The 2nd Proceeding
"Indonesia Clean of Corruption in 2020"

"Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe"

IMAM AS SYAFEI BUILDING
Faculty of Law, Sultan Agung Islamic University
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

UNISSULA PRESS

ISBN. 978-602-1145-41-8
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Front Page</td>
<td>i</td>
</tr>
<tr>
<td>Information of the International Seminar</td>
<td>ii</td>
</tr>
<tr>
<td>Committee Composition</td>
<td>iii</td>
</tr>
<tr>
<td>Preface</td>
<td>iv</td>
</tr>
<tr>
<td>Greeting From The Dean Faculty of Law</td>
<td>vi</td>
</tr>
<tr>
<td><strong>INDONESIA’S KPK AND NSW’S ICAC: COMPARISONS AND CONTRASTS</strong></td>
<td></td>
</tr>
<tr>
<td>Prof. Simon Butt</td>
<td>1</td>
</tr>
<tr>
<td><strong>CAN INDONESIA FREE ITSELF FROM CORRUPTION IN 2020?</strong></td>
<td></td>
</tr>
<tr>
<td>Prof. Dr. Hikmahanto.,S.H.,LLM</td>
<td>4</td>
</tr>
<tr>
<td><strong>AN ACT TO ESTABLISH THE ANTI-CORRUPTION AGENCY, TO VEST POWERS ON OFFICERS OF THE AGENCY AND TO MAKE PROVISIONS CONNECTED THEREWITH.</strong></td>
<td></td>
</tr>
<tr>
<td>Rohimi Shapiee</td>
<td>7</td>
</tr>
<tr>
<td><strong>STRATEGY TO CREATE INDONESIA FREE CORRUPTION IN 2020</strong></td>
<td></td>
</tr>
<tr>
<td>Dr. Jawade Hafidz, S.H., M.H</td>
<td>11</td>
</tr>
<tr>
<td><strong>THE NETHERLANDS INGLOBAL CORRUPTION</strong></td>
<td></td>
</tr>
<tr>
<td>Siti Malikah Marlou Feer, M.A.</td>
<td>28</td>
</tr>
<tr>
<td><strong>ROBUST YET FRAGILE: EFFORTS IN COMBATING CORRUPTION IN INDONESIA</strong></td>
<td></td>
</tr>
<tr>
<td>Laras Susanti.,S.H., LLM</td>
<td>33</td>
</tr>
<tr>
<td><strong>LEGAL STATUS OF AKTOR’S FOR CORRUPTION</strong></td>
<td></td>
</tr>
<tr>
<td>(In the Perspective of Islamic Law)</td>
<td></td>
</tr>
<tr>
<td>Sumarwoto Umar</td>
<td>37</td>
</tr>
<tr>
<td><strong>THE ROLE OF LAW IN THE POVERTY REDUCTION STRATEGY</strong></td>
<td></td>
</tr>
<tr>
<td>Lantik Kusuma Aji</td>
<td>46</td>
</tr>
<tr>
<td>Khalid</td>
<td>55</td>
</tr>
<tr>
<td><strong>THE URGENCY OF ANTI CORRUPTION EDUCATION FOR COLLEGES IN INDONESIA</strong></td>
<td></td>
</tr>
<tr>
<td>Siska Diana Sari</td>
<td>62</td>
</tr>
<tr>
<td><strong>THE PROBLEMS OF DIVORCE IN CUMULATION AT THE RELIGIOUS COURTS BASED ON THE PRINCIPLES OF SIMPLE, FAST AND LOW COST</strong></td>
<td></td>
</tr>
<tr>
<td>Elis Rahmahwati</td>
<td>78</td>
</tr>
<tr>
