

The Reconstruction of Penal Mediation in the Indonesian Criminal Justice System as an Alternative of Criminal Act Settlement in E-Commerce Transaction (E-Commerce Fraud) to Protect Consumers

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Abstract: *There have been disadvantages of criminal act dispute settlement in the court through integrated criminal justice system in Indonesia. One of them is in terms of handling crime of e-commerce fraud such as the bureaucratic barrier, inefficient time management, high cost, past events clarifications, and future problem-solving discussions. To reach the substantive justice simply and easily, it is necessary to implement the restorative justice paradigm toward victims, offenders, and societies. Moreover, the offenders are not required to pass on the integrated criminal justice system based on the responsibility to fulfill a suitable financial compensation for both material and immaterial domains in accordance with suffering victims who go through calculated evidences of confessions. This way is implemented by using a mechanism of penal mediation reconstructed to solve criminal act through non-litigation consumers' protection. This procedural solution is reconstructed through the penal mediation held for each stage in integrating the criminal justice system of criminal litigation processes. With respect to this idea of restorative justice, implementing the integrated criminal justice system is worth considering, including the preliminary inquiry, the further investigation, prosecution, cross examination in the district court, the execution of permanently judged decisions by a general prosecutor and a head of jail institute under the monitoring Body of Consumer Dispute Settlement as a coordinator supervisor toward pointed mediators by either government guarantee and mediation institution (g2mi) or private guarantee and mediation organization (pgmo) based on parties approval to facilitate their participation. This procedural solution can be conducted by using patterns of reconstructing either offline or online penal mediation which is arranged by the Body of Consumer Dispute Settlement for giving permanently-set law strength (inkracht) and its binding. The agreement result of penal mediation process is declared into peaceful official documents based on the judge validation at a district court level.*

Keywords: Reconstruction, Penal mediation, criminal justice system, crime of e-commerce transaction (e-commerce fraud), the protection of consumers

1. Introduction

Law enforcement process should not be done wholly by using a formal justice method in litigating a law process at the criminal justice system (a law enforcement process) conducted by law enforcers to pass on their tasks as a device of state that tends to be formalism and positivism-oriented. This litigation is a formal measurement strongly focused on enforcing efforts with the authority of law enforcers to do whatever that matters. The need-it-right-now case management is supported by a non-litigation dispute settlement paradigm to reach out justice through a consensus approach and to confront the interest of disputing parties that aim to gain results of dispute settlement and win a solution of balancing reciprocal relationships.

Using a non-litigation dispute settlement paradigm is likely to determine the conception of dispute settlement resulting in increasing thoughts of society, complexity, sharpness of social status in society, culture or society values [Soetandyo Wignjosoebroto. "Try to understand behaviour patterns of the avenue user". 1988. Yuridika No. 8, page 41]. In the practice of criminal court, Indonesia is the case in point (especially someone's case of pseudonym called Mrs. ED, based on the decision of state court at district of North Jakarta – No. 46/PID/78/UT/woman at 17 June 1978) [See the decision of state court district of North Jakarta, No.

46/PID/78/UT/WOMAN, 17 June 1978]. Bismar Siregar was as the court head judge who decided to become reconciliation as consideration to clarify that a proved criminal act was not considered a crime anew, therefore, the defendant escaped from accusations and all of law claims.

Basically, the criminal law system in Indonesia takes into account the criminal law implementation. Regardless of the fact, the criminal law stipulation possesses a linkage aspect called a law consequence of contractual relationship pertaining to how it contravenes an approval of suffering parties. Of course, this matter differs from a system in a civil law. In the world of law knowledge is a recognizable separation between a public law and a private law. However, the law relationships transparently contain public elements and the private ones interwoven all at once. This matter has been dealt with properly in the same manner as Wirjono Projodikoro reveals:

"All of laws regulate human behaviors in society to pursue societal salvation, whereas, the society comprises of human beings; the societal interest always becomes a factor in all of law regulations. However, in a certain law relationship, its condition is like a center for gravity that draws on human beings' interest, and it apparently supports another relationship as a center for gravity of the public's interest"

Volume 5 Issue 10, October 2016

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[Wirjono Projodikoro, *Criminal Law Principles in Indonesia*, Refika Aditama, Jakarta, 2003, page 2].

