

## **PARADIGM SHIFT IN THE PRINCIPLE OF RETRIBUTIVE JUSTICE BECOMES RESTORATIVE JUSTICE WITH THE CONCEPT OF PENAL MEDIATION**

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### **ABSTRACT**

Criminal mediation is an alternative settlement of criminal cases in line with the shift in the criminal law enforcement paradigm from the principle of retributive justice to restorative justice. The development of the criminal mediation model mainly focuses on reaching an agreement between the disputing parties regarding the form of settlement with the help of intermediaries that may come from law enforcement officials or independent parties. Renewal of the criminal justice system should be implemented through the integration of criminal mediation to create a progressive Indonesian criminal justice system based on noble values Pancasila. Criminal mediation can be one of the important factors that can provide a significant change in this regard. Renewal can be made by integrating criminal mediation into the criminal justice system through the development of a non-punitive policy using a sociocultural approach and administrative aspects of justice. Meanwhile, from the political side of criminal law legislation (penalty policy), this can be done by defining non-criminal principles, objectives, standards, and procedural law for the implementation of criminal mediation that can be cast into a special law.

**Keywords:** Mediation, Penalty, Criminal Justice

### **INTRODUCTION**

Law enforcement is currently impressed, however, with how the perpetrators have been involved in prison criminal offenses so that all criminal offenders are gathered in correctional institutions, the result is that prisons are full of convicts, and even social institutions are currently overstretched and a major problem in the prison environment in Indonesia. (Rufinus Hotmaulana Hutauruk, 2013) The

main goal of Justice Restorative is to restore while the purpose of both is compensation. Through this concept, it can be interpreted that the process of law enforcement or dealing with criminal acts through a restorative approach is the process of resolving criminal acts which aims to restore the conditions it contains compensating the victims in certain ways agreed upon by the concerned parties. The discourse created to support the intent to make changes to the criminal justice system (the criminal justice system) continues to evolve following the evolution of patterns and dynamics in people's life systems. Many ideas emerge along with the different viewpoints used to support the arguments put forward. Of course, this diversity is also affected by the background of each idea holder. However, in their development today, it has been proven that the ideas and discourses that have emerged have not introduced much fundamental change in the "traditional characteristics" inherent in the criminal justice system in the legal system of various countries in general. The difficulty in changing the traditional characteristics of the criminal justice system, both in countries committed to the civil law system and even within the common law system itself, is mainly due to the nature of the criminal law itself which has already been agreed upon and standardized. (Dean G. Pruitt dan Jeffrey Z. Rubin, 2004) As part of the common law (algemene belangen), and with this form and nature, the level of flexibility of the penal rules is determined and imposed, and in the end still leads to a rigid polarization, that is, at least reluctant to say no) role of the individual, where the application of the law depends only on the state as the main element in defining and imparting a sense of justice. This polarization can be understood as the embodiment of the concept of law about the idea of obtaining perfect justice. The basic concept of justice was formulated by Plato, who mainly stressed that in law as a moral and ethical system, the first thing to do is to seek and focus on the public interest as a priority. The public interest that this concept refers to is the participation of all people in the ideas and efforts to achieve justice through their representation in the state apparatus so that the form of justice is ideally obtained. The result of this concept is that the state is the one that sets the criteria for justice, and the state is the one that shapes and implements the mechanism for seeking justice, so that the state, in turn, is the one that decides or provides justice. Similarly, in criminal law, a criminal act is seen as an act that harms or damages the interests of others and thus becomes grounds for the victim as the aggrieved party to take revenge on the party he has harmed. From the perspective of living together in society, revenge generally does not become a right of the crime victim alone, but rather develops into a shared obligation of all family members even in several dimensions and certain events this is seen as a right and obligation of the community. So that finally achieving revenge becomes part of the responsibility and even the purpose of establishing the state. This concept has been forced in Indonesia for at least since the promulgation of the Code of Criminal Procedure through Law No. 8 of 1981 on the Code of Criminal Procedure. Even in the context of colonial law, the concept of This mechanism has been in effect ever since Indonesia is still under occupation The Netherlands also after independence while used Het Herziene Inlandsch Regulation (HIR) which was later updated with the Updated Indonesian Regulation (RIB) Dutch legacy e.g. Criminal Procedure Code pays attention Comprehensive criminal justice system that abides by the Code of Criminal Procedure, get it. It is said that the justice system of Indonesian criminal law fell if He refuses to mention the

judiciary an important role for the individual in the effort Settlement of criminal cases. (T.O. Ihromi, 1993) Find justice within The criminal case is fully concentrated On the ability of system integration Built by the police Prosecutors, courts, and institutions correctional facility even after The birth of Law No. 18 2003 Concerning Lawyers, which is expected to swell Individual role through mentoring victims and external efforts The court did not change the character Stagnation in the criminal justice system Indonesia. The new defender will be powerless to use and judge his actions to seek justice, just above actions before the Court of First Instance court. (Harkristuti Harkrisnowo, 2003) While the results of efforts Outside the court, for example, the result of negotiations and peace is not The force of law in governance as a consideration of court trial decision. System Indonesian criminal justice Thus it is clear that it is closely related to the theory Complete justice means Plato as already described in on me. Although time has passed and changes in community dynamics in Indonesia and the world in general, even criminal acts Grow and grow Their complexity ranges from form, to qualify for this result due to this action. Criminal rules are no longer part of their general nature, rather Relatively inclined and turned to enter the private domain. In the context of These, of course, research efforts Justice is no longer fair. It is the responsibility of the state to procedures Only formal legal and verbal processes must be followed through relationships and work more socially competitively. In this case, only when refers to the concept of justice balance with priority perfection in bargaining procedures fair between individuals Submitted by John Rawls Next: The principle of justice is the result of agreement and bargaining and he is fair. Due to the situation's original position (parties not conditional on the state system - author) relations of both symmetries, this initial position is fair between individuals as person's moral, and that is as a rational being according to their goals and capabilities recognize a sense of justice. This is the default position where it can be said that the status quo appropriate start, so agree the basics achieved fair, strictly speaking, justice done by agreement taken by the party's litigation, and not before the nation. When justice is done by the country not necessarily even often we don't like it frees the justice seekers themselves even when everyone needs and follows up their interests as well as with different levels of acceptance and sense of justice itself.

