

The Reconstruction Of Penal Mediation Model In The Settlement Of Criminal Case With Civil-Law Agreement Aspect In Indonesian Criminal Justice System

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Abstract

The Indonesian criminal justice system based on the Code of Criminal Procedure (KUHAP) has reduced or even eliminated the important role of individual in the settement of criminal case with civil-law agreement aspect. The search for justice in criminal case with civil-law agreement aspect fully relies on the ability of the integrated system built by the police, judge and penal institution. On the other hand, the result of the effort done outside the court, such as the results of the negotiation and peaceful settlement, do not have the legal power to be used as the consideration for trial process. The settlement of the criminal case with civil-law agreement aspect through the criminal justice process always ends in the situation of "lost-lost" or "win-lost". Therefore, it is necessary to create an alternative concept for the settlement of criminal case with civil-law agreement aspect through penal mediation in order to make win-win solution. In order to develop and reform the Indonesian criminal law, it is necessary to carry out a research into the ideal reconstruction of penal mediation model as an alternative of the settlement of the criminal case with civil-law agreement aspect in the future criminal justice system of Indonesia. According to the result of research and analysis, the reconstruction of penal mediation process as an alternative for the settlement of criminal case with civil-law agreement aspect in the future Indonesian criminal justice system is to develop the model of criminal case settlement which can be done by offering two alternatives: criminal justice process or penal mediation. The mechanism of the settlement through the penal mediation can be done through the settlement pattern using the adat law or national law. The settlement of criminal case with civil-law agreement aspect through penal mediation by using the mechanism of adat law is aimed at preserving and acknowledging the existing adat law in Indonesia.

Keywords: Reconstruction, Penal Mediation, Criminal case with Civil-Law Agreement Aspect, Criminal Justice System

1. Introduction

The essence of the national development is the development aimed at producing the true Indonesians and all Indonesians in order to realize justice, prosperity and peaceful Indonesian community in material and spiritual sense based on the Pancasila principles and the 1945 Constitution.

One program in the national development is known as the law reform. The reform of the national laws is carried out thoroughly and integratively, including both private and civil law. The development also covers the material law and the formal one.

The enforcement of criminal law is essentially a part of criminal policy and the latter is actually a part of social policy. That policy is further implemented in criminal justice system. According to Muladi, the criminal justice system has double functional-dimensions. At one side, the system functions as the public facility to prevent and control crime at a certain level (crime containment system). At the other side, criminal justice system also functions as secondary prevention aiming at preventing crime among the former criminal and those having intention to commit crime. These containment and prevention are carried out through detection process, sentencing and the penal execution (Muladi, 1995).

Criminal law is often used to settle social problem, especially crime prevention. That practice is in line with the function of law as a tool of social control as previously planned process and aimed at suggesting, asking, ordering or even forcing the members of the community to obey legal norms and existing rules of law (Soemitro, 1984).

As time goes by and in line with dynamics of the Indonesian community as well as world dynamics in general, crimes have also developed into more complicated form, qualification and the results that they can cause have also changed. Juridically, there is sometimes a legal binding made by two parties which seems to be an individual contract, but it is actually a crime. Legal events in forms of contracts made by two individual or more, such as cooperation contract, loan agreement, transaction agreement, leasing agreement and so on, may involve bad intention or dishonesty of one party in its arrangement. The agreement is made as a modus to cover criminal intention, such as conceiving lies, tricks or hiding some defects in order to convince other party to sign the agreement. In this way, fraud is committed, document is falsified and embezzlement may be committed.

Consequently, the party who intentionally breaks the agreement on the basis of bad intention or dishonesty will be tried in the criminal court. If such cases are brought to the criminal court, the accused will be examined and tried through the criminal justice process in the criminal justice system according to the general principles of the criminal law. If the accused is proved to be guilty, a sanction will be imposed.

The common application of the criminal justice system as a tool to distribute justice is often regarded unfair by all parties. The reason of it is that the existing criminal justice system is fully burdened by formality, procedure, bureaucracy, tight methodology and the application of the same process for all kinds of problem. One basic of formal justice is repressive action of the police which is usually continued to the trial process in the court. That formal litigative-action often depends on the coercive effort and the authority of law enforcement officials handling the matter. Even if a result is made, it is generally a "lost-lost" situation or a "win-lost" situation.

