

# The Use Of Mediation In Industrial Dispute Resolution

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## *Abstract*

Administrative legislation and / or economic administrative law that "involves" criminal law in Indonesia is quite a lot. One example is Law No. 20 of 2016 on brands and Geographical Indications involved in the development of industry. Problems of criminal law in the field of administrative law and economic law, especially in the enforcement and protection of intellectual property rights have not shown action in line with the spirit of law formation. One form of violation of the law that is currently growing in Indonesia is duplication of copyright. But so far, efforts to provide legal protection for copyright holders seem inadequate. Even in the process of implementing law enforcement, it is not uncommon for copyright infringement cases to run aground in the middle of the road. Seeing the problems in the enforcement of economic criminal law, especially in the field of intellectual property rights, gave birth to an alternative discourse on the resolution of criminal disputes in the field of intellectual property rights, especially against violations of brand rights. How is the concept of industrial criminal punishment related to brand and geotaphic indications, and whether mediation is the right choice in resolving industrial disputes.

**Keywords:** Dispute Resolution, Industry, Brand, Geographical Indication

## 1. INTRODUCTION

Various forms of administrative legislation and / or economic administrative law that "involve" criminal law in Indonesia are quite numerous. One example is Law Number 20 of 2016 on brands and Geographical Indications. Problems of criminal law in the field of administrative law and economic law, especially in enforcement and protection of intellectual property rights has not shown action in line with the spirit of the establishment of law. One form of violation of the law that is currently growing in Indonesia is duplication of copyright. But so far, efforts to provide legal protection for copyright holders seem inadequate. Even in the process of implementing law enforcement, it is not uncommon for copyright infringement cases to run aground in the middle of the road. Seeing the problems in the enforcement of economic criminal law, especially in the field of intellectual property rights, gave birth to an alternative discourse on the resolution of criminal disputes in the field of intellectual property rights, especially against violations of brand rights.

Economic law is a set of both written and unwritten rules that govern economic activity. Suffice it thus can be in the field of public and private or mixing between public and private. Therefore, in economic law there is a process of public "and private" economic activity. The process itself takes place both nationally and internationally. On that basis, sanctions for irregularities and misappropriation of the

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implementation of economic law can be in the form of civil and or criminal sanctions. This last thing actually needs to be refreshed because many business/industrial communities feel that their business activities are only covered in the civil law and commercial law environment. While many activities or part of the process of activities threatened with criminal sanctions. This has been triggered by the government with the publication of Law No. 7 Drt / 1995 which can be known as the economic criminal law.

The position of economic criminal law in the Indonesian legal system needs to be traced by looking at the political development of the economy since the Dutch East Indies. At that time the political economy is liberal, and in the export trade berwujud in the so-called "open door" this situation lasted until the world economic crisis of 1930, which also affected the economy in the Dutch East Indies.

The implementation of economic politics is supported by legislation in the field of economy, and as well as other legal regulations need to be emphasized, because otherwise the regulation has no meaning. Therefore, against violations of laws and regulations in the economic sector need to set sanctions as reinforcement of the enactment of the regulation. Only the problem is, what sanctions should be imposed. In law, in general, three sanction systems are known, namely, civil sanctions, administrative sanctions, and criminal law sanctions.

Criminal law, which in essence is a law that serves to run other legal systems (Civil Law, Business Law, constitutional law) in order to obtain a legal certainty, responds to the activities of this industrial invention by dekriminisasikan Patent and copyright into criminal aspects. Although crimes against intellectual property rights, especially in the field of patents and copyrights, it can be said that it is still rare to be filed in court.

The case is related to an industrial design dispute that occurred in Indonesia earlier. Here's a summary of Kliklegal, including: Toni's Bogo helmet vs. Gunawan's 'owned' Bogo helmet in April 2016, there was a dispute over the Industrial Design of the Bogo branded helmet glass. In the dispute Toni, the owner of the bogo helmet design with registration number ID 0012832 d sued Gunawan who was said to have produced and reproduced and used without rights the industrial design of Toni's bogo helmet glass. Please note, Toni has held the design rights to the bogo helmet for the period for the period August 3, 2007 to August 3, 2017 which has been registered with the Ministry of Law and Human Rights (Kemenkumham). Toni also mentioned that his design has been recognized by Bo Go Optical Sdn Bhd Malaysia because he has collaborated with the helmet company from the neighboring country. For the actions taken by Gunawan, Toni consequently suffered a loss of Rp 700 million. This lawsuit was brought by Toni and his attorney to the Bogor district court. The panel of judges decided that the defendant was found to have violated Article 54 paragraph 1 along with Article 9 of Law Number 31 of 2001 on Industrial Design. Gunawan was sentenced to 1 year in prison. Bag design dispute PT Batik Keris Indonesia a company that produces apparel with batik motifs on October 7, 2014 and sued the bag designer Wenny Sulistiowaty Hartono on the basis of Wenny's bag

