



Penal Mediation Regulations as Modernization of Indonesian Law from Criminal Code (WvS) to National Criminal Code

Winda Aprilia; Eko Sopyono

Faculty of Law, Diponegoro University, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v11i11.6358>

Abstract

This study aims to analyze penal mediation in the Criminal Code (WvS) and the National Criminal Code in the form of modernization that will be in effect in 2026. The focus of the discussion in this study is the development of the concept of penal mediation in the Indonesian criminal law system from the old Criminal Code (WvS) to the National Criminal Code. Significant differences between the regulation of penal mediation in the old Criminal Code and the new Criminal Code, and how they have implications for the modernization of Indonesian criminal law. Optimizing the application of penal mediation in the context of the modernization of Indonesian criminal law. The results of this study conclude that the development of penal mediation in the National Criminal Code, when compared to the old Criminal Code (WvS), broadens the scope of penal mediation, based on the theory of restorative justice. That the concept of penal mediation regulated in the National Criminal Code has included the concept of restorative justice, in addition, the National Criminal Code has expanded the role of law enforcement in facilitating penal mediation, and provides greater discretion in choosing case resolution. Provides greater space for the participation of victims and perpetrators in case resolution; Emphasizes restoration of relationships and compensation. Integrating penal mediation into the criminal justice system. Creating flexibility in case handling.

Keywords: *Penal Mediation; National Criminal Code; Modernization of Criminal Law*

Introduction

The development of the legal system in Indonesia is closely related to its long history. Given its long historical background, the Indonesian legal system originated from the Netherlands, a former colonial power in this country. There is no doubt that Indonesia has adopted laws originating from the Netherlands. As a former colonial country under Dutch rule, Indonesia is obliged to adopt the Dutch legal system, regardless of its own choice (Ariyanti, 2019) . The Indonesian legal system is largely dependent on laws originating from the Netherlands, its former colony. Almost every law that applies in the Netherlands is also recognized and enforced in Indonesia. Simply put, Indonesian law is a legal system that continues to be based on laws established by the Netherlands (Faizal Azhar, 2019) .

In the Netherlands, the Continental European Legal System is the applicable legal system. In Indonesia, the Continental European legal system has also been applied due to its status as a former Dutch colony (Mahrus Ali, 2015) . The Continental European Legal System highlights the importance of written law. Legislation is very important in the Continental European Legal System. The constitution is the legal basis in Indonesia (Andi Maysarah , 2017) .

Indonesian law is an important component in social and state life, which functions as a basic instrument to regulate all aspects of life, both individual, community, and government life. In the midst of the transitional conditions towards a new Indonesia, Indonesian society is in dire need of a legal system that fulfills three prerequisites for the existence of law, namely: peace, justice, and welfare (benefit) (Hutomo, 2021) .

In everyday life, the Indonesian legal system is often used to indicate the norms that apply and are enforced in Indonesia. Indonesian law refers to the legal system, code of norms, or regulatory system that applies in Indonesia. In other commonly used terms, Indonesian law refers to positive Indonesian law, including all laws that are positive or currently in force in Indonesia (Shidarta Bernard Arief, 2012) .

The laws governing society are constantly updated in response to the development of life, resulting in a very diverse legal system. Furthermore, law can be studied from various specific perspectives. Therefore, if studied in terms of its objectives, one part of public law is criminal law, which can be categorized into material criminal law (*materiel strafrecht*) and formal criminal law (*formeel strafrecht*) (Lilik Mulyadi , 2008) . Van Bemmelen and Van Hatum once stated that *Het tegenwoordige strafrecht slechts een face is in een ontwikkelingsgang, waarvan het eindpunt zeker nog niet is bereikt* which in essence today's criminal law is in a state of continuous development, although its final goal has not been achieved (Eddy OS Hiariej , 2016) .

According to Barda Nawawi Arief, the implementation of criminal law reform must be carried out with a policy perspective. Because criminal law reform is essentially a component of policy or legal politics in general and specifically is part of criminal law policy (*criminal law/penal policy or strafrechtpolitiek*) (Barda Nawawi Arief , 1996) . Legal politics is an inseparable component of law enforcement, law enforcement politics, and social politics. Therefore, it is hoped that criminal law reform will be guided by the values that apply in Indonesian society and other countries, which can be a benchmark for the renewal of Indonesian national criminal law.

