

## PENAL MEDIATION

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### Abstract

Kuhap does not provide comprehensive protection for victims of criminal offenses. The current mechanism is excessively focused on the offender rather than the victim, meaning the needs of victims are not adequately accommodated. It is necessary to establish a new mechanism to ensure the protection of victims of criminal offense. In accordance with the problem statement above, this study is categorized as normative legal research, which encompasses analyses of legal principles, legal systematics, the level of legal synchronization, legal history, and comparative law. Protecting victims of crime is fundamentally important; therefore, penal mediation through the Victim Offender Mediation (VOM) approach allows the offender and the victim to meet and discuss the crime that occurred. The VOM mechanism is led by a mediator who assists in formulating an agreement between the offender and the victim, thereby resolving the case through a non-litigation path. The VOM as a mechanism for reforming the criminal justice procedure The implementation of penal mediation by way of dialogue and deliberation to ensure legal protection and justice for the victim constitutes an embodiment of the values contained within Pancasila.

**Keywords:** *Kuhap, Pancasila, Penal Mediation, Victim.*

### INTRODUCTION

Pancasila as a fundamental norm holds a crucial role, consistent with Nawiasky's view that the highest norm, which Hans Kelsen referred to as the basic norm should be termed the Staatsfundamentalnorm or State Fundamental Norm rather than the Staatsgrundnorm (Asshiddiqie & Safa'at, 2006:170). Pancasila, as the State Fundamental Norm, becomes a cornerstone for guiding the nation's life and state governance. This guidance encompasses all aspects of society, not only at the level of legal factors but also non-legal factors such as politics, economy, social life, and culture. Humanity, which is constantly evolving, needs the foundation of Pancasila as the fundamental principle of the state to provide direction in every stage of its behavior, while still adhering to the values contained in Pancasila. The values enshrined in Pancasila serve as a moral compass in realizing a criminal justice system that upholds fairness, human dignity, and the distinctive identity of the Indonesian nation (Rahmatyar & Rosikhu, 2024:144).

These Pancasila values will subsequently serve as a key guide in forming the criminal justice system, as this system governs the mechanisms through which a criminal case proceeds. Explicitly, the definition of the criminal justice system portrays the synergy between its existing subsystems within the judiciary, thus known as the integrated criminal justice system (Ali,

2007:217). The integration of these subsystems involves the police, the prosecution, the courts, and correctional services (*permasyarakatan*). The criminal justice system aims to provide accurate and legally compliant procedures throughout the criminal process, thereby protecting individuals from becoming victims, enforcing the law through due and lawful process so that offenders are held accountable, and preventing offenders from re-engaging in criminal behavior (Reksodipoetro, 2010: 3–4). The operation of the criminal justice system is fundamentally guided by the objective of attaining justice. This justice must be applied at every level of the criminal process, namely from investigation to the trial process and serving the sentence in correctional facilities. The operation of the criminal justice system cannot be separated from the criminal act committed by an individual, and in this regard, the state is present to protect the community by imposing criminal sanctions on the offender. Imprisonment (*pidana penjara*) is one of the criminal sanctions that reflects the concept of retribution for the act committed by the criminal offender. Under the concept of retributive justice, imprisonment represents a form of suffering for the offender, which is a repayment for their actions and constitutes the goal of criminal law itself (Capera, 2021:226).

The underlying notion of retribution embedded in the concept of retributive justice inevitably gives rise to challenges, as law enforcement authorities within the criminal justice system tend to perceive every offender as inherently deserving of punishment. The imposition of a criminal sentence under the retributive concept views every offender as an object, and thus entirely fails to provide a position for the victim who requires rehabilitation (Dewantara & Fransisca, 2024:224). The existence of this retributive or vengeance concept leads to overcrowding in Correctional Institutions, as the final stage of the criminal justice system is the rehabilitation of the convict. Overcrowding in a Correctional Institution naturally creates additional problems. High unemployment rates, social inequality, and economic disparity also contribute significantly to the growth in the inmate population in correctional institutions, further exacerbating the overcrowding situation and the various negative consequences it entails (Hamja, 2022:297).