design follows the design of bags belonging to Batik Keris. Batik Keris assess the bag designed Wenny does not have an element of novelty (not novelty) to get industrial design rights from Kemenkumham so that the company assesses that the design must be public property and not a monopoly of individuals. The Court of Appeals rejected the suit. Rejection also occurred when Batik Keris filed a review back to the Supreme Court. The Supreme Court considered PT Batik Keris Indonesia could not postulate and prove since when to produce and market the object of dispute. It was also conveyed that PT Batik Keris could not prove to the panel of judges that the industrial design or object of dispute had been previously registered or referred to as the first registrar. The industrial design of bags belonging to Wenny Sulistiowaty Hartono has been registered and has an industrial design certificate with the number IDD0000035061 as of September 4, 2012 for the category of bags from the Ministry of Law and Human Rights. Wenny itself has also marketed a bag with his design to the market. Violation of the use of Industrial Design by PT Perusahaan Gas Negara Tbk at Number 3, there was a lawsuit between the inventor of the industrial design of the pipe protection connection (sock adapter), M. Rimba Aritonang with PT Perusahaan Gas Negara Tbk (PGN) related to the use of unlawful findings. Case number 73 / D.I/2012 / PN.Jkt.Pst with plaintiff M. Rimba Aritonang, sued PGN for Rp132.39 billion on November 14, 2012. The plaintiff's attorney stated that PGN had used the industrial design of its client's sock adapter for the company's benefit continuously since 2006 until the lawsuit was filed. Meanwhile, the inventor of the industrial design has held industrial design rights with registration number ID 0009708 entitled 'pipe protection connection Design'. In the lawsuit, the plaintiff stated that PGN had violated Article 46 paragraph 1 of Law No. 31 on Industrial Design. On the other hand, PGN in the answer to the trial objected to the lawsuit. PGN, represented by his attorney Andreas Nahot Silitonga et al, considered that the industrial design owned by Rimba Aritonang did not have its own uniqueness or uniqueness and there was no difference with other sock adapters. He also revealed that there is no novelty in accordance with the provisions of Article 2 Paragraph (1), (2), and (3) jo. Article 3 of the Industrial Design law. However, on Wednesday, April 3, 2013, the Central Jakarta Commercial Court decided PGN to pay damages related to the industrial design of the sock adapter. Payment of compensation amounting to Rp 180 million to the plaintiff, M. Rimba Aritonang. Industrial Design of the Biolife bottle by Tupperware last, in 2017 the US home appliance manufacturer Tupperware sued the Biolife branded bottle because it had similarities with its household product called 'Eco Bottle'. The similarity lies in the thread configuration of the cover, the symmetrical indentation of the 4 corners from the perspective of the top of the bottle, and the configuration pattern of the circle in the middle. The design of 'Eco Bottle' itself has been registered to the Directorate General of intellectual property with Registration Number ID 0024 152-D. Atasa it, Tupperware sued the manufacturer Biolife Semarang District Court. Hoping to win the lawsuit, Tupperware instead had to accept the harsh reality.

Settlement made through the courts has been seen by the dispute is

considered less able to meet the sense of justice, especially by the victim, therefore the settlement outside the court is expected to meet the disappointment of victims who still lack legal protection, because all existing legislation (Criminal Code and Criminal Procedure Code) only provide protection against perpetrators, ranging from examination at the, among other things, the regulation on the rights of suspects to be accompanied by Legal Counsel, suspension of detention, pre-trial and so on, all of which are rights granted to the perpetrator (suspect).

The criminal justice system is expected to have a settlement process that will provide a sense of justice for the parties (victim and perpetrator), this settlement will be implemented by finding between the victim and the perpetrator to talk and negotiate in order to make the peace desired by the parties based on the consensus made by the litigants either without or with the help of a neutral third party, namely through mediation.

