

AN EXPLORATION TO CHRISTIANITY TEACHING CONCERNING PENAL MEDIATION OF CRIMINAL PROCEDURE LAW IN INDONESIA

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Abstract

Civil court justice shares the nature of mediation as part of litigation proses. However, criminal procedure code does not accommodate penal mediation by litigation and non-litigation process. Therefore, penal mediation is considered as an Alternative Dispute Resolution in criminal law. This article attempts to build conversation between jurisprudence and theology, especially speaking the nature of mediatorship of Christian teaching that could be considered as beneficial donates for future penal mediation in criminal law in Indonesia. This research is qualitative work. Literatures, articles, books and related references will receive attention. In conclusion, penal mediation applies to litigation and non-litigation tract, the state should conduct its implementation, modern law maintains its legacy, Christology serves the initiation, and penal mediation pursues restorative justice.

Keywords: *Criminal Law; Jurisprudence Penal Mediation; Mediatorship of Christ; Systematic Theology.*

A. Research Background

Criminal justice system in Indonesia presents ample of requirements in which consumes energies of both parties who are involved in certain cases. It leads to complex paradox where large of court cases are lack of minimum expense process, simplicity, and velocity, even more, the litigation less of justice-focused, and potentially motivated simply to reach bureaucratic justice, not

substantially.¹ However, the law circles system, including the litigation, receives pessimist reputation of morality, ethics, and integrity.² Consequently, public trust is improbable to be achieved, and it provokes criminal justice system to be evaluated. Public expectation contains of irresistible impulse that the litigation able to accommodate code of justice with its minimum negative impact toward the product of litigation. Therefore,

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¹ Agus Raharjo, "Mediasi Sebagai Basis Dalam Penyelesaian Perkara Pidana", *Jurnal Mimbar Hukum*, Vol. 20, No. 1, Februari 2008, p. 91-92.

² Satjipto Rahardjo, "Sosiologi Pembangunan Peradilan Bersih dan Berwibawa", *Makalah, Seminar Reformasi Sistem Peradilan Menanggulangi Mafia Peradilan*, Fakultas Hukum Universitas Diponegoro, 6 Maret 1999, p. 10-11.

Alternative Dispute Resolution should be considered as an alternative in which lack of formal delaying process and decreasing litigation cases in the court. Penal mediation is categorized as an option in civil law of Indonesia where less of possibility to be applied in criminal law. Criminal law has no formal state regulation, *ius positum* of Indonesia, specifically speaking, criminal code does not share any knowledge on penal mediation.³

Whereas, mediation, probably could accommodate several tensions and fluctuation in the criminal justice system, furthermore, its main intention is to offer justice toward civilization,⁴ therefore, non-litigation process is feasible to be considered as an alternative way to reach justice if it shares similar justice-decision as well as litigation system. Moreover, mediation as a non-litigation option is allowed because shares the origin virtues of native civilization.⁵ Actually, Indonesian experiences of civil and criminal cases where mediation was employed to reach the justice. Historic-cultural exercise shows that Indonesian performs expensive respect toward traditional mediation, called consensus and democracy (*musyawarah*).⁶

³ See, Surat Kapolri No. Pol.: B/3022/XII/2009/SDEOPS, SE Kapolri No SE/8/VII/2018, Perkapolri No. 6 Year 2019, Perja No. 15 Th 2020, Kepdirjenbadilum MA No 1691/DJU/PS.00/12/2020. UU No 11 Year 2012.

⁴ Mardjono Reksodiputro, "Sistem Peradilan Pidana: Melihat Kepada Kejahatan dan Penegakan Hukum Dalam Batas-batas Toleransi", *Speech*, Professor Inauguration, Fakultas Hukum Universitas Indonesia, 1993, p. 1.

⁵ H.L.A. Hart, 1972, *The Concept of Law*, Oxford University Press, London, p. 88-89.

⁶ Mushadi, 2007, *Mediasi dan Resolusi Konflik*

Consensus approach was regarded as important stage among the people, it was alive and possible to be applied in modern court. Even, in developed country such as Australia, the practice of mediation as an Alternative Dispute Resolution are well practiced, is growing and developing. Even more, the state facilitates its role through the court and public business sector.⁷ United States shares similar non litigation concept of mediation, it is known as *plea bargaining system*, but equips civil law to resolve criminal cases where prosecutor presents as mediator and the victim does not involve in the mediation,⁸ intend to ask a plea of guilty by the defendant, and as the consequence, the persecutor will guaranty to press the charge of defendant's compared to normal accusing in the court.⁹

Intention to explore and evaluate any possibility of applying mediation as an alternative Dispute Resolution in the law system requires a sensitive cross-discipline method approach in which other knowledge probably could contribute positive alternative such as *plea-bargaining system* in United State where civil law concept applied to criminal cases. However, the legal law system in Indonesia is complex, contains of various foreigner concept throughout decades; Islamic (*shari'a*),

di Indonesia, Walisongo Mediation Center, Semarang, p. 38.