Referring to such differences between a public law and a private law, in one sense, criminal law becomes a part of public law, but a civil law is regarded as a part of private law [*Ibid*]. As this matter is mainly concerned, it can be seen that a consumer who possesses a bond of contractual relationship conveniently toward e-commerce transaction of business, sometimes, there is an e-commerce fraud as one of crimes of e-commerce transaction in that contractual relationship. Then, this e-commerce fraud will be connected to criminal problems, meanwhile the contractual relationship of covenants among business parties in e-commerce transactions remains a civil problem.

One of the prominent cases, for instance, is a fraud in selling Lamborghini and Ferrari done by the offender called YR, otherwise called Ian or Marco or Christian in Medan. He offered those two cars to other parties through Internet. Previously, he unfolded this email: my282mnfg@yahoo.com and the East Java-based victims had undergone a financial loss (Elias Youssef al Habr) approximately worth Rp. 550.000.000,- because those ordered cars did not exist and could not be sent to the victim [Decision of state court district of Medan No. 1275/Pid.B/2005/PN. Mdn, August 12, 2005 quoted from Sigid Suseno, *Jurisdiction of Cyber Criminal Act*, Refika Aditama, Bandung, 2012, page 3]. The consequence of the offender's deeds as a seller or a producer is very detrimental to a consumer or a goods' buyer, so that the consequence of the offender's dishonesty as a producer cannot intentionally conduct an agreement to reach a contractual relationship of covenant in online selling and buying transactions, then the offender as a producer will be asked to assume responsibility of criminal accusation (a fraud as a criminal act) he/she conducts. If such a case is taken as criminal responsibilities, of course, based on general principles of criminal law, everyone who is suspected to perpetrate a criminal act will be investigated and cross-examined through criminal justice processes in an integrated criminal justice system. If the offender proves guilty, then he/she will get a criminal sanction.

Recently, the integrated criminal justice system validly retributive justice-oriented [A view of retributive justice assumes a penalty as a negative punishment toward deviating behaviours practiced by citizens in a society, so that this view merely observes the penalty as a reprisal toward his/her guilt based on his/her moral responsibility. Helbert L. Packer, *The Limits of the Criminal*, Stanford University Press, California, 1968, page 10] is formulated to implement the criminal court as a rationalization or a revengeful objectivity toward the criminal law breaker, so that an infliction and a permanently negative stigma may occur toward offenders of criminal act. Louk Hulsman said that the integrated criminal justice system is viewed as a social problem to take into account, such as [Romli Atmasasmita, *Criminal Justice System, Existentialism and Abolishment Perspective*, Bina Cipta, Bandung, 1996, page 97]:

- 1) Criminal justice system gives rise to infliction;
- 2) Criminal justice system cannot work appropriately under the aim of its idea;

- 3) Criminal justice system cannot be handled;
- 4) Used approach of criminal justice system possesses basic defects

These conditions are incompatible with the society eagerness that encourages wishful restorative justice gained through an integrated criminal justice system in conflict with the settlement medium for victim, society, and crime offenders who conduct a mediation to solve conflicts because of existing disobediences of criminal law as both crime and infraction. The relationship between a breaker or an offender and a victim is integrated into a criminal justice process built on a solid foundation of a dialogical relationship, that is, a well-known relationship among human beings who require humanism. This explanation is similar to Bruce P. Archibald's [Bruce P Archibald, 2016, *Criminal Justice Models: Canadian Experience in European and Islamic Comparative Perspective*, Dalhousie Law Journal, Forthcoming at <http://ssrn.com/2763012>, accessed July 9th 2016. 9.30 am, pages 9-10] opinion, as follows:

The deliberative processes of a restorative justice are far more democratic and egalitarian than the participation by jurors in a standard criminal trial. Well-practiced restorative justice is therefore built on the understanding that society is composed of individuals who have relationships with other, and that criminal conduct is best addressed through processes which involve the people in the relevant relationships, based on values of equality, human dignity, mutual respect, and an ethic of care, and concern to recovery. Victim participation in restorative justice should always be voluntary so that such a relation of victim rights does not preclude the assertion of victim judgment about basic questions of participation toward offender.

