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Frans Simangunsong

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**PROCEEDING THE 1<sup>ST</sup> INTERNATIONAL CONFERENCE ON LAW, GOVERNANCE AND SOCIAL JUSTICE  
(ICOL GAS 2018)**

**SEPTEMBER 25 -26, 2018, PURWOKERTO, CENTRAL JAVA, INDONESIA**

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11. Dr. Hermansyah (Tanjungpura University, Indonesia)

## Foreword

On behalf of Faculty of Law Jenderal Soedirman University, I would say thank you to all scientists, practitioner, and delegation from various institutions who attended the 1<sup>st</sup> International Conference on Law, Governance, and Social Justice (ICoL GaS) 2018. This is the first conference held independently since the birth of Law Faculty in 1981.

The idea of organizing 1<sup>st</sup> ICoL GaS 2018 is based on strong willingness to bring together all scientists and practitioner for solving national issues. In this first conference, the big theme that carried is Law Issues, Governance, and Social Justice. The problem in these three fields are often disturbing the nation in achieving their goals, that is fair and prosperous citizen.

I hope this proceeding can accommodate the ideas from the scientists and practitioner, conference participants and also spread it. We hope you can enjoy this 1<sup>st</sup> ICoL GaS.

Finally, we want to say thank you to all presenter with their willingness and joyfulness send and present their final result or current thinking. Also all non-presenter audience who following this event until finished and contributing the thoughts. Your attendance and presence make this conference held.

Prof. Dr. Ade Maman Suherman, S.H., M.Sc  
Dean of Faculty of Law, Jenderal Soedirman University

## Preface

Dear Author(s), 1<sup>st</sup> ICoL GaS participant, esteemed Readers,

First of all, from the deepest of my heart, I would say thank you to all participants in the 1<sup>st</sup> ICoL GaS 2018, held by Faculty of Law, Jenderal Soedirman University, Purwokerto, Central Java Indonesia at Java Heritage Hotel, Purwokerto, Central Java, Indonesia.

Every day, we watch both in TV or Internet, various problem in Indonesia obstructing the progress and goals of the country's achievement, to become Fair and Prosperous citizen. In the other side, the development of the global political environment influences the potentially to state policies as well as challenges in the implementation of fair governance. These important problems require solutions.

The paper on this proceeding are the chosen paper from around 250 papers who entered to the committee and were selected by our scientific ICoL GaS committee. These papers have presented on 1<sup>st</sup> ICoL GaS 2018, September 25 – 26, 2018, came from the key note speakers, academic experts, and practitioners who come from various country and regions. There are a lot of brilliant thinking from the participants written in their papers, and hopefully these papers can give the contribution for the nations in solving various issues as mentioned above, especially in the law, governance, and social justice fields.

We would say thank you to all contributors who have patiently waiting the review result and fix it. We also would say thank you to the Editor team, lay out, and English editors who have reviewing the incoming article patiently and detail, and the result of their works is proceeding 1<sup>st</sup> ICoL GaS served in front of us.

Kami berharap kalian bisa menikmati pertemuan ini dan dapat berjumpa kembali dalam suasana yang lebih semangat, bersahabat dan berbahagia pada penyelenggaraan 2<sup>nd</sup> ICoL GaS 2019 nantinya.

We hope you can enjoy this conference and meet again in more friendly, hilarious, and happiness of further 2<sup>nd</sup> ICoL GaS 2019.

Prof. Dr. Agus Raharjo, S.H., M.Hum  
Chairman

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**RUNDOWN**  
**1<sup>st</sup> International Conference on Law, Governance and Social Justice**  
**ICoL GaS 2018**

Java Heritage Hotel, Purwokerto, Central Java, Indonesia  
 September 25-26, 2018

**DAY I**

Tuesday, September 25, 2018

TIME (WIB)	ACTIVITY	LOCATION
07.30 – 08.30	Registration	Lobby 1 <sup>st</sup> Floor Java Heritage Hotel
08.30 – 08.40	Art Performance	3 <sup>rd</sup> Floor Khrisna Ballroom Java Heritage Hotel
08.40 – 08.45	National Anthem Indonesia Raya	
08.45 – 08.50	Recitation of Prayer	
08.50 – 09.30	Opening ceremony and welcoming remarks. 1. Chairperson of organizing committee 2. Dean Faculty of Law Jenderal Soedirman University (Unsoed) 3. Rector Unsoed	
09.30 – 09.45	<ul style="list-style-type: none"> <li>• Mou Signing between Unsoed and University of Limpopo South Africa</li> <li>• Foto Session</li> </ul>	Khrisna Ballroom
09.45 – 09.55	Coffee break	
09.55 – 12.00	Plenary Session 1 1. Prof. Dr. Jaco Barkhuizen University of Limpopo, South Africa 2. Prof. Dr. Sudjito Gadjah Mada University 3. Associate Prof. Dr. Rohaida Nordin Universiti Kebangsaan Malaysia	3 <sup>rd</sup> Floor Khrisna Ballroom Java Heritage Hotel
12.00 – 13.00	Lunch Break and Pray	Lobby 3 <sup>rd</sup> Floor Java Heritage Hotel
13.00 – 15.00	Plenary Session 2 1. Prof. Dr. Muhammad Fauzan Jenderal Soedirman University 2. Assistance Prof. Dr. L.G.H. (Laurens) Bakker University of Amsterdam 3. Prof. Dr. Agus Raharjo Jenderal Soedirman University	3 <sup>rd</sup> Floor Khrisna Ballroom Java Heritage Hotel

