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THE 2ND INTERNATIONAL CONFERENCE AND CALL FOR PAPER



Our Speaker



Prof. Henning Glasser
 Thammasat University



Prof. Yuzuru Shimada
 Nagoya University



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 UNSW Australia



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 Utrecht University



Assoc. Prof. Dr. Hj. Sri Kusriyah
 Sultan Agung Islamic University

*Democracy In Digital Era : Law,
 Governance, Sosial And Economic
 Perspective In Asia, Australia And
 Dutch*



September 23-24, 2020
 Imam Assafel Buiding, Faculty of Law, Unissula
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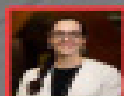
THE 2ND INTERNATIONAL CONFERENCE AND CALL FOR PAPER

THEME : DEMOCRACY IN DIGITAL ERA: LAW, GOVERNANCE, SOCIAL AND ECONOMIC PERSPECTIVE IN ASIA, AUSTRALIA AND DUTCH

Keywords: *Digital Media, Political and Governance Institutions, Electoral Processes, People Representation, Digital Disinformation, Democracy, Digital Economic, Social issue*



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Melissa Crouch
UNSW Australia



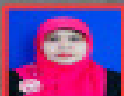
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This agenda aims to provide insights in theory and practice:

1. To exchange and discuss views on the most important issues on Democracy in Digital Era: Law, Governance, Social and Economic Perspective in Asia, Australia and Dutch and its consequences to Law in countries.
2. To discuss the challenges and practical aspect of Democracy and Governance in a Digital Era.

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: Comparative Review"*

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Law Enforcement In Children Judicial System Based On The Restorative Justice System

Ade Ismail Ananda

MIH Unissula

Abstract

Restorative justice to produce restorative justice, which is a process in which all parties involved in a certain criminal act jointly solve the problem of how to handle the consequences in the future. This restorative trial is very possible to be attempted in solving juvenile criminal cases, the approach method used in this research is normative juridical. This research specification is descriptive analytical. The data source used is secondary data. Secondary data with literature study and document study. Qualitative data analysis and problems were analyzed using guarantee theory, legal certainty theory, and punishment theory. Based on the results of the research it can be concluded that the concept of restorative justice through alternative dispute resolution is that the choice of settlement is left to the perpetrator and the victim. In determining sanctions, the perpetrator can offer compensation negotiated / agreed upon with the victim. In Indonesia, the concept of restorative justice is more specifically penal mediation. The underlying principle is that justice is best served when all parties receive fair and balanced attention, are actively involved in the judicial process, and benefit adequately from their interactions with the juvenile justice system

Keywords: *Law Enforcement, Children Judicial, Restorative Justice System*

A. Introduction

The nation and state of Indonesia is a nation that was born “thanks to the grace of Allah the Almighty”, and this recognition is officially stated in the highest document of the Preamble of the 1945 Constitution, and God Almighty is included in Chapter XI on Religion Article 29 paragraph (1) of the Constitution NRI 1945. The above statement brings the understanding and recognition that the existence and origin of the Indonesian nation is due to the intervention and will of Allah Almighty, not produced by a society agreement of free individuals such as the concept of a liberal state. For the Indonesian people there is a close relationship between the state and religion that rests on the One and Only Godhead which is the first principle of Pancasila, and thus the Indonesian nation has a noble legal instrument as the foundation of national and state life, namely Pancasila and the 1945 Constitution.¹

Children as criminals or criminal acts are due to the impact of the development of science and technology, such as promiscuity, an easy and free life, a “show-off” lifestyle, and so on are increasingly pervasive in children’s lives today. They are competing to get recognition from their peers, and not a few of them commit crimes in order to fulfill their lifestyle to get recognition as “the have”, namely by committing theft, robbery, and so on. The motive of the children is simply to have luxury items to show off on social

1. Sri Endah Wahyuningsih, Urgensi Pembaharuan Hukum Pidana Materiel Indonesia Berdasarkan Nilai–Nilai Ketuhanan Yang Maha Esa, Jurnal Pembaharuan Hukum, Volume I No.1 Januari-April 2014, P.19-23

media and to be afraid of not being seen as “slang”.

