

Penal Mediation Utilization in Handling of Household Negligence Cases in the Perspective of Family Court Establishments in Indonesia

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Abstract

Household negligence cases is one form of domestic violence, the handling still use the law of criminal procedure similar with criminal cases in general on household negligence cases it is closely associated with the interests of children who need to be protected, whereas in the juvenile justice system has its own distinct set by case in general. Household negligence cases very closely related to maintaining the integrity of the household as the purpose of the enactment of the Law of the Republic of Indonesia No. 23 Year 2004 of Household negligence elimination is more precise handling done with the penal mediation so that criminal punishment to the perpetrators of neglect actually beneficial both for the offender, victim and community. In judicial practice, Household negligence many cases prosecuted in retaliation for a lawsuit by his wife for divorce and is usually in the divorce process, husband does not provide for his family, then it is used by his wife to report that her husband had done neglect. Thus Household negligence cases are in the realm of civil and criminal penal mediation so that the model is an appropriate way in the handling of these Household negligence cases. Effort in the handling of child protection Household negligence cases so the family case management perspective is more appropriately done by judges who are competent as well as judges and child neglect cases into one group with the juvenile justice as a special family court.

Keywords: penal mediation, household negligence, family court

1. Introduction

Indonesia based on Pancasila state, where the First Precept is Belief in one God, a philosophical foundation in the life of nation and state which includes the implementation of a marriage in Indonesia, which is the spiritual and physical bond between a man and a woman as husband and wife, in the sense of marriage is not merely born or physical affairs, but also involves the inner or spiritual, which aim to form a happy family and eternal.¹

The obligation of a husband as the head of the family is to provide protection to people who are within the scope of the household and in accordance with the mandate of Article 28 of the Constitution of the Republic of Indonesia Year 1945 and Section 28 G of paragraph (1) of the 1945 Constitution which provides that "Everyone has the right to protection of personal, family, honor, dignity and property under his control, and the right to security and protection from threats to do something that is a human rights." And Article 28H Paragraph (2) of the 1945 Constitution states that "Everyone is entitled to special treatment facilities and to obtain the same opportunities and benefits in order to achieve equality and justice."

Provisions within the religious law, in this Hinduism and 1945 laid the foundation philosophy of the provisions of Article 34 paragraph (1) RI Law No. 1 Year 1974 about marriage that determines that "the husband is obligated to protect his wife and give everything the purposes of married life according to his ability"²

Husbands who deny its obligations as head of the family can be classified as a criminal offense because it can lead to misery for people who are in the protection, than contrary to the precepts just and civilized humanity, which contains values that State must uphold the dignity of human beings as civilized beings. Relative to the state in life, especially in the state legislation must realize the achievement of human dignity altitude, especially the rights of human nature as a fundamental right should be guaranteed in Country legislation.³

In Indonesia, the provisions of the household negligence is one form of domestic violence, has been governed by the Constitution Act of the Republic of Indonesia Number 23 Year 2004 on the Elimination of Domestic Violence, to carry out the mandate of the convention on the elimination of all forms of discrimination against women as already ratified by Republic of Indonesia Laws No. 7 Year 1984 about *convention on the elimination of all form of discrimination against women*.⁴ Thus unconsciously of individualistic philosophy which underlies the birth of convention has influenced legislation deletion charge of domestic violence.

¹ Explanation of Article 1 of Law no. 1 of 1974 on Marriage.

² Loc. Cit.

³ Kaelan, *Pancasila Education*, paradigm, Yogyakarta, 2004, p. 80.

⁴ Dossy Iskandar Prasetyo dan Bernad I. Tanya, Op. Cit. p.95.

Convention is directly or indirectly underlie formation the law elimination of domestic violence making criminal threats against the culprit is imprisonment and the process using the law of criminal procedure (Criminal Procedure Code Criminal Procedure Code) the principle of peace not abolish the criminal offense, but only as an excuse to lighten the punishment.

The purpose of the establishment law elimination of domestic violence including Household negligence cases is for the realization of the unity of the household, so that penal mediation is seen as an appropriate means to restore conditions of families in danger of dropping due to the household negligence.

Penal mediation in case handling household negligence, a glance is similar to that discretion. The system has been owned by several agencies in the criminal justice system in Indonesia, such as police and prosecutors to screen incoming cases to discontinue some certain cases through the criminal justice process, but there is a different essence to the discretion of the system.¹

Penal mediation emphasizes criminal interests and at the same interests of the victim, in order to reach *win-win solution* which is advantageous the criminal and victim. In Penal mediation the victim met directly with criminal and can express their demands so that the resulting peace of the parties.²

A Traditionally of criminal justice still in use by criminal justice system, the judicial process is done in a long process, through the stages of examination at the examination level police, prosecutors and the courts. The stages of the examination referred to take a long time; cost and power are great for one case or a criminal case. These circumstances cause a buildup of criminal cases the burden for the courts, as stated by *Patrialis Akbar*, that:

“Mediation model will not only accommodate a small community, but also will reduce congestion and accumulation of cases in the judiciary. Thus the courts, particularly at the level of the Supreme Court, will be able to focus on substantive issues and large. Because the law enforcement officers must be wise in responding various legal, law enforcement officers must have the courage to take actions that “deviate” from the law for the sake of justice. There are still too many legal issues in this country that need to be taken seriously rather than imposing a small issue to be handled through the courts. That's why law enforcement officials need to understand the concept of “diversion”, which is “discretion” to certain cases where the perpetrator does not have to continue the case to the courts.”³

Based on the description above, it seems clear that there are ambiguities norm between living hood matter. in divorce cases as civil matters with Household negligence cases which located in the realm of criminal cases, while the formal law, a legal vacuum occurred because there is regulation of penal mediation as a way of handling Household negligence cases which is in accordance with the values of customary law and the development of criminal law in some countries, which have oriented on peace efforts in the resolution of criminal case and the absence of harmonization of norms and void blur norms perspective will referred to the establishment of special courts that deal with family matters.

Departing from the above presentation, the issues to be discussed are: Is penal mediation model that is used in the handling of Household negligences cases can be used in the creation of a special court family perspective?

2. Methods

Types of legal research that conducted is normative juridical with the consideration that the starting point of the study is an analysis of the legislation regulations.⁴

In this study the legislation in question is law elimination of domestic violence were assessed contains the gap between its considerations which calls for the unity of the household between criminals with victim, whereas in the torso or material settings especially concerning criminal offenses neglect not included as a crime on complaint as to the types of other criminal acts of domestic violence which is expected to answer the question of penal mediation meant.

In an attempt to answer the problems that have been formulated in this study, use of normative legal research methods to identify the legal theories, concepts and principles of law that is used to assess the legal issues related to the handling model Household negligence cases.

In a normative study begins by tracing the legal materials as a basis for legal decision making to the case-law of the concrete case. In addition, normative legal research also a reflection of scientific activities and to provide an assessment of the legal decisions that have been made against the legal cases that have occurred or will occur.⁵

In the law there are a number of approaches and the approaches that researchers will obtain information from the various aspects of the issues they are trying to look for the answer. The approaches used in law study are *Statute*

¹ Discretion arises because there is a goal to be achieved statehood, among others, to create and enforce the laws of the people's welfare oriented policies justice law and legal expediency. Check Marwan Effendy, *Op.Cit.* p.10

² *Ibid.*

³ Patrialis Akbar, *Power for Humanity*, Indonesia Future Institute, Jakarta, 2010, p. 31 – 32.