⁷ Nadja Alexander, "Mediation in Practice: Common Law and Civil Law Perspective Compared", *International Trade and Business Law Annual*, Vol 6, Research Collection School of Law, 2001, p. 1.

⁸ Agus Raharjo, *Op.Cit.*, p. 103.

⁹ F. Zimring & R. Frase, 1980, *The Criminal Justice System*, Little, Brown and Company, USA, p. 498.

Western (criminal and civil), *adat recht* or *adat* law (customary law), specifically speaking,¹⁰ Islamic law is the most contributor where its statute of marriage and shari'a bank are accommodated by the law system of Indonesia. Therefore, delving notion out of the law box owns potential contributive options that may help mediation in criminal law to be developed.

As Muslim is the dominant civilization in Indonesia, Islamic teaching and tradition regularly offer ideas and concepts that could help the construction of penal mediation in criminal cases. In the flip side, other beliefs, however, belong such law system in which applied in the past for their followers, including Christianity tradition. As the second majority community in Indonesia, it is interesting to un-covered the mediator concept in Christian teaching. This essay attempts to investigate the concept of Christian tradition mediation in criminal case that could be considered by criminal law code of Indonesia as an Alternative Dispute Resolution. This research is in order to examine the issue of pertaining the possibility of applying Christian tradition mediation in the penal mediation of criminal law in Indonesia. Follows by sub description regarding; the penal mediation of criminal law in Indonesia; the Christian tradition in sharing the concept of penal mediation in criminal law; Christian tradition offering concerning penal mediation of criminal law in Indonesia.

¹⁰ Mardani, "Hukum Islam dalam Sistem Hukum Nasional", *Jurnal Hukum dan Pembangunan*, Vol. 38 No. 2, April- Juni 2008, p. 175.

B. Research Method

This article, however, led by two contrast disciplines: law and theology. A qualitative method of research is the main approach where a sensitive treatment shared to the tension.¹¹ Therefore, a theological-jurisprudence investigation grounded to this treatise, systematic-theology treatment lies on the Christian teaching of mediatorship while the jurisprudence knowledge is analyzed from primary and secondary data.

C. Research Result and Analysis

1. Penal Mediation: Alternative Dispute Resolution of Criminal Law

Agus Raharjo argues that a non-litigation process is allowed to reach justice, whether the litigation system is not able to perform justice in the high expectation, further, in case it shares bureaucracy that could be obstacles to gain consensus between the parties.¹² However, criminal justice system or formal litigation of criminal law shares complexity involves law enforcement officers demands a long process until the verdict is decided.¹³ Therefore, the non-litigation alternative should be prepared to accommodate the inferiority of criminal law litigation. According to Mardjono Reskodiputro, criminal code manages three stages of criminal law process; pre-adjudication, adjudication,

¹¹ Sonny Eli Zaluchu, "Strategi Penelitian Kualitatif dan Kuantitatif di Dalam Penelitian Agama," (*EVANGELIKAL: Jurnal Teologi Injili dan Pembinaan Warga Jemaat*, Vol. 4, No. 1, 2020, p. 28-38.

¹² Agus Raharjo, *Op.Cit.*, p. 100.

¹³ *Ibid*, p. 101.

and post-adjudication,¹⁴ where the adjudication degree is considered as the central process and holds the significant role toward the litigation process. The non-litigation process applied in several cases. For instance, central Java shows that demise and lack of duration limitation able to cease criminal cases.¹⁵ In other words, penal mediation as an Alternative Dispute Resolution owns the probability as an option to achieve justice in jurisprudence. In his works, according to Sahuri Lasmadi, he argues that Penal mediation is possible to be adopted by civil law with some conditions. It should demand the presumption of guilt and willingness of forgiven; furthermore, it holds the principle of legal certainty, usefulness, and justice.¹⁶ Even more, Yusriyando says that penal mediation contains Pancasila virtues. It developed and maintained from the original characters and values of Indonesian¹⁷ and should be considered as a potential option that could offer a new system in Indonesia. Pancasila reflects the nature of penal mediation; Zakki Adhiyati argues that penal mediation is not strange due to the culture of Indonesia expresses its attributes. For instance, discussion to reach an agreement (*musyawarah mufakat*), a consensus in which exist within the life of ancient Indonesian,

¹⁴ Mardjonon Reksodiputro, *Op.Cit.*, p. 12.

¹⁵ Agus Raharjo, *Op.Cit.*, p. 94.

¹⁶ Sahuri Lasmadi, "Mediasi Penal Dalam Sistem Peradilan Pidana Indonesia", *Inovatif: Jurnal Ilmu Hukum*, Vol. 4, No. 5, 2011, p. 1-9.