Mediation is growing, due to the fact that the process of dispute resolution through the court (litigation) is the most conventional method of dispute resolution. However, due to the complexity and often abused, the bitter experience that befell the community, shows an ineffective and inefficient justice system. Settlement of the case through the court can take a long time and even up to ten years. The process is long and long, which is wrapped in an endless loop. Starting from appeals, Cassation and judicial review, and after the decision has permanent legal force, a new execution can be carried out, which then there are still many other legal efforts that can still be broken through. According To M. Yahya Harahap, not unlike wandering and fortune-telling in the wilderness (adventure into the unknown). In fact, the Justice-seeking community needs a quick settlement process so that it can be more efficient and not too formalistic or informal procedure and can be put into motion quickly. The problem under study is how the concept of industrial criminal conviction related to brand and Geogtaphic indication and whether mediation as an Alternative Dispute Resolution in Industrial Dispute Resolution ( brand/ Gerographic indication) is the right choice ?

## **2. RESEARCH METHOD**

Research that is used is juridical normative, where research is done by tracing legal material through literature studies. This study is descriptive Analytical that is to analyze the data systematically, factual and accurate about the problem under study. With the nature of the research conducted is the nature of descriptive research analysis is to provide data as thorough as possible research on the level of public trust in the National Police. The data collection tools used, namely: primary, secondary and tertiary legal materials which are then analyzed by Qualitative Analysis and then presented descriptively, namely by explaining, outlining, and describing the problems and solutions related to the formulation of the problem made.

## **3. RESULT AND ANALYSIS**

## **A. Concept Of Penalization Of Industrial Crimes Related To Brand And Geogtaphic Indications**

Law No. 20 of 2016 on brands and Geographical Indications. In Chapter 100, it is stated that:

- a) Any person who without the right to use the same mark in its entirety with the registered mark belonging to another party for similar goods and/or services produced and/or traded, shall be punished with a maximum imprisonment of 5 (five) years and/or a maximum fine of Rp 2,000,000,000.00 (two billion rupiah).
- b) Any person who without the right to use a mark that has the same essence with the registered mark belonging to another party for similar goods and/or services produced and/or traded, shall be punished with imprisonment for a maximum of 4 (four) years and/or a fine of at most Rp. 2,000,000,000.00 (two billion rupiah).
- c) Any person who violates the provisions referred to in Paragraphs (1) and (2), whose type of goods results in health problems, environmental disturbances, and/or human death, shall be punished with a maximum imprisonment of 10 (ten) years and/or a maximum fine of Rp. 5. 000.000.000, 00 (five billion rupiah). Further in Article 101 regulated.
- d) Any person without the right to use a sign that has the same overall with the Geographical Indication of the other party for the goods and/or products listed, shall be punished with imprisonment for a maximum of 4 (four) years and / or a fine of at most Rp. 2,000,000,000.00 (two billion rupiah).
- e) Any person without the right to use signs that have similarities in essence with Geographical Indications belonging to other parties for goods and/or products that are the same or similar to the goods and/or products listed, shall be punished with imprisonment for a maximum of 4 (four) years and/or a fine of at most Rp. 2,000,000,000.00 (two billion rupiah).

Article 102 stated, Every person who trades goods and/or services and/or products that are known or should be suspected of knowing the goods and/or services and/or products are the result of a criminal offense as referred to in Article 100 and Article 101 shall be punished with imprisonment for a maximum of 1 (one) year or a maximum fine of Rp. 200,000,000.00 (Two Hundred Million rupiah). Furthermore, Article 103 explains, criminal acts referred to in Article 100, up to Article 102 constitute a complaint offense.

The basic concept in criminal law, according to Sudarto, in criminal law there are 3 (three) main issues, namely : prohibited acts; people who commit prohibited acts; criminal who is threatened with prohibited violations.

Forms of prohibited acts / criminal offense brand is :

- a) Use the same mark in its entirety as the registered mark of another party for the same goods and / or similar services produced and / or traded;
- b) Use marks that have similarities in essence with the registered marks belonging to other parties for similar goods and/or services produced and / or

- traded;
- c) Using signs that have the same overall similarity with the geographical indication of the other party for the same or similar goods with the goods listed;
  - d) Using the same sign in principle as the Geographical Indication belonging to the other party for the same or similar goods as the registered goods;
  - e) The inclusion of the actual origin of the goods that is the result of a violation or the inclusion of words indicating that the goods are imitations of goods that are registered and protected under Geographical Indications;
  - f) Using marks protected by the IND-ikasi origin on goods and services so as to deceive or mislead the public about the goods or services origin;

Regarding "persons who commit prohibited acts "on the subject of trademark crimes in Law Number 20 of 2016 concerning trademarks and Geographical Indications, in each article it mentions the term"any person".