Fair naughtiness of children is still tolerable, but if the delinquency is included in a criminal act or crime, then the act must be accounted for. Because considering that the perpetrators of the crime are children, the perpetrators must receive special protection from the law. This is because children do not understand the consequences of their actions.

The position of children as the younger generation who will carry on the noble ideals of the nation, candidates for future leaders of the nation and as a source of hope for previous generations, need to get the widest opportunity possible to grow and develop naturally both spiritually, physically, and social. Child protection is the effort and activity of all levels of society in various positions and roles, who are well aware of the importance of children for the country and the nation in the future. If they have matured their physical, mental and social growth, then it is time to replace the previous generation.²

Characteristics of children, basically they require special attention, because their physical and mental conditions are immature and still unstable. So if a child commits a delinquency, then the handling and settlement will be carried out wisely and wisely, and as far as possible avoiding interference from the judicial system without neglecting law enforcement and justice in order to ensure that the settlement is carried out properly for the welfare of the child concerned, and the interests of society against children who have committed delinquency.

As the provisions of the United Nation Standard Minimum Rules For The Administration Of Juvenile Justice (UNSMR-JJ or Beijing Rule), in the General Principles, state the need for comprehensive social policies aimed at supporting the achievement of the greatest possible welfare of children, and in turn will reduce interference with the juvenile justice system. By reducing interference in this system, losses to children can be prevented. The steps that need to be done for that are giving attention and taking action on children and adolescents before they engage in deviant behavior or crime.³

The measure of justice is no longer based on equal retribution from the victim to the perpetrator (whether physical, psychological, or punitive). However, this painful act was healed by providing support to the victim and holding the perpetrator to account, with family and community help when needed. Indonesia has implemented the concept of restorative justice in the juvenile justice process. This further guarantees the fulfillment of a sense of justice between victims and perpetrators.

Restorative justice to produce restorative justice, which is a process in which all parties involved in a certain criminal act jointly solve the problem of how to handle the consequences in the future. It is very possible for restorative justice to be attempted in solving juvenile criminal cases. A criminal act committed by a child is a violation against humans and human relations. Criminal acts create an obligation to make things better by involving victims, perpetrators and society in finding solutions to remedy, reconciliation and reassure hearts.⁴

Restorative justice in the settlement of cases of juvenile offenses outside the court that emphasizes the improvement of the consequences that occur due to criminal acts by empowering the recovery process and the interests of all involved, both perpetrators and victims, as well as the community.

The model of settlement of cases outside the court trial process is not new to the Indonesian legal system. In civil law, alternative dispute resolutions have long been known. Supreme Court Regulation No.1

2. Maidin Gultom, 2008, *Perlindungan Hukum Terhadap Anak Dalam Sistem Peradilan Pidana Anak Di Indonesia*, Refika Aditama, Bandung, P. 33.

3. Kusno Adi, 2009, *Kebijakan Kriminal Dalam Penanggulangan Tindak Pidana Narkotika Oleh Anak*, Cetakan Pertama, UMM Press, Malang, P. 55.

4. Angkasa, *Model Peradilan Restoratif Dalam Sistem Peradilan Anak (Kajian tentang Praktik Mediasi Pelaku dan Korban dalam Proses Peradilan Anak di Wilayah Hukum Balai Pemasarakatan Purwokerto)*, Jurnal Dinamika Hukum, Vol. 9, No. 9, Jakarta, September 2009, P. 188.

of 2008 requires judges to conduct mediation first. Peace is something that must be sought at all levels of the court.

