

The Adjustment of Employment Concept in Paying Wages Under Minimum Wage Provisions for Restorative Justice

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The Adjustment of Employment Concept in Paying Wages Under Minimum Wage Provisions for Restorative Justice

Terubus Terubus

ABSTRACT. The purpose of this study is to analyze and find the concept of adjustment in employment cases in terms of paying wages below the minimum wage from a restorative justice perspective. This research is normative legal research. This research uses a legal approach, a conceptual approach, and a philosophical approach. The results show that the concept of resolving labor cases in terms of paying wages below the minimum wage is realized through a peace agreement with victim-offender mediation (VOM) while involving the responsibility of criminals in recovering losses due to criminal acts. Concrete evidence of recovery for victims is started in an agreement that is agreed upon and signed by the parties so that it has legal validity and reasons and has legal force in protecting the interests and rights of the parties.

KEYWORDS. Restorative Justice, Employment, Wages, Adjustment of Cases

The Adjustment of Employment Concept in Paying Wages Under Minimum Wage Provisions for Restorative Justice

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Introduction

Manpower development is an integral part of national development carried out in the context of Indonesian development as a whole and the development of Indonesian society as a whole for the sake of creating a prosperous, just and equitable society, both materially and spiritually based on Pancasila and the 1945 Constitution. The idea of the law is a mindset that contains noble rules to determine the direction and purpose of the wage law in order to create a working society that lives in prosperity. The essence of Pancasila, legal ideals, and morals are the benchmarks for the government, entrepreneurs, and workers in implementing a harmonious Pancasila Industrial relations system with legal certainty, justice, and usability. The ideal wage law should contain the values of Pancasila to achieve true justice, good for employers, and the working company.

To create legal ideals, various policies were established, including in the fields of production, monetary, fiscal, and wages. The importance of wages, which are the rights of the workers/laborers in order to fulfill their daily needs, is the reason for the state to provide protection for the right to

wages, which are guaranteed by the constitution, based on Article 28 D Paragraph (2) of the 1945 Constitution. Creating harmonious industrial relations is the responsibility of workers/laborers, employers, and the government.

The Indonesian legal system is a legacy of the Dutch colonial legal system, *mutatis mutandis* brings Indonesia into the tradition of the Continental European legal system or *civil law* (Hiariej, 2021). The shift in labor law in Indonesia has had an impact on various industrial relations conflicts, resulting in a tug-of-war between the settlement of civil disputes and criminal violations. Criminal sanctions in labor law are often used as a tool by workers to force employers when these basic rights are not fulfilled, by reporting that the employer has committed a crime. The real form of government intervention in the field of wages is the enactment of PP no. 8 of 1981 concerning wage protection. Wage protection in general is based on the wage function which must be able to guarantee the survival of workers/laborers and their families. Government intervention in wages is carried out starting from the stipulation of laws and regulations, supervision, and law enforcement. However, there are still many workers/laborers who carry out work relatively without a work agreement and employment agreement made between the workers/laborers and the employer. The logical consequence of this condition is the workers/laborers do not have certainty of wages in return for the services and labor that have been provided, this condition often triggers a conflict between workers/laborers and employers.

The existence of imbalance in the position of workers and employers requires the state to actively carry out legal protection through the mechanism of legislation. The intervention of the state into labor law makes labor law the scope of administrative law. The possibility of violation of basic rights to freedom and the right to life forces criminal sanction for violations of workers' basic rights (Is & Sobandi, 2020).

There have been several previous studies that have discussed legal protection for workers, especially discussing work agreements based on the Manpower Act. Research conducted by Fajriati et al. analyzed the legal protection of employment agreements for employees who receive salaries below the provincial minimum wage associated with the Manpower Act. Based on the results of the study, a work agreement that stipulates a salary below the minimum wage is null and void (Fajriati et al., 2021). Furthermore, another research conducted by Yetniwati examines wage arrangements based on the principle of justice, fairness in wage arrangements will be guided by

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the principles of good wages. The balance of interests between workers and employers is the basis of fairness in wage regulations. It is not easy to realize the principle of justice without paying attention to morality. Laws that are integrated with morals are good (Yetniwati, 2017). Research conducted by Suhartoyo analyzes legal protection for workers in the national labor law system which includes protection on wages, welfare, and social security for workers; protection of occupational safety and health; legal protection to form and become members of a trade/labor union; protection of the basic rights of workers to negotiate with employers (Suhartoyo, 2019).