The Indonesian criminal justice system based on the Code of Criminal Procedure (KUHAP) has reduced or even eliminated the important role of individual in settling criminal case. The search for justice in criminal case fully relies on the ability of an integrated system built by the police, office of the general prosecutor, the court and penal institution. On the other hand, the result obtained from the out-of-court process, such as the result of negotiation and peace agreement, does not have the legal power to be used as material for consideration in the court trial.

Within this context, the effort for the search of justice cannot only rely on the state, but also the competitive relation and social cooperation. It is because the justice given by the state does not often fulfill the hope of the justice seekers. Besides, justice may be deemed different from the perspective of individuals with different needs and interest.

Referring to the existing reality, the agreement of the conflicting parties is the only way to realize fair procedural-justice and restorative justice in the settlement of the criminal case with civil-law agreement aspect. It is important to prioritize a mechanism having the capability to negotiate different interests and produce a decision agreed by all parties (the offender and the victim) to settle criminal case with civil-law agreement aspect instead of criminal justice process. The victim and the offender can make a peaceful agreement in which the offender agree to compensate for the loss suffered by the victim and consequently, it is not necessary to carry out a criminal justice process. One of the concepts to realize that idea is the mediation system as an effort to settle case outside the court which is known as alternative dispute resolution (ADR) in the realm of the private law. The birth of the concept on the importance of the alternative settlement of criminal case with civil-law agreement aspect through penal mediation is stimulated by the effort to realize win-win solution or mutual acceptable solution.

Historically, a similar concept to the penal mediation effort has long been known as the local wisdom in the community of the Indonesian adat law. Such a local wisdom is built on the foundation of cosmic, magical and religious thoughts. The settlement of criminal case through mediation (peace agreement) has long been known in Indonesia and it is a part of the tradition, such as in the adat community of Banjar, South Kalimantan, the Dayak tribe of Kalimantan, the Kei of the South East Molucca, Aceh and so on.

In the traditional community, the arising conflict as the consequence of the interaction among the members of the community is commonly settled through the consultative meeting and peaceful settlement in order to avoid revenge, shameful feeling, guilty feeling as well as preventing new conflict. All process of the conflict settlement are aimed at restoring the balance and the peace in the community. In the traditional community, the settlement of the criminal case through the peace settlement still exists because the peace has a high value.

The development of the concepts on penal mediation can also be seen in the result of international conferences producing various recommendations and guidance for any countries practicing penal mediation as the media for criminal case settlement, such as :

1. The 9th UN Congress in 1995, especially related to the management of criminal justice (document A/CONF 169/6) stipulating the necessary for all countries to consider "privatizing some law enforcement and justice functions" and "alternative dispute resolution (ADR)" in forms of mediation, conciliation, restitution and compensation in criminal justice system.

2. International Penal Reform Conference held in 1999 proposes that : “the key elements of a new agenda for penal reform, the need to enrich the formal judicial system with informal, locally based, dispute resolution mechanisms which meet human rights standards” identifying nine development strategies for the reform of criminal law through the development of restorative justice, alternative dispute resolution, informal justice, alternatives to custody, alternative ways of dealing with juveniles, dealing with violent crime, reducing the prison population, the proper management of prisons dan the role of civil in penal reform.
3. The 10th UN Congress in 2000 (document A/CONF. 187/4/Rev.3), states that to protect the victim of crime, mediation and restorative justice mechanism should be introduced.

There has been a theorization proposing that the goal of the sanction and sentencing is the conflict settlement, the elimination of the offender’s guilty feeling and creating peace in the community. The development of theorization on the goals of sentencing appears in the draft concept of Indonesian Criminal Code covering (1) The prevention of crime by enforcing legal norm for protecting the community; (2) Socializing the convicts through education in order to make them better individuals and resourceful; (3) Settling the conflict caused by crime, restoring the balance and creating peace in the community; (4) Eliminating the offender’s guilty feeling.

Referring to the goals of sentencing in the draft concept of the Criminal Code, the team of lawmakers has accommodated the existing and developing law in the community taken from the adat law and religious norms. Generally, community upholds the importance of the peace and consequently the settlement of the criminal case through the peace agreement is common although such a process is not regulated by the laws.

