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IMPLEMENTATION OF PENAL MEDIATION IN THE PERSPECTIVE OF PROGRESSIVE LAW (STUDY AT THE SEMARANG CITY POLICE DEPARTMENT)

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Abstract

Criminal Law has the characteristics of a double-edged sword, because on one side it protects the victim but on the other side deprives the rights of the perpetrators. Therefore, the settlement of cases through criminal lines becomes *ultimum remidium* because Criminal Law is used as a last resort in solving criminal cases. One form that emerges today is the Penal Mediation effort which is used as a form of settlement of criminal cases, especially for insignificant crimes. The paper analyzes and looks deeper into the implementation of penal mediation at the Police level, in the Semarang City Police Department. The research uses an empirical juridical method with a research location in the city of Semarang. The research underlines that in the implementation of media penalties at the police level is carried out through a Progressive Law framework. In its implementation, the police must base on the principle of conflict resolution, process-oriented, and the process is informal. One of the penal mediation forms implemented and applied by Semarang City Police Department is on domestic violence cases, where the principle that is put forward is Victim Offender Mediation. This study concludes that the implementation of media penal is one form of restorative justice in Indonesia.

Keyword: Penal Mediation; Progressive Law; Restorative Justice; Police; Criminal Law

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INTRODUCTION

It can be denied that the judiciary in Indonesia today is often understood to have experienced a crisis of social legitimacy and a crisis of public trust and even citizens often do not understand the judicial process experienced even though they are undergoing it. In the judicial process basically embodies the dimension of law enforcement, where law enforcement is a series of processes to describe values, ideas, ideas that are quite abstract which are the purpose of law.

The purpose of law itself is essentially a legal ideal that contains moral values, such as justice and truth. These values must be able to be realized in real reality. The existence of law is recognized if the moral values contained therein can be implemented. Indeed law enforcement is supremacy of a substantial value, namely justice. But since modern law is used, the court is no longer a place to search for justice (*searching of justice*). The court is only a place that struggles with rules and procedures. The law can no longer provide justice which is the ideals of the legal goals so far. The legal actors should be demanded to prioritize honesty and sincerity in law enforcement. They must have empathy and care for the suffering experienced by the people and nation. The interests of the people (their welfare and happiness) must be the point of orientation and the ultimate goal of the administration of law. It is in this logic that legal revitalization is carried out, that is, an effort is needed to reform the justice system. That is a justice that is expected to be a form of justice that is able to accommodate proportionally and fairly formal and informal aspects (*aspirations and social needs*) in mechanisms, considerations, and decisions that are compatible with the community.

Law in reality has 3 (three) objectives, namely legal certainty, expediency and justice. Achieving these three objectives requires a process that takes place in sub-systems of law which among others are mentioned by L.M. Friedman is the legal substance, legal structure and legal culture. Legal substances that become a reference in the Indonesian legal system include the Criminal Code (hereinafter referred to as the Criminal Code) and the Criminal Procedure Code (hereinafter referred to as the Criminal Procedure Code) and other statutory regulations which are *lex specialis* of the Criminal Code for example the Law Domestic Violence law, Child Protection Act, Corruption Eradication Act and others (Achmad Ali, 1996: 128).

Roscoe Pound, concludes that law is a social engineering tool. The law is assumed to be able to direct social change. Some versions of this idea form the basis of most existing laws. In Indonesia, that belief is adhered to. The law is believed to be a means of community renewal. Even judicial unification (through Law Number 1 of 1970), aims to carry out planned social change. Through this law, state justice is established as a judicial body that applies in all regions of the Republic of Indonesia. Political law in the law, is not just a unification of justice, but also intends to transfer the development and application of law to the state

According to Daniel S. Lev, judicial unification is actually based on ideological and political thought, especially in the context of the unitary state format. When viewed from various regulations concerning the judiciary, state justice is a judiciary whose legitimacy rests on the strength of the state's national legitimacy, not on the strength of local cultural legitimacy.

In the context of a pluralistic and heterogeneous Indonesian society, it is easy to imagine that a state justice institution that relies on state legitimacy will be confronted with diverse local legitimacies from one community to another. This situation will certainly affect the existence and appeal of state courts to be used as institutions for

dispute resolution by the public. In addition, the factor of difference in legitimacy (state and cultural), will determine the pattern of dispute resolution in society, namely settlement through the court or outside the court.

Changes and dynamics of society which are extremely complex on the one hand, while on the other hand towards the regulation of legislation making as a partial legislation policy turns out that the public nature of criminal law is shifting in character because it also relatively enters the private sphere with the known and practiced mediation of penal mediation) as a form of case resolution outside the court. Analyzed from the perspective of its terminology, mediation of penalties is known as meditation in criminal cases, meditation in penal matters, victim offenders mediation, offender victim arrangement (English), *strafbemiddeling* (Dutch), *der AuBergerichtliche Tatausgleich* (Germany), *de mediation penale* (France). Basically, mediating penalties is an alternative form of dispute resolution outside the court (Alternative Dispute Resolution / ADR) which is commonly applied to civil cases. On this dimension, ADR outside the court has been regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. In this connection there have been several institutions promoting the ADR method, including the Indonesian National Arbitration Board (BANI) which focuses on the world of trade and ADR in the settlement of construction service disputes (Law Number 18 of 1999 jo Law Number 29 of 2000 jo PP Number 29 of 2000) with civil jurisdiction. Similarly ADR is also known concerning copyright and intellectual work, labor, business competition, consumer protection, the environment and others (Mulyadi, 2015: 3).

In positive law in force in Indonesia, criminal cases cannot be settled out of court, although in certain cases it is possible to settle cases outside the court. However, law enforcement practices in Indonesia are often also criminal cases resolved outside the court through the discretion of law enforcement officials, peace mechanisms, *Adat* institutions and so on. The implications of the practice of resolving cases outside the court all this time are indeed that there is no formal legal basis, so it is also common for a case to occur informally that an informal settlement has been carried out through a customary law mechanism, but it is still processed in court according to the positive law in force.

As a consequence, the existence of penal mediation is increasingly being applied as an alternative settlement of cases in the field of criminal law through restitution in criminal proceedings which shows that the differences between criminal and civil law are not so great and the differences become dysfunctional (Nawawi Arief, 2008: 4-5).

The existence of the settlement of cases outside the court through mediation of the law is a new dimension examined from theoretical and practical aspects. Judging from the practical dimension, mediation of the penal will correlate with the achievement of the world of justice. As time goes on that day by day there is an increase in the volume of cases in all forms and variations that enter the court, so that the consequence becomes a burden for the court in examining and deciding cases according to the principle of "simple, quick and low cost justice" without having to sacrifice the attainment of judicial objectives namely legal certainty, expediency and justice. Mudzakkir suggested several categorizations as benchmarks and the scope of cases that could be resolved outside the court through mediation of the penalties as follows: (Mulyadi, 2015: 5).

1. Violations of criminal law are included in the offense category of complaints, both complaints that are absolute and complaints that are relative.
2. Violation of the criminal law has a criminal fine as a criminal threat and the violator has paid the criminal fine for the fine (Article 82 of the Criminal Code).
3. Violations of criminal law are included in the category of "violations", not "crimes",

which are only threatened with criminal fines.

4. Violations of criminal law include criminal acts in the field of administrative law which places criminal sanctions as ultimum remedium.
5. Violations of criminal law are categorized as light / all-light and law enforcement officials use their authority to exercise discretion.
6. Violations of ordinary criminal law that are terminated or not processed by the Attorney General by the Attorney General in accordance with their legal authority.
7. Violations of criminal law are included in the category of violations of customary criminal law that are resolved through traditional institutions.

In addition to the above dimensions, the existence of penal mediation can be assessed from a philosophical, sociological and juridical perspective. From a philosophical perspective, the existence of the mediation of the penal contains the principle of applying a "win-win" solution and not ending in a "lose-lose" or "win-lose" situation as it wants to achieve by the judiciary with the attainment of formal justice through a litigation legal process (law enforcement process). Through the process of mediating penalties, the highest peak of justice is obtained because of the agreement of the parties involved in the criminal case, namely between the perpetrator and the victim. The victims and perpetrators are expected to find and reach the best solutions and alternatives to resolve the case. The implication of this achievement, the perpetrators and victims can submit compensation offered, agreed and negotiated between them together so that the solutions achieved are "win-win". In addition, through mediation this penalty will have positive implications that philosophically the achievement of justice is carried out quickly, simply and at a low cost because the parties involved are relatively fewer than through the judicial process with components of the Criminal Justice System (Mulyadi, 2015: 6).

Judging from the sociological perspective, this aspect is oriented towards Indonesian society whose cultural roots are oriented towards family cultural values, putting forward the principle of consensus agreement to resolve a dispute in a social system. Strictly speaking, these aspects and dimensions are resolved through the local wisdom dimension of customary law. Through the history of law, it can be seen that the first law applicable and is a reflection of the legal awareness of the people of Indonesia is the local wisdom of customary law. These aspects and dimensions are identical to the *receptie theory* of Snouck Hurgronje. For a long period of time customary law as a legal norm, together with other social norms and norms of Hinduism, played its role as a means of social control. The logical consequence as a social control tool is that the local wisdom of customary law is born, grows and develops in a social system (Mulyadi, 2015: 6-7).