¹⁷ Yusriyando, "Implementasi Media Penal Sebagai Perwujudan Nilai-Nilai Pancasila Guna Mendukung Supremasi Hukum Dalam Rangka Pembangunan Nasional", *Jurnal Pembaharuan Hukum*, Vol. 2, No. 1, 2015, p. 23.

and considered as a modern form of democracy where the fourth principle of Pancasila expresses the virtue of *musyawarah mufakat*.¹⁸ Indeed, it requires circumspection and contextual consideration. Moreover, the state should facilitate the formal form to prevent dissenting of opinion in the public square because, currently, a legal system in Indonesia, criminal code procedures do not accommodate penal mediation as an alternative non-litigation option.

However, civil law accommodates the role of penal mediation, Supreme Court Ordinance no. 1 year 2016, about Mediation Procedure in the Court manages all of the intentions. Article 1 mentions that mediation is an alternative way to achieve consensus between the parties and facilitated by a mediator, while mediator refers to judge or other certified parties in which act on behalf of the parties who are involved in such a case. On the flip side, unfortunately, criminal code does not share any information and clue in this concern. It limits the potency of the agreement through the non-litigation process, and consequently, the consensus of penal mediation in criminal cases owns no high legal standing. The state manages the criminal justice system in which contains intricacy such as; complex bureaucracy, the accuracy, human error, and administration-centered.

Moreover, a criminal case in the court aims to pursue material truth, where

¹⁸ Zakki Adhiyati, Achmad and Edy Herdyanto, "Pancasila Conceptualization on Penal Mediation in Indonesia", *Journal of Law, Policy and Globalization*, Vol. 29, No. 1, 2014, p. 23.

penal mediation offers restorative justice and intends to reach retributive justice. The victim is less attentive in this sense; the court works explicitly to apply equitable punishment to suspect.¹⁹ The form of penal mediation pursues the sense reparation and prevention instead of transforming punishment,²⁰ while in the formal criminal cases court, philosophically is considered does not accommodate the intention of involved parties and potentially provokes other tensions.²¹

Furthermore, the United Nations congress 6th meeting in 1995, documented that particular criminal cases in which the suspect is cooperative, the court should not apply criminal punishment, rather seek alternative consensus to prevent such criminal cases in the future. A non-litigation process probably could offer more advantages to society.²² Therefore, penal mediation in criminal law, as an Alternative Dispute Resolution of the non-litigation process, receive consideration.

2. Its Abroad Practices

Practically, penal mediation is known as victim-offender mediation

¹⁹ Reyner and Dian Andriawan Daeng Tawang, "Alternatif Mediasi Penal Dalam Sistem Peradilan Pidana di Indonesia", *Jurnal Hukum Adigama*, Vol. 1, No. 2, 2018, p. 27.

²⁰ Sahuri Lasmadi, "Mediasi Penal Dalam Sistem Peradilan Pidana Indonesia", *Inovatif: Jurnal Ilmu Hukum*, Vol. 4, No. 5, 2011, p. 1-2.

²¹ *Ibid.*

²² Barda Nawawi Arief, "Pemberdayaan Court Management Dalam Rangka Meningkatkan Fungsi Mahkamah Agung: Kajian dari Aspek system Peradilan Pidana", *Makalah*, Pada Seminar Nasional Pemberdayaan Court Manajement di Mahkamah Agung R.I., dan diskusi Buku Fungsi Mahkamah Agung, F.H., UKSW, Salatiga, 1 Maret 2001, p. 7-8.

(VOM). It is not strange in developed countries both in the civil or common law system. Throughout the years, it has been practiced and receives a serious evaluation.²³ Developed countries prepare examples of how penal mediation was implemented. For instance, a study in the Netherlands shows that participation in penal mediation leads to lower reoffending rates.²⁴ Further, penal mediation is considered as social work in Europe, where it relates to sociology rather than jurisprudence.²⁵ Its paradigm moves from litigation nature to a society based. It implies that criminal code does not always accommodate all crimes because a particular issue is possible to be delegated under social control. According to Anna Rypi, in her work conducted in Sweden, penal mediation shares positive emotion and feeling both to the victim and offender, where in practice, emotion leads the process, and participants able to express spontaneous original feelings.²⁶ In this context, jurisprudence is connected to a psychological approach. Penal mediation demands social and

²³ See Mark S. Umbreit, "Four Decades of Victim-Offender Mediation Research and Practice: The Evidence", *Conflict Resolution Quarterly*, Vol. 36, No. 3, 2018, p. 99-100 and Mark S. Umbreit, Robert B. Coates, Ann Warner Roberts, "The Impact of Victim-Offender Mediation: A Cross National Perspective", *Conflict Resolution Quarterly*, Vol. 17, No. 3, 2000, p. 215-229.

²⁴ Jiska Jonas-van Dijk, *et.al.*, "Victim-Offender Mediation and Reduced Reoffending: Gauging the Self-Selection Bias", *Crime & Delinquency*, 2019, p. 1,2.