The concept on the settlement of the criminal case with civil-law agreement aspect through penal mediation is relatively new because the Criminal Code and the Code of Criminal Procedure as well as other laws related to criminal matters have not regulated the settlement of criminal case with civil-law agreement aspect through penal mediation. The idea on the settlement of the criminal case with civil-law agreement aspect through penal mediation is relatively new. It is because the Criminal Code and the Code of Criminal Procedure as well as other laws and regulations regulating criminal matter have not regulated settlement through penal mediation for criminal case with civil-law agreement aspect. Therefore, when there is an intention for settling criminal case with civil-law agreement aspect through penal mediation, there are no laws regulating it. In line with the reform of the Indonesian Criminal Code, it is necessary for the researcher to carry out the study into the idea of reconstruction on penal mediation model as an alternative for the settlement of criminal case with civil-law agreement aspect in future Indonesian criminal justice system.

2. Research Methodology

This is a qualitative research employing legal normative-approach. Legal normative-approach is a procedure of scientific research in order to find the truth based on the logic of legal science seen from its normative side (Ibrahim, 2010).

The normative legal-research is employed because the research departs from the analysis into the laws and regulations providing ways for reconstructing the penal mediation model as the alternative for the settlement of criminal case with civil law agreement aspect in Indonesian criminal justice system.

The legal materials used in this research are primary legal materials in forms of the Indonesian laws and regulations as well as bylaws related to the research. The research also uses secondary materials and tertiary ones.

All collected legal materials are processed and analyzed through juridically qualitative way in order to find the answers for the problems of the research.

3. Result of Research and Discussion

The settlement of the criminal case with civil-law agreement aspect is not a simple process because it involves components of criminal justice system. There are many stages to go through and it takes time as well as a lot of money to settle criminal case with civil-law agreement aspect. This is in line with the statement of M. Yahya Harahap saying that the settlement of the criminal case through crime trial process has some weaknesses, such as:

The settlement of the case takes a longtime (the system has an inherent delay), time wasting, very expensive, creating animosity, disputing over the past instead of talking about the future and paralyze the parties (Harahap, 1997).

On the other hand, the court as an institution in the criminal justice system in which people hope to conduct a simple trial, quick and less expensive as regulated in the Article 2, point (4) of the Act Number 48 of 2009.

The settlement of criminal case with civil-law agreement aspect through the criminal justice process focuses mostly on the offender, but at the same time, it does not pay attention nor involve the interest of the victim

suffering from the material loss caused by the offender's conduct. The role of the victim in the settlement of the criminal case with civil-law agreement aspect through the criminal justice process fully relies on the ability of integrated system built by the police, the office of the public prosecutor and the court. This reduces or even eliminates the important role of individual in settling criminal case.

The effort in searching for justice in the settlement of the criminal case with civil-law agreement aspect cannot merely rely on the criminal justice process. It must be carried out through the settlement involving conflicting parties and the neutral third parties or the case settlement through penal mediation.

The settlement of the criminal case with civil-law agreement aspect is principally similar with the peace process in the conflict settlement commonly found in the adat community of Indonesia. The penal mediation process is relatively cheaper, quicker and more efficient because the procedure of penal mediation is not as complicated as the bureaucratic criminal justice process. The commitment of the offender and the victim for settling the case as quick as possible makes quicker and more efficient penal mediation.

Penal mediation is the settlement of criminal case through consultative meeting by involving neutral mediator attended by the offender and the victim. The conflicting parties can attend the process alone or accompanied by their respective family and community leaders. It is a voluntary process and aimed at restoring the victim, offender and the community where they live.

If we relate penal mediation to the values of the Pancasila, it can be concluded that consultative meeting in penal mediation is held with the spirit and based on the 4th principle of Pancasila : "Democracy guided by the inner wisdom in the unanimity arising out of deliberations amongst representatives." The goal of the restoration for the victim, offender and the community through restorative justice contains values of the second principle of Pancasila : "Just and civilized humanity". On the other side, the legal goal pursued through the penal mediation is the social justice reflected in the 5th principle : "Social justice for all Indonesians."

Restorative justice is the concept of thought responding the development of criminal justice system placing the gravity on the importance of involving the victim, offender and the community neglected by the mechanism of the existing criminal justice system. On the other hand, restorative justice is also a new frame of thought that can be used by law enforcement officials to respond to a criminal conduct.