In criminal law, any formulation of offense (criminal act), usually begins with the term "whomever" or "everyone" or "anyone". According to Sudarto, this term cannot be interpreted other than-in people. Thus, the term" every person " in the brand crime is a living human being (natuurlijke personen) as a legal subject who commits acts contrary to the law and has the ability to be responsible for the actions he does. This means that it can be said, too, that the corporation in the event of a criminal offense of the brand is not recognized as a subject of criminal law. The punishment that is threatened against a prohibited offense (sanction) is the principal crime in the form of imprisonment or a fine. This criminal sanction is specific to the acts specified in articles 100,101 and 102. The sanction for violation of the provisions of Article 102 is imprisonment or a fine.

The political aspect of crime, seen from the political aspect of crime, is the rational effort of society to overcome crime by using criminal means (penal effort) or outside the criminal law (non-penal). Criminal politics through penal means means using criminal law as a tool to tackle crime. So that criminal law must be studied well by law officers, in order to apply the criminal rules appropriately and fairly. However, to be able to apply the rules of criminal law properly and fairly, law officers are not enough to study the science of criminal law alone (which only sees the facet of the legal rules of a crime), but also must understand the symptoms of human life that lie behind the juridical abstractions provided by criminological knowledge.

The involvement of criminal law in trademark issues is intended as an ultimatum remedium (last remedy) when other legal fields (civil/business law, state administrative law) are unable to resolve problems in the use of trademarks. This also means that criminal law in the field of branding has a secondary function, namely the function to enforce other areas of law. From the aspect of the way of prosecution and from the aspect of dispute resolution. The way of prosecution, theoretically, in criminal law, the way of prosecution of this crime is divided into 2 (two) offenses, namely :

- a) Complaint delict. Offense whose prosecution is only carried out when there is

a complaint from the injured party.

- b) Ordinary delinquents. Offense, the prosecution of which is carried out without the need for a complaint from the injured party.

Article 103 of Law No. 20 of 2016 on brands and Geographical Indications, which confirms that the criminal acts referred to in Article 100, Article 101, and Article 102 constitute a complaint offense. The complaint P.A.F. Lamintang called it by the term *klachtdelict* is a report with a request for prosecution against the person or against certain people. Offenses that can only be prosecuted if there is a complaint from the person who feels aggrieved in Dutch according to P.A.F. Lamintang, called "*delicten alleen op klachte vervolgbaar*" or in German also called *Antragsdelikte*, i.e. as opposed to the so-called "*delicten van ambtswege vervolgbaar*" or offenses that can be prosecuted in accordance with the position.

Some criminal events that can only be prosecuted upon complaint (request) of the subject of criminal events. such a criminal event is called a complaint offense. Complaints offense there are 2 (two) types, namely : absolute complaints offense (absolute) and relative complaints offense (not fixed).

An absolute *klachtdelict* is an offense in which, in essence, the existence of a complaint is a "*voorwaarde van vervolgbaarheid*" or a condition for the perpetrator to be prosecuted. Meanwhile, what is meant by a relative complaint offense is a crime where the existence of a complaint is only a "*voorwaarde voor vervolghaarheid*" or a condition to be able to prosecute the perpetrator, that is, when between the guilty person and the aggrieved person there is a special relationship.

This complaint offense is divided into 2 (two) types, namely absolute complaint offense (absolut) and relative complaint offense. Absolute complaint offense is a complaint offense that can only be claimed if there is a complaint. While a relative complaint offense is a crime that is not a complaint offense, but when committed by relatives, it turns into a complaint offense. it can be seen that the complaint offense is specified in Article 100, 101, and Article 102 of Law Number 20 of 2016 concerning brands and Geographical Indications.it is an absolute delusion.