Criminal law has undergone quite a long development as it is now known as public law. The development of criminal law is understood as an act that is detrimental or detrimental to the interests of others which is then followed by retaliation. In general, retaliation is not only limited to the obligations of individuals who are harmed or harmed by the act, but also extends to the entire family and in certain cases.

However, the public nature of criminal law has shifted over time due to the recognition and practice of penal mediation as a form of out-of-court settlement, as well as changes and complex dynamics of society that have rejected the regulation of legislation as a partial legislative policy (Lilik Mulyadi , 2013) . With the aim of ensuring justice for all parties involved in the criminal process, especially those involving minor crimes, it is essential to implement mediation and restorative justice procedures. As a means to address problems, criminal mediation has been used as an alternative conflict resolution method in many countries with beneficial results for victims, perpetrators, and the community (Mansyur Ridwan , 2010) .

Minor crimes should not need to be resolved through the Court if the purpose of punishment has been achieved through penal mediation. In addition, the penal mediation method can also provide the judge with the freedom to consider resolving other crimes that are considered to have a greater impact on society, such as corruption by reducing the intensity of cases brought to court. The principle of fast,

simple and low-cost justice as stated in Article 4 paragraph (2) of Law Number 4 of 2004 is a principle that is widely recognized in procedural law.

In response to the ever-evolving developments in society and the need for legal reform in line with the current social, economic, and cultural conditions of Indonesia, the new Criminal Code is expected to effectively address these issues. While some efforts have been made to modify and modernize the outdated Criminal Code, the need for a more extensive revision becomes more urgent as time goes by. The ever-evolving social, economic, and cultural transformations in Indonesia require a more relevant and adaptable criminal law system. The upcoming Criminal Code is expected to address these requirements by implementing many significant modifications.

Based on the discussion in above becomes interesting if further studied regarding penal mediation in the Criminal Code (WvS) and the national Criminal Code in the form of modernization that will apply in 2026 about first, how the development of the concept of penal mediation in the Indonesian criminal law system from the old Criminal Code (WvS) to the national Criminal Code. Second, what are the significant differences between the regulation of penal mediation in the old Criminal Code and the new Criminal Code, and what are the implications for the modernization of Indonesian criminal law.

Research Methods

In this study, the author uses a normative legal writing method, where the author researches using legal theory, literature review, and laws and regulations. Comparative approach *and* conceptual approach. The author also uses 2 (three) sources of legal materials, namely Law No. 1 of 1946 concerning the Criminal Code (Old Criminal Code) and Law No. 1 of 2023 concerning the Criminal Code (National Criminal Code). The legal materials are analyzed and presented using qualitative descriptive analysis.

Discussion

1. The Development of the Concept of Penal Mediation in the Indonesian Criminal Law System from the Old Criminal Code (WVS) to the National Criminal Code

The existence of penal mediation can be studied from a philosophical, sociological, and legal perspective. This aspect is studied from a sociological perspective and focuses on Indonesian society which is characterized by family cultural values and prioritizes the principle of deliberation and consensus in resolving disputes in a social system. In a narrow sense, these dimensions and aspects are resolved through the dimensions of local wisdom of customary law.

In the history of law, it is clear that the first legislation that was implemented and became the embodiment of the legal awareness of the Indonesian people was the community's knowledge of customary law. This element and dimension correlates exactly with *theorie receptie Snouck Hurgronje*. Historically, customary law, along with other Hindu social and religious traditions, functioned as a mechanism of community control over a long period of time (HR Otje Salman, 2007).

As a new development in the field of criminal law, penal mediation has the potential to influence the integration of the private sphere into public law. From a philosophical perspective, penal mediation embodies the concept of ensuring mutually beneficial results, not the concept where one party loses and the other party loses because the court aims to achieve formal justice through the legal process. This principle is achieved through the litigation process (*law enforcement process*) (Lilik Mulyadi, 2015).