The settlement of criminal case with civil-law agreement aspect employing restorative justice approach offers different perspective and approach in understanding and handling a criminal case with civil-law agreement aspect. According to the perspective of restorative justice, the meaning of criminal case is actually similar with the general principle of criminal law: the attack against individual and the community as well as communal relationship. The difference is that the main victim of the crime according to restorative justice principle is not the state which is found in the existing criminal justice system. Therefore, crime creates an obligation to restore the broken relationship caused by a crime act. On the other hand, justice is understood as the process for searching the solution of the problem caused by a crime in which the involvement of the victim, offender and community is important for restoring, reconciling and assuring the continuity of the restoration.

Penal mediation is a mediation for settling the criminal case with civil-law agreement aspect through the consultative meeting by the assistance of neutral mediator attended by the victim and the offender. The conflicting parties can attend the process alone or accompanied by their respective family and community leaders. It is a voluntary process and aimed at restoring the victim, offender and the community where they live.

The mediation for criminal case can be done directly or indirectly. All parties can sit face to face to solve their case or the parties can use mediator to settle their case. The latter choice does not require the parties to meet face to face. Mediation can be conducted by professional mediator or trained volunteer. Furthermore, it can be conducted under the supervision of the criminal justice institution or an independent community-based organisation. When the mediation is done, the result must be reported to the criminal justice authority.

The relationship between penal mediation and restorative justice is that restorative justice theory is the foundation of penal mediation. It means that restorative justice is the paradigm facilitating the mechanism of penal mediation.

Still related to restorative justice, the UN ECOSOC accept The Resolution 2002/ 12 on "Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters" on July 24, 2002. According to that resolution, restorative justice is an approach that can be used in rational criminal justice system. This is in line with G.P. Hoefnagels' theory of "*a rational total of the responses to crime*" (Muladi and Arief, 1992). The restorative justice approach is a paradigm that can be used as a frame of the strategy for the settlement of criminal case aimed at responding to the unsatisfaction towards the work of the existing criminal justice system.

The comprehension on restorative justice as a new approach employed in the settlement of criminal case described in Dignan's definition as follows:

Restorative justice is a new framework for responding to wrongdoing and conflict that is rapidly gaining acceptance and support by educational, legal, social work, and counseling professionals and community groups. Restorative justice is a valued-based approach to respond to wrongdoing and conflict, with a balanced focus on the person harmed, the person causing the harm, and the affected community (Muladi & Arief, 1992).

The definition requires a certain condition placing restorative justice as the basic value used for responding a criminal case with civil law agreement aspect. In this case, there should be balance of the attention focus between the offender's interest and the victim's as well as the calculation of the impact resulting from the process for the community. The application of this requirement is not easy because the mainstream perspective of the law enforcement officials on the existing criminal justice system is conventional. According to Mark Umbreit (1999) :

Restorative justice provides a very different framework for understanding and responding to crime. Crime is understood as harm to individuals and communities, rather than simply a violation of abstract laws against the state. Those most directly affected by crime -- victims, community members and offenders -- are therefore encouraged to play an active role in the justice process. Rather than the current focus on offender punishment, restoration of the emotional and material losses resulting from crime is far more important.

The weakness of the existing criminal justice system mentioned above lies in the obstructed roles of the victim and the community. Consequently, their roles are neglected. On the other hand, the model of the settlement of criminal case using restorative justice approach rises their important roles.

To settle criminal case with civil-law agreement aspect, restorative justice can be applied through the mechanism of penal mediation. Such a mechanism involves consultative meeting assisted by the neutral penal mediator and the presence of the victim and the offender. The conflicting parties can attend the process by themselves or accompanied by their respective family and community leaders (religious leader, community leaders, the prominent figure of adat community and so on). It is a voluntary process and aimed at restoring the victim, offender and the community where they live. The settlement of the criminal case with civil-law agreement aspect can have positive impact because :

1. It can settle the criminal case with civil-law agreement aspect more quickly and relatively more cheaply than the settlement through the crime trial process.
2. Focusing the real attention on the interest of the victim and the offender as well as their emotional and psychological needs. The focus is not only directed towards their legal rights and obligations, but also the chances for the victim and the offender to directly participate in informal activities for settling their conflict.
3. Provide the opportunity for the victim and offenders to arrive in a consensus for doing the process and implement the result.
4. Creating the reliable result and mutual understanding between the victim and the offender because they decide the settlement by themselves.
5. It can eliminate the conflict or animosity which often arises along with coercive decision made by the judge in the court.

Seeing that the theory of penal mediation has considerably advanced, it is necessary to reconstruct the model of settlement for criminal case with civil-law agreement aspect in order to build an effective and efficient criminal justice system.

