

PENAL MEDIATION AS AN ALTERNATIVE SETTLEMENT OF CRIMINAL CASES EMPHASIZING RESTORATIVE JUSTICE

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Abstract

Penal mediation is an alternative settlement of criminal cases emphasizing restorative justice approach, which is carried out between the victims and the offenders or his/her families with the purpose of restoring the balance in the society. The major problem in this research is, firstly, how is the penal mediation in criminal law enforcement implemented today? Secondly, how are the weaknesses of the implementation of the penal mediation in criminal law enforcement today? Thirdly, how is the penal mediation in criminal law enforcement based on Pancasila values of justice constructed today? In order to answer the problems mentioned above is obtained by using social legal research method, conducted with case studies that have already been through the legal processes by law enforcement officials until the court makes the decision, this kind of legal processes is deemed to have injured sense of justice in the community by the society. Penal mediation provides the best way to resolve problems or conflicts between the perpetrator and the victims by engaging between them directly in order to solve the problems with peaceful means in accordance with Pancasila values of justice. The conclusion in this study is the current formulation of the regulations has not accommodated penal mediation as a form of settling disputes outside the criminal justice processes. Penal mediation arrangements in the future must be included in the substantive criminal law, the formal criminal law and the implementation of criminal law.

Keywords: Construction; Penal Mediation; Pancasila Justice.

A. INTRODUCTION

The judiciary as law enforcement agencies in the criminal justice system is a beacon of hope of those seeking justice who always wants justice that is simple, fast and inexpensive.¹

The policy is needed so that the peace process "under the hand" that occurs in the community, as

happened in the Police as an initial stage of the criminal justice process can be legitimized by rules that provide legal certainty.²

The concept which has been running for this that does not provide protection and respect for the interests of the victims and the

1 Yesmil Anwar dan Adang, 2009, *Sistem Peradilan Pidana*, Widya Padjadjaran, Bandung, P. 218.

2 Rudini Hasyim Rado, Penal Mediation Policy on The Completion of Sara Conflict in Kei Islands in National Criminal Law Update, Journal Law Reform, Volume 12, Nomor 2, 2016. P.91.

offenders. This is a conventional mechanism which was based on the establishment of a formal process penal (criminal justice system) without looking at the development of law and sense of justice.

Law reform and criminal justice system rests on socio-cultural values of Indonesian society, and thus reflect the values of Pancasila philosophy of life and global developments that reflect respect for the values of local wisdom (local wisdom), is a necessity.³

The problems that can be raised in this paper are: How is the implementation of penal mediation in criminal law enforcement at this time? How are the shortcomings of the penal mediation in criminal law enforcement at this time? How is the construction of penal mediation in criminal law enforcement based on Pancasila values of justice?

This study is a socio-legal (social legal research). Socio-legal studies (socio-legal research) is the study of law in the form of empirical studies are oriented towards the discovery of theories about the process and about the workings of law in society.⁴ Besides mediation reasoning is positive when philosophically the achievement of justice is carried out in a manner fast, simple, and lightweight because there are relatively fewer parties involved than through the judicial

process with the Justice System component Criminal.⁵

The concept of mediation is expected to be an alternative mediation in resolving cases.⁶

B. DISCUSSION

1. Implementation of penal mediation in criminal law enforcement today

a. Ideas and Principles of the Penal Mediation.

Criminal Mediation that is developed rests on the ideas and working principles as follows:⁷

- 1) Conflict Handling/ onfliktbearbeitung.
- 2) Process Orientation; (Prozessorientierung).
- 3) Informal Proceeding - Informalität.
- 4) Active and Autonomous Participation - Parteiautonomie / Subjektivierung.

b. The Comparison of Penal Mediation in Various Countries

Some countries that have implemented penal mediation as an alternative to

3 Natangsa Surbakti, 2015, *Peradilan Restoratif Dalam Bingkai Empiris, Teori Dan Kebijakan*, Genta Publishing, Yogyakarta, P.210.

4 Zaenudin Ali, 2009, *Metode Penelitian Hukum*, Sinar Grafika, Jakarta, p. 13.

5 Selvia Berlian, Penal Mediation Through Traditional Institutions In Completion Of The Case Adultery, *Journal Lampung of University*, 2019, p. 2.