The problem of overcrowding in correctional facilities cannot be separated from the paradigm of law enforcement officials, who, in operating the criminal justice system, consistently place the offender as an object and fail to promote the role of the victim. This situation necessitates a paradigm shift towards a more rehabilitative or restorative approach. Restorative justice views crime not merely as an act violating the state's criminal law, but also as an action that causes harm to the victim (victimization). In other words, restorative justice sees the criminal offense or crime as a conflict between the offender and the victim (Widiartana, 2017:3). Through a restorative approach, the victim's involvement in the conflict becomes crucial for the continuity of the criminal process. By establishing dialogue between the victim and the offender, the subsequent criminal process is geared toward restoring the state to its condition prior to the criminal event. Nevertheless, the practical implementation of restorative justice within the criminal justice system has not proceeded without challenges. This is because even after the victim and the offender have engaged in dialogue and deliberation, the case often still proceeds to court. This occurs because there is no legislated mechanism at the level of statutory regulations that explicitly governs restorative justice as a ground for terminating a case. Furthermore, the criminal justice process often takes a very long time and tends to be

inactive in resolving a criminal case, whereas what is truly needed is a swift resolution between the victim and the offender so that the situation can be restored to normalcy. In light of these concerns, a sense of dissatisfaction has arisen regarding the performance and effectiveness of the existing criminal justice system.

This dissatisfaction necessitates identifying a solution or an alternative that remains grounded in restorative justice as a form of restoring the situation between the victim and the offender, while also providing protection for the victim. This dissatisfaction encourages the development of solutions outside the criminal justice system or outside the penal track. The concept of criminal justice in various countries has begun to shift, no longer relying solely on traditional criminal adjudication to resolve criminal cases, but instead embracing alternative mechanisms, particularly penal mediation. The resolution of criminal cases through mechanisms outside the judiciary is generally referred to as Alternative Dispute Resolution (ADR), which, according to Takdir Rahmadi, is defined as: “A concept encompassing various forms of dispute resolution other than judicial proceedings through legally valid means, whether based on a consensus-based approach or not based on a consensus-based approach” (Januartha et al., 2023:8). Based on the aforementioned background, a deeper study is required regarding the penal mediation process as a form of criminal justice system reform to realize just protection for victims of criminal offenses based on the Pancasila philosophy.

## LITERATURE REVIEW

Penal mediation is frequently described using various terms, such as mediation in criminal cases or mediation in penal matters, it is known in Dutch as *starf bemiddeling* (penal mediation), in German as *Der Außergerichtliche Tatausgleich* (out-of-court settlement), and in French as *de médiation pénale* (Suyono & Dadang, 2020:57). In this context, penal mediation is defined as a mechanism pursued by the parties to resolve a criminal case outside the judiciary. The concept of penal mediation originates from the principles of restorative justice, which aspire to achieve justice by restoring balance and harmony between the victim and the offender (Lesmana, 2019:2). Penal mediation is a process of dispute resolution in which a mediator assists the parties by facilitating communication and negotiation, helping them reach a mutually acceptable and voluntary agreement (Usman & Najemi, 2018:68). M. William Baker, as quoted by Salman Luthan, describes penal mediation as a process that enables victims and offenders to engage in dialogue and reach a shared understanding or agreement on restitution (Luthan, 2011:5).

Lilik Mulyadi explains that, from a sociological perspective, the concept of mediation in Indonesia is grounded in the nation’s cultural foundations, which emphasize familial values (*nilai kekeluargaan*) and uphold the principle of deliberation to achieve consensus (*musyawarah mufakat*) as the primary means of resolving disputes within the social order (Mulyadi, 2013:4). The effort to resolve criminal acts outside the judicial process is a method of resolving criminal cases by means of an agreement between the parties outside the authority of the court, facilitated by a third party by positioning the criminal offender and the victim on the same level (Abildanwa, 2016:140). The involvement of the third party is carried out by a mediator, who guides the penal mediation process by initiating deliberation or dialogue aimed at resolving the criminal case.