In the criminal law field, solving cases through peaceful means is still difficult to carry out. Whereas customary law in several regions recognizes peaceful institutions in criminal cases, whose principles are in line with the concept of restorative justice. Whatever model is chosen, restorative justice is directed at restoring the victim, perpetrator and society at the same time. Therefore, judges need to understand the concept or philosophy.⁵

Juvenile Justice System is all elements of the criminal justice system that are involved in the handling of juvenile delinquency cases.:⁶

1. The police as a formal institution when a delinquent child first comes into contact with the justice system, which also determines whether the child will be released or further processed;
2. Prosecutors and parole institutions who will also determine whether the child will be released or processed in juvenile court;
3. Juvenile court, the stage when the child will be placed in choices, from being released to being included in the institution of punishment. The last is institution of punishment.

The purpose of this research is to hope that the settlement of cases of children in conflict with the law can be resolved through non-litigation efforts, so that children do not experience trauma and avoid the bad stigma as perpetrators of crime, so that justice is created based on the values of Pancasila.

B. Research Methods

The research method used is a normative juridical approach. Normative research or also known as literature law research is legal research carried out by examining library materials or secondary data, then to be applied to research problems, namely the elements of pornographic crimes and investigations of pornographic crimes so that their presentation is based on principles and theories. -theories and doctrines as well as applicable laws. The specification of this research is descriptive in accordance with the problems and objectives in the study. Research by describing a number of variables relating to the problem being researched.⁷

C. Results and Discussion

1. Implementation of Pancasila Justice Theory in Law Enforcement in the Juvenile Justice System Based on the Restorative Justice System

Bagir Manan is of the opinion that children in the criminal law field are treated as “little adults”, so that the whole process except in prisons is carried out the same as in adult cases.⁸ There are 2 (two) categories of children’s behavior that make them confront the law, namely:

1. *Status offender* is delinquency behavior of children which, if committed by adults, is not considered a crime, such as disobeying, skipping school or running away from home;
2. *Juvenile delinquency* is delinquency behavior of children which if done by adults is considered a crime or violation of the law.

5. Muhammad Yasin, Hakim dan Penerapan Keadilan Restoratif, Buletin Komisi Yudisial, Vol. VI. No. 4, Januari- Februari 2012, P. 14.

6. Purnianti, Mamik Sri Supatmi, dan Ni Made Martini Tinduk, 2003, Analisa Situasi Sistem Peradilan Pidana Anak (Juvenile Justice System) di Indonesia, UNICEF, Indonesia, P.i.

7. Andri Winjaya Laksana, Suratman, Analisis Yuridis Penyidikan Tindak Pidana Pornografi Berdasarkan Undang-Undang Nomor 44 Tahun 2008 Di Era Digitalisasi, Jurnal Pembaharuan Hukum, Volume I No. 2 Mei-Agustus 2014, P.169-177

8. Gatot Suparmono, 2000, Hukum Acara Pengadilan Anak, Djambatan, Jakarta, P.40.

Although children must undergo a criminal justice process, children's rights must still be given. Article 3 of the Convention on the Rights of the Child provides for the fulfillment and protection of children's rights in conflict with the law as follows:

1. In all actions concerning the child, carried out by state or private social welfare agencies, courts of law, administrative authorities or legislative bodies, the best interests of the child must be the primary consideration;
2. States parties undertake to ensure the protection and care of children as is necessary for their welfare, taking into account the rights and obligations of their parents, legal guardians or other persons lawfully over them, and for this purpose, must take all appropriate legislative and administrative measures;
3. States parties shall ensure that the various institutions, services and facilities responsible for the care and protection of children conform to the standards set by the competent authorities, in particular in the areas of safety, health, in numbers. and the suitability of their staff, as well as the supervisory authorities.