The development of penal mediation in Indonesia shows a paradigm shift in the criminal justice system, from a retributive approach to a restorative approach. The current law enforcement process in

Indonesia is considered not in accordance with the conditions of society. The response and demands of the community and law enforcement officers, undeniably, have contributed to the presence of penal mediation in the criminal justice system. The application of penal mediation based on restorative justice is an alternative to resolving criminal cases conventionally. The mechanism of criminal justice procedures no longer focuses on punishment, but rather through a process of dialogue and mediation involving the perpetrator, victim, the perpetrator/victim's family, and other related parties. The goal is to jointly create a fair and balanced settlement agreement for the victim and perpetrator, prioritizing the restoration of the original state and the restoration of good relations in society (Rachel Dameria , 2023) .

In practice in Indonesia, the introduction of the application of penal mediation in the Indonesian legal system has begun to be applied in law enforcement practices. This can be seen from several law enforcement policy instruments in the application of restorative justice-based penal mediation, namely:

- a) Regulation of the Chief of Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice;
- b) Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice;
- c) Decree of the Director General of the General Courts Number 1691/DJU/SK/PS.00/12/2020 dated December 22, 2020 concerning Guidelines for the Implementation of Restorative Justice in the General Courts.

The New Criminal Code in this case Law Number 1 of 2023 has also regulated many things related to penal mediation because this Law is intended to replace the Criminal Code as stipulated in Law Number I of 1946 concerning Criminal Law Regulations which has been amended several times. In its development, the revision of this Law, which was initially focused on the main objective of "decolonizing" the Criminal Code through " recodification " , ultimately includes several broader objectives in relation to national and international developments.

The second target is "democratization of criminal law". The third target is "consolidation of criminal law" due to the significant development of criminal law since independence. This development occurs both inside and outside the Criminal Code, giving rise to various characteristics. Therefore, it is necessary to re-arrange it within the framework of the principles of criminal law contained in Book I of the Criminal Code. Furthermore, the formulation of this Law is carried out within the framework of the fourth target, namely adapting and harmonizing various legal developments that arise from the development of criminal law and the development of values, standards, and norms recognized by countries throughout the world.

Article 2 paragraph 1 of the New Criminal Code also emphasizes the importance of laws rooted in society. This term refers to customary law, which determines whether someone who commits a certain act deserves to be punished. This article relates to unwritten laws that still exist and develop in Indonesian society. Furthermore, the resolution of disputes outside the legal process quickly is also emphasized in the new Criminal Code. Law Number 1 of 2023, specifically in Article 132 paragraph (1) of the Criminal Code, stipulates that the authority to prosecute is considered to have ended if:

- a. There is a court decision that has obtained permanent legal force against each person for the same case.
- b. The suspect or defendant died.
- c. Expiry.
- d. The maximum criminal fine is paid voluntarily for criminal acts which are only threatened with a maximum fine of category II.
- e. The maximum category IV fine is paid voluntarily for criminal acts that are subject to a maximum prison sentence of 1 year or a maximum fine of category III.

- f. Withdrawal of complaint for criminal complaint.
- g. There has been a settlement outside the judicial process as regulated by law.
- h. Granting amnesty or abolition.

Letter g in the article above refers to one form of dispute resolution outside the court, namely if there has been a settlement outside the procedural procedures as regulated in the Law. From the perspective of penal mediation based on the theory of restorative justice, the criteria for justice can be seen from various principles that propose that the problem of justice be formulated as a relationship between rights and evaluated based on the final result. In relation to rights, the role of victims and perpetrators is recognized, both in determining the problem and in resolving the rights and needs of the victim. The perpetrator is motivated to be responsible.