If penal mediation can be used as an alternative for the settlement of criminal case with civil-law agreement aspect, a reconstruction on the settlement model of criminal case with civil-law agreement aspect happens. It means the construction of the settlement for criminal case with civil-law agreement aspect in the future will be different from nowadays.

The reconstruction of the model of criminal case settlement is actually to develop or reorganize the existing settlement model in order to reform or restore it to adapt it to the development and the need of the community.

The reconstruction concept of the settlement model for criminal case with civil-law agreement aspect is actually an effort to form or arrange a relatively new model different from the existing one. In other words, it is aimed at developing or arranging a new model which is relatively different from the existing model at present.

The conflict between the offender and the victim caused by the criminal case with civil-law agreement aspect is actually the clash of interest among all parties (offender and victim) caused by written agreement to do certain legal activities, such as cooperation contract, loan agreement, transaction agreement, leasing agreement and so on. Such written materials are accompanied by falsification of letters, fraudulence or embezzlement. According to the existing law and regulations, the model settlement of criminal case with civil-law agreement aspect is

similar to common criminal case which is through the criminal justice process based on the Code of Criminal Procedure (KUHAP).

By doing a reconstruction on the model of settlement for criminal case with civil-law agreement aspect, a new model of settlement for criminal case with civil-law agreement aspect will be formed. The reconstruction on the model settlement for criminal case with civil-law agreement aspect is urgent because the existing criminal justice system is full of formality and procedural matter. Therefore the process takes a long time and costs a lot of money. Besides, it focuses mostly on the offender and consequently, eliminates the important role of individuals in settling a criminal case. On the other hand, the results often cannot satisfy the victim, the offender and the community.

Marc Galenter (2000) states that the settlement of conflict/ dispute in a community can be conducted anywhere and it can not only be done by the court, but also any forums in the community based on indigeneous law.

The settlement of conflict in the community does not always require the trial procedure in the court. The conflicting parties have choices whether they want to settle their conflict in the court or outside court according to their culture. All parties have freedom to make the choice on strategict action taken to settle dispute/ conflict in order to achive their expected goals.

According to Nader and Todd (1978), there are possibilities for the settlement of case practiced in the world : "adjudication, negotiation, coercion, avoidance, lumping it". On the other hand, Robert states that there are four models of conflict/ dispute settlement : negotiation, mediation, arbitration and adjudication (Nurjaya, 2006).

According to the models metioned above, generally, the settlement of conflict/ dispute in the community can be classified into trial settlement (litigation) and out-of-court settlement (non-litigation).