Then, examined from a juridical perspective, mediation of the penal in the state law dimension (*ius constitutum*) is actually not yet well known and still leaves controversy, among those who agree and disagree to be applied. The essential issue leads to the choice of a pattern of criminal dispute resolution, related to the domain of state superiority with the superiority of the local wisdom community. In addition to the above dimensions, other implications of the actual existence of the mediation of the penalty can be said between "there" and "nothing". It is said so, on the one hand because of mediation of the penalties in the provisions of the Act are not known in the Criminal Justice System but in the level under the Act is known only limitedly through the discretion of law enforcement and its partial nature. Then, on the other hand it turns out that the practice of mediating penalties has been carried out by the Indonesian people and the settlement is carried out outside the court, such as through the mechanism of *adat* institutions. There are a number of facts and arguments that are worth mentioning

in this context why a study of the concept of mediation of the assumption is assumed to exist between "there" and "nothing" (Mulyadi, 2015: 12).

First, reviewed at the level of regulation under the Law which is partial and limited in nature, then the mediation of the law is regulated in the Police Chief Letter No. Pol: B / 3022 / XII / 2009 / SDEOPS dated December 14, 2009 concerning Handling Cases through Alternative Dispute Resolution (ADR) and Regulation of the Head of the Indonesian National Police Number 7 of 2008 concerning Basic Guidelines for Strategy and Implementation of Community Policing in the Implementation of Polri Duties. Basically, the regulation governs the handling of criminal cases through ADR with the nature of small material losses, agreed by the parties, carried out through the principle of consensus agreement, carried out must respect social / customary norms and meet the principles of justice and if achieved through ADR the perpetrators are no longer touched by actions other law (Mulyadi, 2015: 12-13).

Secondly, in Presidential Instruction Number 8 of 2002 concerning the Granting of Legal Certainty Guarantees to Debtors who Have Completed Their Obligations or Legal Actions to Debtors who Have Not Completed Their Obligations Based on the Settlement of Shareholder Obligations. The Inpres was addressed to several Ministers / Heads of Government Institutions, including the Minister of Justice and Human Rights, the Attorney General of the Republic of Indonesia, the Chief of the Indonesian Police and the Chair of the Indonesian Bank Restructuring Agency. In the first dictum number 4 of Presidential Instruction Number 8 of 2002 stated that: In the case of granting legal certainty as referred to in number 1 concerns the exemption of debtor from criminal aspects directly related to the Shareholders Obligation Settlement program, which is still in the stage of investigation, investigation and / or prosecution by law enforcement agencies, then at the same time also carried out with the process of terminating the handling criminal aspects, the implementation of which is still carried out in accordance with the provisions of the applicable laws and regulations.

Third, the practice of mediating penalties although normative is not regulated by the Act (positive law), but the practice occurs in Indonesian society. The practice of mediation for example has been carried out through the Customary Session of Prof. Dr. Tamrin Amal Tamagola conducted by the National Dayak Customary Assembly (MADN) named after the Dayak Trial of *Maniring Tuntang Manetes Hinting Bunu* between the Dayak community and Tamrin at Betang Nanggerang, Palangkaraya, Central Kalimantan on Saturday, January 22, 2011 (Mulyadi, 2015: 47).

Handling the problem of alleged criminal acts using the mediation of the law does not yet have a legal basis in the form of legislation but this phenomenon has been done in the process of investigation in the Police so that the issue that then arises is that the handling of criminal cases can be carried out "practice" peace that eliminates the criminal element.

METHOD

This study focuses on Penal Mediation in Criminal Justice Review of the Implementation of Penal Mediation Conducted by the Police at Semarang Police Department (hereinafter Polrestabes Semarang), the author uses the Sociological Juridical research approach. Juridical Sociological research approach is a legal research that uses secondary data as initial data, which is then continued with primary data or field data, as a data collection tool consisting of document studies, and interviews. The sociological juridical research approach was used in this study because the police at the Polrestabes Semarang in particular the Polrestabes Semarang Women's and Child

Protection Center (hereinafter as PPA) in solving criminal cases use a method that deviates positively from the applicable law namely resolution through mediation of the law, while mediating the punishment itself was born from the culture and values that had been living in society.

In the study the authors used qualitative research methods. Namely the approach taken by basing on data stated by informants and respondents verbally or in writing, and also researched and studied as something intact (Dewata and Achmad, 2010). Thus, this research will produce a descriptive description, through this research the writer can get a picture of the situation, by describing the data obtained as is and then analyzed and then draw conclusions. With this method the author will provide an analysis of the Review of the Implementation of Penal Mediation Conducted by the Polrestabes Semarang.

Source of legal data in this study consists of Primary and Secondary Legal Data, namely the primary data obtained through field research (primary research) by interview. In this study primary data derived from interviews with the results of interviews directly with the Headquarters of PPA Polrestabes Semarang and Investigation Unit PPA Polrestabes Semarang. The interview technique used is free guided, where the questions have been prepared in advance as a guideline for respondents, but it is possible for other questions to be adapted to the situation and conditions during the interview.

While secondary data in this study are the results of documentary and literature study obtained from libraries and internet search results related to the object of this study. The secondary data is divided into three, namely:

1. Primary legal materials, which are legal materials that have binding power, namely legislation relating to mediation of penalties and alternative dispute resolution, consisting of:
   a. Law Number 11 of 2012 concerning the Criminal Justice System for Children.
   b. Law Number 39 of 1999 concerning Human Rights Courts.
   c. Police Chief's Letter No. Pol: B/3022/XII/2009/SDEOPS dated 14 December 2009 concerning Handling Cases through Alternative Dispute Resolution (ADR).
   d. Law Number 23 of 2004 concerning the Elimination of Domestic Violence.
2. Secondary legal materials, namely materials that are closely related to primary legal materials and can help analyze and understand primary legal materials, including: legal books specifically about mediation of penalties, scientific journals on mediation of penalties and alternatives dispute resolution, written works, articles and others.
3. Tertiary legal materials, namely materials that provide information about primary and secondary materials, for example: statistical data, legal dictionaries, and others.

Data analysis is used to simplify the processed data so that it is easy to read and understand, from the data obtained in the study, then analyzed using descriptive analysis. The nature of descriptive analysis is that the researcher gives an overview or presentation of the subject and object of the study as the results of the study have been obtained (Fajar and Achmad, 2010: 183). In this study, the analysis used is descriptive analysis to illustrate the implementation of the mediation of the penalties that have been carried out at Polrestabes Semarang, the potential for enforcement of the mediation of penalties at the Polrestabes Semarang, and the model of the mediation of the penalties that have been used at the Polrestabes Semarang.

RESULT AND DISCUSSION

A. Penal Mediation and Progressive Legal Perspectives in Indonesian Criminal Law

In terms of mediation of penalties and Progressive Legal perspectives, in criminal justice the author has conducted an interview with Head of PPA Polrestabes Semarang about how relevant mediation is in criminal justice. "Penal mediation in criminal justice actually already exists, with the issuance of Law Number 11 of 2012 concerning the Juvenile Justice System. Referring to Article 1 paragraph 7 of Law Number 11 of 2012 concerning Diversity" (interview with IPTU Muniarti, S.H. on April 26, 2017, at 10.30 West Indonesia Time in the Semarang PPA Polrestabes Unit).

As explained by the resource person that mediation of penalties in criminal justice actually exists with the issuance of Law Number 11 of 2012 concerning the Criminal Justice System for Children, with the diversion referring to the explanation of Article 1 paragraph 7 of Law Number 11 of 2012. Where is the understanding diversion is the transfer of the settlement of a child case from a criminal justice process to a process outside of criminal justice.

From the results of the interview with the author, the author provides an analysis related to the explanation of the interview results in which the definition of diversion is in line with mediation of the penalties. Where that diversion is one form of penal mediation, which is used for children aged 12 (twelve) years, but not yet 18 (eighteen) years of age refer to the explanation of Article 1 paragraph 3 of Law Number 11 of 2012 concerning the Judicial System Criminal Child. Whereas the mediation of penalties, is used in the settlement of criminal cases both for children and people who are over 18 (eighteen) years old.

Seen from the explanation of Article 145 letter d of the RKUHP regarding the dropping of the authority of the prosecution and the implementation of criminal law, it is stated that the authority of the prosecution is dropped if there has been a settlement outside the process, which means that there has been mediation to resolve the criminal case.

> Before the case goes to our attorney as the police give advice to the parties involved to think about the legal consequences after this case continues to court and get a decision that has permanent legal force, from us the Police will certainly hold a mediation first so that the reporting party can think twice times if you want to continue this case to court. This mediation also aims to suppress the court case files that have accumulated in the court, if it can be resolved by mediation why not, the type of domestic violence case is more efficient to settle using mediation "(interview with IPTU Muniarti, SH on April 26 2017, at 10.30 WIB in the room Semarang Polrestabes PPA Unit).