Criminal sanctions for violating wages, which are regulated in Law no. 13 of 2003 concerning Manpower as amended by Law no. 11 of 2020 concerning Job Creation in Chapter IV of the Labor Cluster Article 81 number 63 in Article 185, is the legal protection desired by workers/laborers is to guarantee the right to work, the right to a fair wage to realize a decent living with the role of laws and regulations in the field of remuneration. In principle, employers are prohibited from paying wages lower than the minimum wage. This is explicitly regulated in Chapter IV of the Cluster of Manpower Article 81 number 25 in Article 88E Paragraph (2) of Law no. 11 of 2020 concerning Job Creation. Exceptions are made for micro and small businesses, where the amount of wage is based on an agreement. Thus, the amount of wages of the micro and small business sector is returned to the agreement made by the workers/laborers with the entrepreneur, the provision is contained in Chapter IV of the Labor Cluster Article 81 number 25 in Article 88A Paragraph (3) of Law no. 11 of 2020 concerning Job Creation. According to research conducted by Purgito (2018), the function of Law Number 13 of 2003 concerning Manpower is as a guideline for certain time work agreements. In this case, the labor law is useful as a reference for resolving labor conflicts, ensuring legal certainty, and upholding justice (Purgito, 2018).

The existence of criminal sanctions in labor law is often used as a tool by workers/laborers to take legal action. Outside of law enforcement procedures by labor inspectors, workers/laborers exercise their rights, starting from a strike, to talking to the streets to hold demonstrations (protests). This condition is certainly very unfavorable for both parties, so there are efforts to pursue a peaceful way outside the judicial process even though the case has been investigated (*pro-justitia*). Apart from the investigation process, communication between workers/laborers and employers is possible, until in the end they take a peaceful path and agree to end the conflict.

Based on the theoretical level and empirical facts mentioned above, this research discusses how the enforcement of peace and the agreement of the parties has juridical power and discusses the settlement of labor criminal cases must be resolved, with the guidance that criminal sanctions are used lastly if other legal institutions are unable to resolve the case, otherwise known as the *ultimum remedium*. Peace agreements as an effort to resolve criminal cases must have a concept that can be used as the basis and footing for stopping investigations that are oriented toward restorative justice. So based on the termination of the investigation, the issuance of SP3 has philosophical power, juridical validity has sociological validity, and creates legal certainty for legal subjects. The development of the dynamics of criminal law that is oriented towards restorative justice, in the criminal justice system, especially employment criminal cases, has not been legitimized so that the settlement of labor criminal law, is a logical consequence of the settlement of criminal cases, employment that is *lex specialist*, there is no formal law that specifically regulates the settlement of cases of criminal violations involving workers/laborers and employers based on an employment relationship.

Based on the description of the problem, the settlement of the case uses a theoretical discourse that uses the concept of detail. At the conceptual level, it is intended to be used as a basis for the settlement of criminal cases that focuses on the recovery of victims (restorative justice), at the level of the process of how the parties (workers/laborers and employers) can reach an or *victim-offender mediation* (VOM). Therefore, it should not be interpreted that restorative justice is the same as the termination of a criminal case. In this study, restorative justice is part of the criminal justice system, so that it can create legal certainty for *yustisiable* (justice seekers), as well as protect the rights of victims and perpetrators of crime.

Based on the description above, the problem formulated in this study is how the concept of resolving labor cases in terms of praying wages under the minimum wage provisions for restorative justice is.

Method

This research is normative legal research that focuses on the study of legal materials that become a reference for discussion of problems, both primary legal materials sourced from laws and regulations, as well as

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secondary legal materials derived from books. This study uses several problem approaches, which are the legal approach (*statute approach*), conceptual approach, and philosophical approach.

The technique of collecting legal materials in this research is done by using a card system to record each legal material used to analyze the problem, then the legal materials are selected and sorted according to the character and analysis needs of the discussion of the problem. For the time being, legal materials that are less relevant are set aside, but by the time they are needed to be used again the search is carried out to find legal materials that are relevant to the issues at hand.