²⁵ Lieve Bradt and Maria Bouverne-De Bie, "Victim-Offender Mediation as a Social Work Practice", *International Social Work*, Vol. 52, No. 2, 2009, p. 181-193.

²⁶ Anna Rypi, "The Feeling Rules of Victim Offender Mediation", *International Journal of Work Organisation and emotion*, Vol. 7, No. 2, 2016, p. 83.

psychology discipline; a comprehensive approach is required to apply this non-litigation track. Indeed, certain developed countries in Europe, such as Poland has less attention to penal mediation. According to Cezary Kulesza, the Polish judicial system is the dominant track who meets criminal matters. It is strange to occupy penal mediation, both the victim and offender tend to employ the formal litigation process.²⁷ In contrast, Germany applies penal mediation frequently in criminal law. Practically, penal mediation in Germany carries dangers.

The mediation scheme receives critics; further, the implementation of the Täter-Opfer-Ausgleich (TOA) shares problematic aspects. For instance, the danger of cooptation, its practical use, official reason, and hidden agenda.²⁸ Therefore, applying penal mediation as an alternative litigation process does not always bear positive contributions, but at the same time, it potentially shares dangers and problems. Another study conducted in Austria shows that penal mediation has a significant impact on a woman's participation. Christa Pelikan demonstrates that statistic shows the increasing of woman involvement in penal mediation; even more, it empowers a woman to present in the criminal process.²⁹ However, penal mediation in

Austria reflects on how jurisprudence relates to anthropology and gender issue. It has a significant influence on the existence of women. Lastly, as a comparison to Europe, a study has been taken in South Africa and shows that participation in penal mediation shares an opportunity to victim and offender for an alternative story.³⁰ Therefore, in this context, it donates benefits for jurisprudence in Africa.

Most developed countries experience penal mediation as an Alternative Resolution Dispute. Its implementation expresses a positive contribution to criminal cases. However, a certain country has less attention to this non-litigation track, but it does not reflect that applying penal mediation carries massive negative impacts. In contrast, the Netherlands, Sweden, Germany, and Austria receive the benefits in its implementation. Further, a prominent knowledge appears in the description above. It seems that penal mediation, as a jurisprudence discipline, works together with other disciplines, and even more, testifies contribution to social, anthropology, psychology square. In his work, Jiri Priban demonstrates how Roger Cotterrell invites us to sociological rethink the legal issues,³¹

²⁷ Cezary Kulesza, "Victim-offender Mediation as an Alternative to Criminal Justice System in Poland", *Temida*, Vol. 21, No. 1, 2018, p. 3.

²⁸ Thomas Trenczek, "Victim-Offender Mediation in Germany – ADR Under the Shadow of the Criminal Law", *Bond Law Review*, Vol. 13, No. 2, 2001, p. 1-2.

²⁹ Christa Pelikan, "On the Efficacy of Victim-Offender-Mediation in Cases of Partnership Violence in Austria, or: Men Don't Get Better, But

Women Get Stronger: Is it Still True?", *European Journal on Criminal Policy and Research*, Vol. 16, No. 1, 2010, p. 49-67.

³⁰ Kim Marriot and Tharina Guse, "Victim-Offender Mediation: Perspective of South African Victims and Offenders", *The Social Work Practitioner-Researcher*, Vol. 19, No. 1, 2007, p. 1.

³¹ Jiri Priban, "Roger Cotterrell: Sociological Jurisprudence: Juristic Thought and Social Inquiry", *Journal of Law and Society*, Vol. 45, No. 2, 2018, p. 330-337.

penal mediation should be looked at by sociology perspective, and jurisprudence needs to keep open.³²

In sum, a cross-discipline or a knowledge combination is expected will supply benefits to the nature of penal mediation. In this case, this treatise attempts to combine jurisprudence and theology concerning penal mediation in criminal law. The experience of the developed country opens the possibilities to discover knowledge from both disciplines. Indeed, jurisprudence does not prepare unlimited space for theology, but its particular dimension shares the opportunity of theology. The next stage of this essay will evaluate the possibility of penal mediation in Indonesia, where Christian teaching could involve contributing notions.

3. The Possibility: Discretion, Culture and Religion

The possibility of penal mediation could be traced in the code of discretion, where practically police officers experience several cases.³³ However, the code of discretion has no bold legal standing as well as penal mediation. The limit of discretion needs to receive attention and being managed, then the restorative aspects of the invaders could be accommodated well. The discretion belongs to the knowledge on how to start the legal concept of penal mediation, and it could be considered as an inspiration to renovate the criminal

court system in Indonesia. More or less, it offers the chance to pursue justice by non-litigation track. The mediation is not intended to investigate errors but to explore the responsibility of the suspect that should transform the victim and colleagues,³⁴ and restores the disadvantages experienced by the victim.³⁵ Further, in litigation track, the suspect is considered based on the code of presumption of innocence, while in non-litigation, the presumption of guilty leads negotiation.³⁶ The effort of delving material truth is ignored; the ultimate aim is to restore the circumstance.