⁴ Johnny Ibrahim, *Op. Cit.* p.390.

⁵ Johnny Ibrahim, *Op. Cit.* p.299.

*approach, Case approach, Historical approach, Comparative approach and Conceptual approach.*¹

Legal materials which studied as objects of study include several things:

- a. Primary legal materials, legal materials studied consisted of legislation that ordered by the hierarchy of the Act of 1945, legislation relating to the scope of the study is: Criminal Code, Criminal Procedure Code, the Republic of Indonesia Law No. 23 year 2004 about Domestic Violence Elimination, Indonesian Law No. 11 of 2012 on the Criminal Justice System Kids, Law of the Republic of Indonesia No. 1 of 1974 on Marriage, Law of the Republic of Indonesia Number 30 Year 1999 concerning Arbitration and Alternative Dispute Resolution, Government Regulation of the Republic of Indonesia Number 9 of 1975 about Divorce. Supreme Court Regulation RI No. 1 Year 2008 about Court Mediation Procedure, *Pakraman* Village Council Decision on the Peace Process;
In this connection, the primary legal material that also needs to be examined is the Supreme Court of the Republic of Indonesia, the High Court verdict, the District Court relevant to the issues discussed.
- b. Secondary legal materials which are primarily law books including thesis and dissertation law and legal journals. In addition, also, legal dictionaries and commentaries court's decision.²
- c. Tertiary legal material is legal materials that provide instructions or explanations to primary legal materials and secondary legal materials in the form of a dictionary of law.

The collection of legal materials that are used to obtain primary law material and secondary legal materials carried by topic issues that have been formulated using the snowball system and classified according to the source and hierarchy to be studied comprehensively.³

Legal materials that obtained in the study were analyzed in such a way, then systematically presented in writing to answer the problems that have been formulated, By analyzing the legal material that is deductively draw conclusions from a problem that is common to the concrete problems faced related to the handling model of Household negligence cases by reference to the handling model Household negligence cases prevailing in other countries linked with case management models in juvenile justice that further transplanted into handling model of Household negligence cases as expected.

3. Result and Discussion

In the discussion of the forms of violence that are set in the Law on Domestic Violence Abolition (UUP KDRT) includes physical, psychological, sexual, and neglect.⁴ It was originally proposed to include forms of economic violence, in addition to physical violence, psychological violence and sexual assault in the types of domestic violence, including debate, whether this section of violence type category will be included in the body or general description.⁵

In the discussion of the economic violence, controversy occur due to the use of economic violence can lead to multiple interpretations even feared to be a lot of misuse of these economic terms.⁶ Based on the reference one faction members in the House of people's representatives (DPR) who said that one of the forms of domestic violence are the neglect of women, the phrase 'neglect of household' eventually used to replace the term 'economic abuse'.⁷

A person whom under applicable law, are required to provide care or maintenance to the person in responsibility, and also against those who restrict and prohibit to work eligible outside the home which resulted in the victim be under the person's control are include to acts of neglect in the household as defined in Section 9 Law No. 23 Year 2014 on Domestic Violence Abolition, that:

- a) Any person prohibited displaced the other persons within the household, whereas under applicable law for him or her consent or agreement is required to provide life, care or maintenance to the person.
- b) Abandonment as referred to paragraph (1) also applies to any person resulting economic dependence by limiting and / or prohibiting eligible to work inside or outside the house so that the victim is under the control of the person.

Performers of neglect in the household is threatened with imprisonment of three (3) years or a maximum fine of

¹ Peter Mahmud Marzuki, *Legal Research*, Kencana Prenada Media Group, Jakarta, 2008, p.93.

² *Ibid.* p.155.

³ Johnny Ibrahim, *Op.Cit.* p. 392.

⁴ A common explanation above UUPKDRT.

⁵ Aroma Elmina Martha, *Op. Cit.* p.59-60.

⁶ Economic violence in draft article 1 5th; any act which results in economic loss, economic dependence by restricting and prohibiting a person to work inside and outside the house so that exploitation occurs inside or outside the home or household members are displaced. In the meeting of the Parliament's decision No.06/DPR-RI/2004-2005, 14 September 2004, this change was based reference book that is a compilation of laws on violence against women are split into physical, psychological, sexual and neglect of women. Check the book of Aroma Elmina Martha, *Op. Cit.* p.62.

⁷ *Ibid.* p. 62.

IDR 15.000.000,- (fifteen million rupiahs), thereby neglecting household as defined in UUP domestic violence included in domain of criminal case, that is public law as specified in Article 49 of the UUP domestic violence. The offense of neglect household there that are heavy, which is deliberately abandon his family which resulted in miserable even up resulting in depression, and there is also to death but there are mild cases associated with sustenance in a divorce case which the solution can adopt the settlement of civil cases that requires mediation efforts to achieve peace.

A growing phenomenon today, the wife in divorce proceedings with her husband filed a lawsuit beside to a living (sustenance), also reported her husband had done negligence of household, whereas both of these cases has a different sphere, in the meaning that the living case of marriage is a civil case sphere (private) while negligence of household in the public domain, namely a criminal case.

Case neglect household as one form of domestic violence inspired by the Convention on the Elimination of All Forms of Discrimination Against Women, do not give room for the return of a household that cracked due to negligence of household by giving threats of imprisonment or fines for the neglect criminals, whereas in the preamble considered, that marriage in Indonesia is in essence a spiritual and physical bond between a man and a woman as husband and wife with the intention of forming a family (household) that happy and eternal based on God Almighty, in accordance with the provisions of Article 1 of Law Republic of Indonesia No. 1974 on the marriage, and in the preamble of Domestic Violence Abolition legislation also mentioned, that in order to realize the wholeness and harmony in the household is required the self-control presence of each person in the household.¹

In the Law of the Republic of Indonesia Number 23 Year 2004 on Domestic Violence Abolition (PKDRT) and the explanation does not clearly provide understanding and elements of the negligence of household, so in judicial practice there are a variety of interpretation of the judge, even not infrequently the judge ruled '*onslag*' due to the accused deeds offenders assessed have proved but a realm of civil cases.

The handling of the negligence of household case prior to the enactment of UUPKDRT using Article 304 of the Criminal Code that determines as follows:

"Anyone who intentionally placing or allowing a person in a state of misery whereas under applicable law for him or her consent, he or she is required to provide life, care or maintenance to the person, shall be punished by a maximum imprisonment of two years and eight months or a maximum fine is three hundred rupiah."²

When examined these provisions are very similar to the provisions of Article 49 UUPKDRT, but its elements are more clearly because it has been determined that one of the elements was "placing or allowing a person in a state of misery" that a husband who split with his wife and children and do not provide a living to children and his wife, in the divorce process may not necessarily have been blamed for perform the neglect of household.