**INTERNATIONAL CONFERENCE ON LAW, GOVERNANCE AND SOCIAL JUSTICE 2018**

15.00 – 15.30	Break	-
15.30 – 19.00	City Tour	Sokaraja Purwokerto
19.00 – 19.30	Break	Java Heritage Hotel
19.30 – 21.00	Gala Dinner	Justisia 3 Hall Faculty of Law Unsoed
<b>DAY II</b> <b>Wednesday, September 26, 2018</b>		
<b>TIME (WIB)</b>	<b>ACTIVITY</b>	<b>LOCATION</b>
07.30 – 08.00	Registration	Lobby 2 <sup>nd</sup> Floor Java Heritage Hotel
08.00 – 10.00	Parallel session 1 Room 1 Room 2 Room 3 Room 4 Room 5 Room 6	2 <sup>nd</sup> Floor Arjuna Meeting Room
10.00 – 10.30	Coffee break	Lobby Arjuna Meeting Room
10.30 – 12.30	Parallel session 2 Room 1 Room 2 Room 3 Room 4 Room 5 Room 6	2 <sup>nd</sup> Floor Arjuna Meeting Room
12.30 – 13.00	Lunch Break and Pray	Java Heritage Hotel
13.00 – 15.00	Parallel session 3 Room 1 Room 2 Room 3 Room 4 Room 5 Room 6	2 <sup>nd</sup> Floor Arjuna Meeting Room
15.00 – 15.30	Closing Ceremony	1 <sup>st</sup> floor Yudistira Meeting Room

**PARALLEL SESSION**  
**1<sup>st</sup> INTERNATIONAL CONFERENCE ON LAW, GOVERNANCE**  
**AND SOCIAL JUSTICE (ICoL GaS) 2018**  
 2<sup>nd</sup> floor Java Heritage Hotel | Purwokerto | Indonesia

Parallel Session 1

PARALLEL SESSION AND TIME (WIB)	ROOM	TOPIC	PRESENTER
08.00 – 10.00 WIB	1	International law	1. Violation on State Sovereignty by Military and Paramilitary Activities on Nicaragua Vs. United States Case <b>Nina Zainab, Dewa Nyoman Agung Noviardi, and Fadilla Farhan Eka Buana ZK</b> 2. The Cultural Genocide in Australia: A Case Study of the Forced Removal of Aborigine Children From 1912-1962 <b>Nuriyeni Kartika Bintarsari</b> 3. Illegal, Unreported, and Unregulated Fishing as Transnational Organized Crimes <b>Elisabeth Septin Puspoayu and Peni Jati Setyowati</b> 4. Analysis of International Law on Human Trafficking with Child as Victims <b>Noer Indriati</b> 5. Construction of International Threat on UN Charter to Prevent an Unjust War <b>Arief Rachman Hakim, Elisabeth Septin Puspoayu, and Dananggana Satriatama</b>
	2	Criminal Justice System and Law Enforcement	1. Legal Philosophy of Pancasila As The Paradigm of The Criminal Justice System: A Philosophical Criticism for the Loss of A Sense of Humanity <b>Rocky Marbun, Abdul Hakim, and M. Adystia Sunggara</b> 2. Criticism of Juridical Positivism Paradigm on The Meaning of Pornography in the Judge Mindset <b>Erni Wulandari and Rini Fidiyani</b> 3. Optimization of The Role of State Storehouse for Seized Goods (RUPBASAN) Expansion of The Authority in The Perspective of Integrated Criminal Justice System <b>Irma Cahyaningtyas</b> 4. The Dominance and Influence of Positivism Paradigm on Judicial Decision Making <b>Tri Laksmi Indreswari</b> 5. The implementation of Criminal Sanctions toward LGBT through the Qanun in Aceh, Indonesia <b>Muhammad Hamdan, and Eva Syahfitri Nasution</b> 6. Cyber Bullying among Law Student: how they deal with it, understand and apply the law <b>Antonius PS Wibowo</b>
	3	Privat Law and Corporate Law	1. Legal Responsibilities of The Boards of Directors of Persero State-Owned Enterprises Agency Towards Losses Conducted By Directors' Loss <b>Susanto</b>