2. Significant Differences in the Concept of Penal Mediation in the Old Criminal Code and the National Criminal Code

Analysis of the provisions in the old Criminal Code and the National Criminal Code shows substantial changes in many areas. Overall, the National Criminal Code shows an effort to improve the efficiency and fairness of the legal system by revising the standards in the previous Criminal Code. The revision of the Criminal Code from the previous edition to the latest edition resulted in many variations in the provisions regulated. The existing Criminal Code and the National Criminal Code show several significant differences, which can be described as follows (Edi Kristianta Tarigan et al., 2024):

- a) The new (national) Criminal Code changes some specific definitions of criminal offences and introduces a number of other categories of criminal offences. An example is the removal of articles on morality that are considered detrimental to human rights. The implication is that criminal offences that were previously considered not to violate the law can now be subject to criminal penalties.
- b) Conditional release is granted under the new Criminal Code on the condition that a criminal has completed half of his sentence. The implication is that those who previously had to complete their entire sentence can now be granted conditional release if they meet certain criteria.
- c) The recent reforms in the trial procedures in the Criminal Code provide immunity rights to witnesses and victims when they give evidence in court. The conclusion is that witnesses and victims have been freed from fear or anxiety about providing the necessary testimony during the trial process.

The new Criminal Code contains various rules that change the previous criminal law provisions. The following are the striking differences between the criminal law provisions in the old Criminal Code and the new Criminal Code:

Difference	OLD CRIMINAL CODE	OLD NEW
The Existence of the Penal Mediation Concept	<ul style="list-style-type: none"> - There are no formal provisions regarding penal mediation. - The main focus is on criminalization and retribution. 	<ul style="list-style-type: none"> - Incorporating the concept of restorative justice - Explicitly regulates and recognizes penal mediation.
Scope of Application	<ul style="list-style-type: none"> - There are no specific provisions for penal mediation. - Out-of-court settlements are based solely on informal practices. 	<ul style="list-style-type: none"> - Expanding the scope of application of penal mediation for various types of specific crimes - Provides clear guidance on cases that can be mediated

Procedures and Mechanisms	<ul style="list-style-type: none"> - There is no formal procedure for penal mediation. - Informal settlements do not have clear legal force. 	<ul style="list-style-type: none"> - Regulate the procedures and mechanisms of penal mediation in detail - Provide a clear legal framework for the implementation of mediation
Role of Law Enforcement	<ul style="list-style-type: none"> - The role of law enforcement is limited to formal judicial processes. - Limited discretion in handling cases. 	<ul style="list-style-type: none"> - Expanding the role of law enforcement in facilitating penal mediation - Provides greater discretion in choosing case resolution
Position of Victim and Perpetrator	<ul style="list-style-type: none"> - Focus on punishing the perpetrators. - The victim's role is limited in the judicial process. 	<ul style="list-style-type: none"> - Providing greater space for the participation of victims and perpetrators in resolving cases - Emphasizing restoration of relationships and restitution
Integration with the Justice System	<ul style="list-style-type: none"> - The justice system is linear and rigid - There is no formal integration with alternative resolution methods. 	<ul style="list-style-type: none"> - Integrating penal mediation into the criminal justice system - Creating flexibility in case handling

The regulation of the settlement of criminal cases through penal mediation in Indonesian criminal law so far, which is regulated in the old Criminal Code, is still limited to criminal cases committed by children, while for other cases it is still not sufficiently regulated (Andi Rahmah, 2018) . Although in various laws there are several provisions that allow for the settlement of criminal cases outside the court, because it has not yet explicitly regulated the existence of mediation between the perpetrator and the victim, especially regarding the provision of compensation or damages which is a means of diversion to stop prosecution or the imposition of criminal penalties (Emy Rosnawati, Siti Dewi Khotimah, Rifqi Ridhlo Pahlevy, 2018) .

Settlement of criminal cases through penal mediation can fulfill the values of justice and benefit but relatively not with the value of certainty. This is because penal mediation encourages the rebuilding of equality of the parties, decisions that can be accepted by the parties, and harmony in society . The concept of penal mediation regulated in the National Criminal Code has included the concept of restorative justice, in addition, the National Criminal Code has expanded the role of law enforcement in facilitating penal mediation, and provides greater discretion in choosing the resolution of cases. Provides greater space for the participation of victims and perpetrators in resolving cases ; Emphasizes restoration of relationships and compensation , Integrates penal mediation into the criminal justice system a. Creates flexibility in handling cases .