Criminal provisions on the negligence of household all this time, its case handling is still based on the of criminal procedural law (Criminal Code) which are same with the criminal case in general, which usually ends up with a criminal prosecution if the defendant is proved perform the criminal offense as the accused. If the law of PKDRT desires wholeness and harmony of the household, its case-handling procedures should be "made their own" by placing a penal mediation as part of the case settlement process such as the law on juvenile justice system, where the implementation of diversion is an event that must be implemented.

Handling cases of neglect household based on the Code of Criminal Procedure does not guarantee the completion of household issues, whereas between the perpetrators with victims generally have very strong family ties, which are not easily separated offhand and with the punishment of imprisonment or fines to the offender, household integrity is threatened and can also cause havoc in the family.³

Juridical consequences handling cases of neglect household which is the realm of criminal law, cannot be avoided use of the principle of law which states that forgiveness by the victim to the perpetrator, not a reason for criminal eraser, but only as an excuse for alleviate criminal that meted out to offenders if found guilty of perform the offenses charged.

In the cases of neglect household during this, the victim or her family almost no attention in the process of the case examination because the position of the victim as a witness only, and cannot affect the public prosecutor as a State tool in representing victims about the indictment which will be submitted to the offender and determine attitude on court decisions deemed not satisfy the justice of the victims to take legal remedies.

Handling case of neglect households still oriented to the protection of public, with criminal punishment that aims to provide guidance to the perpetrators in order to make a wary, so that result the victim does not get attention in proportion.⁴

Negligence household which refers to the criminal law that does not provide protection to the victim is a

¹ A common explanation above Law on Household negligences elimination.

² Moeljatno, KUHP. Book of the Criminal Justice Act, Sinar Grafika, Jakarta, 2001, p.113.

³ ibid

⁴ Ketut sudira, thesis cited from JE Sahetapy, *Victimologi A Potpourri Flowers*, Pustaka Sinar Harapan, Jakarta, 1987, p.39.

weakness of the criminal justice system as stated by Eva Achjani Zulfa, that:

“The weakness of the existing criminal justice systems includes three (3) things:

- a) Criminal offense is more defined the attacks on government authorities than the attacks on victims and or society.
- b) The victim only became part of the verification system and not as the interested parties at the ongoing process.
- c) Process only focused on the punishment for the perpetrators and the crime prevention alone without seeing improvement efforts for losses incurred and restoring balance to the community.”¹

In handling cases of the neglect household, the judge has the autonomy to convict criminals, but in accordance with the character of neglect cases households that are specific, which regarding the integrity of the victim's household with the offender, then the decision should be not imposed arbitrarily follow a subjective feeling.²

The toughest job for a judge in carrying out the duties and responsibilities were when dropping decision, especially for a criminal offense case of households negligence that contained some legal aspects in it, due to the case of negligence of household as a form of domestic violence is charged to the perpetrator as the head of the family, when in reality sometimes the wife incomes is much greater than the offender who has been charged with neglecting her household, and beside that the judge must also consider the interests aspect that want to be protected against the victim and in connection with it in decisions negligence of household, the judge should not solely decide based on purposed of punishment that oriented sentencing provide guidance to the offender, but to harmonize justice and expediency without abandoning aspects of legal certainty, so the decision was perceived fair by the perpetrator or the victim, and the sense of public justice can be protected.³

The judge to ruled neglect in the household, should hold fast to the principle of prudence due the use of criminal sanctions are not appropriate will lead to the failure of the criminal justice system, therefore evolved the idea that criminal sanctions are not the only tool that can be used to enforce criminal law, thus developed two options, namely:

- a) “Using a penal means which means a policy penal by using criminal sanctions (including criminal law politics) where the means of the criminal becomes a major tool in efforts to precaution or prevention of crime.
- b) Using a non-penal facilities which defined as using other means beyond the criminal law means as a tool in the prevention (primarily) crime (prevention without punishment), such as by civil means or administrative sanctions.”⁴

Thus the household negligence case management should refer to the concept of restorative justice that focuses on the interests of victims and perpetrators crime, and by the inclusion of “forgive convict” so that the perpetrators, victims and communities can live in peace again.⁵

Penal mediation models used in handling cases of household neglect that oriented on the peace efforts between the perpetrator and the victim is in line with the history of criminal law which at first there was no difference between the completion of the criminal case with a civil case because the position of the perpetrator and the victim are in the same position, and at that time a reaction to crime are the victim rights entirely to make a claim for the perpetrators (offender). The penalties imposed on perpetrators can be criminal restitution or replacement of the property, thus the criminal law is still civil law dimensionless.⁶

The Household Neglect is the expansion of criminal law that was originally oriented to personal or private interests shift became public law, because the prosecutions perpetrator of crimes are no longer matters of victims to sue perpetrators, but has become the State's obligations aimed at protecting the public from crime.⁷

In the post-development of punishment orientation that places the victim as an important part of the purpose of

¹ Eva Achjani Zulfa, Restorative Justice in Indonesia, Studies Possible Application of Restorative Approaches in Criminal Law Enforcement Practice, Dissertation, 2008, p.132, cited from Rick Linden and Don Clairmont, Making It Work: Planning And Evaluating Community Correction and Healing Projects in Aboriginal Communities (Ontario: Aboriginal People Collection, 1998), p. 3.

² Andi Hamzah, Crime and Punishment System in Indonesia, Pradnya Paramita, Jakarta, 1993, p. 94.

³ Aroma Elmina Martha, *Formation Process of Law on Violence against Women in Indonesia and Malaysia*, Aswaja Pressindo, Yogyakarta, 2013, p.38.

⁴ Eva Achjani Zulfa, Op.Cit. p. 29.

⁵ Explanation of common law PKDRT, Loc. Cit.

⁶ Andi Hamzah in his book, Principles of Criminal Law, Revised Edition Tahun 2008, Rineka Cipta, Jakarta, 2010, p.15 – 26, Furthermore Andi Hamzah explained that the history of criminal law refers to the development meant that formerly, in Europe and also in Indonesia are not segregated public law and private law. The lawsuit either in the public law field including present and that includes private law, filed by aggrieved parties. Terkenallah German adage, "Wo ist kein Klager, ist kein Richter" (if there is no complaint then no judge),

⁷ Badan Litbang Diklat Kumdil Mahkamah Agung RI, Mediation In the Penal Justice System in Indonesia, research reports, Jakarta, 2011, p.2.

punishment, the punishment idea moving towards the completion of criminal case which is something that is beneficial to all parties became the most recent discourse which people think today.¹

The Handling of neglect household case outline is done in two (2) phases, namely:

- a) Pre-adjudication is a phase that starts from the investigation and proceed with the investigation by the investigators, until the prosecution is conducted by the public prosecutor;
- b) adjudication which is a phase where the commencement of the trial of a concerned case, which started by determine the court session day, to match the identity of the defendant, asking detention status, notice of the accused rights to accompanied by legal advisor, reading of the indictment, verification, criminal prosecution, the defense and the criminal punishment.²

In a positive criminal law in Indonesia, particularly in the case of negligence of household, there is no rule that peace can halt the proceedings of a case, although the development of crime prevention does not always have to be resolved in court, but can also be done without the prevention of crime as stated by Iskandar Dossy Prasetyo, that:

“In such condition it required active policy of rulers in the sense of greater intervention to safeguard the victim (female) of all the crime that happened. Countermeasures can be reached by means of: (1). The application of the criminal law; (2). The prevention without punishment; (3). Influencing the community perceptions about crime and punishment through the mass media.”³

Victims of the negligence of household should have a role in the resolution of criminal cases in determining the severity of the sanctions imposed on perpetrators of the crime as known as restorative justice.⁴

The participation of victims in the settlement process is the development of thinking that restore settlement authority of the criminal justice agencies as representatives of the State to the public.⁵

Perpetrators and victims of neglect in the household should be able to resolve their case through the peace that can be used as an alternative of handling cases which generated through penal mediation. Punishment of perpetrators of crime is the *ultimum remedium* that very beneficial for all parties, including the State who has been issued a considerable cost to the phenomenon of the arrest of criminals during the judicial process. Imposition of imprisonment, as stated by Sue Titus Reid, that:

“Prosecutorial decisions will have extensive effect on every aspect of the criminal justice system. Refused to prosecute, or over prosecution, will affect caseloads in the courts and consequently the numbers of people convicted and sentenced to serve terms in prison or other facilities. Prosecutorial decisions may also affect the way the public and defendants view the criminal justice system.”⁶

The Handling of neglect household case with restorative justice model approach is contrary to the purposes of sentencing according to the retaliation theory commonly known as retributive justice, as stated by Chris Cunneen, that:

“The retributive/restorative justice dichotomy fast became in the standard (opposition) approach used to define restorative justice. Two systems were regarded as fundamentally opposed, not only because one is relational and the other is not but because, by and large, advocates of restorative justice believe that it had nothing to do with sentencing and punishment,⁷ and that criminal justice had no restorative elements.”⁸

Mediation has been known only in civil law and has often been used in several countries to resolve criminal matters. Penal mediation is a form of embodiment of the concept of restorative justice, who wants to restore the rights of victims.

Existence of penal mediation can be assessed from the perspective of philosophical, sociological and juridical. In a philosophical perspective, the existence of penal mediation contain the principle implementation of “win-win” solutions and not end up with a “lose-lose” situation and not also end up with a “win-lose” situation as to be achieved by the justice to the achievement of formal justice through the legal process litigate (law enforcement

¹ Eva Achjani Zulfa, Op.Cit, p. 63.

² Ibid. p. 22 – 23.

³ Dossy Iskandar Prasetyo dan Bernard L. Tanyaa, Law, Ethics & Power, Genta Publishing, Yogyakarta, 2011, p.98-99, cited from Khatarine Barlett dan R. Kennedy, Feminist Legal Theory: Reading in Law and Gender, USA.: Westview Press.Inc. 1991, p.1.

⁴ Ibid. p. 64. Restorative Justice, according to Eva Achjadi Zulfa is a concept in mind that the criminal justice system responds to development by focusing on the needs of society and the involvement of victims who felt marginalized by mekanisme who worked on the criminal justice system that exists today.

⁵ Ibid. hlm 63.

⁶ Sue Titus Reid, Criminal Justice Procedures and Issues, West Publishing Company, New York, 1987, p.237.

⁷ Punishment in this case has the same meaning as the sentence or *veroordeling*, for example in terms of conditionally sentenced or *voorwaardelijk veroordeeld* synonymous with conditional convicted or sentenced conditionally, check Sudarto, *Capita Selecta Criminal Law*, Alumni, Bandung, 2010, p. 72.

⁸ Chris Cunneen, *Debating Restorative Justice*, Hart Publishing, Oxford- Portland Oregon, 2010, p.41.

process).¹

Penal mediation resulted in the peaks acquisition of the highest justice due to the agreement of the parties involved in the criminal case is between the perpetrator and the victim. The perpetrators and victims are expected to seek and achieve a solution as well as the best alternative to resolve the case.²

The implications of the achievement is the offender and the victim can file compensation offered, negotiated and agreed upon between them together in order to achieve “win-win” and through the penal mediation philosophically justice achieved rapid, simple and low cost compared with settlement based of the criminal justice system components.³

In a sociological perspective oriented on the Indonesian culture roots, especially in terms of the cultural values of family, put forward the principle of consensus agreement to resolve a dispute within a social dimension that turns of local wisdom in customary law. These aspects and dimensions are identical to the *receptie theory* of Snouck.⁴

Supomo found “indigenous customary law is something alive, because he embodied the real feelings of the people's law, and customary law is dynamic and will grow and develop in line with the development of society”.

Penal Mediation which has been practiced in a few country proven to provide many benefits, it needs an effort in a study form to implement of penal mediation in the judicial process of household negligence case as part of the criminal justice system in Indonesia.⁶

Existence of settling disputes out of court through mediation will be correlated with the achievement of penal justice world is simple, fast and low cost without compromising the achievement of the goal of justice is the rule of law, justice and expediency.⁷

Criminal punishment against perpetrators of household neglect that its light weight and has been forgiven by the victim, assessed does not reflect the purpose of punishment that upholding the dignity of a person by way of educating the actors so in the future will act more cautiously while guided by a sense of justice, as stated by Barda Nawawi Arief, that punishment meted out to the perpetrator based on three things:

- a) Humanity; within the meaning of punishment that upholding the dignity of the person;
- b) Educational; in the sense that punishment being able to make people fully aware of the acts committed and caused him to have a positive and constructive nature of the crime prevention effort.
- c) Fairness; in the sense that punishment should be perceived fair for the convict, victim and the community.⁸

Imposition of criminal in the case negligence of households handed over to the judge to determine the punishment model that is deemed fair both for the perpetrator, the victim and the community. In the criminal cases all of punishment model is seen as a therapy medium for the offender so in the future will apply more caution in civic life.⁹

In today's criminal justice practices, particularly certain cases in this case household negligence, the judge gave an opportunity to the accused and the victim to reconcile, when the victim checked as the witness and the results will be considered by the public prosecutor in criminal charges and by the judges in imposition of judgment.

Peace in the juvenile justice system and the civil cases have different implications from criminal cases in general. In principle the peace in criminal cases generally cannot relieve the defendant from punishment, but only an excuse for criminal alleviate which imposed on the defendant, if based on facts revealed in court, deeds offender has met the elements of the formulations of offense which indicted.

During its development, the existence of peace in the handling of criminal cases, may affect the decision of the judge who is not only about a punishment but it can be a decision that others, which is called “the judge's decisions act” which include the suspension of the decision (suspended sentences), criminal conditional

¹ Lilik Mulyadi, Settlement Court Case Outside Dimensions Through Penal "(Penal Mediation) in the Indonesian Criminal Justice System Assessment Principles, Norms, Theory and Practice, Center for Law and Justice, Training and Development Agency Kumdil, Supreme Court, Jakarta, 2011, p. 174.

² Ibid.

³ Ibid.

⁴ Ibid. hlm 175. It is asserted that the theory of receptie Snouck essentially calling the applicable law and living among the people of Indonesia (Earth's son) is the customary law. This theory receptio response theory in Complexu of LWC Van Den Berg and Solomon Keyzer which essentially states the customs and laws of a class of (legal) community is entirely reception of the religion professed by the community group

⁵ Supomo,

⁶ Ibid. P.311.

⁷ Ibid.