<td><strong>DISPARITIES DECISION RELATED TO INTERPRETATION OF ARTICLE 2 AND 3 CORRUPTION ERADICATION ACT</strong></td>
<td></td>
</tr>
<tr>
<td>Agung Widodo</td>
<td>87</td>
</tr>
<tr>
<td><strong>DIVERSITY ADULT AGE LIMITS POSITIVE LAW IN INDONESIA</strong></td>
<td></td>
</tr>
<tr>
<td>(Studies in Multidisciplinary Perspective)</td>
<td>102</td>
</tr>
<tr>
<td>Title</td>
<td>Page</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>THE APPLICATION OF BALANCE IDEA IN SETTLEMENT OF DOCTOR MALPRACTICE CASE THROUGH PENAL MEDIATION</td>
<td>111</td>
</tr>
<tr>
<td>MODERNIZATION LAW AS A CRIME CORRUPTION VERY EXCEPTIONAL THROUGH ENFORCEMENT OF ETHICS</td>
<td>118</td>
</tr>
<tr>
<td>CORRUPTION POTENCIES IN LAND USE POLICY (A Case Study in Kuningan Regency)</td>
<td>126</td>
</tr>
<tr>
<td>CORRUPTION PREVENTION AND CONTROLS</td>
<td>133</td>
</tr>
<tr>
<td>ISLAMIC LAW VALUES TRANSFORMATION IN THE RECONSTRUCTION OF THE LEGALITY PRINCIPLE OF INDONESIAN CRIMINAL CODE</td>
<td>145</td>
</tr>
<tr>
<td>JUSTICE AND CHARITY IN JAKARTA’S NORTH COAST RECLAMATION PROCESS THAT WILL LEAD TO INDONESIA CLEAN OF CORRUPTION</td>
<td>155</td>
</tr>
<tr>
<td>CORRUPTION CRIMINAL SANCTIONS WITH VALUES OF JUSTICE-BASED</td>
<td>162</td>
</tr>
<tr>
<td>THE REFLECTION OF ISLAMIC BANKING IN THEORY AND PRACTICE</td>
<td>171</td>
</tr>
<tr>
<td>THE IMPLEMENTATION OF LOCAL WISDOM SIRI’NA PACCE AS AN EFFORT OF CORRUPTION ERADICATION IN INDONESIA</td>
<td>181</td>
</tr>
<tr>
<td>DISCOURSE POLITICAL LAW IN INDONESIA ON A COMPLETION OF PLATO PHILOSOPHY</td>
<td>189</td>
</tr>
<tr>
<td>STUDY OF INDONESIA’S PARTICIPATION IN ICSID</td>
<td>202</td>
</tr>
<tr>
<td>NOTARY ROLE IN THE IMPLEMENTATION OF EXECUTION PROCUREMENT OF GOODS AND SERVICES ARE FREE OF CORRUPTION BASED ON THE PRINCIPLE OF GOOD GOVERNANCE</td>
<td>211</td>
</tr>
<tr>
<td>ANALYSIS WIRETAPPING AUTHORITY UPPER KPK LAW ENFORCEMENT IN THE PERSPECTIVE OF HUMAN RIGHTS</td>
<td>221</td>
</tr>
<tr>
<td>SOCIAL WORKING PENALTY AS SOLUTION IN ERADICATING CORRUPTION IN INDONESIA</td>
<td>232</td>
</tr>
<tr>
<td>LEGAL POLITICSOF EMPLOYMENT IN TERM OF PART OF TASK HANOVER TO OTHER COMPANIES IN INDONESIA</td>
<td>244</td>
</tr>
</tbody>
</table>
RESOLUTION OF DISPUTES OF OUTSOURCING WORK FORCE
IN THE COMPANY EMPLOYING OUTSOURCING SERVICE
Pupu Sriwulan Sumaya ........................................................................................................ 256