Absolute offense and relative offense, each has a different nature. According To R. Sughandi, because what is demanded is the event (criminal act:pen), then by itself everyone involved in the event (doing, persuading, helping) must be prosecuted. In accordance with its type, namely absolute complaint offense, this complaint offense cannot be divided. A husband who complains about the incident of adultery (Article 284) committed by his wife, he cannot require that the man who commits adultery with his wife alone be prosecuted, while his wife is released from prosecution. In the case of a relative complaint offense, in the relative complaint offense, the complaint is not intended to prosecute the event (criminal act:pen), but to prosecute those who are guilty of the crime. So this complaint offense can be split. A father whose goods are stolen by 2 (two) children named A and B, can file only one of the two children, for example A, so that B is not prosecuted.

The provisions governing the filing and withdrawing of complaints that are only prosecuted for complaints, in the Criminal Code are specified in Article 72,

Article 73, Article 74 and Article 75 as follows. In Chapter 72 it is stated:

- a) As long as the person affected by the crime can only be prosecuted on complaint, and the person is not quite sixteen years old and yet immature, or as long as he is under guardianship caused by anything other than extravagance, then his legal representative in a civil case is entitled to complain;
- b) If there is no representative, or the representative himself to be complained of, then the prosecution is made on the complaint of the trustee or trustee-in-charge, or of the Assembly to which the trustee or trustee belongs; it is also possible on the complaint of his wife or of a blood relative in a straight line, or if it is absent, on the complaint of a blood relative in a deviant line to the third degree.

Then in Article 73 it is stipulated, "if the person affected by the crime dies within the time period specified in the following article, without extending the time, the prosecution is carried out on the complaint of his parents, children, or her husband (wife) who is still alive unless it turns out that the deceased does not want prosecution. Article 74 specifies:

- a) A complaint may only be filed within six months of the person entitled to complain becoming aware of the crime, if residing in Indonesia, or within nine months if residing outside Indonesia;
- b) If the person affected by the crime has the right to complain when the grace period in Paragraph 1 has not expired, then after that time, the complaint may still be filed only for the remainder that is still lacking in the grace period.

Article 75 explains "the person who submits a complaint, has the right to withdraw within three months after the complaint is filed". Based on the provisions of Article 73 to Article 75 of the criminal code above, the stipulation of the termination of the complaint period mentioned in Article 74 of the criminal code is 6 (six) months for those entitled to complain if they live in Indonesia, and 9 (nine) months for those entitled to complain if they live abroad.

The day of validity of the complaint period is counted from the moment the criminal event occurred. This is as specified in Article 73 of the Criminal Code, if before the expiration of this complaint period the complainant dies, the Complaint can be filed by the mother, father, child, husband/wife of the complainant who is still alive. If he or she has more than one child, they are all entitled to complain. What if the person who has the right to complain before death wants that the crime of adultery is not prosecuted ? in this case, even after death, this crime cannot be prosecuted.

The revocation of the complaint is determined in Article 73 above, where within 3 (three) months from the time the person entitled to complain makes a claim, the person has the right to revoke the complaint. If the complaint is made orally, the calculation of the complaint period begins from the time the complaint is filed. If the complaint is made by letter, then the complaint period is calculated from the date of the complaint letter, (not the date of receipt of the letter).



## **B. Mediation As Alternative Dispute Resolution In Industrial Dispute Resolution (Brand / Gerographic Indication)**

Dispute resolution on trademark infringement as stipulated in Law No. 20 of 2016 on trademarks and Geographical Indications. it can be done in 2 (two) ways, namely making a lawsuit through the Commercial Court, and resolving disputes through arbitration or Alternative Dispute Resolution.

In Chapter XV of the first part of Law No. 20 of 2016 for example, it is determined, "the owner of a registered mark may file a lawsuit against another party who is without the right to use a mark that has the same in principle or in whole for similar goods and/or services in the form of a claim for compensation, termination of all actions related to the use of the mark.

A lawsuit for damages and termination of all actions related to the use of the mark is filed through the Commercial Court. However, according to Article 84 of law NO. 15 of 2001 in addition to the settlement of claims referred to in the first part of this chapter, the parties may resolve disputes through arbitration or Alternative Dispute Resolution.

Alternative Dispute Resolution (APS / ADR) according to Article 1 point 10 of Law No. 30 of 1999 concerning arbitration and Dispute Resolution, is an institution for resolving disputes or differences of opinion through a procedure agreed by the parties, namely out-of-court settlement by way of consultation, negotiation, conciliation or expert assessment.