⁸ Barda Nawawi Arief, Legislative Policy in Combating Crime in Criminal Prison, Universitas Diponegoro, Semarang, Semarang, 1996, p.82.

⁹ Mardjono Reksodiputro, Op. Cit. p. 57.

(probation, conditional discharge, absolute discharge) and conditional release (parole) and forgiven (pardonable).¹

Changes and dynamics societies that are very complex on the one hand, while on the other hand the regulations governing the cases handling cannot accommodate shift the public nature of criminal law that leads to the realm of private law, in handling criminal cases through penal mediation as a form of case handling in peacefully, both conducted in court and out of court.²

Penal mediation which is used as the basis for case handling negligence of household that are lightweight, expected the decision handed down is deemed fair for criminals and victims in addition to the public sense of justice can protected, as had been decided by the Supreme Court in case Number: 307K/Pid. Sus/2010 on charges of Article 49 letter a, Jo. Article 9 paragraph (1) of Law no. 23 of 2004 on Domestic Violence Abolition, Supreme Court convict six (6) months with a trial period of 1 (one) year, with a special requirement to provide a living for his wife and children are still dependents (the victim) as much as IDR 1.000.000, - per month. Such decisions are based on considerations that are needed by the victim is a monthly income, while the perpetrator is not expected to be fired from his job as a civil servant as such, the legal interests of both parties can be accommodated.

Judge's decision that takes into account the interests of the offender and the victim is a legal decision that is really useful for all of criminals, victims and society due to a new decision can be considered good, if the consequences resulting from its implementation is good, the greatest happiness and reduced suffering, but otherwise considered bad if its application resulted in consequences that are not fair, losses, and only increase suffering.³

The legal concept of handling cases according to customary law in Indonesia is same with the concept of restorative justice, it can be seen from the characteristics of customary law in regard to the customary breach and the model and the customs and ways of handling offered.⁴

Handling mechanism through customary law basically by way of deliberation to reach a conclusion which is actually adopted from the local wisdom that has long been practiced by indigenous peoples in the country, however, the term between one area to another is not the same, such as: *Paruman* (Bali), *pegundem* (Lombok), *rembug desa* (Java), *rungkun* (Batak Karo).⁵

Mediation agency has known of indigenous peoples of Bali in handling cases that is done peacefully by the hand of (mediation) third parties, both individuals and other institutions or Pakraman Assembly (Majelis Desa Pakraman/MDP) to get a decision.⁶

Deliberation in the handling of the case mentioned above, indicates that the handling of the case according to law Balinese is implemented by way of deliberation that lead to peace between the perpetrator and the victim, so expect the resulting verdict really fulfill sense of fairness to the offender, the victim in addition to taste justice society can protected with the return of the balance from the jolt that has occurred within the community.

In judicial practice, the Medan District Court in its decision dated January 27, 2009 Number. 2829 / Pid. B/2008/PN.Mdn impose imprisonment to the accused for 1 (one) year and 6 (six) months.⁷

Such decisions can be predicted threaten the integrity of the household of the victims and perpetrators. If the terms of the facts revealed in the trial, that the defendant is said to have refused to said that has abandoned his home with his wife as the reason of bakeries businessman which earn 30 million per month while the defendant as a member of the police only earn 2 million per month, making the victim had never been asked to move so that the task neglect their duties as members Bhayangkari.⁸

¹ Bambang Poernomo, Archetypal Theory - General Principles of Criminal Law and Criminal Law Enforcement, Liberty, Yogyakarta, 1993, hlm43.

² Examined from the perspective of terminology then known as penal mediation mediation in criminal cases, mediation in penal matters, victim Offender mediation, victim Offender arrangement (Britain), Strafbemiddeling (Netherlands), der Aubergeriche Tatausgleich (Germany) de mediation penale (France). Basically penal mediation is a form of alternative dispute resolution outside of court (Alternative Dispute Resolution / ADR) is commonly applied to civil matters. In this dimension out of court ADR has been stipulated in Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution. As explained in the Research Report, Op.Cit. p.3.

³ Suhariyono AR, Updates on the Indonesian Criminal Fines, Criminal Penalties For Alternative Sanctions, Papas Sinar Sinanti, Jakarta, 2012, p. 74.

⁴ Eva Achjani Zulfa, Op.Cit. P.67.

⁵ I Made Widnyana, Op.Cit. p. 104.

⁶ Majelis Desa Pakraman (MDP) Bali, Speech By Settlement Procedures Majelis Desa Pakraman (MDP) Bali, 2012, p. 12.

⁷ Medan District Court decision dated January 27, 2009 Number. 2829 / Pid. B/2008/PN.Mdn, p.17. In the decision also contained defendant's defense counsel stating of the facts revealed in court where witnesses Junior income of about 30 million per month and accused child attends most expensive (Methodist) and the defendant was carrying a child named Knight wiratama Silaen was taken for treatment to abroad (Pineng, Malaysia) cannot be categorized as displaced persons;

⁸ *Ibid*

Case of neglect in the households often occurs as a result of the divorce proceedings between the victim with the perpetrator, so the verdict against such cases are often different from one another because not specifically on point of tangency between living in a divorce case with case negligence of household, as evidenced by the District Court Singaraja dated March 26, 2012 Number 52/Pid.Sus/2012/PN.SGR.¹

The judges in the decision to consider, that the defendant had made peace with the victim, then the conditional assembly to convict the defendant, namely imprisonment for six (6) months with probation for 1 (one) year, but the defendant with the victim still divorced.

Kupang District Court in Case Number: 61/Pid. Sus/2013/PN.KPG, dated 29 April 2013, in its decision declared defendant JUFRI MUHAMMAD BERE Alias JUFRI proven legally and convincingly perform the act charged, but the act does not constitute a criminal offense, and the judge ruled *onslag*;

The verdict handed down on the basis that the facts revealed in court, the panel concluded that living matter has been decided by the religious court Kupang Number: 0030/Pdt.G/2011/PA.KP. dated June 6, 2011 at IDR 750,000 (seven hundred and fifty thousand rupiahs) for each month as well as the provisions of Article 45 UURI No. 1 of 1974 on Marriage.

In consideration of the law the judges suggests that it should the witness Nur Paidawati Fatta submit the petition to the Religious Court Kupang, so that in the future in law enforcement does not create a bad precedent that any civil decision about the distribution of life assurance from parents to their children can be imprisoned.²

Household negligence cases as described above shows that between wife as a reporter and husband as defendant had broken up his marriage so that the decision does not affect the integrity of the household again as PKDRT law enforcement purposes.

In a domestic violence case in Kupang District Court, after the indictment was read by the public prosecutor and the trial continued with the examination of a witness, the defendant's legal counsel filed a petition in order between the defendant and the victim and his family is given the opportunity to pursue mediation.