The analysis of the legal material used in this research is a systematic (logical) interpretation juridical analysis, which analyzes the interpretation that links a regulation with other regulations, namely linking the labor law with the criminal law based on legal reasoning, legal interpretation, and legal argumentation in a coherent manner.

Adjustment to the Litigation Mechanism

The litigation process is the process of resolving employment criminal cases through a criminal justice mechanism that cannot be separated from the investigation based on the reports from workers/laborers related to the suspected criminal events. The reporter in this case is a worker/laborer as well as a victim and the reported person is an entrepreneur. Based on the sentence suspected of the occurrence of a criminal act, the incident must be disclosed by the supervisory staff. The mechanism for disclosing the evidence is carried out through a comprehensive examination procedure so that the evidence found is following the events that occurred. Furthermore, with this evidence, the supervisor can determine whether the incident that occurred is a criminal event or a civil event. This mechanism is implemented following the procedures outlined in the Minister of Manpower Regulation No. 33 of 2016. If law enforcement is not following the procedure, there will be a potential for a lawsuit to be filed in the Administrative Court.

The process of settlement through litigation in criminal cases in the employment field is very often carried out, this is inseparable from the existence of criminal sanctions in the labor law which are used as tools or means to coercing employers. Although in the end the case was stopped for various reasons taken by the parties outside the court. Article 109 of the

Criminal Procedure Code has been outlined in terms of terminating criminal cases. In litigation procedures, criminal sanctions lead to court decisions and judges' decisions for criminal acts. In employment criminal cases several questions commonly arise in the field of employment, who is criminally responsible if the company (corporate legal entity) makes payment of labor wages that do not meet the provincial minimum wage requirements, or other violations that are punishable by criminal threats.

In Law no. 13 of 2003 concerning Manpower, criminal sanctions are regulated in Articles 183-188 with different types of criminal acts, ranging from the act employing minors to the criminal closing of the company (*lockout*). The provisions of Article 189 of Law no. 13 of 2003 concerning Manpower affirms: "sanctions of imprisonment, confinement, and/or fines do not eliminate the employer's obligation to pay rights and /or compensation to workers or laborers". The establishment of Law no. 11 of 2020 concerning Job Creation in the Employment Cluster has changed the map of the types of employment criminal sanctions and the threat of punishment. Employment crime is an unlawful act committed by a worker or entrepreneur who violates a work agreement, company regulations, collective labor agreement, and the Manpower Act whose criminal sanctions are only regulated in Article 185 to Article 188 of Law no. 11 of 2020 concerning Job Creation in the Employment Cluster, while Article 190 regulates administrative sanctions.

Based on the explanation above, the researcher argues that the litigation process is not as simple as that, because the disclosure of evidence before the court is a core part of the litigation process so the judge's decision is based on the suitability of the evidence with the criminal events that occurred. Case files and evidence sent to the prosecutor's office must be following the events handled, so that investigators are required to find, obtain, collect and deliver evidence in court following the applicable legal rules. Consequently, if it is not appropriate, it can be said that the evidence has no evidentiary value (*unlawful legal evidence*). Furthermore, when and in what cases can the punishment be imposed and how is the implementation of the punishment which is enforced by the state. Based on Article 20 of the Supreme Court Regulation number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations it is stated that "Losses suffered by victims due to criminal acts committed by the Corporation can be requested for compensation through a restitution mechanism according to the provisions of the applicable laws or through a lawsuit civil law" (Supreme Court, 2016). From the explanation of their regulations, it can be interpreted that the

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imposition and enforcement of criminal sanctions is the authority of the judge in the trial of criminal cases.

The table below is a framework for resolving employment criminal cases through litigation:

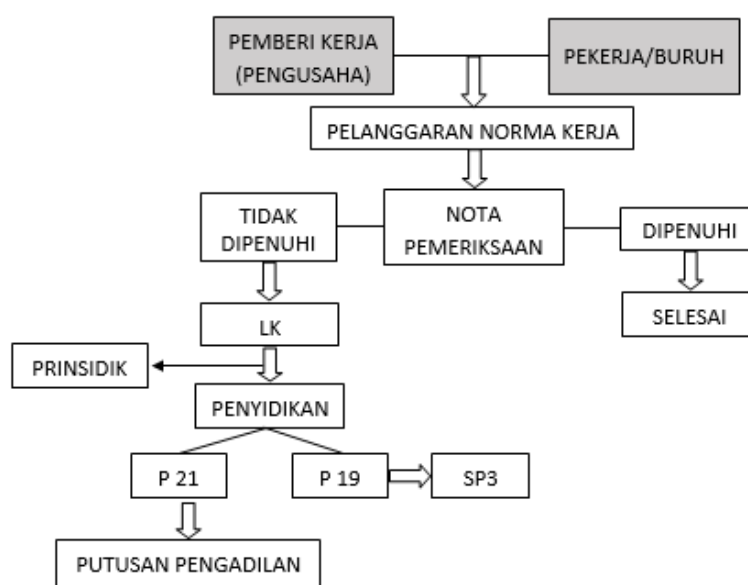


Figure 1. Chart/Scheme of settlement of employment crimes
(Source: Ministerial Regulation No.33 of 2016)

The dispute over rights relates to the non-fulfilment of the normative rights (wages) of workers/laborers, due to differences in the implementation or interpretation of the provisions of the work agreement. The interpretation referred to is the fulfilment of the rights of workers/laborers. The rights in question are normative rights, which have been stipulated in the work agreement. This can occur when the worker refuses the wages given by the employer because each party has a different wage from the work agreement that has been made as the basis for the working relationship. The basic rights of these workers/laborers are protected by the constitution, namely Law no. 13 of 2003 concerning Manpower which was subsequently amended by Law no. 11 of 2020 concerning Job Creation in the Employment Cluster. So that the violation can be subject to criminal sanctions.

The act of paying wages below the minimum wage results in (material) losses on the part of the worker/labourer which must be fulfilled and the act is prohibited and accompanied by a criminal threat. The settlement of the dispute was to pay for the lack of wages, then eliminate the act by complying with the wage norms as ordered in the Memorandum of Examination of the labour inspector or determined outside of litigation, which is based on a peace

agreement of the parties. The following framework is a settlement through litigation:

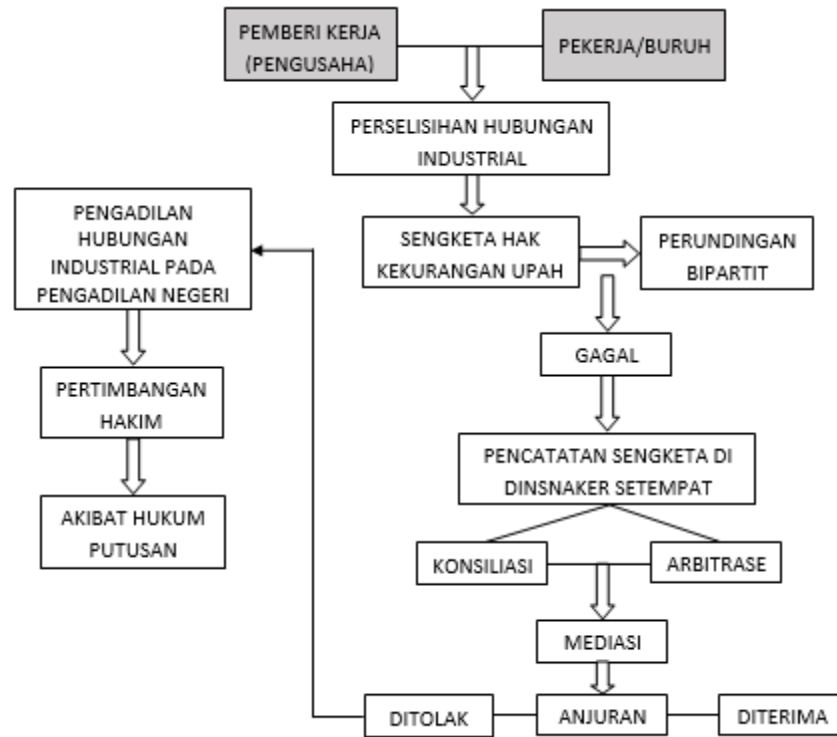


Figure 2. Dispute settlement chart/scheme (Source: Law No. 2 of 2004)

Settlement of industrial relations disputes through the litigation mechanism with the stages regulated in Law no. 2 of 2004 concerning Settlement of Industrial Relations Disputes. The legislation does not define litigation, but it can be seen as stated in Article 6 paragraph 1 of Law no. 30 of 1999 concerning Arbitration which in essence stated that “disputes in the civil sector can be resolved through alternative dispute resolution based on good faith to the exclusion of litigation in District Court”. The results of the settlement outside the litigation route have binding legal force against the parties involved in the dispute, which is stated in a collective agreement or PB.