Although the penal mediation as a non-litigation medium does not exist in The Criminal Code and Statute No. 8 Year 1981 concerning the Code of Criminal Procedure, it is viewed as a juridical optic, integrated criminal justice system in Indonesia based on the Code of Criminal Procedure strongly focused on the criminal act of offenders, either about his/her position from suspect to be a prisoner or his/her rights as a suspect or a defendant extremely protected by the Code of Criminal Procedure. Thus, the criminal justice process in Indonesia namely offender-oriented or offender-oriented criminal justice process [Bagir Manan, *Restorative Justice (An Introduction)*, In *Law Dynamic Reflection : Series of the Latest Decade Thinking*, Edited by Rudi Rizky, et. Al, Perum Percetakan Negara RI, Jakarta, 2008, pages 4 – 5] is regarded as a penalty system focusing on the interest of criminal act of offenders resulting from a victim's interest that does not get a space in the Code of Criminal Procedure. Whereas in the Criminal Code, there has been an arranged victim's interest to get compensation of offenders through judge decision which is a conditional criminal, yet it changes a loss into a victim since it becomes a particular requisite, but in a daily practice it is only a particular requisite of conditional criminal. Nevertheless, it is not often applied by the judge in deciding a conditional criminal, so that its implementation does not become effective. According to Bagir Manan, criminal law enforcement process and penalty system which has been passed right now in Indonesia does not absolutely ensure

integrated justice; it is justice for the offender, justice for the victim, and justice for the society [Ibid].

For the sake of reaching restorative justice for all parties in the crime of e-commerce fraud in the e-commerce transaction, a penal mediation needs to be conducted through an integrated criminal justice system which is also called legalism and formalism. Recently, a penal mediation medium has begun after the issuance of a letter of Indonesia Republic Police head with a number Police B/3022/XII/2009/SDEOPS dated 14th December 2009 concerning the handling of a case through a so-called Alternative Dispute Resolution (ADR).

The characteristic of this letter is partially penal mediation principles which are meant to be a focus of settlement of criminal case using ADR that must be approved by disputed parties. However, if no agreement reaches, it must be done appropriately using a law procedure which is valid professionally and proportionally. In addition, through all sorts of discretion and opportunity rights (*depooning*) possessed by law enforcers, a penal mediation in daily practices in the society can be implemented through a meeting or a reconciliation mechanism or forgiveness institute (a family reconciliation, a village reconciliation, and a customary reconciliation), because such a penal mediation does not exist based on its formal law, so that there often occurs a case which has been informally a reconciliation through a customary law meeting, however, it remains processed at the court in accordance with a valid law.

Meanwhile a penal mediation toward a crime of e-commerce fraud in e-commerce transaction does not exist clearly although it has existed in the Statute No. 11 Year 2008 concerning the information and electronic transaction and the Statute No. 8 Year 1999 concerning the consumers' protection, however, such a matter has not been accommodated yet in these two statutes, because an alternative dispute resolution (ADR) which is constructed under these two statutes merely manages a civil linkage in a contractual relationship between a producer and a consumer in an e-commerce transaction. Therefore a penal mediation can be a penal reform alternative in understanding a criminal law toward a criminal act settlement of the e-commerce fraud in an e-commerce transaction.

Problem Identification

In line with the background information, problems can be identified: How is the reconstruction of a penal mediation chosen as an alternative ideal model of criminal act settlement toward the crime of e-commerce fraud in an e-commerce transaction integrated into a criminal justice system in Indonesia for providing the consumers' protection?

2. Research Objectives

Based on the problem formulation, the research objectives are stated, as follows:

- 1) To know, analyze, and review a penal mediation phenomenon occurring in an integrated criminal justice system in Indonesia to solve the crime of e-commerce

fraud in an e-commerce transaction right now.

- 2) To analyze and review an attempt to get an exact penal mediation reconstruction, so that it can be chosen as an alternative ideal model of criminal act settlement toward the crime of e-commerce fraud in an e-commerce transaction in the integrated criminal justice system in Indonesia for providing the consumers' protection.

3. Significance of Research

Theoretically, this research can give benefit to law scientists, law practitioners, law observers, and law students that a penal mediation used as an alternative of criminal act settlement toward e-commerce transaction crimes in the integrated criminal justice system in Indonesia is likely to develop and reform the criminal law. On the other hand, practically, it can give input or critical thinking contributions to executive and legislature institutions to arrange, talk over, and determine the Statute Planning of a Criminal Code, the Statute Planning of Code of Criminal Procedure, Statute Planning of Information Technology Criminal Act and the further implementation of regulation toward the Statute Planning of a Criminal Code, the Statute Planning of a Code of Criminal Procedure, and the Statute Planning of Information Technology Criminal Act in reforming the criminal law.