Indonesian culture cannot be separated from a system of compromise or deliberation, as this has become the Indonesian nation's identity in practicing the values found in the fourth Principle (*Sila*) of Pancasila. Of course, everything can be discussed or compromised, including in criminal cases with the intention of achieving a common goal between conflicting parties so that the settlement of the case can be carried out outside the criminal justice system and prioritizes recovery for the victim. Dialogue between conflicting parties as a means of resolving disputes represents a progressive step toward constructive conflict resolution. From this concept emerged the term Alternative Dispute Resolution (ADR), which, in certain contexts, offers a more balanced approach to fulfilling the demands of both justice and efficiency. Thus, Alternative Dispute Resolution (ADR) forms part of the broader concept of restorative justice, which redefines the judiciary's role from that of a mere adjudicator to that of a mediator facilitating reconciliation between the parties (Rado et al., 2016:270). Gayus T. Lumbun provides several requirements that must be used in the penal mediation procedure, which include (Hartanto et al., 2019:169):

1. Cases that are not related to the state. It can also be applied to criminal offenses categorized as complaint offenses (*delik aduan*). Furthermore, it may be used for criminal offenses involving the community or the victim, thereby allowing them to determine the terms of restitution or compensation.
2. Cases related to the state but which directly impact the community. This refers, for instance, to criminal acts in the economic sector that necessitate the return of funds in corruption cases.

Based on the parameters established by Gayus T. Lumbun, although there are some exceptions regarding the cases that may be resolved through the mechanism of penal mediation, the core primary objective of implementing penal mediation is to facilitate a discussion among the parties to restore the situation. Agus Raharjo outlines six methods of resolution that can be implemented using the following penal mediation method (Raharjo, 2008:99):

1. To utilize the non-litigation track, the case must first be categorized as either a formal offense or a material offense.
2. Case resolution is performed for cases that fall under the category of complaint offenses.
3. Cases resolved through the non-litigation track must be closely related to the parties, meaning the offender and the victim have more interconnected affairs.
4. The use of the non-litigation track must be grounded in the mutual consent of both parties.
5. The use of a mediator (whether police, advocate, or a third party).
6. The injury inflicted is not substantial, meaning the criminal act committed by the offender does not damage or offend values protected by the state or the community.

Models of penal mediation include Informal Mediation, Traditional Village or Tribal Moots, Victim–Offender Mediation (VOM), Reparation Negotiation Programmes, and Family and Community Group Conferences (Suyono & Dadang, 2020:69). These various models serve as mechanisms that provide greater recognition of victims interests while ensuring offender accountability through processes conducted outside the formal court system. Among these approaches, the most ideal model for resolving criminal matters through non-litigation pathways is Victim–Offender Mediation, wherein a neutral third-party The mediator guides the

parties through the resolution process. Tony Peters describes the legal framework governing the rules of penal mediation, which is structured in several ways (Mulyadi, 2015:17):

1. Regulated as part of the juvenile justice act.
2. Regulated within the code of criminal procedure.
3. Regulated within the criminal code.
4. Regulated separately and autonomously in a mediation act.

Mediation can be initiated at the earliest phase of the criminal process, involving direct participation of both the victim and the offender (Canadian Resource Centre for Victims of Crime, 2022:12). Allowing mediation to take place from the outset affords the parties an opportunity to discuss the continuation of the criminal case, reinforcing the notion that criminal proceedings do not necessarily have to culminate in a judicial verdict, but may instead be resolved through mediation between the parties involved. In Canada, several programs have been implemented as part of the application of restorative justice, including (Al-Adwan, 2021:2):

1. Community Conferencing

In Canada, the mechanism is not limited to involving the families of the victim and the offender, but also includes other parties who are not related to either side. The focus of this program is on restoring the situation and minimizing future potential risks.

2. Community Justice Forums

This program brings together a mediator or facilitator to help the offender and their family meet with the victim, and their family members, or the police to discuss or resolve issues related to the incident that occurred. The Police provides training to police officers or community members. This program is applied to young offenders but is also often implemented for adult offenders.

3. Victim Offender Mediation

This program affords the victim an opportunity and the offender to meet in a safe or designated place, accompanied by a trained mediator. During the meeting session, the victim explains the impact they have suffered, such as emotional, physical, and financial consequences. The offender is given the opportunity to apologize and to make amends to restore what the victim has experienced.