In resolving criminal cases related to domestic violence, Semarang PPA Polrestabes Unit uses Article 4 letter d of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, which reads "maintaining a harmonious and prosperous household integrity". However, in the author's view, this Law is still partial or has not become a permanent legal umbrella in resolving cases, because there are no clear rules regarding the mediation process. According to the author, here the police in carrying out the mediation process more use police discretion, which is regulated in Article 18 paragraph 1 and 2 of Law Number 2 of 2002 concerning the Indonesian

National Police which stated that "*for the public interest of the Republic of Indonesia National Police officials in carrying out their duties and its authority can act according to its own judgment*". The results of the study also explain the mediation process in criminal justice using a restorative approach, which is an approach that emphasizes the conditions for creating justice and balance for the perpetrators of crime and their own victims.

In Indonesia, the paradigm offered by restorative justice as a paradigm that embraces the mediating mechanism of punishment in Indonesia, in practice is not a completely new thing. The practice of resolving non-adversary disputes or outside the criminal justice process, in reality, has been applied by the community as a reflection of the consensus agreement that is part of the philosophical nation of Indonesia. Reality shows that the resolution of a conflict in Indonesian society, even though it is a violation of criminal law, does not always end in court. Minor cases such as juvenile delinquency, petty theft, even to the mistreatment and rape apparently can also be resolved through this deliberative institution with or without involving relevant officials (Mulyadi, 2015: 73).

"The purpose of holding mediation is as a solution to find a win-win solution for both parties. Actually, this mediation does not have a legal basis that governs mediation, but here we as police have the duty to settle cases by acting according to our own judgment to mediate in advance" (interview with IPTU Muniarti, SH on April 26, 2017, at 10.30 WIB in the PPA Polrestabes Semarang).

Settlement of cases outside the court through mediation of penalties is a new development in the realm of criminal law which brings the implementation of private law into the realm of public law. In the mediation dimension of penal, what is achieved is not formal justice through the formal Criminal Justice System sub-system regulated in formal legal regulations. From a philosophical perspective, the existence of the mediation of the penal contains the principle of applying a "win-win" solution and not ending in a "lose-lose" or "win-lose" situation as desired to be achieved by the judiciary with the attainment of formal justice through litigation (law enforcement process). Through the mediation process of the penalties, both parties who are in the middle of the case will get the highest peak of justice due to the agreement of the parties involved in the criminal case, namely between the perpetrator and the victim. The victims and perpetrators are expected to find and reach the best solutions and alternatives to resolve the case. The implication of this achievement, the perpetrators and victims can submit compensation offered, agreed and negotiated between them together so that the solutions achieved are "win-win" (Mulyadi, 2015: 34).

In formal settlement the apparatus seems to be a robot, so mechanistic and in black and white see the problem. The text and editorial rules seem so powerful that they handcuff wisdom and common sense. There is almost no courage to do anything outside the text and editorial rules. People who used to be so brave, creative, innovative, and progressive in mindset and real action. Progressive Law, under the motto: "Law that is pro-justice" and "Law that is pro-people", progressive law puts the dedication of legal actors at the forefront. The perpetrators of the law are required to promote honesty and sincerity in law enforcement. They must have empathy and care for the suffering experienced by the people and this nation. The interests of the people (their welfare and happiness) must be the point of orientation and the ultimate goal of the administration of law.

It is in this logic that legal revitalization is carried out. In progressive law, the process of change is no longer centered on regulations, but on the creativity of legal actors actualizing the law in the right time and space. Or in Plato's language, legal actors must be able to do equity. Progressive legal actors can make changes by making creative

meanings of existing regulations, without having to wait for changes in regulations (changing the law). Bad regulations do not have to be a barrier for progressive legal actors to bring justice to the people and justice seekers, because they can make new interpretations every time for a regulation.

Of course, reforms such as those offered by progressive law require new commitments. Progressive legal actors need a new grip in the form of a framework (belief-framework) that can guide them in working on the progressive law project. That is because progressive law entrusts legal reform to the pioneers of legal actors. Without guidance on a model or framework of belief that functions as a say-form, it is difficult to imagine legal actors being united in one commitment. Without a unity of commitment, the directed renewal step will also be difficult to realize. It is not even impossible, the individual initiative of a legal actor can become "wild".

This is one of the Authors' notes for Progressive Law Expert, Prof. Satjipto Raahardjo, or Prof Tjip - which as far as I know - has not specifically "set" a modelr to guide the "project" of progressive law. In addition to the reasons above, the need for progressive law has a framework model, based on three considerations. First, as Prof. said Tjip, progressive law seeks to reject the status quo - when it causes decadence, a corrupt atmosphere, and a spirit of detrimental to the interests of the people (Progressive Law, Exploration of an Idea, 2004). Second, in the progressive law inherent the spirit of "resistance" and "rebellion" to end the paralysis of the law through the creative and innovative actions of legal actors. Third, the presence of an exemplar or model / model will be able to unite the forces of progressive law in one action form, because exemplar always provides three "software" needed by a movement: (1). The ideological foundation that underlies the movement being fought. (2). Problems that are considered relevant and important to fight for and work on, and (3). Appropriate and effective methods and procedures to resolve the intended problem.

The clarity of these three things, in theory, will bring together the potential forces of progressive law in one agenda and line of struggle. In this way, the hope of the unity of progressive legal force as stated by Prof. Tjip is more easily realized. Among the existing models, *Interessenjurisprudenz* would be one model that is more in line with the spirit of progressive law. In line with progressive law, this school adheres to the principle: "serving the interests and meeting human needs is the main objective of the law". Efforts to achieve these goals cannot be relied on by applying black-and-white rule of law.

Factual interests of humans are very diverse, and usually unique according to time and space. Therefore, law enforcement officials are demanded to take a position as much as possible as if he had personally experienced the case being handled. The settlement of criminal cases using the mediation of penalties if viewed from the point of view of the implementation is indeed effective, because it does not require protracted time in the resolution of the case. The results produced using mediation of penalties were considered very fair because here both parties seek and achieve the best solution to solve the case which is a win-win solution.

In its development, the settlement of cases outside the court, not all criminal cases can be carried out through the mediation dimension of penal. T. Gayus Lumbuun states that legal cases that have a preference for resolution through ADR are as follows:

1. Cases where the perpetrators (or suspected perpetrators) do not involve the State. Or, it can also be prioritized for criminal offenses that fall under the category of offense complaint. In addition, ADR can also be expanded to include criminal acts where victims are citizens or citizens so that they themselves disclose the level of loss they experienced.

2. Criminal actions that although involving the state (as a suspected perpetrator), but require resolution considering the direct impact on the community. For example, for economic crimes that the State expects a return of state funds in corruption cases (T. Gayus Lumbuun, 2007).

   "In carrying out mediation, basically, all cases that we receive at Semarang PPA Polrestabes Unit can be resolved through mediation, and the results are very effective in suppressing case files that have accumulated in court, both mild and severe cases if our leaders agree to be resolved through mediation, then we will do the settlement of the case through mediation "(interview with IPTU Muniarti, SH on April 26, 2017, at 10:30 WIB in the PPA Polrestabes Semarang).

Partially and limited in nature, mediation of the penal is regulated in the Chief of Police's Letter No. Pol: B / 3022 / XII / 2009 / SDEOPS dated December 14, 2009 concerning Handling Cases through Alternative Dispute Resolution (ADR) as well as the Republic of Indonesia's Chief of Police Regulation No. 7 of 2008 concerning Strategic Basic Guidelines and Implementation of Community Policing in the Implementation of Polri Duties. On the Chief of Police's Letter No. Pol: B / 3022 / XII / 2009 / SDEOPS dated December 14, 2009 determined several steps for handling cases through ADR namely (Mulyadi, 2015: 39):

a. Striving to handle criminal cases that have small material losses, the solution can be directed through the ADR concept.
b. The settlement of a criminal case using ADR must be agreed by the parties that litigate, but if there is no agreement, it will only be settled in accordance with legal procedures that apply in a professional and proportional manner.
c. The settlement of criminal cases using ADR must be based on consensus and must be known by the surrounding community by including the local RT / RW.
d. Resolving criminal cases using ADR must respect social / customary norms and fulfill the principle of justice.
e. Empowering members of Community Policing and portraying FKPM in their respective regions to be able to identify criminal cases that have minor material losses and allow them to be resolved through the ADR concept
f. For cases that have been resolved through the ADR concept so that they are no longer touched by other legal actions that are counter-productive with the aim of Community Policing.

Then, in Article 14 letter f Regulation of the Head of the Republic of Indonesia National Police Number 7 of 2008 concerning Basic Guidelines for Strategy and Implementation of Community Policing in the Implementation of Police Duties determined that the application of the Alternative Dispute Resolution Concept (a pattern of solving social problems through alternative routes that are more effective in the form of neutralizing efforts issues other than through legal proceedings or litigation), for example through peace efforts.