4. Research Methodology

This research was an empirical law research (non-doctrinaire) by using a qualitative interactional approach (micro). This research took the diagnostic [Setiono, *Understanding the Law Research Methodology*. Surakarta: The Study Program of Law Science, Doctoral Program at the Law Faculty of Sebelas Maret University, Surakarta. 2010, page 5] form carried out to explain the causes of a phenomenon or some phenomena, so that it strengthens theories that can be applied to solve a law problem.

Theories used to analyze a law problem dealt with the reconstruction of a penal mediation as an alternative of criminal act settlement toward crime of e-commerce fraud in an e-commerce transaction to protect consumers. In this essence, grand theories or independent theories including theories of criminal law formulation policy, theories of restorative justice and theories of justice were likely to use. Meanwhile major theories or dependent theories examined the consumers' protection, such as a caveat emptor (let the buyer be aware of motion) theory, the specificity of duty in a care theory, privities of a contract theory, and a theory of contract that does not protect consumers.

The law concept in this research was the truth and justice principles with natural characteristics and universal validities that can be prescribed to be applicable for the law in the form of symbolic meanings toward social users that can be seen in the interaction among them [Loc cit. Setiono, *Understanding the Law Research Methodology*. Page 7]. This research is juridical and sociological in nature through a statutory, analytical and comparative approach. The sample was taken by using a purposive sampling and the focus toward the target sample or the process of taking samples had been distinctly positioned. The target population was partly the Sub-directorate of Cyber Crime

Investigation and Law Enforcement Ministry of Communication and Information Technology in Central Jakarta, partly the Sub-directorate IV/Cyber Crime of Directorate of Particular Criminal Detective in Metro Jaya District Police of Central Jakarta, partly the Particular Economic Criminal Act of Directorate Criminal Detective Body of Sub-directorate information technology and cyber crime in Indonesia National Police Department in Central Jakarta, partly the Body of Consumer Dispute Settlement in Banjarmasin City of South Borneo, a mediator as one of mediators who conducted daily legal practice in Sidoarjo district courts in East Java, partly who became representatives of e-commerce producers of Indonesia E-commerce Association in Central Jakarta, some parties who became representatives of customary personages from both Banjar Customary Society and Palangkaraya Dayak Customary Society, and opinions of criminal law experts who give enlightenment to the object of study based on their criminal law knowledge. All of those parties were interviewed by using open ended questions in the form of the so-called pattern a semi-structured interview.

The source of data was derived from the primary and secondary data. The primary data was obtained directly from the research field such as oral or written words including the measurement taken through interview, researchers' field notes and personal experience. Meanwhile, the secondary data was obtained from the document study activity or library research to complete the primary data containing three law materials such as primary, secondary, and tertiary law materials. The primary law materials consist of the 1945 Constitution of Republic of Indonesia, the Criminal Code, the Code of Criminal Procedure, Statute No. 11 Year 2008,

the Statute No. 8 Year 1999. The secondary law materials consist of the Statute Planning, research reports, research working paper, national and international journals, other regulations ingrained in Indonesia's customary society or from other states that possess similar glorious values with relevant positive law regulations applicable to the settlement of e-commerce fraud criminal act in an e-commerce transaction through the reconstruction of penal mediation in protecting consumers. The tertiary law materials deal with law dictionaries, encyclopedia, and newspaper.

Data analysis was conducted not only by using a descriptive analytical technique through phases such as data reduction, data serving and drawing a particular conclusion, but also by using an explanative technique to clarify interests of juridical sociological phenomena in the society. The in-depth observation and information search toward the pattern of society behaviors could create public opinions that restrain attitude and society thoughts toward particular law issues. The descriptive analytical and explanative technique was carried out to observe the validity and accuracy of data focusing on the level of confidence and data triangulation.

5. Results and Discussions

The results of data obtained from the Sub-directorate IV/cyber crime of Directorate of Particular Criminal Detective in the District Police of Metro Jaya concerning a recapitulation of crime of the e-commerce fraud in an e-commerce transaction from 2012-2014 can be viewed in the table below:

Table 1: A recapitulation of crime of e-commerce fraud in an e-commerce transaction

	Years	Report (CT/Crime Total)	CC (Crime Clearance)				Σ CC	%
			P21	SP3	Case Affluent	Process		
1	2012	334	-	-	-	-	274	82 %
2	2013	335	8	15	149	153	325	97 %
3	Up to November 2014	408	18	24	163	192	397	97.30 %

(Source: The data was processed by the Sub-directorate IV/Cybercrime of Directorate of Particular Criminal Detective in the District Police of Metro Jaya, Jakarta)