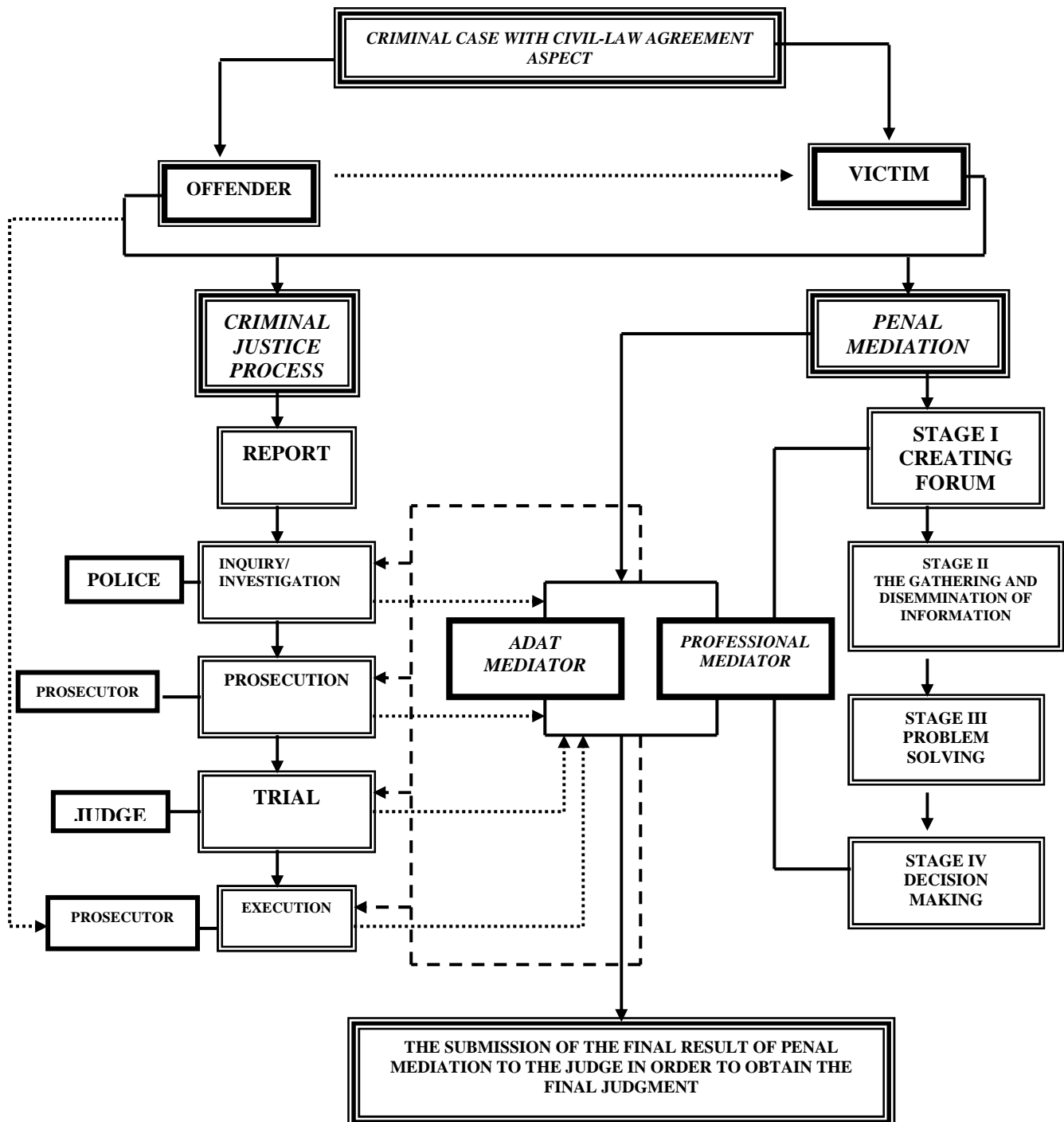
When the criminal justice system cannot provide justice according to the hope of the conflicting parties, they can search for other alternative for the settlement. In the settlement of the criminal case with civil-law agreement aspect, all parties (the offender and the victim) have the rights to choose the mechanism of settlement according to their hope in order to achieve justice.

In the reform of the future national criminal code, it is necessary to carry out reconstruction on the settlement model for the criminal case with civil-law agreement aspect accommodating the settlement through the criminal justice process and penal mediation. The construction of the settlement of criminal case with civil-law agreement aspect in the future criminal justice system should provide two alternatives: criminal justice process and penal mediation.

If the penal mediation is chosen, all parties can still choose the suitable pattern of settlement according to the condition of the local community. They can choose penal mediation through the adat law mechanism or through the national law mechanism arranged by the state. The choice is fully based on the agreement between the victim and the offender.

The settlement of the criminal case with civil-law agreement aspect through penal mediation employing the adat-law mechanism is aimed at preserving and recognizing the presence of the adat law in the adat community of Indonesia. The adat leader chosen as the penal mediator is known as the adat mediator. If the parties choose the national-law mechanism arranged by the state, the penal mediator will be the certified and professional one.

The reconstruction model for future settlement of criminal case with civil-law agreement aspect can be studied in the chart flow as follows :



According to the chart flow described above, it can be explained that the future settlement model for the criminal case with civil-law agreement aspect can be conducted through criminal justice process or penal mediation. The decision on the settlement model for the case is based on the agreement between the offender and the victim.

The agreement between the offender and the victim to choose the settlement for criminal case with civil-law agreement aspect through penal mediation can be done before or during the settlement through criminal justice process. It means that the offender and the victim can make an agreement to choose the settlement model of the criminal case with civil-law agreement aspect through penal mediation before or during the investigation, prosecution or court examination or even after the execution of the verdict.

If the offender and the victim agree to choose the settlement of their case through penal mediation, the settlement through the criminal justice process will be stopped on the basis of letter of the court's decision.

The settlement of the criminal case with civil-law agreement aspect through penal mediation involves the agreement between the offender and the victim. It means that the offender and the victim can make an agreement to choose the settlement model of the criminal case with civil-law agreement aspect through penal mediation before or during the investigation, prosecution or court examination or even after the execution of the verdict.