The provisions for penal mediation in various countries illustrate that criminal law is not always associated with sanctions; rather, there is a wiser mechanism of restoration for the mutual benefit of the conflicting parties. The meeting between the offender and the victim does not negate the offender's responsibility for their actions; instead, this accountability is fulfilled by the offender through the restoration of the victim, ensuring that the resulting criminal justice system does not view the offender merely as an object but actively involves the victim. Penal mediation has several advantages, in the USA, this practice makes a significant contribution to enabling the offender to repair the harm caused, eliminating procedural complexity, saving time and money, and removing unnecessary elements related to the criminal procedure that would otherwise be followed (Al-Adwan, 2021:2). Sahuri Lasmadi provides criteria that should be developed regarding the principles underlying out-of-court case resolution (Mulyadi, 2015:1):

- a. The necessity of having a mediator in conflict handling.
- b. Prioritizing the quality of the process.
- c. The mediation process being informal in nature.
- d. Efforts to ensure everyone is involved in the mediation process.

## **RESEARCH METHOD**

In accordance with the problem statement above, this study is categorized as normative legal research, which, according to Soerjono Soekanto, encompasses research on legal principles, legal systematics, the level of legal synchronization, legal history, and comparative law (Soekanto & Mamudji, 1995:15). The approach methods utilized in this writing are the statutory approach and the conceptual approach. The statutory approach will be employed to identify and analyze regulations pertaining to penal mediation. Meanwhile, the conceptual approach will be used to analyze concepts and doctrines related to penal mediation.

## **RESULTS AND DISCUSSION**

### **REGULATION OF PENAL MEDIATION IN INDONESIA**

KUHAP has been the fundamental law of criminal procedure for over four decades and was considered a progressive legal product in its time, particularly for introducing due process which better guarantees the rights of suspects and defendants (Darmansyah & Silalahi, 2024:7). Based on this, KUHAP mainly emphasizes procedural mechanisms related to offenders, with limited attention to the rights and protection of victims. Consequently, the victim's role in this system is limited, typically as a witness or complainant, and their rights are minimally regulated in the KUHAP, such as the right to file a claim for compensation. Victim protection is primarily granted through compensation and restitution mechanisms which must first be proven in court (Saputra & Nugraha, 2022:65). Under the current KUHAP mechanism, there is no flexibility provided for victims and offenders to resolve the criminal process outside the judicial track. For too long, criminal justice has prioritized the protection of the interests of the offender (it is offender-centered), rooted in the view that the criminal justice system is organized to adjudicate the suspect and not to serve the interests of the crime victim (Yulianti, 2015:85).

Due to the absence of procedures determining the interests of the victim and the offender, and the resolution of cases outside the judiciary, the institutions responsible for the criminal justice system namely the National Police (*Kepolisian RI*), the Prosecution Office (*Kejaksaan Agung*), and the Supreme Court (*Mahkamah Agung*) have formulated their own internal regulations to address this matter.

The Indonesian National Police enacted Regulation No. 8 of 2021 concerning the Handling of Criminal Offenses through Restorative Justice, which, as stipulated in Articles 4 and 5, delineates the substantive and procedural requirements governing the implementation of restorative justice mechanisms. The material requirements relate to social conditions within the community and exclude certain categories of criminal offences from being addressed through restorative justice mechanisms. The police therefore play a role in assessing the extent of the conflict and the community's response should the dispute be resolved through restorative justice channels. These exclusions clarify that not all criminal cases may be settled through a restorative justice approach. Moreover, Articles 6 and 15 of the Regulation provide that

reconciliation between the offender and the victim constitutes a formal requirement for resolving a case through restorative justice. This emphasizes a shift away from an offender-centric approach toward a process in which the victim plays a determining role in the continuation of the proceedings. Accordingly, without the victim's consent, the case must proceed to the court.

The provisions in this Police Regulation demonstrate the existence of a restorative justice mechanism by bringing together the families of the victim and the offender, concluding with the mechanism for terminating the investigation or inquiry. However, this regulation does not open the door for trained professionals, such as mediators, whose duty is to facilitate the parties in meeting to resolve the criminal issue. Penal mediation could also be found in the Chief of Police Circular No. Pol: B/3022/XII/2009/SDEOPS. The Circular provides that in cases involving minor criminal losses, settlement may be pursued through ADR mechanisms, namely deliberation and consensus between the parties (Santoso, 2020:99). Conceptually, this provision reflects the spirit of resolving criminal matters through dialogue and agreement, however, its application remains limited to specific categories of offences. Moreover, under this mechanism, the police retain a significant role in the deliberation process, as opposed to relying on neutral mediators or facilitators.