As indicated by Table 1, first, the crime of e-commerce fraud in an e-commerce transaction from 2012-2014 arose significantly from 82% until 97.3%; second, crime of e-commerce fraud in an e-commerce transaction proportionately occurred along with the crime of e-commerce fraud in an e-commerce transaction through a penal mediation process by way of emerging SP3 (a command letter through which the further investigation of a case is stopped) that tended to increase. It could be viewed that the crime of e-commerce fraud in an e-commerce transaction had been solved through a penal mediation process in 2012, however, there had been an increase in the settlement toward the crime of e-commerce fraud in an e-commerce transaction through a penal mediation process from 2013-2014. The SP3 recorded 15 cases in 2013 and 24 cases in 2014 up to November 2014 all of which could be solved through a penal mediation process.

According to Didiek Purwoleksono (an expert of criminal law), a penal mediation conducted several times at the level

of further investigation through a quiet method or an internal characteristic of SP3. This matter is carried out to avoid the third party intervention in applying a pre-court that dislikes the existing SP3. Therefore, the policy party to conduct further investigation must consider aspects of law effectiveness whether or not there are benefit factors toward the existing penal mediation process [Informal interview with an expert of criminal law from Airlangga University in East Java, Indonesia on March 30, 2016]. Meanwhile, Agus Rahardjo (an expert of criminal law) emphasizes that the effectiveness factor and forgiveness reason by victims take hold of significant key in implementing a penal mediation; a victim is really calculated his/her values of humanity to reach justice not only for an offender, but also for a victim and society [Informal interview with an expert of criminal law from Soedirman University, Central Java, Indonesia, April 6, 2016].

Other models refer to reconstructing a penal mediation to settle the criminal act of e-commerce fraud crime in an e-

commerce transaction. According to Mark William Bakker in his book '*Repairing the Breach and Reconciling: Mediation in the Criminal Justice System*', there are two models of criminal mediations, namely: 1) the Victim Offender Mediation (VOM) → VOM has focused on a restorative justice approach that plays a role of healing toward terrible victims emerged in the context of criminal cases; and 2) Case Management Mediation (CMM) → CMM is a judicial mediation or what some call a muscle mediation, that is, a case management tool that assists the parties in the risk analysis process, focusing on fostering settlement, saving governments' money and reducing burgeoning dockets [Sayantan Gupta. 2009. *Alternative Criminal Dispute Resolution System: An Evolving Interface in India*, Madras Law Journal, Forthcoming, at <http://ssrn.com/1461375>, accessed September 21st 2015, 8.17am, pages 3-4].

The following is a description of criminal act reconstruction procedure toward crime of e-commerce fraud in an integrated criminal justice system of Indonesia. In general, criminal act toward crime of e-commerce fraud in an e-commerce transaction is conducted through an integrated criminal justice system (a litigation system) between an offender and a victim in an unbalancing position. An offender is represented by himself/herself or represented by his/her advocate, while the victim is represented by the state through a general prosecutor, the final results reached the existing winning party or losing party (a win-lose solution), the law base of its implementation is the Statute No. 8/1981 (a Code of Criminal Procedure) and the Statute No. 11/2008 have 5 (five) phases: a preliminary inquiry [Preliminary inquiry can be conducted by either police or particular government employee at information technology sector for all of ranking after being received victim report /victim complaint about assumption of occurring criminal act so that it can be conducted the further investigation] - the further investigation [The further investigation can be conducted by either at least the police with an *Aipdar* ranking (a basic unit of command) or a particular government employee at an information technology sector with at the least ranking III and its goal is to figure out the bright solution of criminal act and to find out the offender as a crime defendant. In essence, the working mechanism of a particular government employee at the information technology sector deals with an investigator who conducts the further information under the supervision of police investigator of Directorate of Particular Economic Criminal Act of Criminal Detective Body and the sub-directorate information technology and cyber crime in Indonesia National Police in Central Jakarta. In this case, the first investigation is mainly concerned with an incident place (a reconstructing crime) and the compiling examination incident news undertaken by the police investigator of Directorate of Particular Economic Criminal Act of Criminal Detective Body and the sub-directorate information technology and cyber crime in Indonesia National Police as mentioned in the witness of examination incident news. The further investigation by a particular government employee at the information technology sector is only limited to the victim report/ victim complaint which is not processed yet by the police investigator. If the victim report/the victim complaint has been processed by the police investigator, the

