

Restorative justice as an Effort to Resolve Minor Criminal Cases in Indonesian Criminal Law: Contextualization of *Samagama Sutta*

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Abstract. *Criminal law policy regulating minor crimes is an urgent issue that needs resolution. The Restorative justice approach in the contextualization of Samagama Sutta is a relevant reference for future research. Resolving cases by prioritizing peace and victim recovery is an appropriate step for out-of-court settlements. Restorative justice as a criminal procedure can be applied through dialogue or deliberation, resulting in an agreement that does not harm either the victim or the perpetrator. This study aims to identify a model of the Restorative justice approach in resolving minor crimes within the context of the Samagama Sutta. This research employs normative legal research, also known as doctrinal research, which involves examining literature and secondary data, including primary, secondary, and tertiary legal materials. The data collection method used is library research, which involves collecting, identifying, classifying, and analyzing data for citation purposes. The data analysis follows the Peter Mahmud Marzuki model. The study results indicate that minor criminal cases should be resolved outside the court by seeking peaceful solutions through agreements between perpetrators and victims. Penal mediation, from a philosophical perspective, applies the win-win solution principle. It serves as an alternative to criminal case resolution that is simple, fast, and cost-effective. This approach aligns with the Samagama Sutta, which emphasizes the relationship between perpetrators and victims through the dispute resolution method (*adikarana samatha*), ensuring that peace efforts occur as early as possible.*

Keywords: *Criminal; Justice; Restorative; Samagama Sutta.*

1. Introduction

Law regulates human behavior in society, therefore laws are made to achieve legal certainty, justice and benefit for society. The law must be implemented and obeyed by every individual, and every individual must be treated equally before the law (*equality before the law*). This principle applies to the legal system that applies in Indonesia regardless of the status and position of each person in society. In essence, the law regulates human behavior in social life, so the interests of the community are always a

factor in making laws. However, in certain relationships, the law focuses on the interests of one person, while in other relationships it focuses on the public interest. (Bustomi, 2021)

The law is not a rule made to perpetuate the lust of a strong person, nor is it a rule to satisfy the instinct of self-hedonism. Law is actually an objective order to achieve virtue and general justice (Tanya et al., 2010). Mochtar Kusumaatmadja, an expert in Community Development law, said that society is synonymous with change, so law is needed to ensure the change so that order and legal certainty continue to be realized by regulating and assisting the process of change in society. Thus, the ideal law is a law that is in accordance with the law that lives in society and conveys the values that apply in society (Sudiyana, 2017). Laws that apply in the community, both regulating and coercive, will help the community comply with the regulations that have been made by the authorized officials.

The restorative justice approach is assumed to be the most recent shift from the various models and mechanisms that work in the criminal justice system in handling criminal cases at this time (Zhang et al., 2019) Howard Zehr stated, *viewed through a restorative justice lens, "crime is a violation of people and relationships. It creates obligations to make things right. Justice involves the victim, the offender, and the community in a search for solutions which promote repair, reconciliation, and reassurance* (Morrison, 2015). Seen through the lens of restorative justice, crime is a violation of public relations. Crime creates an obligation to make it right. Justice involves victims, perpetrators, and communities in finding solutions that offer reparation, reconciliation, and assurance. This is in line with the opinion of Howard and Marshall, Douglas, Yrn that restorative justice is a concept of criminal justice that views criminal acts as crimes against the community and not crimes against the state and for that it creates an obligation for victims and the community to correct them (Häffner et al., 2023). Based on the above definition, restorative justice places justice as a fundamental value in responding to criminal cases.

The problem that arises in the community is the existence of peaceful efforts on alleged criminal acts, as is common outside the court. There is a provision that with or without peace efforts, the criminal element remains and cannot be eliminated. In fact, there are so many small criminal cases that are possible to process based on the principle of fast, simple, and low-cost justice. This can be exemplified by someone who becomes a banana thief on the grounds that he is hungry, while the owner of the banana can forgive, so that the consequences do not have to be decided in court, but it is possible to settle through penal mediation.