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1. In the case of a criminal act carried out in the form of "violations which are only threatened with criminal fines". The provisions of Article 82 of the Criminal Code determine the authority/right to demand a criminal offense be deleted, if the defendant has paid the maximum fine for the violation and the costs incurred if the prosecution has been committed. In principle, the norm of the provisions of Article 82 of the Criminal Code is known as "*afkoop*" or "payment of a peaceful fine" which is one of the reasons for the elimination of prosecution.
2. Law Number 11 of 2012 concerning the Juvenile Criminal System. According to this Law, in the case that a child not yet 12 (twelve) years of age commits or is suspected of committing a crime, the investigator, social adviser, and professional social worker make the decision to hand the child back to the parent / guardian, including him in the education program. , guidance, and guidance in government agencies or LPKS in institutions that handle the field of social welfare, both at the central and regional levels, for a maximum of 6 (six) months.
3. In the event of a case of violation of Human Rights as stipulated in Article 1 paragraph 7, Article 76 paragraph 1, Article 89 paragraph 4 and Article 96 of Law Number 39 of 1999 concerning Human Rights which gives the authority to the National Human Rights Commission mediate in cases of human rights violations. This aspect is only partial in nature, because there is no provision explicitly stating that all cases of human rights violations can be mediated by KOMNAS HAM, because the provisions of Article 89 paragraph 4 specify that KOMNAS HAM can also only give advice to the parties to resolve disputes through the courts, or only provide recommendations to the government or the House of Representatives to be followed up on. In addition, the provisions of Law Number 39 Year 1999 do not explicitly stipulate that the result of mediation by the National Commission on Human Rights can eliminate prosecution or conviction, but based on Article 96 paragraph 3 only stipulates that, "the mediation decision is legally binding and valid as legal evidence ".

In the Criminal Code Bill as a *constituendum ius* aspects of the settlement of cases outside the court have been regulated in the provisions of Article 145 of the Criminal Code Bill that the prosecution authority is canceled because the settlement has been carried out outside the process. The provisions of the Article in full state the authority of the prosecution is disqualified, if:

a. There has been a decision that obtained permanent legal force
b. The defendant died
c. Expired
d. Settlement outside the process
e. The maximum criminal fine is voluntary to be paid for a crime committed that is only threatened with a maximum fine of category II
f. The maximum criminal fine is paid voluntarily for a crime that is threatened with a maximum jail term of 1 (one) year or a maximum fine of category III
g. The President grants amnesty or abolition
h. Prosecution was stopped because the prosecution was handed over to another country based on the agreement
i. Criminal complaints that have no complaints or complaints are withdrawn
j. Imposition of the principle of opportunity by the Attorney General.

"In the case of the prosecution being dropped at Semarang Police Department, there is a reason. The reporter is not cooperative in the case resolution process, usually if the reporter is not cooperative with his report, it means that there has

been mediation at the familial level first" (interview with IPTU Muniarti, S.H. on April 26, 2017, at 10:30 IWST at the PPA Unit of Polrestabes Semarang).

In the context of the Criminal Justice System (SPP) especially in its sub-system, the use of ADR is more effectively developed by the Police than the Attorney General's Office or the Court (Mulyadi, 2015: 43). These aspects and dimensions are emphasized by Adrianus Meliala as follows:

> In this connection, it is inevitable if the use of ADR in this perspective is more felt to be developed by the Police rather than the Prosecutor's Office or the Court, given the role of the Police as the initial gate of the Criminal Justice System. It can be expected that a case that has started by ADR, say so, will be more likely to be continued and ended by ADR as well rather than ADR raised in the middle (when the case is handled by the Prosecutor's Office) or the end of the judicial process (meaning decided by the court) (Adrianus Meliala, Papers, 2005: 8-9).

> "Settling a case using mediation of penalties is more effective than being resolved until the trial, more economical as well. And usually if resolved through a trial then the decision is not a win-win solution" (interview with IPTU Muniarti, S.H. on April 26, 2017, at 10.30 WIB in the PPA Unit of Polretabes Semarang).

Basically, the context of the settlement of cases outside the court through mediation of the ultimate penalty is expected to be able to suppress the accumulation of cases (congestion) in the court, especially at the Supreme Court level. Although there are restrictions on cassation requests through regulations based on the provisions of Article 45A of Law Number 5 of 2004 in conjunction with Law Number 3 of 2009, every year cases occur. Therefore, the settlement of the case through mediation of penalties can also suppress the accumulation of cases at the level of *judex facti* (District Court / High Court) (Mulyadi, 2015: 43).

Settlement of cases outside the court through mediation of penalties should be more directed (if later it will be made in a regulation) for small or minor cases which can be in the form of (Mulyadi, 2015: 44):

a. Violations as stipulated in the third book of the Criminal Code.
b. Minor criminal offenses threatened with imprisonment or confinement for a maximum of 3 (three) months or a maximum fine of Rp. 7,500.00 (seven thousand five hundred rupiah) and minor insults except those specified in paragraph 2 of this section (KUHAP).
c. Minor crimes (*lichte misdrijven*) as stipulated in the Criminal Code in the form of:
    1) Article 302 concerning petty mistreatment of animals.
    2) Article 315 concerning mild insults.
    3) Article 352 concerning mild mistreatment of humans.
    4) Article 364 concerning petty theft.
    5) Article 373 concerning mild embezzlement.
    6) Article 379 concerning petty fraud.
    7) Article 482 concerning mild retention.
d. Crimes committed by children as stipulated in Law Number 11 Year 2012.
e. Crimes as regulated in Act Number 23 of 2004 concerning the Elimination of Domestic Violence.

> "If later on regulations are made regarding handling cases through mediation, we hope to be more selective in choosing cases that can be resolved through mediation, so that with this mediation not only provides a win-win solution but also gives a deterrent effect to the perpetrators" (interview with IPTU Muniarti, SH on April 26, 2017, at 10.30 WIB in the PPA Unit of Polrestabes Semarang).

Dimensions as the context above, allows the resolution of cases outside the court by mediating the penalty because the nature of the case is small or mild, personal and carried out by the perpetrators in a relatively new psychological phase. If the aforementioned case is carried out through a process in the Criminal Justice Sub-System, it will relatively cause turmoil because people's sense of justice will be disturbed. Penal mediation is often stated as "the third way" or "the third path" in the efforts of "crime control and the criminal justice system", and has been used in several countries. How far that possibility can also be applied in Indonesia, what are the limitations and advantages, and how are the arrangements, of course, requires a deep and comprehensive study. But clearly, the peaceful settlement and mediation in the field of criminal law is actually already known in customary law and in everyday reality (Nawawi Arief, Paper, 2008: 49-50).

From the explanation above, the writer gives an analysis that the settlement of criminal cases outside the court through mediation of penalties should be directed towards small or mild cases which can be in the form of: a. Violations as regulated in the third book of the Criminal Code, b. Minor criminal offenses. If later a regulation will be made as a legal umbrella for the implementation of penal mediation, it is hoped that mediation will not only provide a win-win solution but also provide a deterrent effect to the perpetrators.

B. Implementation of Penal Mediation at Semarang City Police Department

1. Working Principle of Penal Mediation

In the implementation of the settlement of criminal cases through penal mediation there is a work principle that must be the basis in the implementation of penal mediation. "In handling cases through mediation, our penalties as police must adhere to principles like this: a. Conflict Management, the position of the police when doing mediation is as a mediator between the whistleblower and his family with the reported and his family. Our task as a mediator is to make the parties both the complainant and the reported forget the legal framework and encourage them to be involved in the communication process, b. Process oriented, penal mediation is more oriented to the quality of the process rather than the result of mas, which is to make the perpetrators of the crime aware of their mistakes. c. The informal process, mediation of the law is an informal process, not bureaucratic in nature and avoids strict legal procedures"(interview with IPTU Muniarti, S.H. on April 26, 2017, at 10.30 WIB in the PPA Polrestabes Semarang Unit).

Before entering into the implementation of the mediation of the penalties carried out by the Police at the Semarang District Police, the Semarang District Police had a Criminal Case Investigation Chart on Figure 1. "*Before entering into the mediation process of penalties, we must know the flow of investigation of criminal cases in Semarang Police Resort*" (interview with IPTU Muniarti, S.H. on April 26, 2017, at 10:30 WIB in the PPA Polrestabes Semarang Unit).

