

POLICE MEDIATION IN THE FRAMEWORK OF ACHIEVING RESTORATIVE JUSTICE (SOLUTIONS FOR JUSTICE AND LEGAL CERTAINTY)

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Abstract

The concept of restorative justice refers to a form of justice that places a greater emphasis on holding offenders accountable in an effort to alleviate the suffering of victims but does so without sacrificing the goals of rehabilitation for offenders in order to establish and preserve public order. Currently, the criminal system in the Criminal Code still focuses on retributive justice, namely the main emphasis on punishing the perpetrators for what they have done. As a result, alternate solution situation closure through compromise is required as an expression of the idea of restorative justice.

Keywords: Restorative justice, criminal law, police mediation

Introduction

Legal sanctions are the most obvious form of embodiment of state power in carrying out its obligations to enforce compliance with the law (Mochtar Kusumaatmadja, 2002). The most obvious implementation of legal sanctions is criminal law sanctions, in which the defendant faces the state as a bearer of the public interest represented by the Public Prosecutor charged with committing a criminal act.

The legal system that governs crimes is known as criminal law. If there is a conflict of interests or friction between parties who transgress standards and the interests of the general public, it is the responsibility of criminal law to make it possible for social life to continue operating normally. The system of laws that govern criminal behavior is sometimes described as "punishment in the shape of sadness." Therefore, the laws governing various forms of discipline make up the bulk of the Criminal Code. The following is a list of characteristics that are associated with the idea of Criminal Law:

1. Regulates things that are prohibited;
2. Concerning the sanctions if violated;

3. About how to apply the sanctions. (Moeljatno, 2008)

The perspective of restorative justice can be summarized as breaking the law is not the only component of criminal behavior. However, it is fundamentally a violation of human relations. Restorative justice emphasizes recovery from the damage caused by crime, through material and symbolic restitution. The goal of restorative justice is to rebuild the perpetrator's self-esteem, and return them to society. Through this restorative justice will provide facilities for community recovery by affirming the values damaged by the perpetrators of crime. According to Henry P. Panggabean, Alternative Dispute Resolution (ADR) is the empowerment of alternative settlements outside the court through peaceful efforts. Henny Mono stated that Alternative Dispute Resolution (ADR) is a form of problem solving that prioritizes the win-win solution principle, and this kind of effort is usually made for criminal incidents (Henny Mono, 2007). Artidjo Alkostar argues that Alternative Dispute Resolution (ADR) is an institution that can be used as a means of resolving disputes in addition to settlement through litigation (Artidjo Alkostar, 1986).

Empowerment through alternative dispute resolution (ADR) can be implemented in the form of mediation, conciliation, restitution, and reimbursement for particular categories of criminal offenses or on the premise of particular life circumstances. ADR can be carried out through the use of techniques/methods such as mediation, conciliation, and adjudication. These techniques/methods have been established in the context of private law, but they can also be utilized in the context of criminal law. For instance, in situations where the issue at hand is significant, convoluted, and time-consuming, as well as in instances of white-collar crime.

According to Barda Nawawi Arief, alternative dispute resolution (ADR) that has been established in a civil environment should also be extensively implemented in the field of criminal law. This is particularly true in criminal cases that contain components of deception and white collar crime or if the adversary is a corporation or other business organization (Barda Nawawi Arief, 1990). As a result, the imposition of a punishment shouldn't be the primary focus of a judicial proceeding if the perpetrator is a business organization, such as a corporation or another type of business entity; rather, it should be to seek an outcome that is beneficial to the interests of society as a whole and reduces the likelihood of a similar offense occurring in the future (recidive).

According to the United Nations Proclamation on the Fundamental Guidelines on the Use of Restorative Justice Programs in Criminal Affairs from the year 2000, restorative justice programs should be used whenever possible (United Nations Declaration on the Basic

Principles on the Use of Restorative Justice Programs in Criminal Matters), which advocates the wider use of the concept of restorative justice in a criminal justice system, restorative justice is relatively new in the criminal law system. Later, in the Vienna Declaration on "No Crime and Justice," the United Nations Proclamation received a lot of attention. The topic of restorative justice was discussed at length during the XI United Nations Conference on Crime Prevention and Criminal Justice, which took place in Thailand in 2005.