			<ol style="list-style-type: none"> <li>2. Implementation of Personality Principle In The Termination of Village Ground Treasure Utilization No. 143/1728 between PB. Rancah Karya dan Catur Tunggal Village Government <b>Umar Haris Sanjaya and Tedy Kuswara</b></li> <li>3. Fintech Indonesia User Legal Protection in Balance Borrowing Money Based on Information Tecnology <b>Sulistiyandari</b></li> <li>4. Insolvency within Bankruptcy: The Case of Indonesia <b>M Fauzi</b></li> <li>5. Private Port and Unlaw Full Operation in Palu Area Central Sulawesi <b>Agus Lanini, Sulbadana and Lembang Palipadang</b></li> <li>6. The Development of Tax Law Application Formula in Indonesia from IRAC into IREAC <b>Agus Suharsono and Burhanudin Harahap</b></li> </ol>
	4	<b>Constitutional Law and Decentralization</b>	<ol style="list-style-type: none"> <li>1. Constitutional Court Existence in Resolving the Internal Disputes of Political Parties in Indonesia (Case Study in Partai Persatuan Pembangunan) <b>Suparto dan Admiral</b></li> <li>2. Local Regulation Cancellation Mechanism and its Legal Consequence based on Lex Superiori Deregog Legi Inferiori Principle in Economy <b>Asri Agustiwi, Isharyanto, and Hartiwiningsih</b></li> <li>3. The Settlement of Boundary Disputes Through Testing of Legislation in Indonesia <b>Suparto and Rahdiansyah</b></li> <li>4. Analysis of Reduction of Authority of The Constitutional Court Through The Law on General Election <b>Budiman N.P.D Sinaga and Sahat H.M.T Sinaga</b></li> <li>5. Correlation Between Constitutional changes and Development Paradigm on Regional Development Planing <b>Titut Amalia, Yos Johan Utama, and Ani Purwanti</b></li> <li>6. The Development of Concept Of Regional-Head Election Without Suspect <b>Muhammad Anwar Tanjung, Retno Saraswati and Lita Tyesta ALW</b></li> <li>7. Legal Politics of Local Government in Democratic Context in Indonesia <b>Anna Triningsih and Oly Viana Agustine</b></li> <li>8. The Position of President and Vice President of Republic of Indonesia, After 3<sup>rd</sup> Amendment Constitution 1945, Correlated with The 4<sup>th</sup> Principle of Pancasila <b>Yoyon Mulyana Darusman</b></li> </ol>
	5	<b>Human Right</b>	<ol style="list-style-type: none"> <li>1. Migrant Workers' Village as an Effort to Strengthen The Rights of Indonesian Migrant Workers <b>Devi Rahayu</b></li> <li>2. Legal Protection Of HIV Children That Affected From Mother Transmission In Perspective Human Rights (Case Study In Cianjur District) <b>Trini Handayani and Tanti Kirana Utami</b></li> <li>3. Government and Esthetic Beauty Clinic's Responsibility in Fulfilling the Citizens' Constitutional Right to the Service of Esthetic Beauty Clinic in Indonesia</li> </ol>

			<p><b>Siska Diana Sari, I Gusti Ayu Ketut Rachmi Handayani, and Pujiyono</b></p> <p>4. Rethinking Cadar Banning in Indonesia's Higher Education: Questioning Freedom of Religion and Positioning Fear of Radicalism <b>Budi Kurniawan</b></p> <p>5. A Gap Between Right to Live Protection and Death Penalty in Indonesia (Judges Decision on Cases Threatened Death Penalty) <b>Febrian, Nurhidayatulloh, Helena Primadianti, Ahmaturrahman, and Fatimatuz Zuhro</b></p> <p>6. The Attempt to Human Rights Protection Through Judicial Review in Indonesia <b>Riris Ardhanariswari, Muhammad Fauzan, and Komari</b></p> <p>7. The Idea Of Authority Extension Of The Constitutional Court To Prosecute Dissolution of Mass Organization In Indonesia <b>Dody Nur Andriyan</b></p>
	6	<b>Restorative Justice and Rehabilitation</b>	<p>1. The Role of Correctional Center (Bapas) Creates Restorative Justice in Juvenile Justice System in North Sumatera <b>Marlina</b></p> <p>2. Victim Impact Statement Model in Criminal Justice System in Restorative Justice Perspective <b>Hervina Puspitosari, and Bintara Sura Priambada</b></p> <p>3. Problem of Diversion System Application in The Case of Children as Actors Crime of Narkotics are Based Restorative Justice <b>Frans Simangunsong</b></p> <p>4. Supporting and Inhibiting Factors the Application of Diversion Programs to Cases of Child Sexual Violence in the Juvenile Justice System in Indonesia <b>Setya Wahyudi and Angkasa</b></p> <p>5. Rehabilitation of Juvenile Throughout Diversion Institution as an Effort of Recidive Offenses on Juvenile Offenders <b>AM.Endah Sri Astuti, Untung Sri Harjanto and Yasrina Ziliwu</b></p> <p>6. Problems in Deciding the Case of Narcotics Abuse (The application of Article 127 of Law No. 35 Year 2009 on Narcotics) <b>Ruby Hadiarti Johny, Rani Hendriana and Dwi Hapsari Retnaningrum</b></p>