The panel of judges who examined the case referred rejected the defendant's legal advisor requests by reason of criminal procedural law does not regulate the process of mediation in the trial of criminal cases, but because the mediation is required, the judge suggested that mediation carried out outside the court by pointing the prosecutor and legal advisor defendant as a mediator and as a result so put in the form of an peace affidavit to be used as the basis of consideration of the panel of judges in deciding the case then between the complainant (wife) and defendant (husband) turns at peace.³

In Indonesian positive criminal law is adopted principle that a criminal case cannot be settled out of court, although in certain cases it is possible existence of a settlement out of court, but the practice of law enforcement in Indonesia is often a criminal case settled out of court through the discretion of law enforcement officers.⁴

Implications practice out of court settlement all this time there is no formal legal basis, so prevalent also occurs a case informally has been made an amicable settlement through customary legal mechanisms, but it still processed to the appropriate court of law applicable positive.⁵

Neglect household case which is one form of domestic violence is a criminal case that has implications for family relationships between the perpetrator and the victim that will not be able finished by the punished of perpetrator, therefore the use of penal mediation in matters negligence household can be done as a model handling civil matters and diversion in the juvenile justice system, where the judges are obliged to offer a criminal case alternative by way of peace to the parties, which is between the perpetrator with the victim prior to the hearing before the trial court. If mediation is reach an agreement, then the result can be used as reason to abolish in run the criminal for criminals, but if penal mediation fails in implemented then the penal proceedings concerned continued.⁶

In the Law of the Republic of Indonesia Number 11 of 2012 on the Criminal Justice System Child has no provision requiring the implementation of penal mediation at the beginning of the proceedings, as provided for in Article 52 of the Law of the Republic of Indonesia Number 11 of 2012 on the Criminal Justice System Children.⁷

¹ Singaraja District Court dated March 26, 2012 Number 52/Pid.Sus/2012/PN.SGR, p. 11-12.

² Kupang District Court Decision in Case Number: 61/Pid. Sus/2013/PN.KPG, dated 29 April 2013, p.11.

³ Minutes of Hearing Case Number: 108 / Pid. Sus/2013/PN.KPG, p.

⁴ Lili Mudyadi, Case Out of Court Settlement Through Mediation Dimension Penal (Penal Mediation) In the Indonesian Criminal Justice System Assessment Principles, Norms, Theory and Practice, Mediation Penal Criminal Justice System In Indonesia, the Center for Law and Justice, Training and Development Agency Kumdil, the Court Supreme republic of Indonesia, Jakarta, 2011, p 171.

⁵ *Ibid.* p. 172.

⁶ Umi Rozah, Op.Cit. p.329.

⁷ In Article 52 paragraph (2) of Act No, 11 of 2012 on the Criminal Justice System Children determined that the judge should should mengupayakan diversion of more than 7 (seven) days after adoption by the chief district court judges.; Paragraph (3)

The Handling of criminal cases except in the case amicably child, also required in the handling of cases that are specific, such as cases of household neglect mainly which is mild where the perpetrator and the victim is likely to remain living in the household, so if resolved peacefully if very beneficial to survival the household life.

Penal mediation is a case management that emphasizes the deliberation between the victims with the perpetrator, have significance in the context of the criminal procedure law reform efforts in Indonesia. In an effort to reorient and reform of the criminal procedure code that corresponds to the central values of the socio-political, socio-philosophical and socio-cultural of Indonesian public that underlying the Indonesian law enforcement policy in Indonesia.¹

Neglect household case has specificity if compared with the other forms of domestic violence because of negligence of household are economic and psychological dimensional, also has implications for the growth of the child such as the intent and purpose of the law on the establishment of the juvenile justice system, so in the future is expected of handling household neglect cases in Indonesia required the model formulation in the case proceedings that have specificity, that is handled by judges who have special competence like a children judge in the juvenile justice, and putting penal mediation as one of the procedures to be followed in the case management process, which is different from the criminal offense in general.²

In the design of the Criminal Procedure draft the Penal Mediation is set but merely handling a criminal case at the level of investigation and prosecution, and the presence of some provisions of the draft Code of Criminal Procedure which determine about sentencing guidelines that take into account the influence of a criminal offense for the victim also the perpetrator's own future and forgiveness of victims, so it needs the provisions for the handling of criminal cases that support the goal is to put the penal mediation as one of the procedures that must be undertaken, especially in the case of negligence of household that can be classified as a crime that happened in the family, due to the imposition of criminal negligence households case especially that is light, would have implications for the emergence of victims as new victims, because psychologically the family as prisoners families has adversely affected the rights of convicted persons would closed to reach certain levels with the imposition of the performer.

Based on the specific character of the cases negligence of household, it is necessary the reconstruction of model of case management by transplantation the handling provisions governing civil cases and which has been set in law of system juvenile justice in the form of penal mediation.

In the criminal procedure law reform, it is necessary to reorient and reform of the criminal procedure law in accordance with the central values of socio-political, socio-philosophical, and socio-cultural values of the Indonesian people, so extracting the values that exist in the community in addition to originating on the values of religious law, criminal law positive (criminal Code), criminal law of other State, and international agreements on criminal law matter.³

4. Conclusion

Based on the description above, it is apparent that household negligence case has two dimensions are private sphere and penal sphere, but during this the handling by using Criminal Procedure Code so it can be ascertained that the case ended with punishment against to the criminal of household negligence who are still bound a very close relationship with the victim.

Penal mediation assessed as a way of handling household negligence case can return household on the purpose of the formation of Elimination Law of Domestic Violence which is to maintain the integrity of the household.

The handling of household negligence case should be done by grouping the case with other cases that are specific such as juvenile justice, so that future can set up a special family court in Indonesia.

References

determines that the diversion as mentioned in paragraph (2) shall be implemented no later than 30 (thirty) days; paragraph (4) determine the diversion process can be carried out in the space of mediation; paragraph (5) provides that in the event of diversion process reached an agreement, the judge delivered the news event and its diversion agreement the chairman of the court to make the determination; paragraph (6) provides that in the event of diversion are not successfully implemented case proceeded to trial stage;

¹ Barda Nawawi Arief, Potpourri Flowers Criminal Law Policy, Citra Aditya, Badung, 1996, p.30-31.

² In connection with the specificity of the crime of abandonment, which is one form of domestic violence, Moerti Hadiati, Soeroso in his book entitled: Domestic Violence In Juridical Perspective - Viktimologis, Graphic Rays, Jakarta, 2011, stating that the acts of violence that occurred in the household has special qualities and special. The specialty of this action lies in the relationship between the perpetrator and the victim. In cases of criminal acts other actors sometimes do not know the victim at all and often times do not have a relationship. But on domestic violence perpetrators and victims have a special relationship, namely the relationship of marriage (husband and wife), blood relations (parents, children, nephew) or employment relationship ties eg domestic servants living in the house with the offender.

³ Made Widnyana, Op. Cit. p.162-163.