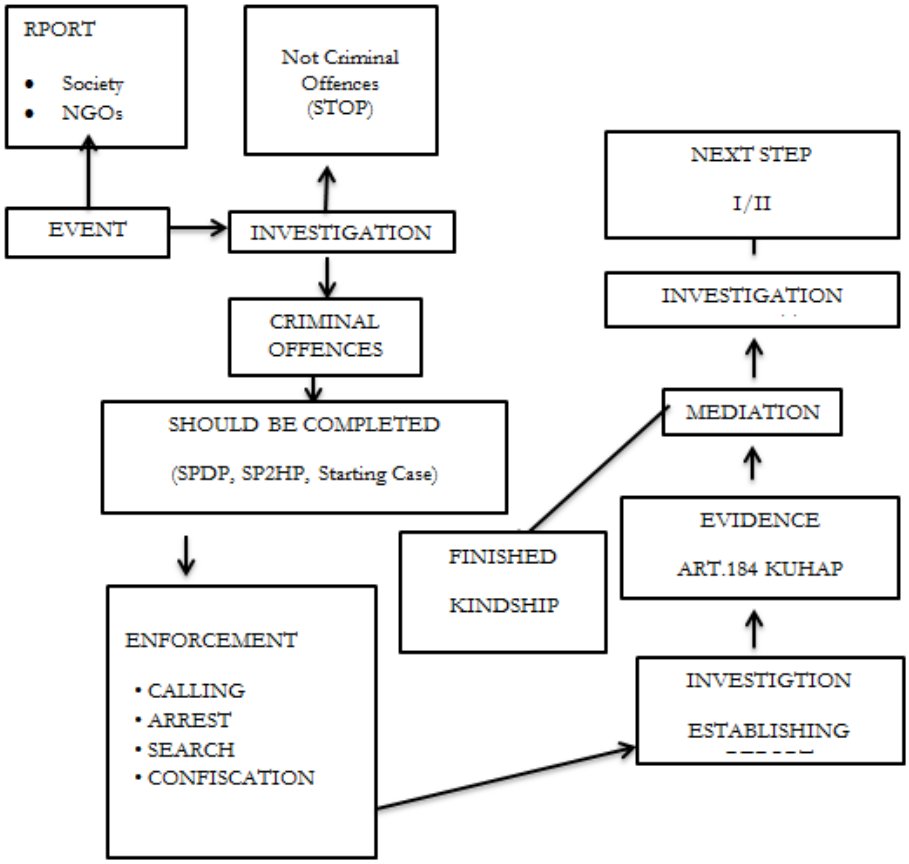

Figure 1 Flow of Criminal Case Investigation
(Source: Computer Information Unit for PPA Polrestabes Semarang)

> "The first time we received a report from the public or an NGO related to a crime, then we conducted an investigation to determine whether the event was a criminal offense or not, if a criminal act was carried out then we would investigate the reported party, but if it was not a criminal offense then we stop the investigation process, then after knowing that the event is a criminal act then we will take action by calling the reporter and the reported to conduct an examination, after the inspection process is complete then we continue to look for evidence that might be reported by the reported to carry out an act criminal to the reporter, then after that we from the police give advice so that the process of settlement of the case is resolved through mediation. If the reporter agrees to have mediation, it usually ends with kinship, if the reporter does not agree to mediation, we will proceed to the legal process more" (interview with IPTU Muniarti, SH on April 26, 2017, at 10.30 WIB in the PPA Unit of the Semarang Polrestabes Unit).

The mediation of the above penalties is considered to be in line with the idea or discourse of the inclusion of ADR in the resolution of criminal cases, among others seen from the following developments (Nawawi Arief, Papers, 2008: 10-15):

a. In supporting documents to the 9th 1995 UN Congress relating to criminal

justice management (such as document A/CONF.169/6) it was revealed that all countries considered "privatizing some law enforcement and justice functions" and "alternative dispute resolution/ADR" (In the form of mediation, conciliation, restitution and compensation) in the criminal justice system. Specifically regarding ADR, it is stated in the document as follows: "The techniques of mediation, connection and arbitration, which have been developed in the civil law environment, may well be more widely applicable in criminal law. For example, it is possible that some of the serious problems that complex and lengthy cases involving fraud and white-collar crime poses for courts could be reduced, if not entirely eliminated, by applying the principles of developed in conciliation and arbitration hearings. In particular, if the accused is a corporation or business entity rather than an individual person, the mental purpose of the court hearing must be not 21 to impose punishment but to achieve an outcome that is in the interest of society as a whole and to reduce the probability of recidivism".

According to the above quotation, ADR which has been developed in a civil law environment should also be widely applied in the criminal law field. For example, for criminal cases that contain elements of "fraud" and "white collar-crime" or if the defendant is a corporation/business entity. It was also emphasized that if the defendant was a corporation/business entity, the main objective of the court examination should not be to impose a criminal sentence, but to achieve an outcome that would benefit the overall community interest and reduce the possibility of repetition.

b. In the 9th 1995 UN Congress report on "The Prevention of Crime and the Treatment of Offenders" (document A / CONF. 169/16), it states:
   i. To overcome the problem of overload (case buildup) in court, the participants of the congress emphasized conditional release, mediation, restitution, and compensation, especially for beginners and young offenders (in report No.112);
   ii. Ms. Toulemonde (French Minister of Justice) proposed "mediation of the penalties" as an alternative to the prosecution which provides the possibility of settling negotiations between the perpetrators of crime and the victim. (in report No. 319).

c. In the "International Penal Reform Conference" held at Royal Holloway College, University of London, on April 13-17, 1999, it was revealed that one of the key elements of the new agenda for the renewal of criminal law (the key elements of a new agenda for penal reform) is the need to enrich the formal justice system with informal systems or mechanisms in dispute resolution in accordance with human rights standards (the need to enrich the formal judicial system with informal, locally based, dispute resolution mechanisms which meet human rights standards). The conference also identified nine development strategies for reforming criminal law developing such as:
   1) Restorative Justice
   2) Alternative Dispute Resolution
   3) Informal Justice
   4) Alternatives to Costudy
   5) Alternative ways of dealing with juveniles
   6) Dealing with Violent Crime
   7) Reducing the prison population
   8) The Proper Management of Prisons
   9) The role of civil society in penal reform

d. On 15 September 1999, the Committee of Ministers of the Council of Europe

received the Re-Commission No. R (99) 19 concerning "Mediation in Penal Matters".

e. In the Vienna Declaration, the 10th / 2000 UN Congress (document A/CONF. 187/4/Rev.3), among others, stated that in order to provide protection to victims of crime, it should be introduced by the mechanism of mediation and restorative justice (restorative justice).
f. On March 15, 2001, the European Union made the EU Council Framework Decision on "the position of victims in criminal proceedings" (the Standing of Victims in Criminal Proceedings)-EU (2001/220/JBZ) which included mediation issues as well. Article 1 (e) of this Framework Decision defines "mediation in criminal cases" as: 'the search prior to or during criminal proceedings, for a negotiated solution between the victim and the author of the offence, mediated by a competent person'. Article 10 states that each member state will try to "promote mediation in criminal cases for offenses which it considers appropriate for this sort of measure". Although Article 10 seems to only give encouragement, according to Anne-mieke Wolthuis, based on the explanation on the European Union's website, member countries are obliged to change their criminal law and procedural law, including 'the right to mediation'.
g. On July 24, 2002, Ecosoc (UN) accepted Resolution 2002/12 regarding the "Basic Principles on the Use of Restorative Justice Programs in Criminal Matters" which included mediation issues.

The issue of mediation in criminal cases has already been included in the agenda of discussion at the international level, namely at the 9th / 1995 and 10/2000 UN Congress on "Prevention of Crime and the Treatment of Offenders" and at the International Conference on Criminal Law Reform (International Penal Reform Conference) in 1999, the international meetings encouraged the emergence of three international documents relating to the issue of restorative justice and mediation in criminal cases, namely: (1) the Recommendation of the Council of Europe 1999 No. R (99) 19 concerning "Mediation in Penal Matters"; (2) the EU Framework Decision 2001 concerning the Standing of Victims in Criminal Proceedings; and (3) the 2002 UN Principles (draft Ecosoc) on "Basic Principles on the Use of Restorative Justice Programs in Criminal Matters".

As for the background of his thought there are those that are linked to the ideas of reforming criminal law (penal reform), and there are those that are related to the problem of pragmatism. The background of the ideas of reform include the idea of victim protection, the idea of harmonization, the idea of restorative justice, the idea of overcoming rigidity / formality in the prevailing system, the idea of avoiding the negative effects of the criminal justice system and the existing criminal system, especially in finding other alternatives to imprisonment (alternative to imprisonment / alternative to custody). The background of pragmatism is, among others, to reduce the stagnation or accumulation of cases (t*he problems of court case overload*).

In addition to the background of the theoretical and international developments above, local wisdom in customary law in Indonesia which is based on the cosmic, magical and religious mindset has long been familiar with this institution of mediation of penalties, including in West Sumatra, Aceh, and Lampung traditional law. With this mediation of penalties in criminal justice is considered relevant to the values contained in the community, especially in resolving cases using mediation/kinship.

2. The Role of the Police in Handling Cases through Penal Mediation

Soerjono Soekanto (2010: 21) argues, role is a dynamic aspect of one's position.