**Parallel Session 2**

<b>PARALLEL SESSION AND TIME (WIB)</b>	<b>ROOM</b>	<b>TOPIC</b>	<b>PRESENTER</b>
10.30 – 12.30 WIB	1	<b>International Law</b>	<p>1. Intolerance Acts In the Philippines and Indonesia: A Comparative Study <b>Clara Ignatia Tobing, and Nestor C. Nabe</b></p> <p>2. Paradoxical Analysis of the Existence of the Indonesian Archipelagic Sea Lane Against the Ideal of the World Maritime Axis (A Critical Review of ALKI Regime of Jokowi's Maritime Doctrine) <b>Siti Merida Hutagalung and Ruth Hanna Simatupang</b></p>

			<p>3. Economic Cooperation Agreement: Indonesia and South Korea <b>Ade Maman Suherman and Anisa Rizky Anggalia</b></p> <p>4. Comparative Legal Research : Consumer Legal Term In The Chapter 1 Article 2, Law No. 8, 1999 – Indonesia With Chapter 1 Article 2, Law No. 8078 – Brazil – <b>Junita Kaseme Tan, Arni Winarsih, Dennis Darmawan Jo, Kiki Kusumawati, Yongki Sidharta Gunawan</b></p> <p>5. Female Genital Mutilation Practices in Indonesia Between Syariah and International Law <b>Wismaningsih, Ade Maman Suherman and Burhanuddin Harahap</b></p>
	2	<b>Criminal Law and Criminal Justice System</b>	<p>1. Sex Massage Therapy at Spa: A New Form of Prostitution <b>I Wayan Gde Wiryawan and Dewi Bunga</b></p> <p>2. Corporate Criminal Liability Under the Reactive Corporate Fault to Achieve Good Corporate Governance in Indonesia <b>Budi Suhariyanto</b></p> <p>3. Termination of Pretrial Process Upon Commencement of the Subject Matter in the Indonesian Criminal Justice System Perspective <b>Tolib Effendi, and Ria Karlina Lubis</b></p> <p>4. Revitalization of Customary Court in The Juvenile Criminal Justice System in Indonesia <b>Nur Rochaeti, and Rahmi Dwi Sutanti</b></p> <p>5. Clemency As The Way Of Peacemaking Approach Application In Criminal Justice System <b>Umi Rozah and Jaco Barkhuizen</b></p> <p>7. Access to Justice For The Disability Women As A Victims in the Criminal Justice System <b>Cahya Wulandari</b></p>
	3	<b>Business and Comercial Law</b>	<p>1. Government Policies To Improve Tobacco Farmers Business Results <b>Hezron Sabar Rotua Tinambunan and Hananto Widodo</b></p> <p>2. Model of entrepreneurship for people with disabilities <b>Sugeng Eko Putro Widoyoko, Budi Setiawan, Khabib Sholeh, and Muh. Ibnu Shina</b></p> <p>3. Empowerment of Small to Medium Enterprises Using Franchise Take Over Model <b>Dewi Sulistianingsih, Pujiono Pujiono, and Rini Fidiyani</b></p> <p>4. Legal Protection for Cunsumers on Unlabelled Processed Food From Seaweed in Brebes Regency <b>Dwi Edi Wibowo, and Benny Diah Madusari</b></p> <p>5. Legal Protection for Consumers in On Sale Purchase Agreement <b>Dharu Triasih, B. Rini Heryanti, and Endah Pujiastuti</b></p> <p>6. Political Law of the Government in Responding to The Development of Online Transportation in Indonesia <b>Ashinta Sekar Bidari</b></p>