The concept of restorative justice through alternative dispute resolution is that the choice of settlement is left up to the perpetrator and the victim. In determining sanctions, the perpetrator can offer compensation negotiated / agreed upon with the victim. This system formulates justice into the formulation of the parties, namely victims and perpetrators, not based on calculations by prosecutors and judges' decisions. The weakness that is concerned about the application of restorative justice is that it can be a source of abuse of authority (discretion) by law enforcers.⁹

The definition of restorative justice according to Tony F. Marshall is a process in which the parties have an interest in breaking together how to reach an agreement after a criminal act occurs, including its implications at a later date. The concept of restorative justice through alternative dispute resolution is that the choice of settlement is left up to the perpetrator and the victim. In determining sanctions, the perpetrator can offer compensation negotiated / agreed upon with the victim. This system formulates justice into the formulation of the parties, namely victims and perpetrators, not based on calculations by prosecutors and judges' decisions. The weakness that is concerned about the application of restorative justice is that it can be a source of abuse of authority (discretion) by law enforcers.¹⁰

According to Article 1 point 5 of the Joint Decree of the Chairman of the Supreme Court of the Republic of Indonesia, Attorney General of the Republic of Indonesia, the Chief of the Indonesian National Police, the Minister of Law and Human Rights of the Republic of Indonesia, the Minister of Social Affairs of the Republic of Indonesia, and the State Minister for Women's Empowerment and Child Protection of the Republic that what is meant by justice Restorative is a fair settlement that involves the perpetrator, the victim, their family and other parties involved in a criminal act, jointly seeking solutions to the crime and its implications, by emphasizing restoration to its original state..

Restorative justice system at least aims to improve / restore (to restore) criminal acts committed by children with actions that benefit the child, the victim, and the environment. The characteristics of the restorative justice model according to Muladi are as follows:¹¹

1. Crime is defined as one offense against another and recognized as conflict;

9. Gayus Lumbuun, 2012, Keadilan Rstoratif & Pemidanaan, Makalah Kuliah, Pascasarjana Universitas Indonesia, Kajian Ilmu Kepolisian, Depok, P. 6.

10. Ibid., P. 6.

11. Ainal Mardiah, Mediasi Penal Sebagai Alternatif Model Keadilan Restoratif Dalam Pengadilan Anak, Jurnal Ilmu Hukum Pascasarjana Unsyiah Kuala, Vol. 1 Tahun 1, No.1, Agustus 2012, P.5.

2. Points of attention to solving problems of responsibility and liability in the future;
3. The normative character is built on the basis of dialogue and negotiation;
4. Restitution as a means of party improvement, reconciliation and restoration as the main goal;
5. Justice is defined as relations of rights, assessed on the basis of results;
6. Target attention to the improvement of social losses;
7. The community is the facilitator in the restorative process;
8. The roles of victims and perpetrators of criminal acts are recognized, both in matters of and in resolving the rights and needs of victims. Perpetrators of criminal acts are encouraged to be responsible;
9. Accountability of the perpetrator is defined as the impact of understanding the act and to help decide what is best;
10. Crime is understood in a comprehensive, moral, social and economic context; and
11. Stigma can be removed through restorative action.

The characteristic of restorative justice is that it makes the offender responsible for correcting the loss caused by his / her mistake; provide opportunities for offenders to prove their capacity and quantity in addition to dealing constructively with guilt; involving victims, parents, extended family, school and close friends; create a forum to work together in resolving these problems; establish a direct and real relationship between mistakes and social reactions. In the best interest of children, law enforcement officials should apply a restorative justice approach.

Indicators in restorative juvenile justice can be seen from the roles of perpetrators, victims, the community, and juvenile justice professionals. Each role is as follows:¹²

1. Perpetrators, active actors to restore losses to victims and society. He must face the victim / victim's representative;
2. Victims are actively involved in all stages of the process and play an active role in mediation and participate in determining sanctions for the perpetrators;
3. The community, is involved as a mediator in developing community services and providing job opportunities for the perpetrator as a form of reparative obligation, helping victims and supporting the fulfillment of the perpetrators' obligations;
4. Professionals, facilitate mediation, provide restorative assurance, develop creative / restorative community service options, involve community members in the process, educate the community.