Adjustment to Non-Litigation Mechanism

Settlement through *non-litigation* means resolving legal issues out of court, known as alternative dispute resolution. Settlement of criminal cases through a non-litigation path is an alternative route that will help reduce the

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buildup of cases in the judiciary and the congestion criminal justice system in dealing with crime. Several things make the settlement of criminal cases through crime. Several things make the settlement of criminal cases through non-litigation channels said to be quasi civil-criminal, because it contains civil elements but is used to solve problems or criminal cases, the reasons include:

1. An agreement between the parties to settle a criminal case, either through a trial at the first stage (investigation) or not through the courts. Agreement in civil law is one condition for the validity of the agreement (Article 1320 Civil Code) and the agreement constitutes a law for those who make it so that it must be obeyed (Article 1338 of the Civil Code).
2. There is an agreement to use or not to use the services of one or several mediators.
3. During this process, negotiations took place or bargained about the amount of compensation loss or other action that must be given or committed by a criminal to the victim. Negotiations or bargaining is a process that is usually contained in civil law.

The position of the perpetrator in the process of resolving criminal cases through the non-litigation route is different from the process through litigation. In litigation, the perpetrator is subject to the principle *presumption of innocence*, hence during examinations in the police and court, different statements can be provided. All of that will affect the judge in making a decision. In settlement through non-litigation, the position of the perpetrator is the *presumption of guilt*, hence what happened in the negotiation is not looking for the perpetrator's fault, but determining what happens must be done or given by the perpetrator to the victim.

Settlement of cases out of court is recognized in the laws and regulations in Indonesia, which started in the explanation of Article 3 of Law no. 14 of 1970 concerning the Basic Provisions of Judicial Power stated that "settlement of cases out of court, based on peace or through referees (arbitration) is still allowed". Law no. 30 of 1999 concerning Arbitration and alternative dispute resolution, this law has provided a special place for the existence of alternative dispute resolution outside the litigation process. Based on Article 1 Number 10 states "Alternative *Dispute Resolution* is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely settlement outside the court utilizing consultation, negotiation, mediation, or expert judgment" (Yoyok Ucok Sunyoto dan Dadang Firdiyanto, 2019).

The informal employment criminal case settlement process is a process consensus based on the agreement of the parties in dispute (workers/laborers) and community members to encourage perpetrators (entrepreneurs) to be responsible to victims, recovering losses not from a psychological aspect but includes material losses which are the core of the victim's problem. Encourage dialogue or negotiation to resolve problems that have occurred to restore disharmony by maintaining balance.

The settlement of labor criminal cases outside of criminal justice or non-litigation formally is regulated neither in Law no. 13 of 2003 concerning Manpower nor in Law no. 11 of 2020 concerning Job Creation in the Employment Cluster. Exceptions for conflicts with the dimensions of civil disputes have been limitedly outlined in Law no. 2 of 2004 concerning the Settlement of Industrial Relations Disputes.

Settlement outside the judicial system (non-litigation) has philosophical applicability, which is defined as any rationale to achieve the welfare of society and at the same time include protection for society. Peace is the highest law, the adage has the meaning that in peace there is justice which always maintains the balance of individual and community interests. Perpetrators and victims of crimes can then sit together to discuss steps that can be taken to fix the problems that have occurred (*restitution integrum*).

To ensure legal certainty, it is better if the agreement reached by both parties outside the judicial system (non-litigation) should be stated in a collective agreement (PB). To guarantee legal certainty, the collective agreement (PB) is recorded at the Industrial Relations Court. This means that the Industrial Relations Court has issued a registration deed to the collective agreement (PB) if one of the parties does not implement the provisions in the collective agreement (PB). then the aggrieved party can apply for execution to the Industrial Relations Court Article 7, Article 13, Article 23 of Law no. 2 of 2004. This is to avoid denial from the perpetrators of the crime who do not want to implement the agreement.