	4	<b>Administrative Law</b>	<ol style="list-style-type: none"> <li>1. The Existence of Legal Protection of Citizens to Government Action in Making Decision of State Administrative <b>Enny Agustina</b></li> <li>2. Quo Vadis Reclamation Policy Development Bay Of Jakarta <b>Trubus Rahardiansah</b></li> <li>3. Design Of Social Justice In Administrative Courts <b>Indriati Amarini</b></li> <li>4. Preventing Maladministration on Issuing Mining License (A Case Study in Southeast Sulawesi, Indonesia) <b>Oheo K.Haris, Rizal Muchtasar and Sahbudin</b></li> <li>5. The Analysis of Administrative Law to the Government Policy about Tax Exemption of Waqf Land Certification <b>Islamiyati, R. Bondan Agung Kardono, and Aditya Wirawan</b></li> <li>6. The Role of Administrative Court in Settlement Administrative Dispute of General Election <b>Ayu Putriyanti</b></li> <li>7. State Administrative Court As a Means to Realize Justice <b>Weda Kupita</b></li> <li>8. Privatization of State Owned Enterprises in the Welfarestate Perspective <b>Tuti Widyaningrum and Rike Yunita Budi Hutami</b></li> </ol>
	5	<b>Gender Equality and Minority Rights</b>	<ol style="list-style-type: none"> <li>1. The Importance of Female Judge Representation in the Constitutional Court of Indonesia in Order to Achieve Gender Equality during Judicial Review Procedure <b>Natasya Fila Rais</b></li> <li>2. "Head of The Family " Review of Family Law, in Gender Perspective <b>Wahyuni Retnowulandari</b></li> <li>3. Gender-based Religious Democracy: A Study of Umi Azizah's Winning and Women Political Movement of Tegal Regent Election in 2018 <b>Zaki Mubarak</b></li> <li>4. Legal Politic of Gender Responsive Election System (A Concept) <b>Ristina Yudhanti, Adi Sulistiyono, and Isharyanto</b></li> <li>5. The Impact of the Law No. 6/2014 on Village to Women Participation in Public Decision-Making Process of Kelurahan Representative Forum in Salatiga <b>Ani Purwanti, Dyah Widjaningsih</b></li> <li>6. The Importance of Revising Minimum Age for Mariage and Dispensation Policy in Act No. 1 of 1974 On Marriage: A Philosophical, Sociological and Juridical Argumentation <b>Siti Rofiah</b></li> </ol>
	6	<b>Victimology, and Legal Assistance</b>	<ol style="list-style-type: none"> <li>1. Legal Protection for Cyber Crime Victims on Victimological Perspective <b>Angkasa</b></li> <li>2. Reforming the Compensation Model to Victims of Crime in Indonesia <b>Hanafi Amran</b></li> </ol>

			<p>3. Reconstruction of Integrated Legal System for Protecting the Victims of Domestic Violence in Divorce Cases <b>Naqiyah, and Nita Triana</b></p> <p>4. Legal Assistance by Advocate to Defendant who Can't Afford <b>Dessi Perdani Yuris</b></p> <p>5. The Disappointed of Economic Assistance in Aceh: Study Disempowerment of the Former Free Aceh Movement's Widow – <b>Ristati M. Yahya, Khairawati M. Hanafiah, Nurlela Ima Abdullah, and Zulham Ibrahim</b></p> <p>6. Penal Mediation From The Perspective of Criminal Law (Study of the Settlement of Criminal Cases by Mediation) <b>Dwi Hapsari Retnaningrum</b></p> <p>8. The Tipikor Trial on IT in Implementation of the Hearing The Islands as Fast, Lightweight cost and simple <b>Sulistiyanta, Sebastianus Adi Santoso Mola, Fredyk M Haba Djingi, and Fatma Ayu Jati Putri</b></p>
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**LUNCH BREAK AND PRAY**  
**12.30 - 13.00 WIB**

**Paralell Session 3**

<b>PARALLEL SESSION AND TIME (WIB)</b>	<b>ROOM</b>	<b>TOPIC</b>	<b>PRESENTER</b>
13.00 – 15.00 WIB	1	Criminal Law and Crime countermeasure	<p>1. Children Under The Age as the Victim of Sexual Crimes <b>Vience Ratna Multi Wijaya</b></p> <p>2. Optimazation of The Village Roles in Counter Measure to Criminal Acts of Human Trafficking <b>Erma Rusdiana, Eny Suastuti, and Syamsul Fatoni</b></p> <p>3. Economic Approach To Combat Violence Against Children In Indonesia <b>Ermania Widjajanti and Rusmilawati Windari</b></p> <p>4. Legal Professions As The Reporting Parties In Anti Money Laundering Regime: How Can Professions Actively Contribute? - <b>Go Lisanawati, Njoto Benarkah and Yoan Nursari Simanjuntak</b></p> <p>5. Indonesia's Labor Protection in Singapore from Criminal Acts of Exploitation in the Work Environment <b>Mety Rahmawati</b></p> <p>6. Access to Justice for Victims of Structural Violence in Makassar, South Sulawesi <b>Agus Raharjo, Luthfi Kalbu Adi and Yusuf Saefudin</b></p>
			2