Restorative justice is an effort to seek peaceful conflict resolution outside the court. Especially for children with legal conflicts, restorative justice is important to apply because child psychological factors must be considered. Mediation is a process of negotiating problem solving, in which the parties that are not impartial work together with the disputing parties to seek mutual agreement. The outside party is called a mediator, who has no authority to decide disputes, but only helps the parties to resolve issues that are authorized to them.¹³

In the Big Indonesian Dictionary, the word mediation means the process of involving a third party

12. Angkasa, Op.Cit., P.191.

13. Khotibul Umam, 2010, *Penyelesaian Sengketa Di Luar Pengadilan*, Pustaka Yustisia, Yogyakarta, P.10.

inresolving a dispute as an advisor. This definition contains three important elements, namely: ¹⁴

1. Mediation is the process of resolving disputes or disputes between two or more parties;
2. Parties involved in dispute resolution are parties outside the disputing parties;
3. The parties involved in the dispute resolution act as advisors and do not have any authority in making decisions.

Mediation is a form of dispute resolution option, which is commonly known in civil law. Penal mediation is one of the alternatives to solve the problem. Penal mediation is no longer for minor criminal cases, but also for serious crimes such as rape and murder. Penal mediation is a way to prevent children from coming into contact with the law from the criminal justice process.

Penal mediation is the settlement of a criminal case through deliberation with the help of a neutral mediator, attended by victims and perpetrators along with parents and community representatives, with the aim of restoring victims, perpetrators and the community.

Penal mediation has advantages such as flexibility, speed of settlement, low cost, and the power that the parties have to determine the agreement to be reached. In this penal mediation, reconciliation and compensation are paid for the victims. If this mediation reaches an agreement, the results can be used as an excuse to abolish committing crimes for the perpetrators of criminal acts. Mediators at this stage can be carried out by judges or mediators from outside the court who have received certification and training.

Mediasi ini adalah gabungan dari model *Victim-Offender Mediation* dan *Reparation Negotiation Programmes*. Hakim setelah mempelajari kasus dan tindak pidana yang dilakukan oleh terdakwa, menawarkan mediasi penal sebagai alternatif penyelesaian perkara dengan perdamaian para pihak. Jika para pihak menyetujui, maka diadakan persetujuan secara suka rela untuk mengikuti penyelesaian perkara dengan cara mediasi baik oleh pelaku maupun oleh korban.

Hakim dapat bertindak sebagai mediator ataupun dengan mediator di luar pengadilan yang telah memenuhi syarat dan bersertifikasi. Mediasi mempertemukan pihak pelaku dan korban, pada kesempatan ini diadakan rekonsiliasi antara korban dan pelaku, serta dilakukan pembayaran ganti kerugian yang diderita korban. Mediasi penal dilakukan berdasarkan prinsip rahasia, sehingga segala peristiwa yang terjadi dan segala pernyataan yang muncul dalam proses mediasi harus dirahasiakan oleh para pihak termasuk mediator.

Tujuan sebenarnya keadilan restoratif adalah untuk mengembalikan keselarasan antara korban dan pelaku. Bagi korban, hal ini berarti kerugian fisik dan kerugian psikis. Bagi pelaku, hal itu berarti mengambil tanggung jawab, menghadapi rasa malu, dan mendapatkan kembali martabatnya. Hukum pidana yang ada sekarang, secara filosofis lebih mengutamakan kepastian hukum daripada keadilan.¹⁵

Many people still associate restorative justice primarily with victim-perpetrator mediation or more broadly (but erroneously), with service-oriented victims. In newer conceptualizations, the parties should be able to participate in rebuilding relationships and in determining responses to crime. The distinctive feature is direct, face-to-face dialogue between victims, perpetrators, and especially the community.

Restorative model of juvenile justice is also based on the assumption that responses or reactions to delinquent child behavior are ineffective without the cooperation and involvement of victims, perpetrators, and the community. The underlying principle is that justice is best served when all parties receive fair and balanced attention, are actively involved in the judicial process, and benefit adequately from their

14. Syahrizal Abbas, 2009, Mediasi Dalam Perspektif Hukum Syariah, Hukum Adat, & Hukum Nasional, Kencana Prenada Media, Jakarta, P. 3.