The Attorney General's Office (*Kejaksaan Agung*), through Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020, provides a mechanism for termination of prosecution based on restorative justice. This mechanism is carried out using the principle of *dominus litis*, which involves closing a case in the interest of the law. The Regulation explains that out-of-court case resolution is possible if the original situation has been restored using a restorative approach. The Regulation provides that the termination of prosecution on the basis of restorative justice shall be conducted responsibly by the Public Prosecutor and duly submitted in a hierarchical manner to the High Prosecutor's Office for further oversight and validation. The mechanism for terminating prosecution as regulated therein demonstrates that the restorative justice model still requires lengthy stages and procedures, despite the primary objective being the restoration of harm and the fulfillment of victims' rights by the offender. Consequently, the resolution of criminal cases continues to rely heavily on personnel within the criminal justice system and does not afford victims sufficient autonomy or meaningful participation in the process.

In contrast, if we look at the concept of penal mediation carried out by several other countries, penal mediation is used as a means of resolving criminal cases without requiring much time, unlike the criminal justice system. Its objective is achieved through dialogue or deliberation to create restoration for the victim and ensure the offender is responsible for compensating the victim's losses.

The Supreme Court of the Republic of Indonesia, through Supreme Court Regulation (Perma) Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice, explains that the existence of a peace agreement, or the defendant's expressed willingness to take responsibility for compensating the victim's losses and/or addressing the victim's needs serves as a mitigating factor for sentencing and a consideration for imposing a conditional/supervision penalty. This regulation, however, only governs restorative justice as a mitigating factor for the Judge when delivering a verdict. The

mechanism still follows the criminal case procedures within the KUHAP, as the Court ultimately decides the criminal case. This is fundamentally different from the goal of penal mediation, which is aimed at ensuring the case does not reach the court and is resolved outside the judiciary.

However, the regulation does not specify a detailed procedure for carrying out penal mediation, resulting in the criminal justice process continuing to operate under the procedural framework of the Criminal Procedure Code (KUHAP) without granting sufficient autonomy to the victim and the offender in determining the resolution of the criminal case. In fact, such mechanisms should be adopted to shift the resolution of criminal matters away from rigid formalistic procedures toward penal mediation approaches grounded in dialogue and deliberation involving both the offender and the victim. The implementation of penal mediation within the formal criminal justice system in Indonesia does not find a definitive answer. However, given the Indonesian people's culture of dialogue and deliberation, a suitable mechanism can be found in the Customary Law (*Hukum Adat*) existing in various regions. Barda Nawawi Arif observes that although alternative dispute resolution mechanisms are conventionally confined to civil matters, in practice, criminal disputes are frequently settled through extra-judicial means (Arief, 2008:3-4). Such resolutions commonly employ deliberative or reconciliation-based approaches such as family deliberation (*musyawarah keluarga*), village deliberation (*musyawarah desa*), or customary deliberation (*musyawarah adat*) (Arief, 2008:3-4). In the Batak indigenous community, they still rely on the "runggun adat" forum, which essentially resolves disputes through deliberation and kinship. Similarly, in the Minangkabau customary law, the "peace judge" (*hakim perdamaian*) is known, whose general role is that of a mediator and conciliator (Lamusu, 2015:9). Based on this, the concept that most closely approximates the process of penal mediation is customary resolution, by bringing the parties together, assisted by a mediator or third party who leads the meeting process between the victim and the offender. The ultimate result of this customary provision is the resolution of the dispute through deliberation, which naturally allows the criminal issue to be settled outside the judicial track.

Crime prevention is not exclusively carried out through criminal law approaches, but may also be undertaken through customary law mechanisms. This was affirmed in the 7th United Nations Congress, which emphasizes that the prevention of criminal acts should not be interpreted rigidly, but instead requires alternative approaches, including those based on local customs and community traditions (Susanti, 2020:89).