Besides, the ancient cultures of Indonesian perform the knowledge of penal mediation. Evidence and references show that kingdoms in Indonesia regularly applied mediation approach to reach a consensus. It aims to share justice among the people, or intend to reach a neutral meeting point. Modern Indonesian considers such an agreement as *musyawarah*.³⁷ Therefore, Lilik Mulyadi suggests that penal mediation could be arranged by a common institutional mechanism and has no direct connection with formal litigation in the state. It is applied partially where several cultures in Indonesia testify the nature of this non-litigation process, for instance, Peradilan Gampong, Budaya Bakar Batu,

³² Brian Tamanaha, "Sociological Jurisprudence Past and Present", *Law & Social Inquiry*, Vol. 28, No. 1, 2019, p. 493-494.

³³ Reyner, *Op.Cit.*, p. 15.

³⁴ Raharjo, *Op.Cit.*, p. 103.

³⁵ Gregorius Widiartana, "Paradigma Keadilan Restoratif Dalam Penanggulangan Kejahatan Dengan Menggunakan Hukum Pidana", *JUSTITIA ET PAX: Jurnal Hukum*, Vol. 33, No. 1, 2017, p. 1-23.

³⁶ *Ibid.*

³⁷ Mushadi, *Loc.Cit.*

Lembaga Begundem, and awig-awig.³⁸ It is a legacy of ancient Indonesian in which maintained well throughout the decades. Indeed, it does not bear a single aim to reconcile specific cases. Still, in the sense of public discussion in which look for an agreement, mediation, negotiation, or dialogue was employed. According to Lawrence Friedman, the synchronization of law and culture manifested in the virtues of integrated law-culture, which encompasses theoretical, jurisprudence, and legal code, and applied in the origins of social values.³⁹ Furthermore, H.L.A Hart expresses the concept of *primary rules of obligation*, practices that automatically shaped by civilization, and possible to be considered as a formal form of law.⁴⁰ Therefore, criminal code should openly receive construction inputs, especially contributions from the virtues and values of civilization that picture the identity of Indonesian.

Moreover, the intention of penal mediation is focused on consensus, emphasizes the balance between the victim and criminal.⁴¹ Therefore, the bold print of this alternative litigation relates to the restoring process instead of punishing oriented. On the other hand, penal mediation is expected able

to protect the right of the criminal but, at the same time, restore the material and immaterial condition of the victim. The dialogue and conversation in this litigation maintain the principle of agreement or win-win solution. Furthermore, Islamic law shares a similar concept of penal mediation. Faisal Adi Surya demonstrates that Jarimah Qisas Diyat shares the nature of penal mediation; however, it is limited to a specific case.⁴² But it reflects the existence of penal mediation within the theological concept of religion and culture in Indonesia. Besides, penal mediation is applicable to be applied in domestic violence. Laely Wulandari argues that domestic violence is considered as criminal law where in practice, penal mediation is usually occupied as an alternative consensus. But she concerns the damage and consequences of its domestic violence. She suggests a sensitive approach, together with a strict evaluation of the physical and emotional effects of the violence before employing this non-litigation track.⁴³ Hani Barizatul Baroroh insists that penal mediation in domestic violence is adapted from civil law and intends to pursue restorative justice.⁴⁴ Indeed, the practice of these systems is not common and strange to

³⁸ Lilik Mulyadi, "Mediasi Penal Dalam Sistem Peradilan Pidana Indonesia: Pengkajian Asas, Norma, Teori dan Praktik", *Yustisia Jurnal Hukum*, Vol. 2, No. 1, 2017, p. 1-2.

³⁹ Barda Nawawi Arief, 2007, *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan*, Prenada Media Group Kencana, Jakarta, p. 145.

⁴⁰ HLA Hart, *Loc.Cit.*

⁴¹ Natangsa Surbakti, "Mediasi Penal Sebagai Terobosan Alternatif Perlindungan Hak Korban Tindak Pidana", *Jurnal Ilmu Hukum Publikasi Ilmiah*, Vol. 14, No. 1, 2011, p. 90-92.

⁴² Faisal Adi Surya, "Tinjauan Mediasi Penal Dalam Perspektif Hukum Adat dan Hukum Islam", *Jurnal Jurisprudence*, Vol. 5, No. 2, 2015, p. 118-120.

⁴³ Laely Wulandari, "Kebijakan Penanganan Kekerasan Dalam Rumah Tangga Melalui Mediasi Penal", *Jurnal Law Reform*, Vol. 4, No. 2, 2010, p. 1-2.