THE APPLICATION OF CORRUPTION LAW
TO WARD CRIMINAL ACT IN THE FIELD OF FORESTRY
Ifrani .................................................................................................................................. 267

THE EFFORTS OF ERADICATING CORRUPTION THROUGH INSTRUMENTS
OF MONEY LAUNDERING LAW AND RETURN ACTORS’ ASSETS
Yasmirah Mandasari Saragih ................................................................................................... 276

AFFIRM ROLE OF EXISTENCE RECHTSVERWERKING
TO ACHIEVING LEGAL CERTAINTY IN LAND REGISTRATION
Rofiq Iaksmamana, Setiono, I Gusti Ayu Ketut Rachmi Handayani, Oloan Sitorus ............... 287

ANTI-CORRUPTION EDUCATION AT AN EARLY AGE
AS A STRATEGIC MOVE TO PREVENT CORRUPTION IN INDONESIA
Ida Musofiana ....................................................................................................................... 304

FREED INDONESIA’S CORRUPTION BETWEEN HOPE AND REALITY
Dr. Tongat, SH., M.Hum., Said Noor Prasetyo, SH., MH .......................................................... 313

UTILIZATION OF INDONESIA MARINE RESOURCES IN AN EFFORT
TO REALIZE INDONESIA TO WARD THE SHAFT OF THE MARITIME WORLD
Dr. Lathifah Hanimi, SH, M.Hum., M.Kn. and Letkol (mar) MS. Noorman, S. Sos., M.Opsla..... 319

POTENTIAL CORRUPTION IN THE VALIDATION POLICIES
ON ACQUISITION TAX OF LAND AND OR BUILDING
Lilik Warsito .......................................................................................................................... 325

THE EFFORT OF LAW ENFORCEMENT IN COMBATING CORRUPTION
IN SOUTH SUMATRA
Sri Suatmiati .................................................................................................................................. 334

ETHICAL PERSPECTIVE AND THE MAPPING OF NORM IN CORRUPTION ACT
Siti Zulaekkhah ............................................................................................................................ 344

AN EXPANSION OF CONCEPT THE STATE ECONOMIC LOSS
IN CORRUPTION IN INDONESIA
Supriyanto, Hartwiningsih, Supanto ......................................................................................... 354

JURIDICAL STUDIES ON SUBSTANCES AND PROCEDURE OF THE DISMISSAL
OF THE PRESIDENT AND/OR VICE-PRESIDENT AFTER THE REFORMATION
Siti Rodhiyah Dwi Istinah ........................................................................................................... 364

THE ROLE OF THE SHARIA SUPERVISORY BOARD IN THE FRAMEWORK ENFORCING
SHARIA PRINCIPLES AT THE INSTITUTE OF ISLAMIC BANKING IN SEMARANG
Aryani Witasari .......................................................................................................................... 376

SEMARANG CITY GOVERNMENT ROLE IN CONSERVATION AND ENVIRONMENTAL
PROTECTION TO THE CAPITAL OF THE NATIONAL HERITAGE IN INDONESIA
Achmad J Pamungkas (Indonesia), Carlito Da Costa (Timor Leste) ................................................. 390
STUDYING THE WISDOM OF ZAKAT
Moch. Gatot Koco (Indonesia), Basuki R Suratno (Australia) ........................................ 398

HOMOLOGATION RECONSTRUCTION IN BANKRUPTCY THAT IS BASED ON
DIGNIFIED JUSTICE
Agus Winoto .................................................................................................................. 410

RECONSTRUCTION OF EXECUTIVE AND LEGISLATIVE AUTHORITY
IN MAKING GOOD GOVERNANCE (GOOD GOVERNANCE) VALUES BASED ON
WELFARE
Mohamad Khamim ........................................................................................................ 420

THE TASK RECONSTRUCTION AND BPKP’S AUTHORITY IN THE CASE
OF JUSTICE VAUE BASED CORRUPTION
Sarbudin Panjaitan ......................................................................................................... 429

THE RECONSTRUCTION OF MADLIYAH AND IDDAH MAINTENANCE
AND MUT’AH IN DIVORCE CASE FOR JUSTICE AND WELFARE
Mustar ............................................................................................................................ 438

JURIDICAL ANALYSIS OF THE ALLEGED CRIMINAL OFFENSE TO MANUFACTURE
A NOTARY DEED
Subiyanto ......................................................................................................................... 446

REVITALIZATION DEAL IN AKAD HYBRIDS IN SHARIA BANKING VALUE BASED
ISLAMIC JUSTICE
Masduqi ............................................................................................................................ 452