## **VICTIM OFFENDER MEDIATION AS JUST PROTECTION FOR VICTIMS OF CRIMINAL OFFENSES**

According to Satjipto Raharjo, legal protection is the safeguarding of rights that have been harmed by others, and this protection is granted to the community so they can enjoy their rights bestowed by the law (Sabri et al., 2023:402). Based on this, the law is created to protect the community, and thus the rights within society must be properly accommodated, one of which is providing justice for victims of criminal offenses. The lack of legal regulation governing penal mediation should not impede the search for a legal solution to protect victims. Satjipto Raharjo emphasizes the culture built within a constitutional state as "the cultural



primacy" a culture of making the citizens happy—which can be achieved by prioritizing "a state with conscience" over "legal structure of the state" (Reda et al., 2020:36). The consideration of the need to pay attention to victims of crime is based on the theoretical basis that the state must protect its citizens in fulfilling their needs or if its citizens experience difficulties, therefore if a crime occurs that results in victims, the state must also be responsible for paying attention to the needs of these victims (Lugianto, 2014:554). In the legal regulation concerning crime victims, two modes are recognized: first, the procedural rights mode, which emphasizes the victim's active active participation in the criminal justice process and second, the service model, which focuses on guidelines for case handling and the provision of compensation as a restitutive criminal sanction (Waluyadi, 2018:155).

It is not uncommon for the resolution of criminal cases through the judicial track to leave unresolved issues regarding victim restoration. Victim Offender Mediation (VOM) is a form of restorative justice where the victim and the offender meet directly, accompanied by an expert mediator (Jonas-van Dijk et al., 2019:952). The advantage of VOM as a form of penal mediation in ensuring justice for the victim lies in this meeting, where the victim can explain the physical and psychological suffering caused by the offender's actions. This provides the offender with knowledge that their actions have affected the victim and their family (Wellikoff, 2003:2). This concept also implies that the imposition of punishment on the offender rarely meets the victim's needs or wishes (Faisal, 2011:85), making the VOM approach one of the most just mechanisms for victims of criminal offenses. The purpose of VOM implementation is to provide legal protection for the victim and to be a means of increasing the offender's responsibility for the crime committed against the victim (Periani, 2013:8).

The protection of victim rights is regulated in Articles 98 and 99 of the KUHAP, which give victims the opportunity to file a claim for damages (*gugatan ganti kerugian*) resulting from the criminal offense. This claim is filed during the ongoing criminal case process. However, the provision states that if the claim is granted, the compensation will gain permanent legal force only if the criminal verdict also gains permanent legal force (*berkekuatan hukum tetap*). This implies that if the offender is acquitted, the claim for damages filed by the victim will also be rejected (Pengadilan Negeri Serang, 2024:12). Apart from the provisions in the KUHAP, protection for victims can be carried out through the submission of restitution or compensation via the Court, specifically under Supreme Court Regulation (Perma) Number 1 of 2022. This regulation differentiates between restitution and compensation: restitution emphasizes the restoration carried out by the offender to the victim. However, the regulation defines restitution as a right, thus requiring a prior application from the victim. Furthermore, the provisions for granting restitution to victims allow for alternative court-determined restitution, namely through the auction of the criminal offender's assets or through a third party. If this cannot be executed, a proportionally determined substitute imprisonment sentence (*pidana kurungan pengganti*) is granted. If one approaches this using the penal mediation concept through VOM to provide justice to the victim, these current legal provisions will not deliver justice and will fail to restore what the victim has experienced.

Based on the descriptions above, it can be illustrated that just protection for victims is not being adequately implemented. Therefore, the restorative approach for victims will be more appropriate if conducted through procedures outside the criminal judiciary. This allows the

victim and the offender to meet directly, engage in dialogue, and deliberate to determine the resolution of the criminal case with the objective of achieving a just outcome in the form of victim restoration. Ontologically, the fundamental distinction between criminal justice policy and penal mediation lies in its conceptual focus on the state's approach to criminal law enforcement in pursuing proportionality and justice for both the victim and the offender (Sukandia et al., 2020:568). Epistemologically, the criminal justice system operates through adversarial procedures that typically result in a winning and losing party, whereas penal mediation facilitates intensive communication between the victim and the offender to achieve a mutually beneficial, win-win solution. Axiologically, penal mediation seeks to restore the victim by fulfilling their rights and prioritizing reparation as the core objective of the process.

Based on the above, it provides a very clear distinction between criminal sanctions and penal mediation, in its ontological basis it provides an illustration that criminal sanctions are a form of enforcement of state law while in penal mediation what is prioritized is balance and order. In the epistemological stage, the mechanism of criminal sanctions focuses on fulfilling procedures in criminal justice so that there will be a losing party or a winning party while in penal mediation what is prioritized is the communication process to find a joint solution between the parties. The axiological stage between the two is to provide happiness in society but in the study of penal mediation the mechanism is by means of restoring the situation between the offender and the victim.