If someone runs his position, then he has carried out a role (Soerjono Soekamto, 2010: 21). According to the Big Indonesian Dictionary, understanding the role of a set of actions that are expected to be owned by people domiciled in the community. Based on the above understanding, the role of the police in implementing penal mediation can be interpreted as a series of actions and behaviors carried out by the police as people who are domiciled in the community as protectors and mediators in applying mediation to penalties. In discussing the application of penal mediation, it can be said that the police as the spearhead of the criminal justice process are the main parties who have the authority (discretionary authority) and influence on the application of penal mediation.

Making a report to the Police Department because they experience a crime if they feel wronged is the right of every citizen. Even so, if the parties in this case (whistleblower, reported, and police) first went through a non-litigation settlement, it is very likely that a peace agreement has been reached. Compared to waiting for the court to prove that the elements of a criminal offense would be more beneficial if the parties were brought together and the party who felt aggrieved could bring up their violated rights. By striving to settle criminal cases through non-litigation channels, the Police have not only provided services and non-litigation mediators but have also helped to bring about a quick, simple and low-cost court. Based on the results of the author's research with the interview method of IPTU Murniarti on April 26, 2017, the Police at the Semarang Polrestabes implemented mediation as a form of legal service and mediator assistance. For criminal cases, most of the police at Semarang Police Resort stated that they agreed with the idea of mediating penalties and applied them to resolve criminal cases, both minor and serious crimes, as an embodiment of the concept of Restorative Justice. Wherein in a joint decree between the Chairperson of the Supreme Court of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, the Chief of the Indonesian National Police, the Minister of Law and Human Rights, it was explained that Restorative Justice was the settlement of cases of minor criminal offenses committed by investigators at the investigation or judge stage from the beginning of the trial with involving the perpetrators, victims, the families of the perpetrators / victims, and related community leaders to jointly seek a fair solution by emphasizing restoration to its original state. From this explanation the implementation of mediation in Semarang PPA Polrestabes Unit is in line with the explanation of Restorative Justice, because the purpose of holding mediation in the resolution of cases of domestic violence is useful to restore the state of the household to the parties as before.

> "We always mediate before proceeding to more legal processes, both mild and severe cases even if the leadership agrees to do mediation we are ready to mediate, but mediating does not mean eliminating the legal consequences of the reported, he (reported) is obliged to report himself every Monday and Thursday to the Semarang Police Resort (interview with IPTU Muniarti, SH on April 26, 2017, at 10.30 WIB in the Semarang Police Resort Unit PPA).

Based on the results of the author's interview with the resource person, most cases handled by the PPA Unit of Polrestabes Semarang are ordinary offenses, namely crimes committed by the husband in the form of physical beating / violence to the wife. The reported (husband) should be snared Article 351 paragraph 1 KHUP with the threat of imprisonment of two years and eight months "Abuse is threatened with imprisonment for a maximum of two years and eight months or a maximum fine of three hundred rupiah". However, in reality the Police prefer mediation paths in dealing with the

problem of domestic violence by ignoring Article 351 paragraph 1 in order to get a win-win solution. In practice, the police often use descriptive to determine which cases are more effective if resolved through mediation.

In the application of penal mediation, according to IPTU Murniarti S.H., the police play an active role. Forms of active role include as a mediator who proposes the application of mediating penalties as an alternative settlement of criminal cases on victims, and perpetrators. This action was taken after the police considered the type of criminal act carried out by the perpetrator, who and how the condition of the perpetrator was, what was the nature of the victim's loss and the will of the victim.

This active role is one of which is done when a case of domestic violence is carried out by x (may not be named) a husband to y (may not be named) a wife who asks for money to buy rice. The police are both the mediators and the givers of advice to the wife to consider her demands. The police finally acted actively proposing to the victim or the complainant to implement the mediation of the penalties and finally to mediate with the reported party. Finally the mediation carried out resulted in an agreement made by the perpetrator and the victim. The police will decide to settle the case through the ADR (mediation penal) mechanism provided that the crime is a minor crime or a crime that is punishable by imprisonment or confinement for a maximum of three months and / or a maximum fine of seven thousand five hundred rupiahs and minor insults except for traffic violations, the offender is not recidivist or has been sentenced to repeat a similar crime, and of course there must be a willingness from the parties.

Criminal cases that can be resolved by the Police in the PPA Unit at Polrestabes Semrang through mediation include:

1) Cases of Physical Violence in the Household (Article 44 of the Act alleged PKDRT). Physical Violence in the Household regulated in Article 6 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence is an act that results in pain, illness, or serious injury. In the 2016-2017 period, there were 26 cases handled by the Semarang PPA Criminal Investigation Unit in 2016 and of the 26 cases 16 cases were successfully resolved through mediation while 10 cases were not resolved (the Reporter was not cooperative) and in 2017 there were 4 cases that can be resolved through mediating penalties.
2) Psychic Violence (Article 45 of the Act against the PKDRT). Psychic violence in the household in Article 7 of Law Number 23 Year 2004 concerning the Elimination of Domestic Violence is an act that results in fear, loss of self-confidence, loss of ability to act, helplessness, and/or severe psychological suffering for a person. During the period of 2016-2017, the PPA Polrestabes Semarang Unit did not receive the same report related to cases of Psychological Violence.
3) Abandonment (Article 49 of the alleged PKDRT Act). The regulation which is compelled in Article 9 paragraph 1 of Law Number 23 Year 2004 concerning the Elimination of Domestic Violence is that every person is prohibited from neglecting people within the scope of his household, even though according to the applicable law for him or because of an agreement or agreement he is obliged to provide life, care, or maintenance to that person. In the 2016-2017 period, the Semarang PPA Polrestabes Unit has handled 2 cases regarding the registration, where one case was resolved through mediation and one case was not completed (the Reporter is difficult to contact).

Table 1 Number of Criminal Actions handled by PPA Unit Semarang Criminal Investigation Unit in 2016-2017

No	Types of Crimes	Article alleged	L	P.21	S	L	P.21	S	Notes
			2016			2017			
1	Physical abuse	Art 44 of Elimination of Domestic Violence Law	26	-	16	4	-	4	-
2	Psychological violence	Art 45 of Elimination of Domestic Violence Law	-	-	-	-	-	-	-
3	Abandonment	Art 49 Elimination of Domestic Violence Law	2	-	1	-	-	-	

(Source: Computer Information Unit for PPA Polrestabes Semarang)

The data table above shows that in 2016 there were 28 reports that came to Semarang Police Resort concerning the occurrence of domestic violence, of which 26 were cases of domestic violence, and neglect cases with 2 cases. Furthermore, in 2017 there were 4 cases of reports of physical violence. This data shows that there has been a decrease in the level of reports of domestic violence cases at Semarang Police Resort from year to year. For domestic violence that occurred in 2016, of the 28 reports received, all from 28 only reached the investigation stage, and no cases were included in the trial stage. This means that all domestic violence cases in 2016 were resolved through a mediation process. Furthermore, in 2017 there were 4 cases of domestic violence complaints. Of the 4 cases received by the PPA Polrestabes Semarang, everything was resolved through mediation and none of the cases continued until the trial stage.

Based on the results of the author's interview on April 26, 2017 with IPTU Murniarti S.H., as an Investigator of the Semarang Polrestabes Women's and Children's Protection Unit On that occasion, he stated that "Domestic Violence that most often reaches the stage of prosecution is domestic violence related to physical violence by the husband. This is actually because the victim as the wife only wants to give lessons to the husband so that the husband can appreciate and respect the wife more. For cases of violence and psychological violence, there is a great deal of peace both at the level of investigation in the police and at the time the prosecutor's office conducts mediation efforts.

IPTU Murniarti S.H., emphasized that the mediation stage was carried out by the police by considering complaints made by victims. Usually domestic violence occurs only because the two parties conflicting opinions on a certain matter will be brought together by the police. for cases of domestic violence in the form of abuse, usually before conducting mediation efforts the police first ask for the victim's consent to have a meeting, because some victims are usually traumatized and are reluctant to meet with their husbands.

At the stage of the meeting conducted by the police the discussion at the meeting is always conducted by the Female Police in charge of the Women's and Child Protection Unit. This is intended to avoid debates between the two parties which can make the atmosphere worse. If the meeting results in peace, the victim is advised to revoke the report on domestic violence.

Terminating the investigation has several reasons, namely: a. Not enough evidence, b. Not a crime, c. For the sake of law which is divided into: 1. Article 75 of the KHUP concerning the withdrawal of complaints, 2. Article 76 of the Criminal Code concerning *Nebis in idem*, 3. Article 77 of the Criminal Code concerning suspects died, 4. Article 78 of the Criminal Code concerning Expiry. In Article 75 of the KHUP it reads "The person who filed the complaint, has the right to withdraw within three months after the complaint is filed". Thus Article 75 of the Criminal Code can only apply to crimes whose offense is a complaint offense, so that if a complaint is withdrawn it will stop the ongoing legal process. However, the provisions of Article 75 of the Criminal Code cannot be applied to ordinary crimes, which causes that if a complaint is withdrawn it cannot stop the ongoing legal process. In reality the case handled by the PPA Unit of Polrestabes Semarang is that the offense is an ordinary offense which in Article 75 the KHUP of the revocation of the report can only apply to crimes whose offense is a complaint offense. However, in practice the Police often use the "Discretion" of the Police with the consideration of maintaining order and peace of society, efforts to "close" the case can still be done as long as both parties can mutually agree and accept, and will not lead to new problems.