RECONSTRUCTION OF LEGAL PROTECTION DISTRICT HEAD IN THE ELECTION
IMPLEMENTATION OF VALUE-BASED JUSTICE
Kukuh Sudarmanto Alugoro ............................................................................................. 462

ABUSE OF AUTHORITY OFFENSE THEOLOGICAL RECONSTRUCTION LAW
ERADICATION OF CORRUPTION (LAW NUMBER 31 OF 1999
JO. LAW NUMBER 20 OF 2001) BASED ON VALUE OF JUSTICE
As’adi M. Al-ma’ruf ......................................................................................................... 472

RECONSTRUCTION OF THE DAILY PAID WORK AGREEMENT IN THE EMPLOYMENT
LAW BASED ON JUSTICE
Christina N M Tobing .................................................................................................... 479

THE LAW AND THE IMPACT OF MARRIAGE SIRRI
Sahal Afhami .................................................................................................................. 489

CRIMES AGAINST CHILDREN AS ACTORS
Muhammad Cholil .......................................................................................................... 503

RECONSTRUCTION OF CRIMINAL PROCEDURAL LAW
(KUHAP) ABOUT THE DETENTION
Muhammad Khambali .................................................................................................... 512
<table>
<thead>
<tr>
<th>Title</th>
<th>Author</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>BASED ON JUSTICE PROBLEMS OF DISPUTE RESOLUTION REGIONAL CHIEF ELECTION (GOVERNOR, REGENTS AND MAYOR)</td>
<td>Esti Ningrum</td>
<td>520</td>
</tr>
<tr>
<td>RECONSTRUCTION REGIONAL MINIMUM WAGE (UMR) IN RENEWAL OF EMPLOYMENT LEGAL REMEDIES BASED INDONESIA THE VALUE JUSTICE PANCASILA</td>
<td>Urip Giyono</td>
<td>531</td>
</tr>
<tr>
<td>IMPLEMENTATION OF LAW AS TO MAINTAIN SECURITY IN THE CONTEXT OF PROFESSIONAL POLICE POLMAS (CASE STUDY IN LAMPUNG POLICE)</td>
<td>Muhammad Yaman</td>
<td>539</td>
</tr>
<tr>
<td>RECONSTRUCTION OF CRIMINAL SANCTIONS PENAL CODE ACTORS ON ABORTION CRIME BASED ON THE VALUE OF JUSTICE</td>
<td>Hanuring Ayu Ardhani Putri</td>
<td>549</td>
</tr>
<tr>
<td>REGISTRATION FIDUCIARY GUARANTEE REALIZE LEGAL PROTECTION OF CREDITORS AND DEBTOR</td>
<td>Ansharullah Ida</td>
<td>556</td>
</tr>
<tr>
<td>RECONSTRUCTION OF LEGAL DISPUTES MEDIATION IN HEALTH CARE FOR PATIENTS HOSPITAL BASED ON THE VALUE OF JUSTICE</td>
<td>Teguh Anindito</td>
<td>569</td>
</tr>
<tr>
<td>RECONSTRUCTION OF CRIMINAL SANCTIONS AGAINST CRIME OF ACTORS AND MURDER MURDER IN PLAN BASED ON VALUE OF JUSTICE CRIMINAL CODE</td>
<td>Maria Marghareta Titiek Pudji Angesti Rahayu Teguh Anindito</td>
<td>579</td>
</tr>
<tr>
<td>IMPLEMENTATION OF PENAL MEDIATION IN CRIMINAL LAW</td>
<td>Aji Sudarmaji</td>
<td>587</td>
</tr>
<tr>