Related to VOM as a form of penal mediation, there is a need for stages or parameters to determine which cases are suitable for penal mediation. A key requirement for this penal mediation is the willingness of the victim to engage in deliberation or dialogue. There are several steps or provisions that can be used in implementing VOM, including (Umbreit & Greenwood, 2000:7):

1. Providing a comfortable and suitable space for the dialogue, which is led by a mediator. Expertise is required to ensure the dialogue can be conducted comfortably;
2. Allowing both the victim and the offender space to share their stories and to exchange information with each other;
3. And the last thing is to write it down in the form of an agreement, however this agreement is not mandatory, but the most important thing is that the victim and the offender are able to meet a long mechanism”.

In the VOM mechanism, the appointed mediator must be competent/certified. Therefore, the ongoing criminal justice process at the police level requires a statutory regulation stipulating that, upon receiving a criminal offense report, the police shall provide direction for the case to be resolved through the penal mediation track with a third-party mediator. Furthermore, after the mediator (who is not a law enforcement official) receives the referral or criminal case report from the police, the mediator is obligated to (Suyono & Dadang, 2020:281):

1. Initiate contact with both the victim and the offender to arrange the time and venue for their respective individual pre-mediation sessions.;
2. The process seeks to facilitate both involved parties, enabling direct dialogue and mutual understanding under guided supervision;
3. Assist the parties in documenting the agreement;

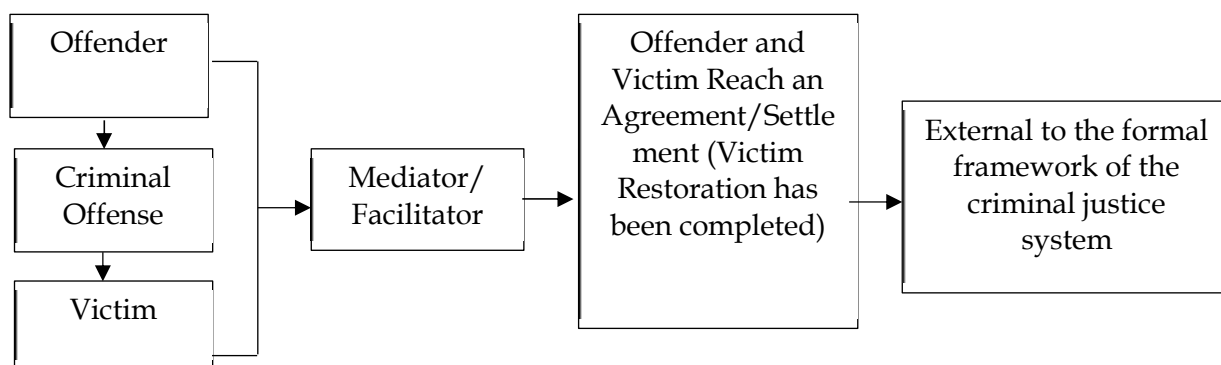


Chart 1 : Victim Offender Mediation Flow.

### RELEVANCE OF PENAL MEDIATION TO THE PANCASILA PHILOSOPHY

Since ancient times, the pattern of dispute/case resolution in Indonesian society has been based on deliberation for consensus (*musyawarah mufakat*), exemplified by forms such as *rembuk desa* (village assembly), *kerapatan adat* (customary council), *peradilan adat* (customary judiciary), *peradilan gampong* (gampong judiciary), *bakar batu* culture (stone-burning ceremony), *lembaga bugendem*, and so forth (Yusriando, 2016:33). Based on this, society traditionally prefers peaceful settlements in resolving cases/disputes. This signifies that in addressing legal problems within the life of the community, the preferred path is deliberation for consensus to achieve peace and avoid the litigation track. Deliberation within restorative justice fundamentally represents the actualization of Pancasila values (Akbar, 2021:95). In the context of penal mediation, I Nyoman Putu Budiarta states that penal mediation is an embodiment of Pancasila (Akbar, 2021:96). This further affirms that, within the context of Indonesian society, penal mediation is the case resolution method that most closely aligns with Indonesian culture, carried out through deliberation to achieve peace among the parties. This is the culture that should be made the basis for the formation of law related to penal mediation. Given the existence of culture within the diversity of society, and the fact that this culture continues to develop and maintain its originality, these values can be established as a legal culture.