Alternative Dispute Resolution (APS or ADR) is a set of experience and legal techniques that aim:

- a) Resolve legal disputes out of court for the benefit of the parties.
- b) Reduces the cost of conventional litigation and the usual downtime
- c) Prevent the occurrence of legal disputes that are commonly submitted to the court

Alternative Dispute Resolution has actually been used since ancient times until now by traditional communities in Indonesia in resolving disputes between them, especially in rural areas. Alternative Dispute Resolution has traditionally been considered very effective and is a tradition that is still alive in society. In many rural areas of Indonesia, the village head or tribal chief is still considered the supreme authority in leading the village, and as an intermediary or providing decisions in disputes between residents. Therefore, in dispute resolution people prefer to seek a dialogue (deliberation), and usually ask a third party such as the village head or tribal chief to act as a mediator, conciliator or even as an arbitrator.

Basically the result of reconciliation in the form of dispute resolution in the form of peace, where the parties are equally willing to give in to each other on the basis of the principle of to take a little to give a little. Such a form is actually known in Indonesian law (according to Western civil law convention) called *dading*. However, in the lives of local communities, efforts to resolve cross-differences in the form of such peace can also occur in cases that according to national legislation are referred to as criminal law.

In making a conclusion if this trademark crime can be resolved by arbitration or Alternative Dispute Resolution. However, if this is related to the provisions contained in Chapter XV with the title "dispute resolution", in that chapter, the author does not find a clause that specifies and emphasizes that "dispute resolution through arbitration or Alternative Dispute Resolution does not apply to trademark crimes". That is, in the absence of emphasis on such a clause, in the opinion of the author, this bias becomes a loophole that criminal acts in the field of branding can be resolved through arbitration or Alternative Dispute Resolution.

Barda Nawawi Arief said that penal mediation is an alternative form of dispute resolution outside the court (commonly known as ADR or "Alternative Dispute Resolution"; some call it "appropriate Dispute Resolution"). ADRs are generally used in civil cases, not criminal cases. Based on the current legislation in Indonesia (positive law), in principle, criminal cases cannot be resolved outside the court, although in certain cases, it is possible to resolve criminal cases outside the court.

Through the process of Penal mediation is expected to be achieved the establishment of better communication between the parties litigants, so it is expected to reduce anger/hostility between the parties to one another, and on the other hand with this mediation process makes the parties litigants can hear, understand the reasons / explanations / arguments that become the basis / consideration, and understand the shortcomings / advantages / strengths of each, and this is expected to bring closer the point of view of the parties litigants, towards a compromise acceptable to the parties.

Penal mediation there are parties involved in the handling process, namely victims, perpetrators, communities and community leaders (village heads/tribal chiefs) or other parties (law enforcement) as a neutral person to be used as a Mediator to help the parties to the dispute in order to reach a settlement in the form of voluntary agreement on part or all of the disputed issues. The task of the mediator is to make the parties forget about the legal framework and encourage them to engage in the communication process. As a Mediator in a criminal case, the investigators themselves can be raised, therefore, the investigator in the implementation of Penal mediation must be neutral, or not take sides with one of the parties to the dispute.

The investigator as a mediator must also be able to help find a way out / alternative solution to disputes arising between the parties that is agreed and acceptable to the parties to the dispute, so that the negotiation process is a forward looking process and not backward looking, where what is to be achieved is not to seek the truth and/or the legal basis applied but rather to resolve problems that can be accepted by the parties themselves.

This Penal mediation is an alternative to solving criminal cases outside the court, so that every criminal case does not have to be prosecuted to court, this is as intended in the draft concept of the 2018 Criminal Code, Article 145 on the loss of prosecution authority, letter d. Solution outside the process.

Every person who is examined both at the investigation level has a tendency

to mental decline (fear), so that the consequences of what is conveyed will follow the instructions of the investigator which results in harming the perpetrator himself, even the victim also sometimes feels afraid when dealing with police investigators, so that this can also be possible will gain losses against the victim himself.

Based on Penal mediation, it is hoped that it can aim to provide a sense of justice for the litigants, so that the parties will have a sense of justice as one of the goals of the law. Alternative settlement of criminal cases through penal mediation in practice has been running and implemented by several investigators at the police level, this is done as the power and authority given to investigators to conduct policy through the discretion given to police investigators.