15. Sri Endah Wahyuningsih, 2018, Model Pengembangan Asas Hukum Pidana Dalam KUHP Berbasis Nilai-Nilai Ketuhanan Yang Maha Esa, Fastindo, Semarang, P.2.

interactions with the juvenile justice system.

Pancasila, as the national life value aspired by the Indonesian people, is the source of all sources of law that live and are based on the values in society. In the history of Pancasila, it has gone through a political consensus and philosophical consensus so that for the Indonesian people, Pancasila is a philosophical system and also a value system adopted by the nation.¹⁶ The consequence of making Pancasila the basis of the nation's philosophy means that in every life the nation and state must make Pancasila a philosophical foundation that animates every step of development, including development in the field of law.¹⁷

Pancasila is a major work of the Indonesian nation so that it must be considered as a core philosophy which is the local wisdom of the Indonesian nation. The values in Pancasila are the values that underlie the life of the nation or "the contents of the soul of the Indonesian people" which are the essence of the civilization of the Indonesian nation that has existed for thousands of years. These values must be used as a measure of the basic values of development and legal reform in Indonesia.

According to Paton, the essence of legal development is legal guidance and legal reform. Legal formation is the treatment of existing laws, not destroying them but allowing them to grow, while legal reform is forming a new legal order.¹⁸

2. Contribution of Penal Mediation as the Embodiment of Pancasila Values Against the Supremacy of Law

Children who commit delinquency and lead to criminal acts, must face the law to be accountable for their actions, which are commonly referred to as children who are in conflict with the law. In the criminal justice process, there are several stages that must be passed for justice seekers at the level of investigation, investigation, examination in court to the stage of imposing a criminal decision and even legal remedies if used by the parties which of course require a lot of time, effort and cost. for justice seekers.

This is of course very contrary to the principles of justice stated in Law Number 48 of 2009 concerning Judicial Power Article 2 paragraph (4) which states that the trial is carried out simply, quickly and at low cost. This principle calls for a simple or not too formal legalistic trial, a convoluted and prolonged process and prioritizes justice over legal certainty. The time needed in a simple process is fast and the costs required in the process are affordable for anyone, including the poor.¹⁹

One of the ways to make the principle of justice simple, fast and low cost effective in criminal justice is by applying the concept of restorative justice in both the first level court and the last court such as the Supreme Court of the Republic of Indonesia. Restorative justice concept or the concept of restorative justice is a concept of justice that aims to empower victims, perpetrators, families and communities to correct an act against the law, by using awareness and conviction as a foundation for improving social life. That the concept of restorative justice is basically simple.

Contribution of Penal Mediation as the Embodiment of Pancasila Values Against the Supremacy of Law The current state of the criminal justice system in various countries raises the surface of a sense of dissatisfaction and frustration with the existence of formal criminal law. This aspect is because the development of the criminal justice system is deemed unable to provide protection for human rights and transparency in the public interest. As a consequence, there are ideas on how to make alternative efforts

16. Sunarjo Wreksosuhardjo, 2004, Filsafat Pancasila Secara Ilmiah dan Aplikatif, Andi Offset, Yogyakarta, P.27.

17. Sri Endah Wahyuningsih, 2013, Prinsip-Prinsip Individualisasi Pidana Dalam Hukum Pidana Islam dan Pembaharuan Hukum Pidana Indonesia, Cetakan Kedua, Badan Penerbit Universitas Diponegoro, Semarang, P.2.

18. Sri Endah Wahyuningsih, 2013, Perbandingan Hukum Pidana, Dari Perspektif Religipus Law System, Cetakan Kedua, Unissula Press, Semarang, P.4.

19. Eva Achjani Zulva, 2011, Pergeseran Paradigma Pemidanaan, Lubuk Agung, Bandung, P. 68.

to overcome them. The United Nations (UN) once every five years holds a congress known as “Congress on Crime Prevention and The Treatment of Offenders”. This congress aims to discuss and discuss the development of crime, the prevention and handling of criminals and various related topics. The congress was also given the opportunity for a number of countries to share experiences on a number of programs.