<td>FAIR SETTLEMENT RECONSTRUCTION OF PROBLEMATIC CREDIT DISPUTE AT BANK RAKYAT INDONESIA (STUDY CASE AT MEDAN-SINGAMANGARAJA BRI BRANCH OFFICE)</td>
<td>Bachtiar Simatupang</td>
<td>594</td>
</tr>
<tr>
<td>RECONSTRUCTION OF THE WASTE MANAGEMENT LAW BASED ON WELFARE VALUE</td>
<td>M. Hasyim Muallim</td>
<td>616</td>
</tr>
<tr>
<td>RECONSTRUCTION LAW OF PUNISHMENT AGAINST CHILDREN NARCOTICS ABUSE-BASED PROGRESSIVE LAW</td>
<td>Salomo Ginting</td>
<td>625</td>
</tr>
<tr>
<td>LEGAL PROTECTION PROBLEM OF WIFE AND CHILDREN OF POLYGAMY SIRRI IN INDONESIA</td>
<td>Muhlas</td>
<td>639</td>
</tr>
<tr>
<td>Title</td>
<td>Author</td>
<td>Page</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>-------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>IDEAL RECONSTRUCTION OF REHABILITATION PUNISHMENT FOR NARCOTICS ADDICTS AND ABUSER'S VICTIMS JUSTIFIED BASED ON THE LAW OF THE REPUBLIC OF INDONESIA NO. 35 YEAR 2009 (CASE STUDY IN SUMATERA UTARA PROVINCE)</td>
<td>Ahmad Zaini</td>
<td>648</td>
</tr>
<tr>
<td>IMPLEMENTATION OF ACCELERATION SYSTEMATIC LAND REGISTRATION FULL IN HUMBANG HASUNDUTAN DISTRICT</td>
<td>Ruslan</td>
<td>658</td>
</tr>
<tr>
<td>RECONSTRUCTION OF STATUS AND AUTHORITY OF THE SHARIA COURT IN THE NATIONAL JUDICIAL SYSTEM BASED ON JUSTICE</td>
<td>Jufri Ghalib</td>
<td>667</td>
</tr>
<tr>
<td>RECONSTRUCTION OF LIABILITY NOTARY PUBLIC OFFICERS TO ACT AS A VALUE-BASED JUSTICE</td>
<td>Elpina</td>
<td>679</td>
</tr>
<tr>
<td>RECONSTRUCTION OF CONSUMER PROTECTION LAW IN MAKING THE BALANCE BUSINESS BASED BUSINESS AND CONSUMER VALUE OF JUSTICE</td>
<td>Ramon Nofrial</td>
<td>693</td>
</tr>
<tr>
<td>RECONSTRUCTION OF LAND USED RIGHT EIGENDOM VALUES BASED ON JUSTICE AND LEGAL CERTAINTY</td>
<td>Hakim Tua Harahap</td>
<td>706</td>
</tr>
<tr>
<td>RECONSTRUCTION OF DIVERSION CONCEPT IN CHILD PROTECTION OF CONFLICT WITH THE LAWS BASED ON THE VALUE OF JUSTICE</td>
<td>Ulina Marbun</td>
<td>726</td>
</tr>
<tr>
<td>RECONSTRUCTION OF PARATE EXECUTION MORTGAGE RIGHTS TO LAND BASED ON THE VALUE OF JUSTICE</td>
<td>Zaenal Arifin</td>
<td>740</td>
</tr>
<tr>
<td>THE RECONSTRUCTION OF DIVORCE DUE TO MARITAL STATUS UNDER THE UNAUTHORIZED GUARDIAN AS VALUE OF JUSTICE</td>
<td>Abdul Kholiq</td>
<td>751</td>
</tr>
<tr>
<td>THE RECONSTRUCTION OF LEGAL AID LAW FOR CHILDREN WHO GET CONFLICT WITH LAW IN PROCESS OF JUSTIFICATION FOR CHILDREN BASED ON THE VALUE OF PANCASILA</td>
<td>Adi Mansar</td>
<td>767</td>
</tr>
<tr>
<td>MEDIATION RECONSTRUCTION AS ONE OF THE ALTERNATIVE SETTLEMENT OF DECLINE IN THE COURTS BASED ON THE VALUE OF JUSTICE (Study at the Simalungun District Court)</td>
<td>Mariah S.M. Purba</td>
<td>778</td>
</tr>
</tbody>
</table>
LAW ENFORCEMENT AGAINST CORRUPTION IN PERSPECTIVE OF HUMAN RIGHTS IN INDONESIA
Sekhroni ................................................................. 798

