. In many cases, admitting guilt becomes easier because the victim shows a willingness to listen to the perpetrator's explanation of his actions, which is a positive step in building mutual understanding. This is very different from the process in the traditional criminal justice system, where there is often a lack of space for this kind of direct interaction.

With the integration of the concept of penal mediation into the criminal justice system in Indonesia, perpetrators of criminal acts not only feel punished, but are given the opportunity to understand the impact of their actions and correct their mistakes through a more restorative and transformative process and provide perpetrators with the opportunity to improve themselves and contribute to broader social recovery. This approach is very relevant to the concept of restorative justice which emphasizes the importance of the active role of all parties in restoring relationships and resolving problems fairly. Restorative justice places more emphasis on dialogue and reconciliation, where both parties, both victims and perpetrators, are given the opportunity to be involved in a joint healing process, not just punishing the perpetrator (Penias Isba, Marius Suprianto Sakmaf & Jumiran, 2024). Penal mediation also reflects the principle of rehabilitative justice, which focuses on the restoration and reintegration of perpetrators into society after they have admitted their mistakes and taken responsibility for their actions.

Integration Model of Penal Mediation Conceptualization in Indonesian Positive Law Referring to Implementation in Various International Countries

Penal mediation, as an alternative form of dispute resolution in the criminal justice system, has a significant impact on improving access to justice, efficiency, and restoring relationships between victims and perpetrators. This model, which emphasizes the principle of restorative justice, has not been fully integrated into Indonesia's positive legal system. Therefore, there needs to be an integration model that can combine penal mediation with the existing Indonesian legal structure, while referring to the implementation experience in international countries that have previously adopted this concept. The main concept in penal mediation is the restoration of the relationship between victims and perpetrators. In Indonesia, of course, this can be aligned with the values of deliberation and consensus that are already known in the culture of society and are clearly stated in the 4th principle of Pancasila (Usman & Andi Najemi, 2018). Penal mediation provides an opportunity for parties involved in criminal cases, especially in minor crimes, to obtain justice without protracted procedures and by reducing the number of cases going to court, penal mediation can help reduce the burden on the criminal justice system and speed up the process of resolving cases.

In order to develop an integrated model for the concept of penal mediation in positive law in Indonesia, an adjustment stage is certainly needed. To integrate penal mediation, it is necessary to amend several relevant laws, such as Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHP), Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, and Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Not only that, the role of the institution that implements the concept of penal mediation also needs to be considered. Institutions that can implement penal mediation can come from judicial institutions, the police, or even social institutions that focus on victim recovery and perpetrator reintegration. The police and prosecutors as initial decision makers can be given the authority to suggest or direct parties involved in minor crimes to participate in penal mediation before the case is continued to court. Judges in criminal justice can act as parties who assess whether mediation is appropriate to be applied in the case in question, as well as being supervisors who ensure that agreements are reached fairly and correctly (Made Rai Diascitta Hardi Sentana, I Wayan Wesna Astara & I Nyoman Gede Sugiarta, 2020). Not only in terms of law enforcement officers (APH), considering the complexity and sensitivity of penal mediation, mediators must also be trained and have adequate qualifications, both from professionals in the fields of law, psychology, and social sciences. More specific rules on penal mediation procedures in minor criminal cases need to be established so that there is no discrepancy or confusion

in the field, by explaining in detail the regulations on accepting cases that can be mediated and clear criteria for the mediators involved.

In Canada, restorative justice has been widely applied, especially in cases of minor offences and juvenile cases. Penal mediation is carried out by a specialised institution with full support from the justice system. This experience shows that penal mediation can reduce the burden on the courts, while also providing more positive outcomes for victims and offenders, with more social peace and victim recovery (Lidya Rahmadani Hasibuan, 2015). In Germany, a penal mediation system is used to resolve minor criminal disputes by emphasizing an agreement between the victim and the perpetrator, leading to compensation or some form of reparation. This process reduces pressure on the criminal justice system and allows more serious cases to be dealt with more quickly (Muhammad Noval Amaldy & Setiyono, 2024). In New Zealand, restorative justice is applied in the juvenile justice system, giving juvenile offenders the opportunity to admit their mistakes to the victim. Mediation in New Zealand has been shown to be effective in reducing the rate of reoffending among offenders (Vinda Agustina, H. S. Tisnanta & Muhtadi Muhtadi, 2024). Determining the appropriate penal mediation model to be applied in Indonesia must be based on various mature considerations. First, it is necessary to pay attention to the success rate of implementing the penal mediation model in other countries that have adopted it. Second, the type of crime that can be resolved through mediation must be an important consideration.