investigator of a particular government employee at information technology sector must reject the victim report /the victim complaint]- prosecution [Prosecution must be conducted by district attorney as a general prosecutor after he/she receives completed examination incident news from the investigator along with an accusation letter being submitted at the district court through a clerk of court] - cross examination in the court [Cross examination in the district court can be conducted by either a judge or judges committee to make a court decision based on court principles which are free, honest, fair and neutral.] through phases (a defendant identity examination – a perusal of accusation letter by the general attorney – exception/resistance by either an offender as a defendant or his/her advocate – the verification from the general attorney who represents victims and verification from an offender as a defendant and or his/her advocate – perusal of indictment letter by the general attorney – perusal of protecting letter/a *pledooi* by an offender as a defendant and or his/her advocate) – replication/re-replication by the general attorney – duplication/reduplication by an offender as a defendant and or his/her advocate – a perusal of judge decision, if one of parties from an offender as a defendant and or his/her advocate and or the general attorney does not receive judge decision. They can propose law efforts in stages, not only ordinary law efforts namely an appeal and a cassation, but also extra ordinary law efforts, namely a reconsideration and a cassation for the law) – execution of permanent judge decisions (*inkracht van gewisdje*) [Execution of a permanent judge decision by the district attorney along with the head of jail institute] by a district attorney along with the head of jail institute after the two parties receive such a judge decision conducted by the district attorney as a decision executor. In addition, it is carried out by a defendant who has changed his/her law status into a prisoner in a jail or a socialization institute, but if the defendant is apparently proved guilty through the judge decision so that he/she gets a jail criminal punishment and he/she receives such a decision. A prisoner passing his/her criminal punishment time in a jail/a socialization institute under supervision of the head jail institute is responsible person implementing a process of prisoner's jail criminal punishment. There are five stages of an examination process in the integrated criminal justice system that are very long and too tired for both an offender and a victim without exception. This matter will be very different if each stage in the integrated criminal justice system is conducted through a penal mediation reconstructed, whereas such stages can be passed if a peaceful agreement has been made between an offender and a victim through a penal mediation in each of the stages. The form of reconstructing a penal mediation includes an offline penal mediation and an online penal mediation. The definition of penal mediation is distinctively explained by Gezuraga, [Ixusko Ordenana Gezuraga. 2012. Penal Mediation Service in a Basque Urban Local Court, International Journal of Onati Socio Legal Series Vol 1 No.9, 2011, Forthcoming at <http://ssrn.com/1986740>, accessed July 9th 2016. 9.30am, page 5-6] as follows:

Penal mediation studies an informal mechanism for criminal conflict resolution both to solve crimes and misdemeanors as a means to change the paradigm of current criminal justice

which proclaims the need to abandon the principles of retributive justice to deepen the values of restorative justice. When we enter the field of restorative justice, it is understood more as a violation of human relationships than violation on the basis that criminal dispute is a social evil with defending opportunities to pursue the benefit of the victim, of the offender, and of the society and inspired by the principle of opportunity for the benefits of them. In this way, victim has to be restored from the physical and mental damage he has suffered, security that has been threatened has to be restored to society and the offender has to be restored to the society.

Using an offline penal mediation must be conducted for the case of jurisdiction in Indonesia regions. The mediator of an offline penal mediation consists of a penal mediator and a customary mediator. **Firstly**, a penal mediator is a mediator of criminal justice personnel in the integrated criminal justice system who handles a case at the beginning before entering a mediation process, or it can also be a mediator who comes from integrated criminal justice system personnel at the external criminal justice system based on the parties' agreement. The personnel are pointed by the government guarantee and mediation institute, or it can also come from a certificated independent mediator who is pointed by the private guarantee and mediation institute. **Secondly**, a customary mediator is a mediator who comes from a customs prominent figure knowing details about the crime of e-commerce fraud in an e-commerce transaction related to the trade of goods and services that are owned by the national culture and art values, or a country's exotics pointed by the private guarantee and mediation institute.

Using an online penal mediation must pertain to cases by following certain rules, namely: **Firstly**, follow rules of international law → forming of all legal actions must be proportionate in accordance with the statute of state or law of state from the perspective of places where these legal actions are carried out; the rule of international law based on the universality principle in every state owns the right to seize and to punish the crime of offender(s). It means *locus regit actum* (a place dominates deeds). Whereas, if law enforcer(s) will confront a case every time, actually the law enforcer(s) cannot discover a grip in the statute, then he/she/they must find the law. The method which is taken by him/her/they looks like when he/she/they must fulfill empties (shortages) in the material law field.