- Abadinsky, Howard, *Discretionary Justice; An Introduction to Discretion in Criminal Justice*, Charles C. Thomas Publisher, Illinois, 1984.
- Adami Chazawi, *Interpretation of Criminal Law, basic Punishment, Weighting and Mitigation. Crime Complaints, Concurrent and Doctrine Causality, Criminal Law Lessons*, Raja Grafindo Persada, Jakarta, 2002
- , *Crimes against property*, Bayumedia, Malang, 2003.
- Abdur R. Khandaker, *Police And Criminal Justice in Bangladesh, dalam Integrated Approach to Effective Administration of Criminal and Juvenile Justice, Criminal Justice In Asia The Quest for An Integrated Approach*, UNAFEI, Tokyo, 1982, hlm 113
- Andenaes, Johannes, *Towards A Morality Neutral System of Sanction, dalam Punishment and Deterrence*, The University of Michigan Press, Canada, 1974.
- Andi Hamzah, *Crime and Punishment System in Indonesia*, Pradnya Paramita, Jakarta, 1993
- , *Principles of Criminal Law, Revised Edition Year 2008*, Rineka Cipta, Jakarta, 2010.
- Arnhem, *Criminal Law in Action, An Overview of Current Issues in Western Society*, Goda Quint, without Year.
- Apeldoorn, J.J. Van. *Introduction to Legal Studies*, Jakarta, Pradnya Paramita, cetakan kedua puluh enam, 1996,
- Aroma Elmina Martha, *Formation Process of Law on Violence against Women in Indonesia and Malaysia*, Aswaja Pressindo, Yogyakarta, 2013
- Bahder Johan Nasution, *Research Methods of legal Science*, Mandar Maju, Bandung, 2008,
- Barda Nawawi Arief, *Legislative Policy in Combating Crime with Prison Criminal*, Universitas Diponegoro, Semarang, 1996,
- , Barda Nawawi Arief, *The potpourri of Legal Crime policy*, Citra Aditya, Badung, 1996
- , *Some Issues of Criminal Law Comparative*, Raja Grafindo Persada, Jakarta, 2003,
- Bambang Poernomo dalam bukunya berjudul : *The basic pattern of Theory/ Public Principal Criminal Procedure and Criminal Law Enforcement*, Liberty, Yogyakarta, 1993
- Ball, *The Deterrence Concept in Criminology and Law*, 46J.Crim.L.,C&P.S,347 (1955).
- Bagir Manan, *Authoritative Justice System, A Searches*, FH UII Press Yogyakarta, 2005,
- Carl Joachim Friedrich, *Historical Perspective of Legal Philosophy*, Nuansa dan Nusamedia, Bandung , 2004
- Chris Cunneen, *Debating Restorative Justice*, Hart Publishing, Oxford- Portland Oregon, 2010
- David Austern, *The Crime Victims Handbook, Your Right and Role in the Criminal Justice System*, Penguin Book, Canada, 1987.
- Dossy Iskandar Prasetyo dan Bernard L. Tanya, *Law, Ethics & Power*, Genta Publishing, Yogyakarta, 2011
- Djoko Prakoso dan Nurwachid, *Study of Opinions Regarding the Effectiveness of Criminal Dead in Indonesia in this recent*, Ghalia Indonesia, Jakarta, 1983.
- Edward H. Levi, *An Introduction to Legal Reasoning*, The University of Chicago Press, Chicago, London, 1974.
- Eva Achjani Zulfa, *Restorative Justice in Indonesia, Studies Possible Application of Restorative Approaches In the Practice of Criminal Law Enforcement*, Dissertation, 2008
- , Eva Achjani Zulfa, *Paradigm shift Punishment*, Lubuk Agung, Bandung, 2010
- Garner, T.G. *Corrections in Hongkong, dalam Integrated Approach to Effective Administration of Criminal and Juvenile Justice, Criminal Justice In Asia The Quest for An Integrated Approach*, UNAFEI, Tokyo, 1982.
- Gatot Soemartono, *Arbitration and Mediation in Indonesia*, Gramedia Pustaka Utama, Jakarta, 2006,
- Gross, Hyman, *A Theory of Punishment*, Indiana University Press, Bloomington, London, 1971.
- Gruuf, Stanley E, *Theories of Punishment*, Indiana University Press, Bloomington, London, 1971.
- Hamdan, H.M, *The elimination reason of Criminal Theory and Case Studies*, Refika Aditama, Bandung, 2012.
- Heri Tahir, *Fair Legal Process in the Criminal Justice System in Indonesia*, LaksBang Pressindo, Yogyakarta, 2010.
- Israel Drapkin and Emilo Viano, *Victimology: A New Fokus*. Lexington books D.C. Health and Company, Massachusetts, London, 1974
- Jeremy Bentham, *Theory of Legislation, Principles of Legislation, Civil Law and Criminal Law*, translated by Jeremy Bentham, *The Theory Of Legislation* (N.M. Tripathi Private Limited, Bombay, 1979, Nuansa & Nusamedia, Bandung, 2010.
- Johnny Ibrahim, *Theory & Research Methodology of Legal Normative*, Bayumedia Publishing, Malang, 2005,
- John Rawls, *A Theory of Justice*, London: Oxford University press, 1973, which have been translated into Indonesian by Uzair Fauzan and Heru Prasetyo, *Justice theory*, Pustaka Pelajar, Yogyakarta, 2006.
- Kahar Masyhur, *Fostering Moral and Akhlak*, Kalam Mulia, Jakarta, 1985, "p.71.
- Karyadi M. dan R. Soesilo, *The Law Book of Criminal Procedure with Explanations and Comments (KUHP with Official Explanation / Comments)*, Karya Nusantara, Bandung, 1983, "p. 174.
- Kenneth J. Peak, *Justice Administration, Police, Court, And Correction Management*, Prentice Hall, Englewood Cliff, New Jersey. Tanpa tahun.
- Lawrence M. Friedman and Stewart Macaulay, *Law And Behavioral Sciences*, tanpa tahun,
- Majelis Desa Pakraman (MDP) Bali, *Procedure for Settlement Talk By Pakraman Village Council (MDP) Bali*,