In an interview with the author of IPTU Murniarti S.H., he also added, as a further stage, the police supervised the families who had made peace by requiring the victim and her husband to report every week. Regarding the reporting period will be calculated based on the condition of the household concerned. If only in a few reports, it is indicated that the household concerned has gotten along well, then the report must be stopped.

3. Penal Mediation Model conducted at PPA Unit of Polrestabes Semarang

On the same occasion, on April 26, 2017, the writer conducted an interview with IPDA Muslih S.H, a member of the Police Unit of PPA Polrestabes Semarang. Regarding Mediation in the settlement of domestic violence cases, it was stated that, the mediation process carried out by the Police at the Semarang Police Resort uses the Victim Ofender Mediation model. Mediation in this form is mediation by bringing together victims and perpetrators. In addition, several other parties were also involved, such as the appointed mediator and could be held at each stage of the process.

> "Penal mediation itself consists of several types, namely: 1. Informal Mediation Model. 2. Traditional village or tribal moots model. 3. Victim Offender Mediation Model. 4. Model Reparation negotiation programs. 5. Model Community panels or courts. 6. Family and community group conferences model. What we use in the application of penal mediation at Semarang Polrestabes is Victim offender mediation model, because this model is very effective by bringing together the two parties who are litigating" (interview with IPTU Muniarti, SH on April 26, 2017, at 10:30 WIB at the Polrestabes PPA Unit Semarang).

Since the mediation of domestic violence cases is mostly done at the investigation stage, investigators at the Polrestabes are often the mediators of both conflicting parties. In this model the mediator does not direct the path of peace, but helps the parties to formulate a solution to the problem so that the desire to solve the problem and the form of resolution is truly pure from both parties. Third parties may not interfere and force the parties to choose a form of settlement. Thus the goal of a

win-win solution is expected to be truly achieved. In addition, the existence of the investigator as a mediator becomes important as a guideline so that the mediation of this penalty remains integrated with the criminal justice system. Thus what is decided in mediation of the law will have legal force.

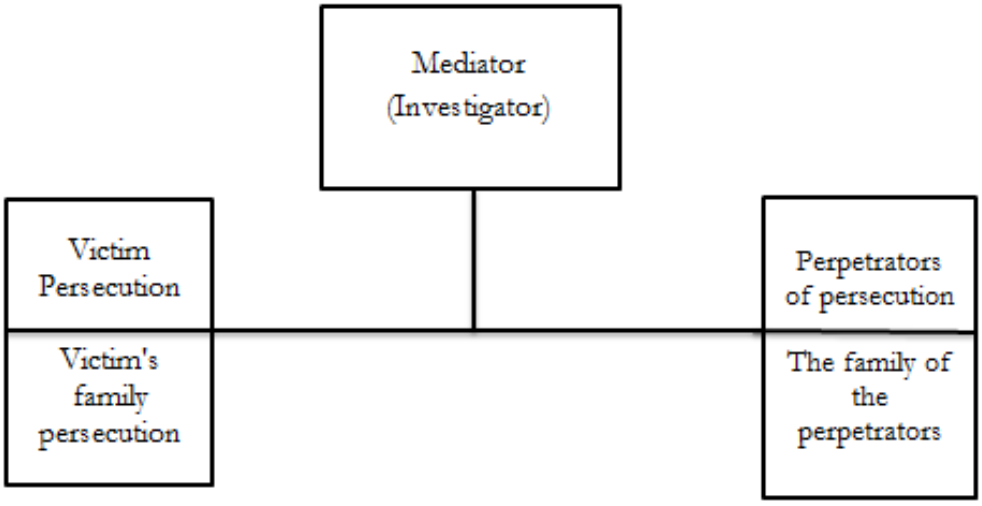

Figure 2 Penal Mediation Model Victim Offender Mediation

Polrestabes Semarang applies the victim offender mediation model because it is considered effective in handling mediation. IPTU Murniarti explained that this model was considered effective because the victims of the persecution and the victims' families met directly with the perpetrators and the families of the perpetrators. "This model is very effective and makes it easy for us investigators as mediators to carry out this mediation, we as mediators only facilitate a place for the parties to mediate, from this mediation model we can know what the wishes of the victims are and can get win-win mediation results solution" (interview with IPTU Muniarti, SH on April 26, 2017, at 10:30 WIB in the PPA Polrestabes Semarang).

Furthermore, it is said that, "This model is very effective and makes it easy for us investigators as mediators to carry out this mediation, we as mediators only facilitate a place for the parties to mediate, from this mediation model we can know what the wishes of the victims are and can get win-win mediation results. solution" (interview with IPTU Muniarti, SH on April 26, 2017, at 10:30 WIB in the PPA Unit of Polrestabes Semarang).

C. Penal Mediation as an Alternative to Settling Criminal Cases Outside the Court

Penal mediation is one way of handling criminal cases by directing the resolution of criminal acts from non-litigation path litigation. This mediation of punishment arises from the weaknesses found in the judicial process in Indonesia and the culture of the community in solving problems.

Penal mediation or often referred to as various terms, including mediation in criminal cases or mediation in criminal matters, has developed in Indonesia. In Dutch terms, mediating penalties is called *strafbemiddeling*. Whereas in German terms it is called *Der Außergerichtliche Tataus-gleich* and in French terms it is called *de mediation pënale*. In addition, because in conducting the mediation process, the mediation of justice brings

the victim and perpetrator together, the mediation of punishment is often referred to as Victim Offender Mediation, *Täter Opfer-Ausgleich*, or Offender Victim Arrangement (Nawawi Arief, 2007: 1).

One expert, Widman (2006: 61), defines "mediation as a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute in order to settle the case without going through the courts".

Whereas the mediation of the position of penal as an instrument for the settlement of criminal cases can be placed in two categories, namely on the one hand as the settlement of disputes or criminal case disputes that are alternative to the conventional criminal justice system and vice versa on the other side as part of the conventional criminal justice system which during this provides legal protection for the interests of victims (Luthan, 2013: 45).

There are three important reasons for mediating penalties to be included in the criminal justice system, namely: First, criminal mediation has a potential impact in reducing and controlling the accumulation of criminal cases in court and providing alternatives to traditional criminal prosecution in the form of mediation. Second, mediation can be reconciled (plea cases) which are converted into traditional plea bargaining. So that the prosecutor and the accused are expected to be able to reach a fairer agreement in some cases which can be turned into traditional agreements by using neutral and independent mediators. Third, mediation facilitates interaction between victims and perpetrators after mistakes have been determined in the adjudication process (Simms, 2007: 2).

In the development of the idea of mediation, penal is often associated with the emergence of the idea of restorative justice. This view stems from a new paradigm of the nature of crime and the reaction to crime itself. Crime is not seen solely as a violation of abstract laws, but rather the violation of relations between individuals (Nawawi Arief, 2012: 16). Besides mediation, penal is often associated with alternative dispute resolution in civil cases.

The birth of penal mediation in criminal law is related to the problem of pragmatism and the ideas of penal reform which among others are oriented to the protection of victims, the idea of harmonization, the idea of restorative justice, the idea of overcoming power or formality in justice, the idea of avoiding the negative effects of the criminal justice system and the system current penalties, especially imprisonment (Nawawi Arief, 2012: 18).

Aside from the ideas of criminal law reformation above mediation of penalties also born as an embodiment of local wisdom in customary law in Indonesia which is based on cosmic, magical, religious realms (Nawawi Arief, 2012: 20). So basically mediation of the law is a legal culture that actually has been born from the community itself and has long been adopted by some people in Indonesia as an alternative solution to criminal acts.

Basically there are 2 (two) types of criminal proceedings. First, namely the solution by reasoning. In an attempt to prosecute, the criminal acts carried out in the settlement are directed to take legal proceedings in accordance with the applicable laws and regulations, in other words the criminal effort is resolved through the courts. Second, non-penal efforts. Non-penal efforts prioritize preventive measures that are preventative against criminal acts that might occur (Nawawi Arief, 2002: 42).

According to Barda Nawawi Arief, penal mediation is often referred to by various terms, including: "Mediation in criminal cases" or "Mediation in penal matters" which in Dutch terms is called *strafbemiddeling*, in German terms it is called "*Der*

Aubergerichtliche Tatausgleich" and in French terms it is called "*de mediation penale*". Because penal mediation mainly brings the perpetrators of crimes and victims together, this mediation is often also known as "Victim Offender Mediation" (VOM), Tater Opfer Ausgleich (TOA), or Offender victim Arrangement (OVA) (Nawawi Arief, 2012: 1).