THE PRINCIPLE OF NATURAL JUSTICE AND HUMAN’S RIGHT PROTECTION FOR CITIZENS IN ERADICATION OF CORRUPTION IN INDONESIA
Indriyana Dwi Mustikarini ........................................... 809

PREVENTING LAND MAFIA USING POSITIVE LAND REGISTRY SYSTEM
Bambang Sulistyowidjanarko ........................................ 816

UNRULY PASSENGER IN AVIATION: THE REGULATIONS AND CASES IN INDONESIA
Adya Paramita Prabandari ............................................. 826

EDUCATION ANTI-CORRUPTION IN INDONESIA: PROBLEMS, CHALLENGES AND SOLUTIONS
Alwan Hadiyanto ........................................................ 839

SPIRITUAL URGENCY OF RELIGIOUS AND EXPENSES OF EVIDENCE IN COMBATING CORRUPTION IN INDONESIA
Sulistyowati ............................................................... 852

SUE FOR THE STATE ADMINISTRATION OF JUSTICE IN INDONESIA
Sarjiyati ................................................................. 863

CONSISTENCY MODEL OF COURT DESIGNATION TO FOSTER PARENT RIGHTS AUTHORITY DUE TO DIVORCE ON CHILDREN
Erna Trimartini ........................................................ 873

AN INVESTIGATION AUTHORITY OF CRIMINAL ACT ON CORRUPTION IN CRIMINAL JUSTICE SYSTEM IN INDONESIA
Sukmareni ............................................................... 885

PRO CONS THE EXISTENCE OF DEATH PENALTY IN CORRUPTION ACT OF 1999 IN INDONESIA
Anis Rifai ............................................................... 903

PENAL MEDIATION IN SOLVING MEDICAL MALPRACTICE CASES AS AN ALTERNATIVE OF PENAL SANCTIONS BASED ON LOCAL WISDOM
Sri Setiawati ............................................................ 913

SPECIAL PROTECTION OF CHILDREN IN CRIMINAL JUSTICE SYSTEM
Achmad Sulchan ........................................................ 922

MORAL REFORM BUREAUCRACY AS PREVENTION OF ILLEGAL PAYMENTS TO INDONESIA CLEAN OF CORRUPTION
Herwin Sulistyowati .................................................... 932

STANCE AND AUTHORITY OF PEOPLE’S CONSULTATIVE ASSEMBLY DURING REFORMATION ERA 1945
Ahmad Mujib Rohmat .................................................. 944

"Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe"
TAXES AND ALMS SEEN FROM ISLAMIC LAW
Mohammad Solekhan ........................................................................................................... 954

DIVERSION IN COURT (Case Studies in Karanganyar District Court)
Anita Zulfiani ....................................................................................................................... 964

International Seminar
Photos...................................................................................................................................... 971
IMPLEMENTATION OF PENAL MEDIATION IN CRIMINAL LAW

Aji Sudarmaji
Student of Doctoral Program Faculty of Law Sultan Agung Islamic University
Email: aji.eshaemha@gmail.com

Sri Endah Wahyuningsih
Doctoral Program Faculty of Law Sultan Agung Islamic University
Email: endahw@unissula.ac.id

ABSTRACT

Penal mediation is an alternative settlement of criminal cases emphasizing restorative justice approach, which is carried out between the victims and the offenders or his/her families with the purpose of restoring the balance in the society. The major problem in this research is, firstly, how is the penal mediation in criminal law enforcement implemented today? Secondly, how are the weaknesses of the implementation of the penal mediation in criminal law enforcement today? Thirdly, how is the penal mediation in criminal law enforcement based on Pancasila values of justice constructed today?

In order to answer the problems mentioned above is obtained by using social legal research method, conducted with case studies that have already been through the legal processes by law enforcement officials until the court makes the decision, this kind of legal processes is deemed to have injured sense of justice in the community by the society. Penal mediation provides the best way to resolve problems or conflicts between the perpetrator and the victims by engaging between them directly in order to solve the problems with peaceful means in accordance with Pancasila values of justice.