Conclusion

The results of this study conclude that the development of the National Criminal Code penal mediation, when compared to the old Criminal Code (WvS), has expanded the scope of penal mediation, based on the theory of restorative justice. That the concept of penal mediation regulated in the National Criminal Code has included the concept of restorative justice, in addition, the National Criminal Code has expanded the role of law enforcement in facilitating penal mediation, and provides greater discretion in choosing case resolution. Provides greater space for the participation of victims and perpetrators in resolving cases; Emphasizes restoration of relationships and compensation. Integrates penal mediation into the criminal justice system. Creates flexibility in handling cases.

Reference

- Andi Maysarah, *Perubahan dan Perkembangan Sistem Hukum di Indonesia*, Jurnal Warta Edisi, Volume 1 No. 52, April 2017.
- Andi Rahmah, S. A. (2018). Mediasi Penal Sebagai Alternatif Penyelesaian Tindak Pidana Kekerasan Dalam Rumah Tangga. *Jurisprudentie*, 5(2), 251–272. <https://doi.org/https://doi.org/10.24252/jurisprudentie.v5i2.6592>.
- Ariyanti, V. (2019). Kebijakan Penegakan Hukum Dalam Sistem Peradilan Pidana Indonesia. *Jurnal Yuridis*, 6(2), 33–43. <https://doi.org/10.35586/jyur.v6i2.789>.
- Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, Bandung: Citra Aditya, 1996.
- Eddy O S Hiariej, *Prinsip-Prinsip Hukum Pidana*, Yogyakarta: Cahaya Atma Pustaka, 2016.
- Edi Kristianta Tarigan dkk, *Tinjauan Yuridis Perbandingan KUHP Lama dan KUHP Baru*, Volume 18, Nomor 3, Juli 2024.
- Emy Rosnawati, Siti Dewi Khotimah, Rifqi Ridhlo Pahlevy, M. T. M. (2018). Mediasi Penal Sebagai Alternatif Penyelesaian Perkara Kekerasan Dalam Rumah Tangga. *De Jure: Jurnal Hukum Dan Syari'ah*, 10(2), 61–71. <https://doi.org/http://dx.doi.org/10.18860/j-fsh.v10i2.4888>.
- Faizal Azhar, A. (2019). Penerapan Konsep Keadilan Restoratif (Restorative Justice) Dalam Sistem Peradilan Pidana Di Indonesia. *Jurnal Kajian Hukum Islam*, 4(2), 138.
- H.R. Otje Salman, *Kesadaran Hukum Masyarakat Terhadap Hukum Waris*, Bandung: PT Alumni, 2007.
- Hutomo, P. (2021). Perspektif Teori Sistem Hukum Dalam Pembaharuan Pengaturan Sistem Pemasarakatan Militer. *Legacy: Jurnal Hukum Dan Perundang-Undangan*, 1(1), 46–68. <https://doi.org/https://doi.org/10.21274/legacy.2021.1.1.46-68>.
- Lilik Mulyadi, *Bunga Rampai Hukum Pidana Perspektif, Teoretis dan Praktik*, Bandung: Alumni, 2008.
- Lilik Mulyadi, *Mediasi Penal dalam Sistem Peradilan Pidana Indonesia: Pengkajian Asas, Norma, Teori dan Praktik*, Yustisia Vol.2 No.1 Januari – April 2013.
- Lilik Mulyadi, *Mediasi Penal dalam Sistem Peradilan Pidana Indonesia*, Bandung: Alumni, 2015.
- Mahrus Ali, H.A.(2015).*Sistem Pertanggungjawaban Pidana:Perkembangan dan Penerapan*. Rajawali Pers.
- Mansyur Ridwan, *Mediasi Penal Terhadap Perkara KDRT (Kekerasan dalam Rumah Tangga)*, Jakarta: Yayasan Gema Yustisia Indonesia, 2010.
- Rachel Dameria, *Urgensi Penerapan Mediasi Penal dalam Sistem Peradilan Pidana di Indonesia*, Volume 32, No 1.
- Shidarta Bernard Arief. (2012). *Penalaran Hukum Dalam Sudut Pandang Keluarga Sistem Hukum dan Penstudi Hukum*. Unair Press.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal. This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).