Based on these two criteria, the author argues that the model and implementation of penal mediation in future criminal law policies can be divided into two types, namely:

a. Informal Mediation Model

In this model, penal mediation is carried out entirely outside the criminal justice process. The selection of this model is more based on the nature of the relationship between the perpetrator and the victim, for example in cases involving family members as perpetrators or victims, as well as in cases involving minors as perpetrators of criminal acts. Thus, the formulation of policies for this model must consider several things, including: 1) penal mediation in this model must be fully implemented outside the criminal justice process, which means that only certain criminal acts that meet the criteria can be resolved through this mediation, such as minor crimes or cases involving close personal relationships between the perpetrator and the victim; 2) the validity of voluntary penal mediation, in which case, mediation carried out by the perpetrator and victim outside the court will only be recognized as valid if it is carried out voluntarily by both parties, this is important to ensure that the mediation process is not coercion, but a resolution based on mutual agreement; 3) the role of a certified mediator, where the penal mediation process must be facilitated by a mediator who has valid certification and the presence of a professional mediator is important to ensure that the mediation runs according to the correct procedure and results in a fair agreement, in accordance with the principles of restorative justice; 4) the legal force of the agreement reached in penal mediation must be recognized as a valid and final decision so that the agreement cannot be challenged by either party and this process can be carried out simply by ratification through a stamp and signature of all parties, without requiring a court decision, considering that mediation is a voluntary process and is oriented towards reconciliation; 5) settlement and termination of prosecution, if penal mediation produces an agreement that satisfies both parties, the results of the agreement will be a reason to eliminate prosecution of the criminal act that has been mediated and thus penal mediation is not only a dispute resolution mechanism, but can also be a basis for stopping further legal proceedings (Fitrayadi, Oheo K. Haris & Handrawan, 2020). The application of the penal mediation model based on the principle of voluntary and out-of-court settlement is very relevant to handling cases that involve sensitive personal relationships, such as cases of domestic violence or violations involving children. This model can also be an effective solution to reduce the burden of criminal justice, as well as provide an opportunity for victims and perpetrators to resolve their problems more peacefully and productively, without going through the formal justice process which is often time-consuming and expensive.

b. Combining Informal Mediation Models, Victim-Perpetrator Mediation, and Reparation Negotiation Programs

The combination of several penal mediation models aims to optimize the benefits of each existing approach. By combining these models, the penal mediation process can go through several important stages, which ensure that the results achieved are more effective and comprehensive. At the investigation stage, after the investigator has studied the case or crime committed by the perpetrator,

with certain criteria (such as the type of crime that can be mediated), the investigator can summon the perpetrator and victim to offer alternative solutions outside the judicial process. At this stage, mediation is carried out with the principle of strict confidentiality. All conversations and statements that arise during the mediation process must be kept confidential by all parties, including the mediator. This is to ensure that the mediation process does not interfere with the ongoing criminal justice process. The mediator may also not be a witness in the criminal trial regarding the matters discussed or the reasons why the mediation did not reach an agreement, if the mediation process fails to produce a solution. This model allows for a more open and informal approach at the beginning, with the aim of keeping the relationship between the perpetrator and the victim constructive, and providing an opportunity for a faster resolution and without further conflict. At the prosecution stage, the public prosecutor, after assessing the crime committed by the perpetrator based on certain criteria, can offer mediation to the perpetrator and the victim (Andri Winjaya Laksana, 2017). The main objective of this stage is to achieve reconciliation between the victim and the perpetrator, and to enable the perpetrator to compensate for the losses suffered by the victim. If an agreement is reached through mediation, the agreement deed signed by both parties will serve as a final and binding decision, and the prosecution cannot be continued. Thus, the results of this mediation can serve as a legitimate legal reason to eliminate further prosecution, thus providing the perpetrator with the opportunity to obtain release from the criminal process.