The settlement of the criminal case with civil-law agreement aspect through penal mediation can be done by modifying or combining the models of penal mediation in the *Explanatory memorandum* of the European Council's Recommendation No. R (99) as follows:

1. Penal mediation at the investigation stage

Penal mediation at the investigation stage can employ the combination of informal mediation, traditional vilage or tribal moods, victim-offender mediation dan reparation negotiation programmes to settle criminal case with civil-law agreement aspect. At this stage, the work of penal mediation is as follows :

- 1.1. After observing and studying a case or a crime act committed by the offender with criteria showing the characters of the criminal case with civil-law agreement aspect, the investigator summons the offender and the victim to offer the alternative settlement outside the court. It is through penal mediation based on the adat law or national law.
- 1.2. Penal mediation must be done voluntarily by all parties. If the offender or the victim agrees to conduct a mediation, the investigator will inform the parties and tell them the about the adat mediator or professional mediator who will assist them to settle the case.
- 1.3. Penal mediators (the professional and the adat) are provided by the investigators.
- 1.4. Penal mediation is conducted confidentially. All things happening and statements appearing during the mediation must be kept as secrets by all parties, including the penal mediator. The penal mediator cannot be the witness on things happening during the mediation and the cause of the failure of mediation in a trial process when a mediation fails.
- 1.5. During the penal mediation, the offender and the victim are facilitated in a meeting to find "win-win" solution. The victim can ask the offender to compensate for the material loss facilitated by the mediator.
- 1.6. If agreement is reached in the mediation, the penal mediator tells the investigator about it. The compensation for the loss must also be reported.
- 1.7. The agreement on penal mediation is a final decision and this must be reported to the court in order to be approved as the reason for the cancellation of prosecution.
- 1.8. Agreement between two parties is the reason for the investigator to discontinue the procees of the case-handling to the prosecutor.

2. Penal mediation in the prosecution stage

Penal mediation in the prosecution stage is a combination of penal-mediation model : *informal mediation, traditional vilage or tribal moods, victim-offender mediation and reparation negotiation programmes*. The implementation of penal mediation in the prosecution stage can be described as follows :

- 2.1. The general prosecutor studies the case and its civil-law agreement aspect. Afterwards, the prosecutor can offer the case settlement through penal mediation to the offender and the victim.
- 2.2. Penal mediation is conducted based on the voluntary approval of the offender and the victim. If all parties agree to conduct a mediation, the agreement for the penal mediation is reported to the public prosecutor.
- 2.3. The public prosecutor can act as a mediator , or the mediator of customary law or certified professinal mediator can be appointed by the prosecutor.
- 2.4. The penal mediator facilitate the meeeeting between the offender and the victim.
- 2.5. The mediation process is conducted secretly and consequently all things happening and all statements coming out during the mediation is not opened to the public by all parties.

- 2.6. Penal mediation involves reconciliation and the offender agrees to take step for paying the compensation to the victim.
 - 2.7. If the penal mediation cannot reach the agreement, the criminal case with civil-law aspect will be submitted to the court to be examined and to be prosecuted. In this way, the penal mediator is not allowed to witness for the disagreement of the penal mediation and any activities during the penal mediation.
 - 2.8. If the penal mediation results to the agreement between the perpetrator and the victim, the letter of agreement binds the parties after the court legalizes it. Besides, a further prosecution must not be conducted and the final result of the agreement can be the basics for the reasons of prosecution cancellation.
3. Penal mediation during the examination in the court
- Penal mediation conducted in court-examination stage is a combination of victim-offender mediation model, traditional vilage model or tribal moods model, and reparation negotiation programmes model. Penal mediation can be implemented as follows :
- 3.1. After studying the case and crime conduct committed by the accused, the judge can offer penal mediation as the alternative settlement of the criminal case in a peaceful way for the offender and the victim.
 - 3.2. If the offender and the victim agree, voluntary agreement is arranged between the offender and the victim.
 - 3.3. The judge can act as the penal mediator or appoint a customary-law mediator or reliable and certified penal mediator from outside the court.
 - 3.4. The penal mediator facilitates the meeting between offender and the victim in which reconciliation is held and compensation for the loss is paid.
 - 3.5. The mediation process is conducted secretly and consequently all things happening and all statements coming out during the mediation is not opened to the public by all parties.
 - 3.6. If the penal mediation cannot reach the agreement, the court examination is continued until judge reaches the verdict.
 - 3.7. If the penal mediation results to the agreement between the perpetrator and the victim, the letter of agreement binds the parties after the court legalizes it. Besides, a further prosecution must not be conducted unless the offender fails to fulfil his or her obligation as stated in the agreement.
4. Penal mediation at the stage of execution of the court's decision
- The penal mediation conducted at the stage of execution of the court's decision or during the imprisonment of the offender is the combination of *victim-offender mediation model*, *traditional vilage model or tribal moods model*, and *reparation negotiation programmes model*.
- The penal mediation at this stage functions as the reason for the authority's cancellation on the execution of the court's decision :
- 4.1. For criminal case with civil-law agreement aspect, the offender can offer the penal mediation to the victim in order to eliminate the execution of the court's decision.
 - 4.2. If the victim agrees with the offender's demand to conduct penal mediation, the approval for the penal mediation is requested to the prosecutor as the executor.
 - 4.3. The judge as the executor will study the possibility of approving penal mediation.
 - 4.4. If penal mediation is agreed to be conducted, a customary-law mediator or reliable and certified penal mediator from outside the court can be appointed by the judge.
 - 4.5. The mediation process is conducted secretly and consequently all things happening and all statements coming out during the mediation is not opened to the public by all parties.