Penal mediation as a settlement of criminal cases outside the court has not been widely found in the literature and existing legislation, but nevertheless the understanding and understanding and implementation in the implementation of the settlement of criminal cases outside the court through Penal mediation is needed as a reference and study in practice and theoretical.

#### 4. CONCLUSION

Alternative Dispute Resolution has different character and nature in the process of examination of the case, where the examination through alternative dispute resolution is carried out behind closed doors, within a limited time, is not formal, and the costs incurred will be less. This is the reason why industrial dispute resolution (brand / Geographical Indication) will be more effective if done through alternative dispute resolution channels, where industry players will be more likely to choose a path that is easy, fast and profitable or does not provide greater losses for their business activities.

#### REFERENCE

- Soerjono Soekanto, Faktor-Faktor Yang Mempengaruhi Penegakkan Hukum, CV Rajawali, Jakarta, 1983.
- Ariman Sitompul. (2023). Alternative Dispute Resolution Criminal Acts Of Money Politics In Elections In View Of Normative Law. International Asia Of Law And Money Laundering (Iaml), 2(1), 1–9.
- Sabela Gayo (2022), Alternative Dispute Resolution in Mining Disputes with The Mechanism of Mediation, International Journal of Research and Review (IJRR), Vol. 9 No. 3.
- Ariman Sitompul (2020). E-Procurement System in the Mechanism of Procueremen of Goofs and Service Electronically. International Asia of Law and Money Laundering, 1(1), [https://www.wipo.int/wipo\\_magazine/en/2016/si/article\\_0010.html](https://www.wipo.int/wipo_magazine/en/2016/si/article_0010.html) diakses 30 Desember 2023
- Sabela Gayo (2023), The Use Of Mediation In Maritime And Fisheries Dispute Resolution, Legal Preneur Journal Vol. 2 No. 1.
- Ariman Sitompul, Sabela Gayo. (2022). The Use of Mediation as an Alternative Health Dispute Resolution. Hong Kong Journal of Social Sciences
- M.Citra Ramadhan, dkk, Faktor Penghambat Penegakan Hukum Merek Di Sumatera

- Utara, Jurnal Imiah Penegakan Hukum, Vol. 9, No.2, 2022.
- Andi Hamzah,. Delik-Delik Tertentu (Speciale Delicten) di dalam KUHP, Jakarta: Sinar Grafika, Jakarta, 2009.
- P.A.F Lamintang & C. Djisman Samosir,. Delik-Delik Khusus Kejahatan yang Ditujukan terhadap Hak Milik dan Lain-lain Hak yang Timbul dari Hak Milik,. Tarsito, Bandung, 1990.
- Tami Rusli, Penyelesaian Sengketa Antara Konsumen Dan Pelaku Usaha Menurut Peraturan Perundang-Undangan, Keadilan Progresif, Vol. 3, No.1 , 2012
- Madjedi Hasan, "Hal-Hal yang Perlu Dipertimbangkan Sebelum Menandatangani Kesepakatan Berarbitrase, Indonesian Arbitration", Quarterly Newsletter, No. 11, 2010.
- Az. Nasution, "Aspek Hukum Perindungan Konsumen", Jurnal Teropong, Mei 2003, Masyarakat Pemantau Peradilan Indonesia.
- Muhammad Taufiq dkk, Mediasi Sebagai Penguatan Kearifan Lokal Banyumas Dalam Penyelesaian Perkara Pidana, Media Hukum Vol.24, No. 2, 2017.
- Sabela Gayo (2023), The Use of Mediation as Alternative Capital Market Dispute Resolution, International Journal of Research and Review (IJRR), Vol. 10 No. 3.
- Janus Sidabalok, 2006, Hukum Perlindungan Konsumen di Indonesia.
- Juli Esther dkk, Mediasi Penal Dalam Penangan Pelaku Tindak Pidana Sebagai Upaya Meminimalisir Hunia Lembaga Perasyarakatan, Nomension Journal Of legal Opinion, Vol. 1, No.1, 2020
- Sabela Gayo (2023), The Use of Mediation as Alternative Tax Dispute Resolution, International Journal of Research and Review (IJRR), Vol. 10, No. 1.
- Sabela Gayo. (2022). Alternative Dispute Resolution Criminal Acts Of Money Politics In Elections In View Of Normative Law. International Asia Of Law And Money Laundering (Iaml), Vol. 1, No. 1.