⁴⁴ Hani Barizatul Baroroh, "Mediasi Penal Sebagai Alternatif Penyelesaian Kekerasan Dalam Rumah Tangga", *Jurnal Agama dan Hak Azazi Manusia*, Vol. 2, No. 1, 2012, p. 183-184.

Indonesian and its litigation. It could be considered as *ius constituendum* or an expectation for future formal law.

As the code of discretion and culture receive possibility as consideration for penal mediation, the role of religion, probably, plays a significant influence on the law system, especially speaking, penal mediation of non-litigation track. Marc Galanter argues that justice is possible to be obtained wherever and allowed to grab from every source that belongs reserve of its knowledge.⁴⁵ It leads to the conclusion that religion could present its role to overcomes particular criminal case, or in minimum expectation, religion may share ideas that bear constructive contributions. In this sense, Raharjo claims that society who owns high spiritual experience could seek and ground justice under the religion.⁴⁶ However, religion takes two knowledge, social and theological approach. Indeed, both of them present the idea that could be considered as an alternative source where religion comes with a sociological approach while theology transforms dogmatic. There are some Islamic theologies occupied by the state, for instance, syari'a bank, Act of Marriage, and regional autonomy in Aceh. In sum, Christian teaching concerning penal mediation is feasible to be evaluated and suggested to criminal law in Indonesia.

⁴⁵ Marc Galanter, "Justice in Many Rooms: Courts, Private Ordering, and Indigenous Law", *Journal of Legal Pluralism*, Vol. 1, No. 19, 1981, p. 1-47.

⁴⁶ Agus Raharjo, *Op.Cit.*, p. 101.

4. The Condition

In some instances, penal mediation could be applied against particular damage and negative consequences in which probably arise by litigation track. Raharjo argues a case that allowed to be treated by penal mediation must be agreed by both parties who are involved in the case. The consequence of the evidence does not bear broad implications, the echo does not reach a larger society, and material and immaterial compensation are possible.⁴⁷ With this in mind, Raharjo limits the scope of penal mediation. It implies its range in specific limits. Penal mediation is not the first option of litigation but acts as an alternative way to reach justice. Particular examples by Raharjo, such as; defamation, persecution, thievery, and adultery,⁴⁸ furthermore, a criminal offense that requires fine and specific case in which owns the nature of *petitioned offense* (delik aduan).⁴⁹ However, *petitioned offense* relates to a private area, the litigation process depends under the consideration of the victim while *ordinary offense* (delik biasa) is considered as a criminal in which shares public damages and consequences, and the government acts as an active subject to criminal process cases. The *petitioned offense* employs an alternative approach in which intends to reach restorative justice; this means, it bears

⁴⁷ *Ibid.*, p. 99-100.

⁴⁸ *Ibid.*, p. 94.

⁴⁹ Mudzakkir and Dalam I Made Agus Mahendra Iswara, 2013, *Mediasi Penal Penerapan Nilai-Nilai Restoratif Justice dalam Penyelesaian Tindak Pidana Adat Bali*, Tesis, Universitas Indonesia, p. 55-56.

the same Spirit with penal mediation. Therefore, the petitioned offense is one of the requirements to be proceeded by penal mediation. With this in mind, it is essential to ground the limit and circle of penal mediation. Despite it able to share justice, explicitly speaking, restoring justice, but extraordinary cases could not be able to be accommodated by this track. Therefore, strict criteria should be applied to assess criminal cases that appropriate for penal mediation.

5. Christian Teaching: Mediatorship of Christ

Christian teaching and tradition share a wide range of knowledge concerning mediation. Several passages, cases, stories, and dogma are prospect sources that could be considered as the ground of the mediation concept. As this essay examines a systematic theology approach, biblical dogma is the primary attention that receives an evaluation. Still, Christian dogma contains a large number of themes, but Christology serves interesting notions due to attributes of mediation are prepared massively.⁵⁰ Explicitly speaking, its role in the redemption plan portrays a comprehensive display of mediation nature.

The drama of redemption plan involves the triune God, the Father, the Son, and the Spirit. Specifically, it relates

to sinful man, as the first man, Adam and Eve committed to sin, the plan of restoration was formulated to bring back the image of God in which manifested in human nature. Indeed, the gap exists between the triune God and man, a very contrast nature of divinity and humanity lead to complexity, the consequence of sin, however, is eternal death (Rm. 6:23). From now on, restoration requires proper formulation, the relationship between the triune God and human being need to be reconciled. John Owen argues that the Father, as the leader of triune God, but equal to another person, bears the initiative to redeem human sin, designs mediatorship plan, and sends His begotten Son as a mediator.⁵¹ However, mediator work requires incarnation; therefore, the Son incarnated Himself in the human body. Indeed, the mystery of incarnation remains fluctuation and debate. William Hasker argues that the incarnation of the Son is superior to other metaphysical accounts of incarnation.⁵² It means that this incarnation carries unique nature in which the requirement of mediatorship works.