- 4.6. If the penal mediation reaches the agreement for the peace settlement and the offender agrees to pay the compensation for the victim, the final result of the agreement is reported to the court in order to be legalized by the court.
- 4.7. The peace agreement and the payment for the compensation is put into the letter of agreement which has the final status. The letter of agreement is used as the basic for releasing the offender from the unfulfilled sentence.

The construction for the formulation policy of the criminal law to make penal mediation as alternative for the settlement of criminal case with civil-law agreement aspect in the future is the development of the penal mediation implementation covering the plan of the procedure or mechanism of penal mediation in settling criminal case with civil-law agreement aspect in future criminal justice system. The policy on the implementation on penal mediation in the settlement of criminal case with civil-law agreement aspect in criminal justice system covers penal mediation during the investigation stage, prosecution stage, court-examination stage and the execution of the sentence.

It is time to build the legal basis and its bylaws for the ideal construction of penal mediation as an alternative for the settlement of criminal case with civil-law agreement aspect in Indonesian criminal justice system. In order to build the legal basis and bylaws of the penal mediation as one way to settle the criminal case with civil-law agreement aspect, it is necessary to reform and re-arrange criminal justice system as part of the criminal-law reform. The reform of the criminal justice system is necessary in order to place penal mediation as an alternative for the settlement of criminal case with civil-law agreement aspect.

The reform of the criminal justice system can be initiated by establishing the legal basis of the penal mediation. It can be done through the amendment or revision of the laws and regulations related to the settlement process of the criminal case by adding new institution, penal mediation, into Indonesian criminal justice system.

The reform on the criminal justice system should be done through comparative and comprehensive approaches involving the global and local development of thoughts. At the global level, the practice of penal mediation as alternative for criminal case settlement has advanced considerably. Some countries have acknowledged and applied penal mediation as alternative for the settlement of criminal cases and put it into the Criminal Code, Code of Criminal Procedure and other special laws. At the local level, the reform of the Indonesian criminal law can not be separated from the living and growing law in the adat community which is constitutionally acknowledged by the Article 181 point (3) of the 1945 Constitution. According to Indonesian customary law, the conflict settlement process in the adat community is conducted by way of the peace agreement. It is similar to the settlement of criminal case through penal mediation.

In order to reform the criminal justice system and make penal mediation as alternative for the settlement of criminal case with civil-law agreement aspect, it is necessary to amend or revise some laws and regulations, such as the Indonesian Criminal Code (KUHP) and the Indonesian Code of Criminal Procedure (KUHP).

4. Conclusion

The reconstruction penal mediation model as the alternative of the settlement for criminal case with civil-law agreement aspect in future Indonesian criminal justice system is carried out by developing a model of criminal-case settlement which can be conducted by giving alternatives of criminal justice process or penal mediation. The settlement mechanism through penal mediation can be done by employing the pattern of settlement according to the customary law or national law organized by the state. The settlement of criminal law with civil-law agreement aspect through penal mediation is aimed at preserving and acknowledging the existing customary law (adat law) in the adat-law community of Indonesia.

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