The settlement of criminal cases in Indonesia is carried out based on the criminal procedure law as stipulated in Law Number 8 of 1981 concerning the Criminal Procedure Law (KUHP). Within the framework of the system and institution, the settlement of criminal cases is carried out by and through the mechanism of the criminal justice system. Based on this system, basically criminal cases cannot be resolved through mechanisms outside the court. This concept shows that there is still a strong school of legal positivism that prioritizes legal certainty, so that it is sometimes felt to be contrary to the demands of justice developed in the midst of society. As a result, in practice, the police in various regions in Indonesia in their position as the gateway to the criminal justice system are often faced with demands from perpetrators and victims to be able to

resolve criminal cases through non-judicial channels. This practice in Indonesia's positive criminal law has been widely applied in various disputes that occur in society, especially for criminal acts that are light in nature and not difficult to prove. Out-of-court case settlement is an alternative used to achieve simple, fast and low-cost justice so that justice will be realized as expected. (Usman & Najemi, 2018)(Rahardjo, S., 2010)(Zulfa, 2010)(Huda, K 2013)

In the Criminal Code (KUHP) Article 205 paragraph (1) it is explained that a minor crime is a criminal case with a threat of imprisonment or imprisonment for a maximum of three months and/or a maximum fine of Rp 7,500 (seven thousand five hundred rupiah). Then the Supreme Court (MA) has also issued PerMA Number 2 of 2012 concerning Adjustment of Limits on Minor Crimes and the Amount of Fines in the Criminal Code. It was conveyed through Perma, that the value of the fine of Rp 7,500 was possible to be multiplied up to 1,000 times until it touched Rp 7,500,000 (seven million five hundred thousand rupiah). The Perma also conveyed that the word two hundred and fifty rupiah contained in Article 364, 373, 379, 384, 407 and 482 of the Criminal Code are read as Rp 2,500,000 (two million five hundred thousand rupiah). The change in the value of the rupiah in the Criminal Code has not yet been updated. So that the settlement of the limit on the value of the fine and the amount of loss has not been able to meet the sense of justice and public satisfaction related to the settlement of minor crimes. Moreover, law enforcers often ignore the provisions of the Perma, by then only following the ordinary procedural law for perpetrators of minor crimes. (Adiesta, 2021)

The existence of this law is required to be able to be the commander and driver of the sustainability of the nation and state. Apart from being a guarantee of certainty and justice, there are other functions of the law to prosper human life, so that it is generally conveyed that the law also becomes a battlefield of struggle and war for humans to find happiness in their lives (Cheng et al., 2023). Small crimes are easily touched while major crimes are difficult to touch in law enforcement in Indonesia, for example the phenomenon of law enforcement against the lower class such as: (1) In the case of the theft of a watermelon in Kediri by Cholil and Basyar Suyanto who were then sentenced to 15 days of probation for 1 month; (2) The case of theft of kapuk randu worth Rp 12,000.00 (4 family members were detained in Rowobelang Prison) with the defendant who was sentenced to 24 days in prison; (3) The case of Mr. Klijo Sumarto (76), a suspect in the theft of satanic and raw Kluthuk bananas for Rp 2,000.00 in Sleman, December 7, 2009 (imprisoned at the Cebongan Sleman Prison); (4) Mbok Minah case (with the charge of stealing 3 cocoa beans worth Rp 2,100.00, August 2, 2009, sentenced to 1 month and 15 days of probation); (5) The case of theft of a pair of flip-flops of a Police member by AAL (15 years old) who was still found guilty even though the sandals were proven not to belong to the police member concerned. (Angrayni, 2016)

Paying attention to the problems that occur above is a very urgent matter, therefore restorative justice is expected to be an innovation in resolving criminal acts through efforts to prioritize the settlement process by recovering the losses experienced by the victim with the perpetrator or the community who are also affected by the related criminal acts. Restorative justice as a criminal procedure can be transferred as a dialogue or deliberation so that then the result can be in the form of an agreement that neither harms the victim or the perpetrator. Restorative justice can mean restorative justice, which in Indonesia is still rarely found to be enforced in an effort to resolve minor crime cases. The reason is the tendency of most law enforcers who still prioritize law

enforcement as in more binding legislation. What then shows that the court seems to be a house where justice resides, or the best place to find justice, until then it is found that there is a criminal act, almost always encouraged to delegate it to the court without considering time, effort and of course the cost that often needs to be ascertained will be proportional to the level of seriousness of the crime that occurred. Restorative justice can basically be interpreted as a form of response or response to *retributive theory* that prioritizes the aspect of retaliation, along with neo-classical theories that tend to focus on the similarity of criminal sanctions with action sanctions. In fact, Restorative justice is implemented through cooperative efforts that involve all parties involved in the case.