However, the initiative of mediatorship work came from a supernatural being, could be considered as the unconditional love of God. The Father, the God, owns the initiative, present as the initiator. According to Herman Bavinck, the intention to employ the mediatorship concept is

⁵⁰ See, Charstar Arstilo Rumbay, "Christology in Digital Era: A Socio-systematic Theology Contribution to the Sustainable Smart Society," *PASCA: Jurnal Teologi dan Pendidikan Agama Kristen*, Vol. 16, No. 1, 2020, p.15-23. and "The Knowledge of Hospitality in the Redemption of Christ," *DIEGESIS: Jurnal Teologi Kharismata*, Vol. 2, No. 2, 2019, p. 66-75.

⁵¹ John Owen, 1965, *Of Communion with God the Father, Son and Holy Ghost*, Grand Rapids, MI: Christian Classics Ethereal Library, p. 27-31.

⁵² William Hasker, "A Compositional Incarnation", *Religious Studies*, Vol. 53, No. 4, 2016, p. 1-15.

because mediation is grounded in the life of a human being. Worldly mediator activities testify positive contributions to both sides who are involved in the conversation. The actualization purposes, the mediator, is Christ, the Son, who was being sent by the Father to be a bridge. However, the problem is, a mediator's work requires two natures, orders, and intentions. Here, in this case, Christ acts as the representation of humanity and divinity. With this in mind, Christ owns the divinity of the Father and humanity of sinful man.⁵³ Christ is presented as fully human and divine, whereas a theological interpretation is not sufficient to gain comprehensive knowledge; rather, the human nature approach, even more, all nature exercise is required to taste the mystery of Christ's mediatorship work.

Furthermore, the Father, however, is superior; it enables Him to participate actively in the plan of mediation. Indeed, it doesn't mean that the Father as the initiator is superior rather than the other divine persons.⁵⁴ Therefore, the dogma is, God the Father owns the initiative to save the world and offers salvation where the Son was presented as the mediator between the Father and man. In the context of penal mediation, the initiator should own authority and act on behalf of both parties. The initiator is required to accommodate all the intention to reach restorative justice.

⁵³ Herman Bavinck, 2006, *Reformed Dogmatics: Volume 3: Sin and Salvation in Christ*, Grand Rapids, MI: Baker Publishing Group, p. 237.

⁵⁴ John Owen, 1965, *Of Communion with God the Father, Son and Holy Ghost*, Grand Rapids, MI: Christian Classics Ethereal Library, p. 49.

Moreover, the mediatorship work of Christ should be considered as a blessing for the human being.⁵⁵ Christ restored the broken connection in the garden of Eden. Previously, as the consequence of sin is death, sinful man has no opportunity or chance to be connected to the Creator. Further, God has no option to redeem a sin except by a mediator. With this in mind, the mediatorship of Christ implies a positive contribution to both divine and human being. It shares a similar motivation with penal mediation in criminal law. The main intention is to accommodate the order of both parties.

However, the initiator of Christ's mediatorship work is the Father. In the penal mediation process, a particular subject or institution is required to act as the initiator. The initiator has a significant role for penal mediation, and as criminal law manages the horizontal relationship, the suspect or his representative, the lawyer, bears the responsibility to start negotiations by non-litigation track. A penal mediation process is impossible to be applied if a lack of initiative. After an agreement to ground the case by penal mediation is reached, a mediator decides orders and intentions of the victim without degrading the right of the suspect. The future code of penal mediation should manage the role of initiator and mediator. Muladi argues that penal mediation in which contains the intention of restorative justice lies the court as mediator. It implies that penal

⁵⁵ John Owen, 2001, *The Person of Christ*, Sovereign Grace Publisher, Lafayette, p. 65.

mediation potentially presented as an option in the litigation track.

As a consequence, it will be considered as *Formal Dispute Resolution* instead of Alternative Dispute Resolution. It is grounded in the formal legal form and has its legal standing. Furthermore, the expected criminal law should be able to consider the virtues, values, culture, nature, and tradition in which is rooted in the life of society.⁵⁶ He concerns of anthropology and sociology knowledge, both need to be the consideration to formulate a proper form of penal mediation in Indonesia. Moreover, the criminal code of Indonesia does not represent the value of Indonesian as it is a legacy from colonialism; the attributes are strongly connected to the character of colonialism. Therefore, the expectation of implementing penal mediation is suitable for Indonesian history and existing culture.