The urgency of Pancasila as the foundation for the formation of legal culture is consistent with the statement by Mahfud MD, who asserts that: "Pancasila is highly suitable to be used as a platform for shared life for the diverse Indonesian nation to remain bound as a united nation" (Mahanani, 2019:7). The Pancasila legal culture can certainly serve as the basis for the formation of a new legal system. This is because the Pancasila legal culture held by Indonesian society will become the driving engine that determines the direction in which that legal system operates. Lawrence M. Friedman reinforces this view by asserting that a legal system cannot function effectively without a supporting legal culture; without it, the law becomes lifeless and disconnected from society (Yusyanti, 2015:95).

The Pancasila legal culture in relation to penal mediation is inseparable from the Fourth *Sila* (Principle) of Pancasila. The values contained in the provisions of the Fourth *Sila* indicate that, in its implementation across all aspects of life, the priority should be given to deliberation. The value of deliberation to reach consensus, when interpreted more comprehensively, may be understood as a forum for conferencing, seeking solutions, reconciliation, reparation, and circle processes (Prayitno, 2012:414). In this context, deliberation and consensus embody a spirit of dialogue to address the issues at hand, encouraging mutual listening, joint problem-solving, and ultimately assigning responsibility and a constructive role to each party involved in the conflict.

Based on this, the concept of penal mediation is very closely relevant to the Pancasila philosophy, especially the Fourth *Sila*. This is because penal mediation prioritizes the deliberation process to resolve the problem/conflict, with the ultimate goal being peace. The approach of penal mediation, founded on the Fourth *Sila* of Pancasila, introduces a paradigm shift in the criminal process. Initially, the criminal process was viewed as the state's presence to impose a deterrent effect on the perpetrator, but this is excepted through penal mediation. Given the Indonesian society's philosophy of deliberation for consensus in all aspects of life, including conflict/dispute resolution, penal mediation should rightfully be used as a form of criminal justice system reform in Indonesia. The implementation of penal mediation as a reform in the Indonesian criminal justice system certainly takes a step toward providing access to justice for victims so that they obtain their rights related to victim restoration. In other words, this fulfillment is a form of justice for the victim. The concept of access to justice is closely linked to the Fifth *Sila* (Principle) of Pancasila. The parameter of social justice mandates that all citizens have equal rights and that every person has equal standing before the law (Budiyono et al., 2024:45).

The meaning of social justice for victims of criminal offenses can also be interpreted as the restoration that they should receive, both financially and socially (Zakiah et al., 2024:25). In light of the foregoing, penal mediation constitutes a progressive development within the criminal justice system, aimed at ensuring the effective implementation of restorative justice principles and providing adequate protection for victims of criminal acts. This is because, through the penal mediation procedure where the victim and the offender meet, accompanied by a mediator justice for the victim can be fulfilled. This differs from the penal procedure currently being implemented, which focuses more on the behavior of the criminal offender, while the crime victim will not receive compensation for losses as a form of restoration for the victim;

## CONCLUSION

Penal mediation is a form of criminal case resolution that does not involve mechanisms within the criminal justice system. Penal mediation is used to provide a place/space for the offender and the victim to dialogue or deliberate, which, if reached, can then be formalized in an agreement. In this mechanism, the victim of a crime is given the freedom to provide an explanation of what happened to him or her as a result of the crime, so that the perpetrator of the crime can provide a form of reparation for the victim's experience.

And this guarantees more protection for victims compared to criminal justice mechanisms that are time-consuming and victims of crime are less given a place to recover their situation.

One form of penal mediation is Victim Offender Mediation (VOM). This mechanism establishes a forum in which the victim and the offender may engage in constructive dialogue and deliberation under the guidance and facilitation of a mediator. This approach allows the victim and the offender to resolve the case/dispute without requiring resolution through judicial proceedings. Penal mediation is considered one of the best methods for case resolution and creating a harmonious relationship. Through penal mediation, the values contained within the Fourth and Fifth *Sila* (Principles) of Pancasila can be applied. This is because dialogue and deliberation lead to justice for the victim in obtaining their rights to restoration following the criminal offense.

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