Based on the description above, the settlement of criminal cases through non-litigation as an alternative route is the right step to achieve justice as desired or expected by each party. Justice can be found in many spaces, and can also be found without going through the bureaucracy (criminal justice system). In the context of progressive law as introduced by Raharjo (2007), the law is for humans, not the other way around. If the law is for humans, then the ways taken to make humans happy can be tolerated so it needs to be developed as part of human effort to seek justice, including the settlement of

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criminal cases through non-litigation channels. If humans are for the law, then what happens is an attempt to make humans objects in the criminal justice process, where human actions will be matched with existing laws.

The Concept of Settlement of Cases That Realize Restorative Justice

The concept of *restorative justice* is a popular alternative in many countries for handling unlawful acts (against the law in a formal sense) because it offers a comprehensive and effective solution with a new approach model in efforts to resolve criminal cases. The concept of restorative justice is a new *paradigm of criminal law in the world* which was first initiated by Albert Eglash (1977). Restorative justice is carried out through discretion (policy) and diversion, namely resolving amicably by transferring cases from the formal criminal justice process to non-formal processes to be resolved by deliberation. The principle of *restorative justice* is one of the principles of law enforcement in the settlement of cases that can be used as an instrument of recovery, the guidelines for the implementation of restorative justice are contained in Article 3 Paragraph (3) of the Regulation of the Prosecutor's Office of the Republic of Indonesia No. 15 of 2020 on the termination of prosecution Based on restorative Justice stated that "The settlement of cases out of court as referred in paragraph (2) letter e can be carried out with the following provisions: a. for certain criminal acts, the maximum fine is paid voluntarily following the provisions of the legislation or b. there has been a restoration of the original situation by using a Restorative Justice approach".

The restorative justice concept puts forward the concept of mediation and the concept of reconciliation in which perpetrators, victims, law enforcement officers, and the wider community participate directly in resolving criminal cases inversely or contrary to the traditional criminal justice system that has been in effect since old times and valid until now, in the positive legal system it is not possible to abolish punishment based on peace. Even if the victim forgives the perpetrator of a crime, the court is obliged to continue the case. The practice of criminal justice generally makes the peace made between the victim and the perpetrator of a crime a matter of mitigating considerations used by most judges in making their decisions. If the losses have been met, then the law enforcement officers in charge should not make rigid decisions, the sentencing should consider the peace that has been made between the perpetrator and the victim.

The concept of settlement of a criminal case in terms of paying wages below the minimum wage on the basis of achieving peace by the parties must be able to realize restorative justice and have juridical power that can provide protection to workers/laborers as well as protection to employers must meet the following provision:

1. The basis for the settlement of criminal cases must be based on the will of the parties, as evidenced by a written statement, through a peace agreement that is approved and signed by the parties.
2. There is an agreement on the fulfilment of the rights of the victim and the responsibility of the perpetrator as a result of a criminal act, the fulfilment of the rights as intended is proven by a statement letter in accordance with the agreement signed by the parties.
3. There is an agreement to serve as a legal product, as well as the settlement of criminal cases through the revocation of criminal cases or termination of the criminal justice process.

The concept of settlement of criminal cases is the embodiment of values, corrective justice, and restorative justice, if paralleled with the Regulation of the State Police of the Republic of Indonesia Number 8 of 2021, it has fulfilled the material requirements and formal requirements, so that it can be used as a basis for terminating criminal cases paying wages in under the provisions of the minimum wage, on the basis of an amicable agreement by the parties.

Conclusion

The concept of resolving labour cases in terms of paying wages below the minimum wage is realized through a peace agreement with the *victim-offender mediation* (VOM) mechanism, involving the responsibility of the perpetrators of crime in recovering losses due to criminal acts. Concrete evidence of peace is referred to in the concept of settlement of the case, evidenced by a peace agreement letter signed by the parties. Evidence of fulfilment (recovery) for the victim is stated in the agreement agreed upon and signed by the victim. Concrete evidence of the statement has validity and juridical reasons, so that it has legal force in providing protection to the interests and rights of the parties, that the agreement of both parties has the same strength as the law (*pacta sunt servanda*). The adage means that peace agreements are the highest laws that have restorative justice values.

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