			<ol style="list-style-type: none"> <li>2. Non Penal Policy of Terrorism Mitigation in Indonesia <b>Ali Masyhar</b></li> <li>3. Overcoming Corporal Punishment of Children: An Evaluation Toward Indonesian Penal Policy Nowadays <b>Rusmilawati Windari, Supanto, and Widodo Tresno Novianto</b></li> <li>4. Investigation System Reform in Settling Smuggling Crime <b>Deaf Wahyuni Ramadhani, Supanto, and Hartiwiningsih</b></li> <li>5. Relevance of Criminal Law Formulation in The Law of Household Violence Elimination in Indonesia <b>Emmilia Rusdiana and Dewi Setyowati</b></li> <li>6. Hubbul Waton Minal Iman As Reinforcement Theorem Of State Defense In The Context Of Terrorism Prevention In Indonesia <b>Slamet Tri Wahyudi</b></li> </ol>
	<b>3</b>	<b>Bussiness law and Commercial law</b>	<ol style="list-style-type: none"> <li>1. Legal Protection on Indigenous Herbs Of Madura Through Geographical Indications <b>Habib Adjie, Tanudjaja, Woro Winandi, and Moh. Saleh</b></li> <li>2. Legal Protection of the Registered Trademark Owner in the Constitutive System (First to File) in Indonesia <b>Raden Murjiyanto</b></li> <li>3. The Importance of Sea Boat as a Supporting Facility Transportation of People and Goods <b>Elfrida R Gultom</b></li> <li>4. Implication of Article 16 Section (3) Of 28 Year 2018 Copyright as a Fidusia Guarantee Object <b>Budi Hermono</b></li> <li>5. The Law Reform of Solving Waqaf Dispute Based on Pancasila in The Global Era <b>Islamiyati, Achmad Arief Budiman, Dewi Padusi Daengmuri</b></li> <li>6. Problems in the Status of Object Ownership of Ijarah Muntahiyah Bittamlik Financing Contract in Sharia Banking Law <b>Nurul Hikmah</b></li> </ol>
	<b>4</b>	<b>Environmental Law and Administrative Law</b>	<ol style="list-style-type: none"> <li>1. The Dynamics of Paddy Land Legal Policy in Indonesia <b>Sri Wahyu Handayani, Siti Kunarti, and Supriyanto</b></li> <li>2. Harmonization of Grating Land Rights for Investment in Land –Law Perspectives <b>Fifik Wiryani, Mokhammad Najih, Rizkahana Y Damhuri, and Asri Rezki Saputra</b></li> <li>3. The Moral Panic of Environmental Crime in the Geothermal Exploration Project in Banyumas <b>Arif Awaludin</b></li> <li>4. Community Knowledge Related to Mangrove Conservation Law Products <b>Eny Sulistyowati, and Pudji Astuti</b></li> <li>5. The Use of Forest Areas for Infrastructure Development under Leasehold Forest Area License: A Sustainable Development Perspective <b>Suhadi</b></li> <li>6. Court Administration in the Framework of Good Governance <b>Rahadi Wasi Bintoro</b></li> </ol>

			7. A comparative study of spatial policy in Indonesia and the Netherlands <b>Haris Budiman, Anis Mashdurohatun and Eman Suparman</b>
	5	<b>Health Law and Administrative law</b>	<ol style="list-style-type: none"> <li>1. Effectiveness of Hospital Accreditation Implementation As a Protection Effort on Patient Information Rights <b>Anggraeni Endah Kusumaningrum</b></li> <li>2. Fraud in Healthcare Service <b>Dara Pustika Sukma, Adi Sulistiyono, and Widodo Tresno Novianto</b></li> <li>3. Legal Analysis of Hospital Dispute Settlement through Mediation By Provincial Hospital Supervisory Board (BPRS) <b>Nurani Ajeng Tri Utami</b></li> <li>4. Transformation of Social Security Administrative Body (BPJS) within Social Security Reform in Indonesia <b>Siti Kunarti, Tedi Sudrajat, Sri Wahyu Handayani</b></li> <li>5. Discretion as Freedom of Action in Administering Governance <b>Siti Kunarti and Kartono</b></li> <li>6. Legal Issues In The Implementation Of National Social Security System On Labor In Indonesia <b>Tedi Sudrajat, Siti Kunarti and Abdul Aziz Nasihuddin</b></li> <li>7. The Role of Village Consultative Body For the Tourism Development in Baturaden District <b>Kadar Pamuji, Riris Ardhanariswari, and Noor Asyik</b></li> </ol>
	6	<b>Prevention Crime and Local Wisdom</b>	<ol style="list-style-type: none"> <li>1. Prevention of Gratification in the District Court. <b>Hibnu Nugroho</b></li> <li>2. Victim Precipitation Prevention in the Criminal Acts of Fornication and Coition Against Children <b>Rani Hendriana</b></li> <li>3. Local Economic Development Manifesto: Policy Analysis on The Implementation of Village-Owned State Enterprises <b>Ulil Afwa</b></li> <li>4. Strengthening Indigenous Law to Make a Sustainable Development of the Coastal Area and Small Islands in Indonesia <b>Nurul Huda, A.H. Asy'ari, Yusuf Saefudin and Muhammad Bahrus Syakirin</b></li> <li>5. An Analysis of the Justice Values to Legal Protection for Traditional People from Coastal Reclamation Threat in Coastal Areas <b>Rina Yulianti , Safi, and Murni</b></li> <li>6. Social Work Penalty as The Alternative of Imprisonment <b>Kuat Puji Prayitno, Dwi Hapsari Retnaningrum and Rani Hendriana</b></li> <li>7. Dialogue Model for Resolving Freedom of Religion Conflict <b>Rini Fidiyani and Erni Wulandari</b></li> </ol>