At the trial stage in court, after the judge has studied the case and the criminal acts committed by the defendant, the judge can offer penal mediation as an alternative to resolving the case through peace between the two parties. The use of mediation at this stage is highly dependent on the readiness of both parties, both the perpetrator and the victim, to engage in dialogue and seek a solution that can benefit both parties. If the mediation is successful, the results can be the basis for the judge's decision, which allows for a reduction in the sentence or a transfer of the process to rehabilitative steps rather than imprisonment. Thus, penal mediation functions as a more humane and effective way out in dealing with perpetrators who have the potential to improve their behavior. At the sentencing stage, even though the perpetrator has served his sentence for his actions, penal mediation can still be carried out. This process usually begins with a request to the victim and the Public Prosecutor to allow mediation to be carried out in order to reduce the sentence received by the perpetrator. The main objective of penal mediation at this stage of sentencing is to provide the perpetrator with an opportunity to show remorse, and to allow for the victim to recover (Ni Kadek Ayu Ismadewi, Widodo Tresno Novianto & Hartiwiningsih, 2017). Mediation conducted at this stage can open up the possibility for the perpetrator to receive a reduced sentence or even parole if he or she demonstrates a cooperative and responsible attitude towards his or her actions.

The combination of these mediation models provides flexibility in handling various types of criminal acts, taking into account the social context, the relationship between the victim and the perpetrator, and the readiness of both parties to negotiate. The mediation process applied at various stages of criminal justice is expected to create a more rehabilitative rather than punitive resolution, and reduce the burden on the justice system. Thus, penal mediation can be an alternative that focuses more on restoring relations between the parties and minimizing the negative impacts caused by the criminal process. Nevertheless, the implementation of penal mediation in Indonesia still faces various challenges, particularly regarding acceptance by both society and law enforcement authorities. Many actors within the traditional legal system may still hesitate to recognize penal mediation as a legitimate and effective approach to resolving criminal cases due to concerns that it could undermine the repressive function of criminal law (Eko Budi Sariyono & Dian Cahayani, 2023). However, considering the success achieved by various other countries in integrating penal mediation into their legal systems, the potential for adapting this approach in Indonesia is becoming increasingly relevant. The ongoing criminal law reform initiated by the government presents an opportunity to incorporate penal mediation as an integral part of the criminal justice system.

CONCLUSION

Penal mediation is an alternative approach to resolving criminal cases that has emerged alongside a paradigm shift in criminal law enforcement, moving from a retributive justice model to a restorative justice approach. This method prioritizes the rights of victims affected by criminal acts,

encouraging countries such as Canada, Germany, and New Zealand to implement and develop penal mediation as a means of dispute resolution. Rather than focusing solely on punishment, penal mediation facilitates agreements between the parties involved, with the assistance of a mediator either a law enforcement officer or an independent party. The legally binding agreements reached through this process promote justice that is constructive and mutually beneficial. The integration of penal mediation into the Indonesian criminal justice system is a crucial step toward creating a more progressive and humanistic legal framework, in line with Pancasila's values. This transformation requires shifting the judicial perspective from rigid and formalistic procedures to a more flexible, people-centered approach.

To effectively integrate penal mediation, several practical measures must be taken. First, legal and policy reforms are necessary to establish a dedicated legal framework that defines the principles, objectives, and criteria for cases eligible for mediation, along with standardized procedures. A special law on penal mediation should be introduced to provide clear legal certainty. Second, institutional strengthening is essential to enhance the capacity of judicial institutions through specialized training for law enforcement officers, prosecutors, and judges on restorative justice practices. Third, public awareness and community engagement must be increased through education campaigns, social outreach, and collaboration with local communities to build trust in the process. Finally, sociological and cultural approaches should be encouraged to align mediation practices with Indonesia's cultural and social norms, ensuring that solutions are not only legally sound but also socially acceptable. By implementing these steps, penal mediation can serve as an effective complement to the existing legal system, reducing case backlogs, providing direct justice and recovery for victims, and offering offenders a path to rehabilitation rather than mere punishment. This shift will not only alleviate the burden on the traditional justice system but also create a more humane and restorative legal process that fosters reconciliation and social harmony.

CONFLICT OF INTEREST

The author(s) declare(s) that there is no conflict of interest.

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