According to Martin Wright defines mediation as a process in which the victim (victims) and the perpetrator (perpetrators) communicate with the help of an impartial third party, either directly (face to face) or indirectly through a third party, enabling / enabling victims express the needs and feelings and needs of their perpetrators to accept and act based on their responsibilities (Suseno et al, 2013: 44).

According to Stuart M. Widman formulating criminal mediation as a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute, whereas according to Mark William Baker penal mediation is a process of bringing victims and perpetrators - the perpetrators together to reach a reciprocal agreement with restitution as a foothold of the norm (Suseno et al, 2013: 45).

According to Hasan Alwih (2015: 892) in the Large Indonesian Dictionary, it provides a limitation that "mediation is the process of involving a third party in settling a dispute as an advisor. The mediator is an intermediary (liaison, mediator) for the parties to the dispute ". The definition of mediation given by the Big Indonesian Dictionary contains three important elements. First, mediation is the process of resolving disputes or disputes that occur between two or more parties. Second, parties involved in dispute resolution are parties from outside the disputing party. Third, the parties involved in resolving the dispute act as advisors and do not have any authority in decision making.

In principle, criminal acts that occur in the community can be resolved in 2 (two) ways. First, through a penal effort, the criminal act carried out is directed to take a legal process in accordance with the applicable laws and regulations, in other words the estuary of the penal effort is the litigation process. Secondly, through non-penal efforts that are more prioritizing the nature of prevention (preventive) against crime that occurred (Nawawi Arief, 2002: 42).

According to Christopher W. Moore, mediation is an intervention in a dispute or negotiation by a third party that can be accepted by the disputing party, is not part of both parties and is neutral. This third party does not have the authority to make decisions. He was tasked to help the warring parties to voluntarily reach agreement agreed to be received by each party in a dispute (Usman, 2003: 80).

There are three reasons for the urgency of criminal mediation to be included in the criminal justice system, namely: first, criminal mediation has a huge potential impact in reducing and controlling the accumulation of criminal cases. Mediation quickly settles disputes and often results in perpetrators avoiding criminal charges, and victims receive restitution by agreement in mediation. Second, mediation can be reconciled (plea cases) which are changed to traditional plea berganing, thus forming a criminal mediation model that is used as an alternative means of case resolution to reduce the burden of the criminal justice system. Third, mediation facilitates victim-offender interaction after errors are determined in the adjudication process (Suseno et al, 2013: 45).

Although Indonesia does not recognize the existence of criminal mediation in the criminal justice system in Indonesia, in practice many criminal cases are settled through mediation of penalties, which are law enforcement initiatives as part of the settlement of cases, especially civil cases (Mansyur, 2013: 80).

Penal mediation is one way of handling criminal cases by directing the resolution of criminal acts from non-litigation path litigation. This mediation of penalties arises due to the weaknesses found in the judicial process in Indonesia and the culture of the

community in solving problems.

Penal mediation or often referred to as various terms, including mediation in criminal cases or mediation in criminal matters, has developed in Indonesia. In Dutch terms, mediating penalties is called *strafbemiddeling*. Whereas in German terms it is called *Der Außergerichtliche Tataus-gleich* and in French terms it is called *de mediation pēnale*. In addition, because in conducting the mediation process, the mediation of justice brings the victim and perpetrator together, the mediation of punishment is often referred to as Victim Offender Mediation, *Tter Opfer-Ausgleich*, or Offender Victim Arrangement (Nawawi Arief, 2007: 1).

One expert, Widman (2006: 61), defines "mediation as a process by which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute in order to settle the case without going through the courts".

There are three important reasons for mediating penalties to be included in the criminal justice system, namely: First, criminal mediation has a potential impact in reducing and controlling the accumulation of criminal cases in court and providing alternatives to traditional criminal prosecution in the form of mediation. Second, mediation can be reconciled (plea cases) which are converted into traditional plea bargaining. So that the prosecutor and the accused are expected to be able to reach a fairer agreement in some cases which can be turned into traditional agreements by using neutral and independent mediators. Third, mediation facilitates interaction between victims and perpetrators after mistakes have been determined in the adjudication process (Simms, 2007: 2).

In the development of the idea of mediation, penal is often associated with the emergence of the idea of restorative justice. This view stems from a new paradigm of the nature of crime and the reaction to crime itself. Crime is not seen merely as a violation of abstract laws, but rather the violation of the relationship between individuals (Nawawi Arief, 2012: 16). Besides mediation, penal is often associated with alternative dispute resolution in civil cases.

CONCLUSION

Penal mediation is in accordance with the view of progressive law in criminal law so that Penal Mediation is progressive (a step forward) in Indonesian criminal law. It can be seen that mediation of penalties in Indonesia is very accommodating of the values contained in the community, and resolving both civil and criminal cases with Penal Mediation is not new, this is evidenced by the settlement by deliberation approach. Law Number 11 of 2012 concerning the Juvenile Criminal System. Referring to Article 1 paragraph 7 of Law Number 11of 2012 concerning Diversity. Where the definition of diversion is the transfer of the settlement of the case of children from the criminal justice process to processes outside of criminal justice. But in reality it only exists in the juvenile justice system, for the most part there are no rules governing mediation in the justice system. But in reality this mediation of punishment itself was used by the Semarang Police District Police to resolve cases that were considered ineffective if they continued until the trial. Mediation itself is actually more effective if done at the police level, because at the police level it is easier to carry out the mediation process, it is different if the file has been p-21 and has been submitted to the court, it is already difficult to do mediation. The purpose of the mediation of this penalty itself is to suppress the trial files that have accumulated in the court. And it is hoped that by holding a mediation of the penalties in handling cases of groundbreaking cases in

Semarang Police District can find a win-win solution for both parties. This is where the law looks for humans, not humans for law.

The implementation of penal mediation at Semarang Police Station has been effective, especially in the Semarang Police PPA Unit. The settlement of cases of domestic violence through mediation at the Semarang Police Station is carried out at the investigation stage, because the mediation process at the investigation stage, the police acts as the facilitator or mediator of the parties , the tendency to give authority through mediation can be seen from a number of realities of domestic violence cases in the 2016-2017 range which in the follow-up to cases of violence reported at the PPA Polrestabes Semarang unit, out of 32 cases, 11 cases remain unresolved, unresolved here which is intended is that the complainant is not cooperative towards his claim and has never come to Semarang Police Station or the reporter withdraws his claim before mediation is held, 21 cases are resolved by mediation at the Semarang Polrestabes PPA Unit. There are several stages of settlement through mediation, namely the initial stage after receiving a report later, the investigator prepares a room to invite or come to the reporter for questioning about the case, after listening to the chronology of the case, the investigator goes to the implementation stage which concludes whether the problem is a mild case. or not, then the investigator provides a view of the reporter regarding whether or not the problem needs to be further processed. The settlement phase resolves the problem through mediation in accordance with the prevailing norms after an agreement between the two occurs, the reporter withdraws the complaint report against the perpetrator. When the victim withdraws the complaint report there will be an additional examination in the form of a BAP, the purpose of the peaceful examination is to explore information about the reasons underlying the victim to withdraw the complaint. After the minutes of the investigation of the victim for the withdrawal of the complaint report against the perpetrators, the investigator then summoned and reunited the two parties again to make a peace format included a stamp, witnesses in the peace format must be neutral people from the victim and the perpetrator. In the compilation of a peace format the wishes of the victims towards the perpetrators can be poured into the contents of the peace. For example, by saying an apology from the perpetrator, and accompanied by the fulfillment of the actions desired by the victim. The mediation settlement is chosen by the victim in the hope that the perpetrators are aware and willing to stop the violence. After the completion of the case by using mediation of the law does not necessarily cause the perpetrators to be free from lawsuits, the peace agreement in mediating the penalties caused several legal consequences, namely: The obligation to report every Monday and Thursday to the Semarang Police, and the perpetrators must comply with all reported wishes agreed by the two parties.

Penal mediation and possible enforcement in criminal justice in Indonesia. When viewed in judicial practice, Penal Mediation is very possible in the resolution of criminal cases at the investigation level, even though there are actually no legal rules governing mediation in the trial, but when there are ideas for reform of criminal law (penal reform), and are associated with problems pragmatism. The background of the ideas of "reform" include the idea of victim protection, the idea of harmonization, the idea of restorative justice, the idea of overcoming rigidity / formality in the prevailing system, the idea of avoiding the negative effects of the criminal justice system and the existing criminal system, especially in finding other alternatives to imprisonment (alternative to imprisonment / alter-native to custody). The background of pragmatism is, among others, to reduce the stagnation or the problem of court case overload, to simplify the judicial process. So it is very possible to use the mediation of penalties in the criminal justice process in Indonesia as in RKUHP Article 145 explained in its sub-

section that one of the authorities of the prosecution is by way of settlement outside the process, from the provisions of the RKUHP it is possible to settle criminal cases outside the court. However, if it is within the scope of the police, then mediation of penalties is very possible in efforts to resolve criminal cases.

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QUOTE

The unforgivable crime is soft hitting. Do not hit at all if it can be avoided; but never hit softly.

Theodore Roosevelt