# Penal Mediation from the Perspective of Criminal Law (Study of the Settlement of Criminal Cases by Mediation)

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**Abstract.** Mediation is a method to solve cases by involving third parties, commonly used in civil law. The usage of mediation in criminal law, aims to make the perpetrators aware that their criminal act is wrong and to perceived that the victims need to be reinstated. Therefore it is important to understand what the background of the usage of mediation in criminal crime cases and how the prospect of mediation in the future is. The purpose of this paper is to know how penal mediation is seen from the perspective of criminal law, while the benefit is to contribute thoughts in terms of criminal law. The method used to solve the problem is juridical normative method and empirical method. Based on the results of the study, it is known that penal mediation which is basically undisclosed in the field of criminal law—practically has been used, thus the prospect of mediation will be widely used in the future. In several laws, the provisions of mediation are also registered. Penal mediation from the perspective of criminal law can be used as one of the means of settlement of criminal cases.

## 1 Introduction and Literature Review

The police as the first door to enter criminal cases have an important role. In reality, the cases handled are not equitable with the number of police available, so that the criminal justice system which is expected to be the last stronghold of justice seekers is not fulfilled. The police are a living law, through this police promises and legal objectives to secure and protect the public become reality (1). Another factor is the factor of law enforcement officers themselves. The main problem of law enforcement actually lies in the factors that might be influenced it (2). One way of law enforcement is with criminal law. According to George P Fletcher

“ without punishment and institutions designed to measure and carry out punishment, there is no criminal law.”  
(4)

According to Moeljatno criminal law is part of the overall law that applies in a country, which establishes the basics and rules for :

- 1) Determine which action should not be carried out, which are prohibited, accompanied by a threat or sanction in the form of a particular criminal who violates the prohibition
- 2) Determine when and in what cases to those who have violated the prohibitions that can be imposed or imposed as punishment as threatened
- 3) Determine in a way how the imposition of a criminal offense can be carried out if a person is suspected of having violated the prohibition (3)

Criminal law from a nation is a very chief indication to understand the level of the nation's civilization, because it implies how the nation's views on ethics (morality), social, and religious morality (4)

In principle, mediation is unknown in criminal law, but in Article 82 of the COUP there is a regulation concerning the settlement of cases outside the court, namely Afdoinen buiten process, limited to criminal acts that are only threatened with criminal penalties.

Penal mediation is a mediation in criminal cases. According to Barda Nawawi Arief (5) the background to the idea of the inclusion of mediation ideas or discourses in criminal cases, some are related to ideas of criminal

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reform (reason reform), and some are associated with pragmatism problems. The context of the settlement of cases outside the court through its peak judicial mediation is expected to suppress the accumulation of cases (congestion) in court, especially at the Supreme Court level. (6)

Criminal mediation focuses on committed mistakes and aims to make the perpetrators aware that the crime they once committed was wrong and also made them aware that the victim needed to be reinstated (7).

## **2 Objective of the Study**

The purpose of this research is to understand how mediation is viewed from the perspective of criminal law while mediation is still undisclosed in criminal law, and whether in police practice the Banyumas POLRES applies mediation.

## **3 Methodology**

The method used in this study is sociological / non-doctrinal juridical. By using primary and secondary data. Primary data is obtained from interviews with respondents (police). Secondary data comes from primary, secondary, and tertiary materials. Research location at Banyumas Police Station. Qualitative data analysis with descriptive and prescriptive properties. Approach method with law approach and case approach. Conclusion with the induction method. According to Soetandyo Wignjosoebroto, in the non-doctrinal study of material logic with its inductive syllogism that is commonly used (9)

## **4 Discussion**

The practice of resolving criminal cases outside the court so far has no formal legal basis, so cases often formally have a peaceful settlement (although through customary law), but still proceed to the court in accordance with applicable law. (6). From the results of Taufiqurrohman Abiddanwa's research, the criminal law policy in overcoming criminal acts through settlement efforts outside the positive legal process is currently only a small part while the others are still oriented towards formal settlement (10).