In the contextualization of the Tipitaka Scriptures, *Majjima Nikaya, Samagama Sutta* the Buddha offers principles that can be adopted in resolving a conflict, which is initially useful in resolving conflicts in the *bhikkhuan (Sangha)*, but as it develops, it is also possible to apply it to the resolution of various kinds of problems or legal conflicts in society. It is further explained in the *Samagama Sutta* that the root causes of conflicts are 1) disputes, 2) accusations, 3) violations, 4) deeds. In addition, efforts to resolve conflicts such as settlement and reconciliation when related cases occur, deletion of cases through confrontation, deletion of cases due to memory, deletion of cases due to past insanity, confession of violations, majority view, and statements of a person's bad character. (Anonymous, B., & Bodhi, B. (2009)

This is in line with Kathleen Daly's opinion which focuses on repairing damage and losses caused by criminal acts that must be supported through the concept of restitution, namely seeking to recover the damage and losses suffered by victims of crime and facilitating the occurrence of peace. This is reinforced by Larry J. Siegel that in restorative justice, the criminal justice system should support the creation of a peaceful and just society, the justice system should be aimed at creating peace, not punishing (Siegel, Larry J, 2009).(Daly, K 2000)

Based on the explanation above, the main purpose of this research as an alternative in resolving cases, namely by reconditioning the conditions as before the crime or criminal act occurred. This is because there are certain conditions that change due to the existence of crimes or criminal acts from perpetrators who are generally also found to be lost or suffered, following as a legal role that encourages the restoration of the original condition before the crime and criminal act occurred, so that the victim gets protection for his rights. The *Samagama Sutta* approach can be used as an alternative to resolving cases early by looking at the root of the conflict that occurred and resolving the conflict with reconciliation efforts. In addition, this research is expected to contribute to the settlement of minor criminal cases that are adjusted to applicable laws, so that the application of criminal law can be more effective in protecting the individual rights of citizens. Based on the above background, the formulation of the problem in this study is how to apply restorative justice in resolving minor criminal cases in the contextualization of *Samagama Sutta*. This research is expected to make a positive contribution to the development of light criminal law policies and become an alternative solution in changing the paradigm of law enforcement in Indonesia.

2. Research Methods

The type of research in this legal research was normative legal research or commonly known as doctrinal *research*, which was research conducted by researching literature

materials or secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. According to Peter Mahmud Marzuki, all research related to law (*legal research*) was normative. The data sources used in this study were secondary legal sources consisting of primary legal materials, secondary legal materials, and tertiary legal materials. (Marzuki, 2023)

The data collection technique in this study is through document study, namely collecting and analyzing various documents and literature relevant to the research topic. The data obtained from the study of the document is used to formulate arguments in the law of misdemeanor crimes in the constitutionalization of *Samagama Sutta* based on the restorative justice policy. Data analysis uses qualitative data and data is collected and analyzed by identifying by adjusting applicable laws. The results of the analysis will help in formulating the application of restorative justice.

3. Results and Discussion

3.1. The Urgency of Penal Mediation in the Settlement of Misdemeanor Cases from the Perspective of Restorative Justice

Resolving cases through penal mediation is one of the processes of law enforcement, while law enforcement itself is a series of processes to describe values, ideas, and minds that are quite abstract which are the goals of law. The purpose of law or the ideal of law contains moral values, such as justice and truth. These values must be able to be realized in real reality. The existence of the law is recognized if the moral values contained in the law are able to be implemented or not. In this regard, it is necessary to conduct a study to find other alternatives that can be developed in the law enforcement process (criminal) towards a more equitable settlement of minor crime cases. According to the author, the settlement of cases of minor crimes that are more equitable should be resolved through penal mediation because the harmful effects and losses caused by the crime are also light. In looking at the settlement of minor crime cases from the perspective of restorative justice, settlement through penal mediation can be seen as an important thing to do and it is necessary to obtain a legal umbrella so that there is legal certainty in its implementation.