On this occasion, a number of countries also took advantage of the opportunity to establish cooperation in the efforts to prevent and control crime, especially in transnational crimes (Transnational Crime). There are many positive implications when implementing penal mediation as the embodiment of Pancasila values:²⁰

1. Accumulation of cases does not occur in court, so that economically, the state’s financial and economic expenditures do not occur and reduce the time required to settle a criminal case. Correlation of this dimension, because the accumulation of cases does not occur, the correctional institutions do not become relatively overloaded.
2. The victim’s perspective helps to reduce the sense of revenge against the perpetrator, because between individuals there has been a relationship again. The perpetrator apologized and the victim has forgiven so that it reduces the guilt of the perpetrator and creates an atmosphere of reconciliation which reflects the principles of deliberation and consensus, so that the life of the nation and state becomes harmonious, harmonious and balanced. Then also, the pressure on the victim is less than when going to court in court, because there is no need to be a witness, bring witnesses, hire a lawyer, and have the opportunity to control the outcome.
3. The perspective of a non-criminal offender will avoid punishment, stigma or records of crimes that have been committed, fined or court fees as compensation, and so on.
4. It is a media and an opportunity between victims and perpetrators to meet to discuss crimes committed by the perpetrators which have given a negative stigma in the victim’s life, then victims can also express their concerns, desires and feelings and ask for restitution.
5. Normative perspective, the values of penal mediation based on Pancasila and restorative justice, which when implemented in legislation policy are relatively acceptable to society because they are taken, appointed, applied and oriented from the content of cultural values that are born, live, grow. and developing in Indonesian society.
6. Conducting penal mediation in case handling is more flexible, the process is faster, simpler and cost-effective compared to procedural length of justice in caqu in accordance with the judicial system.

The real aim of restorative justice is to restore harmony between victim and perpetrator. For the victim, this means physical harm and psychological harm. For the perpetrator, it means taking responsibility, facing shame, and regaining dignity. In newer conceptualizations, the parties should be able to participate in rebuilding relationships and in determining responses to crime. The distinctive feature is direct, face-to-face dialogue between victims, perpetrators, and especially the community.

The underlying principle is that justice is best served when all parties receive fair and balanced attention, are actively involved in the judicial process, and benefit adequately from their interactions with the juvenile justice system. Positive law will only be effective if it is in line with the law that lives in society, which is a reflection of the values that live in it as the values in Pancasila, and social law requires state authority to enforce the law derived from the idea of that society. Even without the role of the state, social

20. Yusriando, Implementasi Mediasi Penal Sebagai Perwujudan Nilai-Nilai Pancasila Guna Mendukung Supremasi Hukum Dalam Rangka Pembangunan Nasional, Jurnal Pembaharuan Hukum, Volume II No. 1 Januari-April 2015, P.23-45

law still exists. In the event of a conflict of interest in society, the solution is to take a middle way, namely creating justice.

D. CONCLUSION

The concept of restorative justice through alternative dispute resolution is that the choice of settlement is left to the perpetrator and the victim. In determining sanctions, the perpetrator can offer compensation negotiated / agreed upon with the victim. In Indonesia, the concept of restorative justice is more specifically penal mediation. Penal mediation is the settlement of a criminal case through deliberation with the help of a neutral mediator, attended by victims and perpetrators along with parents and community representatives, with the aim of restoring the victim, perpetrator and the community. The underlying principle is that justice is best served when all parties receive fair and balanced attention, are actively involved in the judicial process, and benefit adequately from their interactions with the juvenile justice system. Positive law will only be effective if it is in line with the law that lives in society, which is a reflection of the values that live in it as the values in Pancasila, and social law requires state authority to enforce the law derived from the idea of that society. Even without the role of the state, social law still exists. In the event of a conflict of interest in society, the solution is to take a middle way, namely creating justice

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