Provisions of positive law in Indonesia (*ius constitutum*) concerning mediation, including Law number 30 of 1999 concerning Arbitration and Alternative dispute resolution, Law Number 32 of 2009 concerning Environmental Protection and Management, Law Number 8 of 1999 concerning Consumer Protection, Law No. 39 of 1999 concerning Human Rights, Law No. 36 of 2009 concerning Health, and there are still several mediation provisions spread in other laws. In the field of civil law, mediation must be carried out before the judge examines the case, this is regulated in the Supreme Court Regulation of the Republic of Indonesia Number 1 of 2016. In criminal cases, the settlement outside the court is done if :

1. the offender is a child, namely with diversion. Diversion is the transfer of settlement of child cases from prosecution of criminal justice to prosecution outside criminal justice. (Law number 11 of 2012 concerning the juvenile justice system).
2. article 82 Paragraph (1) of the Indonesian Criminal Code, which formulates the authority to prosecute violations that are threatened with fines only, to be deleted, if the maximum fine and costs incurred are paid if the prosecution has been started, with the authority of the official appointed by the law general rules, and in the time set by him.

Based on the results of research at the Banyumas Resort Police, results were obtained :

First, according to the police the settlement of criminal cases with Restorative Justice (mediation) is very good, because the legal purpose of Restorative Justice if implemented with the procedure will be fulfilled from the three aspects, justice, usefulness, and legal certainty. However, it only applied for child cases. Other cases have not exist yet. Because there is no legal basis even though there is a discretion it still cannot contradict the prevailing regulations. Restorative justice has two sides, on the one hand it is a concept and on the other hand its implementation. The implementation may be very good in certain cases, such as persecution, embezzlement, fiduciary. From this statement it appears that the police only carry out what is in the law of the juvenile justice system. The police did not dare to apply to other cases, even though according to the police it was denied. Associated with the legal system theory of Lawrence Friedman, in the legal structure, the police as law enforcement officers only apply what the law says. There is no independence from the police acting on its own discretion. Although the main law of the police gives authority to the police to carry out discretion. Secondly, the police who conduct mediation are at the Integrated Service Center (PPT). PPT is a place of service, complaint, and examination specifically for child or female victims. Because child perpetrators are done with diversion, mediation is done in the PPT room. Third, the legal basis for the settlement of cases with mediation at the Banyumas POLRES is based on the National Police Regulation, the Law on the Protection of Women and Children, and the Juvenile Justice System Law. Fourth, the settlement mechanism is in 3 stages, namely the Investigation Stage, the Prosecution Stage, and the Trial Stage in the Court. Usually the settlement is done at PPT,

then at the mediation police station, the results of the mediation are brought to court to be asked for confirmation. Fifth, the role of the police in the mediation process is as a neutral mediator, its role is as mandated by the Juvenile Justice System Law. Only convey what is the duty of the investigator. Sixth, the police need a legal umbrella as the basis for conducting mediation. From the police's request for a legal umbrella, it was clear that the police were only implementing the law. The police should have given discretion, dare to act with the aim for the good of victims and perpetrators.

According to Agus Raharjo, the settlement of criminal cases through non-litigation channels is an alternative route that will help reduce the accumulation of cases in the court and congestion of SPP in handling crimes. models There are several things that make the settlement of criminal cases through non-litigation channels said to be quasi-criminal because there are civil elements but are used to resolve criminal cases (11). Non litigation pathways that are widely used by the police are mediation.

The mediation model used is the victim offender mediation model. This mediation model is one model known in the judiciary with a restorative justice approach.

There is a significant difference between resolving disputes through the court and outside the court. According to Marcus Priyo Gunarto, each of these ways of solving has characteristics of differences. (12)

The characteristics of dispute resolution through the court are :

1. Takes a long time
2. Demand large costs;
3. The process is very formal;
4. Decisions are not always satisfying;
5. Coercive;
6. Based on rights (right based);
7. Can damage existing business / social relations;
8. Can cause prolonged conflict
9. Backward looking (looking back, not forward)
10. Open / publicity (someone's reputation)

While the characteristics of dispute resolution through ADR :

1. The nature of volunteerism in the process;
2. Quick procedure;
3. Non judicial decision (not punish);
4. Secret nature (privatization of disputes);
5. Flexibility in designing the terms of dispute resolution;
6. Save time and costs;
7. Protection and recovery of existing relationships;
8. Ease of carrying out the outcome of the settlement;
9. It's easier to predict results.

The settlement of cases through an off-court process results in a "win-win solution" agreement, guaranteed confidentiality of the parties' disputes, avoidance of delays caused by procedural and administrative matters, comprehensively resolving problems in togetherness and maintaining good relations.

## 5 Conclusion

In criminal cases, in principle, mediation is still undisclosed. Mediation is known in the realm of civil law, therefore the provision on mediation are listed in various laws. Although in criminal cases mediation is still undisclosed, the police at the Banyumas POLRES use the settlement of cases that are the perpetrators of children. This is based on the Law on the Criminal Justice System of the Child, even though the law is called diversion. With the implementation of mediation in criminal cases involving children, the police should be able to apply in other criminal cases, not having to await for a legal umbrella so that a better criminal justice system can be created.

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