## **METHODOLOGY**

The research method used by the author is the normative legal research method. The data used by the authors in this study is secondary data by conducting studies related to the data in the library study which includes primary, secondary, and tertiary legal subjects. These legal materials can be found in the literature on the issues under study such as rules, regulations, bills, research findings, and even dictionaries. How to Shift the Paradigm of the Principle of Justice Retributive Being Justice Restorative with Mediation Concept Penalty?

## **RESULTS**

Mediation is a negotiation process to solve problems in which the neutral parties cooperate with the parties disputing parties to obtain a mutual agreement. According to Muzlih MZ, as quoted by Radwan Mansour, Mediation is a settlement process for the disputing parties to reach the satisfaction of the disputing parties to reach a satisfactory settlement through a neutral third party

(mediator). Criminal mediation is known as criminal case mediation, criminal mediation, offender-victim mediators, offender-victim arrangement (English), strafbemiddeling (Dutch), der AuBergerichtliche Tatausgleich (Germany), Penalty Mediation (French) it allows the offender to accept and take responsibility for his actions. Criminal mediation is a new dimension that is being studied theoretically and in practice. If examined from the practical dimension, criminal mediation will relate to the achievements of the world of justice. Over time, there is an increasing number of cases in all forms and variables that enter the courts, so the consequences become a burden for the courts to consider and decide cases according to the principle of simple, quick, and low-cost justice. Without sacrificing the achievement of the objectives of the judiciary, which are legal certainty, benefit, and justice. (Khotbul Umam, 2010). The ideas and principles of penal mediation are

1. Conflictbearbeitung: The task of the mediator is to make the parties forget the legal framework and encourage them to participate in the communication process. This is based on the idea that crime has created conflict between individuals, and this conflict is what the mediation process aims for.
2. Process Orientation / Prozessorientierung: Criminal mediation is more process quality oriented than results-oriented, i.e. making the perpetrators aware of their mistakes and their conflict needs Unresolved, calming the victim out of fear, and so on.
3. Informal process (informal/informal procedure): Mediation Punishment is an informal process, not a bureaucratic one. Avoid draconian legal action. The criminal mediation process applicable in the criminal justice system can take place from the investigation stage to prosecution, and the court meets the conditions that, among other things, the offender acknowledges his actions and promises not to repeat them, apologizes to the victim and takes responsibility, instead the victim is willing to accept an apology and willing to conduct deliberations or negotiations, while community representatives support the deliberations, the special conditions of criminal mediation give priority to cases of secondary qualifications. The mediation process begins with the opening of the mediator, the stage of discussing the problem, the final stage of compiling the mediation agreement, and the signing of the mediation agreement by all parties present. According to Mouladi, the appropriate model for the Indonesian criminal justice system is the model referring to Dadir-Dadir Strafrecht, which he calls the balance-of-interest model. This model is a realistic model that takes into account the various interests that criminal law must protect, namely the interests of the state, the public interest, the interests of the individual, the interests of the perpetrators of criminal acts, and the interests of the victims of crime. (Muladi, 1995) Restorative justice is an approach that emphasizes compensation for losses caused or incurred by criminal acts. The recovery of this loss will be achieved through collaborative processes involving all stakeholders. Actions and programs that reflect restorative goals will be able to solve the offense by:
  1. Identifying and taking steps to recover losses;
  2. Involvement of all stakeholders;
  3. Changing the traditional relationship between societies and their governments in dealing with crime.
 (Peter Mahmud Marzuki, 2008)

## **DISCUSSION**

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(M. Musa, 2023)

## CONCLUSION



Penal mediation an Alternative Settlement Corporation v Criminal cases held simultaneously a paradigm shift occurs in the application of criminal law principles Retributive justice becomes just Restorative justice. This principle claims the criminal justice process to the availability of interests. The interests of the victim as a party are harmed as a result of the perpetrator's actions, so this view is encouraged in countries like the United States, Germany, France, and later Belgium implementation and development of Penal Mediation Forms. Mediation model development Punishment focuses on the essence of an agreement between parties to the dispute regarding the form of dispute resolution helped by a broker can come from law enforcement officials or independent parties. An agreement obtained from the mediation of the pen binding on all parties all consequences. It is a form of justice best to try through relationships and work more socially competitively. Justice system reform criminal through merger Penal mediation must be done to create a criminal justice system progressive Indonesian nation based on noble values Pancasila. This update can begin with a conceptual reconstruction in the criminal justice system with more formal concepts and dynamics and has a progressive trend in the acceptance of new things more Humanitarian. Mediation can be penal one of the important factors that can make a big change in this case. Update via the inclusion of criminal mediation in the criminal justice system can do it by establishing a non-punitive policy using the approach of social/cultural and administrative aspects eliminate. Meanwhile, Policy aspects of criminal law legislation (Penalties policy) can do with defining principles, goals, and standards, not criminal and procedural law the implementation of criminal mediation can pour into private law.

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