In other words, if the statute does not contain applicable stipulation (it will be valid toward the law that will be applied), then law enforcer(s) make(s) a decision based on custom principles [Custom principles mean general opinions which are inherent, followed and truthfully have been duly paid attention, because, in daily life practice, these law stipulations can only be obeyed by people if they are appropriate with opinions or society conventions]. If it cannot gain applicable stipulations in the custom principles, then he/she/they must be guided based on settlements determined by a doctrine and jurisprudence (a law case) for homogenous cases. Therefore, law enforcer(s) should be able to comprehend stipulations that will be formed if he/she/they function(s) as a statute producer.

The importance of jurisprudence can be guided in that the law jurisprudence possesses an awesome strength to fulfill blankness of law resulting from law dynamism which is continually running along with information technology development around the world, so that the offender's rights as a defendant or a prisoner can be completed to get time boundary in decreasing criminal punishment including to create an obviously-set peaceful forum. Such a matter can be viewed in an underdeveloped country such as India. This explanation is similar to an opinion addressed by Jayanth K. Krishnan and C Raj Kumar [Jayanth K Krishnan and C Raj Kumar, 2011. *Delay in process, Denial of Justice: the Jurisprudence and Empirics of Speedy Trials in Comparative perspective*. George Town Journal of International Law Vol 42 2011, at <http://ssrn.com/1681074>. accessed September 20th 2015. 19.15 pm, pages 11-12] as criminal law scholars in India. As an underdeveloped country, the country has judiciaries and the criminal justice system guided by what is known as *The Indian Penal Code* (IPC) that has drawn attention of the American Criminal Procedure Law.

In Fact, Indian has been progressive in enforcing the law in 2000s. There was an evolution of jurisprudence which has been well-known in the courts and the supreme courts to emphasize the needs to protect trial prisoners' rights in getting time limits for penal incarceration including creating a tangible tranquility forum based on the agreement victims both misdemeanors and felonious'. **Secondly**, for the jurisdiction case outside of Indonesia regions, it can be conducted parties possess difference citizenship, and one of them must bow together to follow citizenship rules based on the agreement reached. **Thirdly**, for the jurisdiction case in Indonesia regions, this matter can be conducted and if the victim's domicile is so far from a decided place, it will be carried out by using a mediation process. For conducting an online penal mediation, its mediator is an online mediator, meaning that a mediator is a provider of website/domain homepage/site of online mediation services with which its program is affiliated with a website/domain homepage/body of consumer dispute settlement sites.

Interrelationship among mediators consists of a penal mediator, a customary mediator, and an online mediator with government guarantee and mediation institute (G2MI) and private guarantee and mediation institute (PGMI). It shows that mediators perform their task to facilitate the parties (an offender and a victim) under the supervision of G2MI and PGMI, so that it can be clarified based on the authorities of G2MI and PGMI that assume responsibility. **Firstly**, asking a mediator and or a co-mediator pertinent to the approval of parties; **Secondly**, determining the time boundary of a mediation process which will be carried out; **Thirdly**, commanding a mediator to determine a mediation meeting schedule and the parties must be present; **Fourthly**, commanding a mediator to request offender's firmness to give a guarantee of his/her valuable properties equal with the victim's financial loss; **Fifthly**, commanding a mediator to convey the final result of a penal mediation in the district court to get an official document of peacefulness (*acta van dading*) in a covenant letter form, so that law strength and binding parties (a victim and an offender) are worth considering; **Sixth**, asking a mediator's written notification

of an offline mediation result which has been agreed or uploading an online mediation result which has been agreed in a mediation registration list in the body of consumers' dispute settlement as a coordinator of supervisor.

Sessions taken by parties to conduct a reconstruction of penal mediation through an offline penal mediation and an online penal mediation in settling the criminal act of e-commerce fraud crime in integrated criminal justice system in Indonesia possess 4 (four) phases, such as creating a forum, verifying documents by collecting and transferring information, settling of problems and making a decision. However, differences between an offline penal mediation and an online penal mediation may vary, namely: *Firstly*, devices or tools in conveying such mediation processes. An offline penal mediation must be directly conducted (face-to-face) among parties with a penal mediator and or a customary mediator to conduct sessions creating forum, settling of problem, and making a decision.

However, it can be undertaken by conducting sessions and verifying documents, collecting and transferring information through hard documents (paper documents). On the contrary, an online penal mediation must be indirectly conducted (a virtual chatting room via teleconference or videoconference) among parties with an online mediator to conduct sessions, create forum, settle problems, and make a decision. It also has a session to verify documents by collecting and transferring information through soft documents (paperless documents or documents via email, short messages services, telephone, facsimile, and online chatting).