In practice, cases are resolved through deliberation mediated by investigators. After an agreement was reached, the victim submitted a withdrawal of the report to the investigator, then the investigator issued an investigation termination order (SP3) on the grounds that there was not enough evidence, so the case was not continued. This way of resolving criminal cases may be able to meet the demands of justice and utility, but it can be a problem when viewed from the aspects of legality and legal certainty. Such a way of solving also raises the question, whether it can be referred to as penal mediation. (Usman, 2009)

Case resolution through the means of penal mediation from a restorative justice perspective can be done by prioritizing deliberation that can bring together the perpetrator and the victim. Thus, the principle of forgiveness will also be highlighted in the settlement of the case. In general, the urgency of the need to implement penal mediation in the criminal justice system in Indonesia, from the aspect of judicial administration is to reduce the accumulation of cases.

Stuart M. Widman called penal mediation "a process with a mediator facilitates

communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute". Likewise, M. William Baker, mentioned penal mediation as "the process of bringing victims and offender to reach a mutual agreement regarding restitution would become the norm. According to Barda Nawaie Arif, penal mediation is often referred to as (Salman Luthan, 2011) *mediation in criminal cases/mediation in penal law matters*, because penal law media mainly brings together the perpetrator of criminal acts and the victim, and according to him, penal mediation is an alternative form of dispute resolution outside the court in the form of *alternative dispute resolution* (Barda Nawawie Arief, 2009).

Based on the explanation above, penal mediation can be done outside the court. The penal mediation process by the mediator in this case is carried out by mediating between the two parties who are in dispute through the agreement of both parties. The process of bringing together the perpetrator and the victim is a process that must be taken in an effort to resolve disputes.

Settlement through restorative justice in criminal cases can be described as follows:

NO	Criminal Cases	Restorative Justice Settlement with Penal Mediation (Non-Litigation)
1	Article 310 of the Criminal Code concerning Defamation or insult	➤ Settlement of criminal cases through the ADR (Alternative Dispute Resolution) route with the intention of resolving conflicts that occur between perpetrators and victims.
2	Article 351 of the Criminal Code and Article 352 paragraph 1 of the Criminal Code concerning minor persecution	➤ The principle of "win-win solution" which means that even though there are guilty and utilized parties, but the settlement in this way is expected to provide justice for the victim, and the perpetrator also does not have to be charged with criminal punishment according to the applicable law and the settlement of the case requires a mediator.
3	Article 311 of the Criminal Code concerning defamation	➤ The Mediation process is informal so that the parties involved feel respected by each other.
4	Article 372 of the Criminal Code concerning embezzlement	➤ Out-of-court criminal case settlement is:
5	Article 378 of the Criminal Code on fraud	1. Customary settlements,
6	Article 359 of the Criminal Code is a criminal act due to starvation so that it can have an impact on the death of a person.	2. Familial settlement (Mediation) facilitated by investigators, After an agreement was reached, the victim submitted a withdrawal of the report to the investigator, then the investigator issued an investigation termination order (SP3) on the grounds that there was not enough evidence, so the case was not continued.
7	Article 285 of the Criminal Code concerning licensing	In Article 1 paragraph I of Perja No. 15 of 2020, Restorative justice is the settlement of criminal cases by involving the perpetrator, the victim, the family of the perpetrator/victim, and other related parties to jointly seek a fair settlement by emphasizing restoration to the original state, and not retaliation.
8	Article 367 paragraph 2 of the Criminal Code concerning running away from an underage girl	In Article 2, it is explained that the termination of prosecution based on restorative justice is carried out on the basis of: a. justice; b. public interest; c. proportionality; d. criminal offenses as a last resort; and e. fast, simple, and low cost.
9	Article 367 paragraph 2 of the Criminal Code concerning theft by family members	

In Article 3 paragraph (1) the Public Prosecutor is authorized to close the case in the interest of law and paragraph (2) The closure of the case in the interest of law is carried out in the following cases:

- a. the defendant died;
- b. expiration of criminal prosecution;
- c. there has been a court decision that has obtained permanent legal force against a person for the same case (nebis in idem);
- d. complaints for criminal offenses complaints are withdrawn or withdrawn; or
- e. There has been an out-of-court settlement of the case.