6 Hani Barizatul Baroroh, Penal Mediation as Alternative Settlement of Violence at Home Stairs, *Journal In Right*, Volume 2, Nomor 1, 2012. p. 152

7 Barda Nawawi Arief, 2010, *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan*, Kencana, Jakarta, p. 5.

the settlement of criminal cases:⁸

Albania; Amerika; Argentina; Belanda; Norwegia; Portugal;

Analyzed from its historical perspective, criminal law which is the public law as it is known today has gone through a long development⁹

Barda Nawawi Arief outlines the penal mediation in some countries, a comparative material can be put forward as follows:¹⁰ Austria; Belgia; Jerman; Perancis; Polandia.

c. Penal Mediation Based On Local And Cultural Wisdom Values of Indonesia With Pancasila Philosophy

Law state of Pancasila which is based on the principle of the kinship means that Indonesia prefers the common people, but the dignity of the human being as an individual remains respected, and our paradigm about the state of law to function aegis that is democracy enforcement including the democratization of law, social justice and human decency. The shape of the kinship principle is consensus.¹¹

Although the settlement of crime through This customary institution has not been positively regulated, however at least in future policy come namely in a renewal of criminal law at Indonesia through discussion of the Draft Penal Code (R-KUHP) settlement process outside the system existing formal criminal justice began be considered.¹²

The implementation of the consensus which is based on the values of Pancasila is very important in everyday social life. Way of solving problems of criminal law with the consensus in the form of penal mediation can help people achieving the highest justice and also gain harmonious, secure and peaceful life.

d. The shortcomings of the penal mediation in criminal law enforcement today

Weaknesses in the implementation of the penal mediation today, is: because there is no legal framework for penal mediation, perception of law enforcement officers that are not the same for penal mediation, still the law enforcement officers who have not been willing to be a mediator, limited time, compensation that is not

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<https://core.ac.uk/download/files/379/11727763.pdf>, downloaded at 31-08-2016

9 Lilik Mulyadi, Penal Mediation in Indonesia's Criminal Justice System: Assessment of Principles, Normas, Theory, and Practice, *Journal Yustisia*, Volume 2 Nomor 1, October 2017, p. 1.

10 Barda Nawawi Arief, *op.cit.*, p. 26.

11 Teguh Prasetyo dan Ari Purnomosidi, 2014, *Membangun Hukum Berdasarkan Pancasila*, Nusa Media, Bandung, p. 52.

12 Rudini Hasyim Rado, Penal Mediation Policy on The Completion of Sara Conflict in Kei Islands in National Criminal Law Update, *Journal Law Reform*, Volume 12, Nomor 2, 2016, p. 267

affordable, and yet the good intention of the perpetrators or the victims or their families to settle criminal cases through penal mediation.

- e. Construction of penal mediation in criminal law enforcement based on Pancasila values of justice
- 1) Construction value

Construction value of penal mediation in criminal law enforcement based on Pancasila values of justice is to achieve peace through mediation which protects the interests of the perpetrators and victims of crime in a balanced, fair and dignified way.

- 2) Construction law Weakness

Article 109 Paragraph (2) Criminal Procedure Code (KUHAP) and Article 140 Paragraph (2) a. Criminal Procedure Code (KUHAP).

In the article, the peace through mediation has not been a reason to stop the investigation and stop the prosecution.

2. After Construction

Article 109 Paragraph (2) Criminal Procedure Code (KUHAP). In the case of investigators to stop the investigation because of peace through mediation, insufficient evidence, the incident that was not a criminal act or proceeding terminated by operation of law, the investigators notify the public

prosecutors, the suspects or his/her families.

Article 140 Paragraph (2) a. Criminal Procedure Code (KUHAP). In terms of the public prosecutors decided to discontinue prosecution for their peace through mediation, insufficient evidence, the incident that was not a criminal act or the case was closed by law, the public prosecutors pour it in a decree

3. The Discovery of Legal Theory

The discovery of a new legal theory is: Theory of Penal Mediation of Pancasila, means a medium that puts the completion of the criminal case consensus between perpetrators and victims of crime or their families to seek peace that protects the interests of the perpetrators and victims of crime in a balanced, fair and dignified way.