All sessions in an online penal mediation are based on communication through a protected password system. An online mediator as a provider of website/domain home page/site of online mediation services must communicate with parties in a three-room-procedure, meaning that an online mediator when speaking with one of the parties in a separate secret room and after that parties discuss again in the third room through three passwords which are protected by chatrooms. In this matter, if an agreement has been reached by parties, they will be possible to meet with one another that an online mediator as a provider manages directly to meet whenever it is possible and strongly needed. If the agreement has been reached to conduct a direct meeting with online mediators and parties, then an online mediator as a provider is taken charges by the body of consumers' dispute settlement; Secondly, the offline penal mediation and online penal mediation are meant to keep confidentiality toward involved witnesses of two parties as part of approved clauses of agreement reached in the offline penal mediation and online penal mediation with the offender's family, victim's family, caring society, etc. Involving such witnesses is important, but contents of the previously-mentioned clauses are unlikely to divulge in the agreement reached by parties. Therefore, these witnesses must be legally strengthened attached with signature on a sealed letter or a notarized letter (for an offline penal mediation) and or attached digital signature on an e-document that is formerly supplied with a log in using certain passwords managed to access the online mediator as an online mediator website provider.

A penal mediation process will be able to run effectively and efficiently within an existing goodwill to settle the criminal act toward the crime of e-commerce fraud. This matter is different if the results of penal mediation have been approved by the parties together, all at ones, then the mediator can directly convey approved results of such a penal mediation at the district court level to get a decree of peaceful and official documents (*Acta Van Dading*), so that it becomes an execution base, but it does not depend on how the next examination phase in the integrated criminal justice system after a penal mediation can lead to agreements. The form of reconstructing a penal mediation in each of stage is in line with the integrated criminal justice system by inserting or using a restorative justice idea to implement integrated criminal justice system in Indonesia by adopting ingrained existing and developing glorious values in Indonesian societies (a living law) and other states that own similar cultures and values. Thus, these can be used to be a reference in constructing a penal mediation that settles a criminal act of e-commerce fraud crime in the e-commerce transaction to protect consumers.

6. Conclusion

The settled criminal act of e-commerce fraud crime in the e-commerce transaction through reconstructing of penal mediation to protect consumers can be conducted in two ways, either offline penal mediation or online penal mediation. Basically, they based on the managing law stipulations that involve the body of consumer dispute settlement as a coordinator supervisor of a pointed mediator by the government guarantee and mediation institute or the public guarantee and the mediation institute to reach goals in strengthening offenders' responsibility and in carrying out the content of agreement reached by parties because of its existing guarantee burdened toward the offender if he/she is reluctant to assume responsibility in the form of consumers' protection act.

7. Suggestion

To create a penal reform, the law enforcer(s) in the integrated criminal justice system in Indonesia (police, particularly the government employee at information technology sector, prosecution, court, socialization institute/jail institute) can produce policies to apply reconstruction of a penal mediation as an alternative of criminal act settlement toward e-commerce fraud crime in the e-commerce transaction, that is, e-commerce fraud crime as a criminal act in the form of civil linkage. As a law consequence of contractual relationship in form of online selling and buying agreement, it can reach law purposes effectively and efficiently not only the certainty of law, justice law, utility for society, but also reactivity of the body of consumer dispute settlement to spread out its tasks and authorities to coordinate the government guarantee and mediation institute or public guarantee and mediation institute. It not only makes a decision out of the court, but also toward the law infraction of consumer protection in the civil law as mentioned in the law stipulations of paragraph 52, Statute No. 8/1999.

In addition, making a decision out of the court toward crime of e-commerce fraud in the e-commerce transaction at criminal law aims to protect consumers and spread out tasks and authorities owned by the body of consumers' dispute settlement. This articulates the application of opinions addressed by Detleev Frehsee [Detlev Frehsee is a Professor of Criminology and Criminal Law from University of Bielefeld Germany at Barda Nawawi Arief. 2015. *Penal Mediation, Settlement criminal act at out of court*. Article in journal of sudut hukum, 2015, at <http://s-hukum.blogspot.co.id>. Accessed September 18th 2015. 6.32am, page 2] focusing on the increasing use of restitution in a criminal process referred to differences between a criminal law and a civil law that are not slightly big and such differences do not really function.

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