The conclusion in this study is the current formulation of the regulations has not accommodated penal mediation as a form of settling disputes outside the criminal justice processes. Penal mediation arrangements in the future must be included in the substantive criminal law, the formal criminal law and the implementation of criminal law.

Keywords: Construction, Penal Mediation, Pancasila Justice.
A. Introduction

The concept which has been running for this that does not provide protection and respect for the interests of the victims and the offenders. This is a conventional mechanism which was based on the establishment of a formal process penal (criminal justice system) without looking at the development of law and sense of justice.

Law reform and criminal justice system rest on socio-cultural values of Indonesian society, and thus reflect the values of Pancasila philosophy of life and global development that reflect respect for the values of local wisdom (local wisdom), is a necessity. The problems that can be raised in this paper are:

1. How is the implementation of penal mediation in criminal law enforcement at this time?
2. How are the shortcomings of the penal mediation in criminal law enforcement at this time?
3. How is the construction of penal mediation in criminal law enforcement based on Pancasila values of justice?

1. Research Methods

This study is a socio-legal (social legal research). Socio-legal studies (socio-legal research) is the study of law in the form of empirical studies are oriented towards the discovery of theories about the process and about the working of law in society.

2. Results and Discussion

a. Implementation of penal mediation in criminal law enforcement today

A. Ideas and Principles of the Penal Mediation.

Criminal Mediation that is developed rests on the idea and working principles as follows:

a. Conflict Handling/on fliktbear beitung.
b. Process Orientation; Prozessorientierung).
c. Informal Proceeding - Informalität.
d. Active and Autonomous Participation - Partei autonomie/Subjektivie-rung.

B. The Comparation of Penal Mediation in Various Countries

---

Some countries that have implemented penal mediation as an alternative to the settlement of criminal cases:4

**Albania; Amerika; Argentina; Belanda; Norwegia; Portugal;**

Barda Nawawi Arief outlines the penal mediation in some countries, a comparative material can be put forward as follows:5 **Austria; Belgia; Jerman; Perancis; Polandia.**

C. Penal Mediation Based On Local And Cultural Wisdom Values of Indonesia With Pancasila Philosophy

Law state of Pancasila which is based on the principle of the kinship means that Indonesia prefers the common people, but the dignity of the human being as an individual remains respected, and our paradigm about the state of law to function aegis that is democracy enforcement including the democratization of law, social justice and human decency. The shape of the kinship principle is consensus.6

The implementation of the consensus which is based on the values of Pancasila is very important in everyday social life. Way of solving problems of criminal law with the consensus in the form of penal mediation can help people achieving the highest justice and also gain harmonious, secure and peaceful life.

b. The short coming sof the penal mediation in criminal law enforcement to day

Weak nesses in the implementation of the penal mediation today, is: because the reisno legal framework for penal mediation, perception of law enforcemen tofficers that are not thes ame for penal mediation, still the law enforcemen tofficers who have not been willing to be a mediator, limited time, compensation that is not affordable, and yet the good intention of the perpetrator orrsor the vic tims or heir families to settle criminal cases through penal mediation.

c. Construction of penal mediation in criminal law enforcement based on Pancasila values of justice

1. Construction value

Construction value of penal mediation in criminal law enforcement based on Pancasila values of justice is to achieve peace through mediation which protect the interests of the perpetrator ors and victim sof crime in a balanced, fairanddig nified way.

---

4https://core.ac.uk/download/files/379/11727763.pdf, downloaded at 31-08-2016
2. Construction law

**Weakness**

Article 109 Paragraph (2) Criminal Procedure Code (KUHAP) and Article 140 Paragraph (2) a. Criminal Procedure Code (KUHAP).

In the article, the peace through mediation has not been a reason to stop the investigation and stop the prosecution.

**after Construction**

- Article 109 Paragraph (2) Criminal Procedure Code (KUHAP)
  In the case of investigators to stop the investigation because of peace through mediation, insufficient evidence, the incident that was not a criminal actor proceeding terminated by operation of law, the investigators notify the public prosecutors, the suspect or his/her families.