In Article 5 paragraph 1 letters a,b and c, the criminal case can be closed for the sake of law and the prosecution based on Restorative justice can be stopped in the event that the following conditions are met:

- a. the suspect is the first time to commit a criminal act;
- b. criminal acts are only threatened with a fine or threatened with imprisonment for not more than 5 (five) years; and
- c. The criminal act is committed with the value of evidence or the value of losses incurred as a result of -6 criminal acts not exceeding Rp2,500,000.00 (two million five hundred thousand rupiah).

Criminal Categories:

1. Criminal Offenses in the Complaint Offense Category
2. Criminal acts in the category of violations do not include crimes and are only given fines
3. Paying the fine that is the reference
4. Criminal acts within the scope of administrative law
5. Crimes in the misdemeanor category
6. Criminal acts are ordinary crimes and can be stopped
7. Including customary crimes

Based on explanations related to the resolution of problems or cases outside the court, it can be resolved through customary law and familial settlement (mediation). The settlement through mediation was facilitated by the investigator, after an agreement was obtained, the victim submitted a withdrawal of the report to the investigator, then the investigator issued an investigation termination order (SP3) on the grounds that there was not enough evidence, so the case was not continued.

3.2. The Urgency of Problem Solving in the Contextualization of *Samagama Sutta*

In the Tipitaka Scripture, *Majjima Nikaya*, the section that describes the *Samagama Sutta* cases that have the potential to arise due to the cause of problems with the *Samagama Sutta* approach can be described in the following table:

NO	Cause of the Problem	Settlement in the Contextualization of <i>Samagama Sutta</i>
1	Tempered and vengeful	The seven methods of dispute resolution (adikarana samatha) are:
2	Likes to insult and dominate	1. Elimination of cases through confrontation (<i>samukhavinaya</i>).
3	Envy and greed	2. Settlement of cases by majority opinion (<i>yebhuyasika</i>).
4	Likes to cheat and cheat	3. The deletion of cases due to memory (<i>sativinaya</i>).
5	having evil desires and wrong views	4. The abolition of cases due to past insanity (amulhavinaya).
6	stick and strengthen their own views.	5. Confession of an offense (<i>patinnata karanam</i>) 6. Bad character statements against a person (<i>papiyyasika</i>) 7. Closing with grass (<i>tinavattharaka</i>), dispute resolution through forgiveness and assuming the violator has never committed a violation.

- a. Based on the table above, it can be explained that (1) the elimination of cases through confrontation is that both parties are in conflict by following the guidelines that they have agreed upon. (2) Settlement of cases by majority opinion is the settlement of disputes carried out by the disputing parties with the help of a third party in accordance with the established guidelines. (3) The deletion of a case due to memory is a case that is resolved because the violator does not remember that he has violated the rules. (4) The deletion of a case due to past insanity is a solution to the problem because the perpetrator does not remember what he did in the past due to memory loss. (5) Confession of an offense is the settlement of a dispute with the admission of guilt through the help of a mediator. Closing with grass is a statement of bad character over a person is a bad character that has been formed from the beginning so it is difficult to change. (6) Bad character statements are conscious efforts or mistakes made so that the potential early causes of problems that may arise can be known. (7) Dispute resolution through forgiveness and assuming that the violator has never committed a violation.

4. Conclusion

The application of legal policy through penal mediation outside the court is carried out by the mediator by bringing together the perpetrator and the victim. The mechanism of the police can also be carried out through the discretion of the police as law enforcement officials, while in the case of customary law, it is carried out through the peace mechanism. The existence of penal mediation is studied based on various perspectives, both in terms of philosophy, sociology and juridical. Penal mediation is seen from the philosophical side of applying the principle of *win-win solution*. Penal mediation is also an alternative to resolving criminal cases simply, quickly and has a low cost because there are fewer parties involved than through litigation, so that it can achieve the level of effective and efficient resolution of criminal cases, but provides high benefits and justice. The *Samagama Sutta* approach can be applied through peace efforts between perpetrators and victims. The basis applied is the elimination of cases through confrontation (*samukhavinaya*) and the settlement of cases by the majority opinion (*yebhuyasika*). The elimination of cases through confrontation is that both parties are

in conflict by following the guidelines they have agreed on. The settlement of the case with a majority opinion is in line with the handling through penal mediation, namely conducting deliberations with both parties who are in conflict with third-party intermediaries, namely mediators. Acknowledgment of a violation is the settlement of a dispute by admitting guilt through the help of a mediator through an apology and providing compensation for the damages suffered by the victim.

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