2012,

- Mardjono Reksodiputro, *Criminology and Criminal Justice System*, Universitas Indonesia, Jakarta, 1994.
- , *Human Rights In The Criminal Justice System, Justice Services Training Center and Legal Services (d / h Institute of Criminology)*, University of Indonesia, Jakarta, 1994,
- Marpaung, Leden, *Principle - Theory - Practice Criminal Law*, Sinar Grafika, Jakarta, 2005,
- Marwan Effendy, *Discretion, Discovery Law, Corporate & Tax Amnesty In Law Enforcement*, Jakarta, 2012
- Mien Rukmini, *Aspects of Criminal Law and Criminology (A Potpourri)*. Alumni, Bandung, 2009.
- Moelyatno, *Principles of Criminal Law*, Bina Aksara, Jakarta, 1987
- Moerti Hadiati Soeroso, *Domestic Violence In Juridical Perspective – Viktimologis*, Sinar Grafika, Jakarta, 2011,
- Mohamad Faiz, Pan, *Justice Theory John Rawls*, in journal *Constitution*, Volue 6 Nomor 1 (April 2009)
- Muladi and Barda Nawawi Arief, *A Potpourri of Criminal Law*, Alumni, Bandung, 1992.
- Muladi, *Capita Selecta of Criminal Justice System*, Universitas Diponegoro Semarang, 2002.
- , dan Dwidja Priyatno, *Corporate Criminal Liability*, Prenada Media Group, Jakarta, 2010.
- Munir Fuady, *Major Theories (Grand Theory) in Law.*, Kencana, Jakarta, 2013
- Neil Mac Cormick, *Legal Reasoning and Legal Theory*, Glarendon Press, Oxford, 1978
- Norval Morris, *The Overview of Criminal Justice Administration, Criminal Justice In Asia The Quest for An Integrated Approach*, UNAFEI, Tokyo, 1982.
- Patrialis Akbar, *The power for human right*, Indonesia Future Institute, Jakarta, 2010,
- Peter Mahmud Marzuki, *Law Research*, Kencana Prenada Media Group, Jakarta, 2008
- Purnadi Purbacaraka and Soerjono Soekanto, *Reflections On Law Philosophy*, Rajawali, Jakarta, 1982, “p.83.
- Badan Litbang Diklat Kumdil Mahkamah Agung RI, *The Penal Mediation of Justice System in Indonesia, Research report*, Jakarta, 2011,
- Richard P. Claude, *Comparative Human Rights*, The Johns Hopkins University Press, Baltimore and London, Bethesda, Maryland, tanpa tahun.
- Robert Reiff, *The Invisible Victim, The Criminal Justice Systems Forgotten Responsibility*, Basic Book, Publisher, New York, 1979.
- Romli Atmasasmita, *Criminal Justice System Perspective Eksistensi dan Abolitionisme*. Bina Cipta, Bandung, 1996.
- , *Juvenile Justice in Indonesia*, Mandar Maju, Bandung, 1997.
- , *Contemporary Criminal Justice System*, Prenada Media Group, Jakarta, 2010.
- Ruslan Saleh, *Indonesian Criminal Stelsel*, Aksara Baru, Jakarta, 1997
- Rusmilawati Windari, *Legal protection of children from violence in the Family in Indonesia and Thailandl Comparative Studies in Criminal Law in Perspective, without the publisher and year of publication.*
- Sholehuddin, M, *In the Criminal Justice System Sanctions, Double Track System Basic Idea & Its Implementation*, Raja Grafindo Persada, Jakarta, 2002,
- Stuart H. Traub And Craig B. Litle, *Theories of Deviance*, State University of new York at Courtland, tanpa tahun.
- Suhrawardi K. Lunis, *Ethics of the Legal Profession*, Second Printing, Jakarta, Sinar Grafika, 2000, “p. 50.
- Soesilo, R, *Kitab Undang-undang Hukum Pidana (KUHP) Serta Komentar-komentarnya Lengkap Pasal Demi Pasal*, Politeia, Bogor, 1988.
- Satya Wahyudi, *Idea Implementation System Update Peradilan Diversion In Criminal Child in Indonesia*, Genta Publishing, Yogyakarta, 2011,
- Sahetapy, JE, *Victimologi A Potpourri Flowers*, Pustaka Sinar Harapan, Jakarta, 1987,
- Siswanto Sunarso, *Victimology in the Criminal Justice System*, Sinar Grafika, Jakarta, 2012
- Soerjono Soekanto, *Normative Legal Research, A Brief Overview*, Rajawali, Jakarta, 1985
- Siregar, Bismar, *Justice of the Various Aspects of the National Law*, Rajawali, Jakarta, 1986
- Syaiful Bakhri, *telsel Criminal Law Developments in Various Aspects Indonesia Keadilan National Law*, Total Media,, Yogyakarta,
- Sudarto, *Law and Criminal Law*, Alumni, Bandung, 2007
- , *Capita Selecta Criminal Law*, Alumni, Bandung, 2010,
- Sudarsono, *National Marriage Law*, Rineka Cipta, Jakarta, 1991
- Sue Titus Reid, *Criminal Justice Procedures and Issues*, West Publishing Company, New York, 1987
- Suhariyono AR, *Updates on the Indonesian Criminal Fines, Criminal Penalties For Alternative Sanctions*, Papas Sinar Sinanti, Jakarta, 2012,
- Sukadana, I Made, *Judicial Mediation, Mediation in Civil Justice System in Indonesia in order to Realize Judicial Process Simple, Quick and Cost Lightweight*, Prestasi Pustaka Publisher, Jakarta, 2012
- Teguh Prasetyo, *The criminalization of the Criminal Law*, Nusa Media, Bandung, 2011.
- Umi Rozah, *Political Construction of Penal Law Mediation as an Alternative Pengelesaian criminal case, the Criminal Law in Perspective*, Pustaka Larasan, Denpasar, 2012

Waluyadi, *Crime, Courts and Criminal Law*, Mandar Maju Bandung, 2009.

Yarahap, M.Yahya, *Discussion of Issues and Implementation of Code of Criminal Procedure, Hearing, Appeal, Appeal and Judicial Review*, Edisi Kedua, Sinar Grafika, Jakarta, 2006,

Widnyana, I Made, *Discussion of Issues and Implementation of Code of Criminal Procedure, Hearing, Appeal, Appeal and Judicial Review*, PT. Fikahati Aneska, Jakarta, 2013

Peraturan Perundang-undangan

Republic of Indonesia, Tahun 1981, Nomor 76., *Undang-Undang Dasar 1945*,

Republic of Indonesia, Tahun 1981, Nomor 76., *The Law on Criminal Procedure, Law No. 8 of 1981, the Republic of Indonesia*, Tahun 1981, Nomor 76.

Republic of Indonesia, *Law on Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (Convention on the Elimination of All Forms of Discrimination Against Women)*, Undang-undang Nomor 7 Tahun 1984, Lembaran Negara Tahun 1984 Nomor 29. Tambahan Lembaran Negara Republik Indonesia, Nomor 3277.

Republic of Indonesia, *The Law on the Elimination of Domestic Violence*, Undang-undang Nomor: 23 Tahun 2004, Lembaran Negara Republik Indonesia, Tahun 2004, Nomor 95, Tambahan Lembaran Negara Republik Indonesia, Nomor 4419.

Republic of Indonesia, *Law on Child Protection*, Undang-undang Nomor: 23 Tahun 2002, Lembaran Negara Tahun 2002, Nomor 109. Tambahan Lembaran Negara Republik Indonesia, Nomor 4235.

Republic of Indonesia, *The Law on the Criminal Justice System Anak Undang Law on Child Protection*, Undang-undang Nomor : 11 Tahun 2012, Lembaran Negara Tahun 2012, Nomor

Republic of Indonesia, *Law on Marriage*, Undang-undang Nomor 1 Tahun 1974, Lembaran Negara Republik Indonesia Tahun 1974, Nomor 1, Tambahan Lembaran Negara Republik Indonesia, Nomor 3019.

Republic of Indonesia, *Law on Arbitration and Alternative Dispute Resolution*, Undang-undang Nomor: 30 Tahun 1999, Lembaran Negara Republik Indonesia tahun 1999 Nomor , Tambahan Lembaran Negara Republik Indonesia Nomor

Republic of Indonesia, *Law of the Republic of Indonesia Number 12 Year 2011 on the Establishment Laws and regulations*

Republic of Indonesia, *Government Regulation on Divorce*, Peraturan Pemerintah Nomor 9 Tahun 1975, Lembaran Negara Republik Indonesia tahun 1975 Nomor 12 , Tambahan Lembaran Negara Republik Indonesia Nomor 3050.

Supreme Court of the Republic of Indonesia, the Indonesian Supreme Court Rules, Mediation Procedure, Perma No. 1 of 2008

Indonesian Supreme Court, Supreme Court Circular dated 3 September 1973 No. 05 of 1973

Indonesian Supreme Court, Supreme Court Circular 1 of 2000