- Article 140 Paragraph (2) a. Criminal Procedure Code (KUHAP)
  In terms of the public prosecutor decided to discontinue prosecution for their peace through mediation, insufficient evidence, the incident that was not a criminal actor the case was closed by law, the public prosecutor orspourit in a decree

3. The Discovery of Legal Theory

The discovery of a new legal theory is: Theory of Penal Mediation of Pancasila, means a medium that puts the completion of the criminal case consensus between perpetrators and victims of crime or their families to seek peace that protects the interests of the perpetrators and victims of crime in a balanced, fair and dignified way.

**D. Conclusion**

1. Conclusion

After assessment, the conclusion can be drawn as follows:

a. Implementation of penal mediation in criminal law enforcement today is:

1. At the level of the Advocate, a peace agreement through mediation between the offenders and the victims or his/her families is followed by creating a peace agreement letter, and the case is considered to have been completed.

2. At the level of investigation by police, a peace agreement through mediation between the offenders and the victims or his/her families:
   After being made / published SPDP, and BAP, then they will be asked to create a revocation report and made advanced BAP both the victims and perpetrators of criminal acts whose contents revoke the description on the dossier before, so the proof is made /
deemed insufficient evidence, the investigation process is stopped by grounds of insufficient evidence. (Article 109 Paragraph (2) Criminal Procedure Code (KUHAP)), made / published SP3.
Diversion, made / published SP3.

3. At the level of prosecution by the prosecutors, even though there has been peace between the offenders and the victims or his/her families, but the letter of the peace cannot be used as a basis to stop the prosecution, except to the Diversion and a waiver of the case in the public interest (Principle of Opportunity).

4. At the court level, although there has been peace between the offenders and the victims or his/her families, but the letter of the peace cannot be used as a basis for stopping the trial, but it is only used to commute or state demands of the prosecutor not acceptable, except for Diversion. It remains decided with the decision / determination of judges.

5. At the level of the Correctional Institution (LP) Indonesia, mediation has not been implemented, because it has no "Legal Standing" regarding penal mediation.

b. Weaknesses of penal mediation in criminal law enforcement today are:
   1. Absence of legal protection regarding penal mediation.
   2. The perception of law enforcement officers are not the same on penal mediation.
   3. There are still the law enforcement officers who have not been willing to be a mediator.
   4. Limited time.
   5. Unaffordable compensation.
   6. The absence of good faith on the perpetrators or victims or their families to settle criminal cases through penal mediation.

c. Construction of penal mediation in criminal law enforcement based on Pancasila values of justice Pancasila:
   1. Construction value:
      Bringing peace through mediation which protects the interests of the perpetrators and victims of crime in a balanced, fair and dignified way.

   2. Construction law:
      a. Article 109 Paragraph (2) Criminal Procedure Code (KUHAP)
In the case of investigators to stop the investigation because of **peace through mediation**, insufficient evidence, the incident that was not a criminal act or proceeding terminated by operation of law, the investigators notify the public prosecutors, the suspects or his/her families.

b. Article 140 Paragraph (2) a. Criminal Procedure Code (KUHAP)

In terms of the public prosecutors decided to discontinue prosecution for their **peace through mediation**, insufficient evidence, the incident that was not a criminal act or the case is closed by law, the public prosecutors pour it in a decree.

3. The discovery of a new legal theory is:

Penal Mediation Theory of Pancasila, means a medium that puts the completion of the criminal case consensus between perpetrators and victims of crime or their families to seek peace that protects the interests of the perpetrators and victims of crime in a balanced, fair and dignified way.

2. **Recommendation**

1. The government and the People’s Representative Council of the Republic of Indonesia (DPR) should amend Article 109 Paragraph (2) and Article 140 Paragraph (2) a Criminal Procedure Code (KUHAP).

2. The Penal Code (KUHP), the Criminal Procedure Code (KUHAP) and Penal Execution Law should be made or revised to include provisions on penal mediation as a settlement of a criminal case outside the judicial processes.
REFERENCES


Internet:
https://core.ac.uk/download/files/379/11727763.pdf, downloaded at 31-08-2016