C. CONCLUSION

After assessment, the conclusion can be drawn as follows: Implementation of penal mediation in criminal law enforcement today is: At the level of the Advocate, a peace agreement through mediation between the offenders and the victims or his/her families is followed by creating a peace agreement letter, and the case is considered to have been completed.

At the level of investigation by police, a peace agreement through mediation between the offenders and the victims or his/her families: After being made/published SPDP, and BAP, then they will be asked to create a revocation report and made

advanced BAP both the victims and perpetrators of criminal acts whose contents revoke the description on the dossier before, so the proof is made/deemed insufficient evidence, the investigation process is stopped by grounds of insufficient evidence. (Article 109 Paragraph (2) Criminal Procedure Code (KUHP)), made / published SP3.

Diversion, made / published SP3. At the level of prosecution by the prosecutors, even though there has been peace between the offenders and the victims or his/her families, but the letter of the peace cannot be used as a basis to stop the prosecution, except to the Diversion and a waiver of the case in the public interest (Principle of Opportunity).

At the court level, although there has been peace between the offenders and the victims or his/her families, but the letter of the peace cannot be used as a basis for stopping the trial, but it is only used to commute or state demands of the prosecutor not acceptable, except for Diversion. It remains decided with the decision/determination of judges.

At the level of the Correctional Institution Indonesia, mediation has not been implemented, because it has no "Legal Standing" regarding penal mediation.

Weaknesses of penal mediation in criminal law

enforcement today are: Absence of legal protection regarding penal mediation. The perception of law enforcement officers are not the same on penal mediation. There are still the law enforcement officers who have not been willing to be a mediator. Limited time. Unaffordable compensation. The absence of good faith on the perpetrators or victims or their families to settle criminal cases through penal mediation.

The discovery of a new legal theory is: Penal Mediation Theory of Pancasila, means a medium that puts the completion of the criminal case consensus between perpetrators and victims of crime or their families to seek peace that protects the interests of the perpetrators and victims of crime in a balanced, fair and dignified way.

The government and the People's Representative Council of the Republic of Indonesia (DPR) should amend Article 109 Paragraph (2) and Article 140 Paragraph (2) a Criminal Procedure Code (KUHP).

The Penal Code (KUHP), the Criminal Procedure Code (KUHP) and Penal Execution Law should be made or revised to include provisions on penal mediation as a settlement of a criminal case outside the judicial processes.

BLIBIOGRAPHY

Book:

Barda Nawawi Arief, 2010, Problems of Law Enforcement and Criminal Law Policy in Crime Management, Kencana, Jakarta.

Natangsa Surbakti, 2015, Restorative Justice in an Empirical Frame, Theory, and Policy, Genta Publishing, Yogyakarta.

Teguh Prasetyo dan Ari Purnomosidi, 2014, *Building Law Based on Pancasila*, Nusa Media, Bandung.

Yesmil Anwar dan Adang, 2009, *Criminal Justice System*, Widya Padjadjaran, Bandung.

Zaenudin Ali, 2009, *Legal Research Methods*, Sinar Grafika, Jakarta.

Journals:

Hani Barizatul Baroroh, *Penal Mediation as Alternative Settlement of Violence at Home Stairs*, *Journal In Right*, Volume 2, Nomor 1, 2012.

Lilik Mulyadi, *Penal Mediation in Indonesia's Criminal Justice System: Assessment of Principles, Normas, Theory, and Practice*, *Journal Yustisia*, Volume 2 Nomor 1, October 2017.

Rudini Hasyim Rado, *Penal Mediation Policy on The Completion of Sara Conflict in Kei Islands in National Criminal Law Update*, *Journal Law Reform*, Volume 12, Nomor 2, 2016. Page, 91.

Selvia Berlian, *Penal Mediation Through Traditional Institutions In Completion Of The Case Adultery*, *Journal Lampung of University*, 2019

Internet:

<https://core.ac.uk/download/files/379/11727763.pdf>, downloaded at 31-08-2016