Moreover, the mediatorship of Christ reflects the initiative Father and the sacrifice Son, where the obedience performed by Christ. The primary attention of the universe goes to Christ as the center of the great redemption plan.⁵⁷ The implementation of future penal mediation in criminal law should consider the main actor, the victim, who is the most disadvantaged. The penal mediation should be victim-centered, to restore to original state the

victim's rights, damage, material, and immaterial losses. On the other side, the suspect presented based on the code of presumption of guilt where the intention is not to seek the facts of his felony, instead, to apply restorative justice. Owen highlights the motivation of Christ as the mediatorship, where genuine love stirs the plan of salvation.⁵⁸ The term love in systematic theology, strongly relates to the nature of forgiveness, could be regarded as remission in the criminal code. The encouragement of negotiation, however, could be rooted in the remission approach without decreasing the right of the victim. Here the significant differences probably appear between litigation and non-litigation track in criminal law cases. While the court will explore evidence of the case, holds the code of presumption of innocence, and work to give proportional punishment toward the suspect, penal mediation offers the negotiation approach where the motivation is to restore the original state of the victim and simultaneously employs remission approach toward the suspect.

However, the mediator should receive resorting attention, because when the expected penal mediation is accommodated under the formal form of criminal law through litigation, the court presents as the mediator, as the representative of the government. The problem is, it is employed formally in a non-litigation track, where the state acknowledges penal mediation but does not prepare the formal institution. The

⁵⁶ Muladi, "Proyeksi Hukum Pidana Materiil Indonesia Di Masa Mendatang", *Pidato Pengukuhan Jabatan Guru Besar Undip*, Semarang, 1990, p. 15.

⁵⁷ John Owen, 2009, *The Glory of Christ*, MI: Reformed Church Publication, Zeeland, p. 66-67.

⁵⁸ *Ibid.*

term mediator will be an essential issue. A criminal case under the customary law is more realistic because the tribal chief automatically served as the mediator and trusted will lead the negotiation fairly or criminal case in which echoes surround a particular religious circle where the priest could represent as the mediator of his congregation. The Particular case that involves cross-cultural cross religion and cross demography, which occurs in the public square, needs a neutral trusted mediator. In Christology, Christ was elected as the mediator in term the head of the redemption plan, the universe depends on him, and he was required to displayed fairly.⁵⁹ The mediator in penal mediation must have respected reputation and trusted by both sides; here, the agreement between the victim and suspect is extremely needed to reach restorative justice. The mediator should be the representation of both parties and able to share justice.

Furthermore, surprisingly, the mediatorship of Christ intends to restore the sinners.⁶⁰ After the fall of the first man, Adam and Eve, they lost special privileges as innocent creatures. They suffered the relationship with the Creator, were not allowed to stay at Eden garden, and following consequences in the future (Gen. 3:14-24). Therefore, the expectation is, through the mediatorship of Christ, the original life of man shall be

retrieved. The nature of penal mediation, restorative justice belongs to the same character in the Christology. Restoration is the core nature of penal mediation, where punishment has no place in the term of this track. The knowledge of Christology strengthens the role of penal mediation through litigation or non-litigation project. Among the notion of Christian teaching concerning the mediatorship of Christ, the sense of restoration is a significant issue that portrays similarity between both disciplines.

D. Conclusion

In summary, the evaluation of penal mediation in the criminal code, and the cross-discipline conversation with Christian teaching on the mediatorship of Christ, several potential contributions are offered to be considered. Firstly, penal mediation could be applied both in litigation or non-litigation track and expects a legal standing, the state acknowledging. As an Alternative Dispute Resolution, of course, by the non-litigation process, it requires a reputable mediator who could accommodate the intention of the victim and suspect. Further, an initiator needs to work actively to start the reconciliation. Secondly, the legal standing of penal mediation should be equipped with the state, guaranty of legal security. Thirdly, the legacy of customary law is maintained and nurtured by modern law, the echoes of its tradition are attached as a specific identity of Indonesia. Fourthly, mediatorship in Christology serves

⁵⁹ Dinu Moga, "A Consideration of John Owen's Teaching on the Heavenly Session of Christ", *Sciendo: Perichorisis*, Vol. 17, No. 3, 2019, p. 3-20.

⁶⁰ John Owen, 1850, *The Death of Death in the Death of Christ*, England, Newcastle: Johnstone & Hunter, p. 13.

the importance of initiator due to the implementation of penal mediation should be initialized by lighter. Therefore, criminal law must accommodate the role of initiator together with a neutral mediator based on the agreement of both parties. Lastly, the intention of penal mediation pursues restorative justice and motivated by positive aims, performs remission toward the suspect, and applies restoration to the victim.

A cross-discipline conversation is possible to develop. Christian teaching owns the capacity to share knowledge concerning penal mediation to criminal law in Indonesia. Its contribution opens the expectation in the future that theology may donate proportional donation to other disciplines, especially speaking jurisprudence. The minimum expectation is, regional law could accommodate certain religion teaching legally, formal institution performs the penal mediation such as occurs in West Sumatra, Aceh, and Lampung. The particular region where the majority is Christian could be able to consider such penal mediation with Christian teaching's attributes. The maximum expectation is the national code of law could occupy specific knowledge of Christian teaching concerning penal mediation.

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