According to the definition provided by the Black Law Dictionary, mediation is "A technique of nonbinding conflict settlement that involves an impartial third party who attempts to assist the contending parties achieve a conclusion that is mutually acceptable".

Research Methodology

Legal research when viewed from its purpose, can be divided into normative legal research or literature and sociological or empirical legal research. The focus of normative legal research is research on literature or secondary data. While sociological or empirical legal research examines secondary data followed by research on primary data in the field or on society (Soerjono Soekanto, 1942).

When examined from the perspective of its function, legal research can be broken down into two categories: conventional legal research and literature, and sociological or observational legal research.

Methods of qualitative research were used for this investigation. A research technique that generates observational data in the form of written or spoken words from people and perceptible behavior is what Bogdan and Taylor mean when they refer to qualitative methodology. The strategy that makes use of qualitative research techniques focuses on the individual's history as well as their comprehensive self-conception (Lexy J.M., 2013).

For the purpose of this investigation, the following kinds of legal documents were used as primary sources of information:

a. Primary legal material is defined as legal material that is authoritative or possesses authority. More specifically, primary legal material is legally enforceable in the shape of legislative regulations, which include the following:

1. The Codified Judicial Procedures (KUHP)
2. The Codification of Judicial Procedure (KUHP)
3. The Alternative Conflict Settlement and Arbitration Act of 1999, also known as Bill No. 30 of 1999

4. 4. A piece of legislation dating back to the year 2002, number 2, that is related to the POLRI

5. Regulation of the Chief of the Indonesian National Police No. 7 of 2008 Concerning Fundamental Principles for Strategy and Implementation of Community Monitoring in the Implementation of Indonesian National Police (POLRI) Obligations in the Performance of Indonesian National Police Responsibilities in the Performance of Indonesian National Police Responsibilities in Indonesian

6. The Government Regulation (PP) No. 80 of 2019 Regarding the Transaction of Goods and Services Through Technological Networks

7. The POLRI Act No. 8 of 2021 Addressing the Administration of Criminal Matters Based on Restorative Justice

b. Secondary legal materials are sourced from legal materials that can assist in analyzing and understanding problems in research. These materials can be obtained by studying books, literature, the internet, and research results related to the subject matter. Legal resources that are considered secondary can be of assistance to researchers in analyzing and comprehending problems.

c. The word "secondary legal materials" refers to those that supplement primary and intermediary legal materials with additional information. The Legal Dictionary, the Great Indonesian Dictionary, and the internet are the three resources that are considered to be supplementary legal resources. These are the resources that are employed.

Discussion

The resolution procedure for Indonesia's criminal justice system is carried out through the country's criminal justice system (CJS), which prioritizes the Police Research and Investigation Agency (POLRI), the Attorney General's Office (AGO), and the Judiciary as its three primary elements. As a result of the implementation of this mechanism, court decisions that have legal force remain the deadline for settling criminal cases. The application of this mechanism by the state aims to provide legal certainty to parties in criminal proceedings. Meanwhile, settlement of cases outside CJS has not been accommodated in criminal law in Indonesia.

The use of statutory legal mechanisms that apply in the settlement of criminal cases by ignoring other efforts outside the court, in its implementation has created new problems, both economically, socially and psychologically. In order for the threat of criminal sanctions to be effective, the state must finance court operational

activities, both costs for routine activities and those allocated for physical facilities and their maintenance. Other costs incurred are the process of prosecution by the attorney and the trial of cases by the court. And if the judge has rendered a decision, the execution process must also be carried out at a cost.

Apart from cost calculations, sanctions will also be detrimental to community members because the imposition of sanctions will cause those who are subject to sanctions to be isolated from society, thereby reducing their potential to contribute to society. The decline in contributive power is not only detrimental to those affected by sanctions and their families, but also to society in general. Meanwhile, the interests of the victims are not fulfilled even though the perpetrators of crimes have been convicted.

On the other hand, placing young offenders together with other criminal offenders who may have committed crimes many times will open opportunities for novice offenders to become contaminated with high-profile criminals and be influenced to commit more serious crimes on other occasions.

Due to the inherent problems with the legal process, the necessity of alternative means of settling crime cases has been brought to light (non-litigation). One of the benefits of finding alternate dispute resolution methods is that it can appease the public's thirst for justice without burdening the judicial system. Maintaining good relations between the parties, in accordance with the culture of Indonesian society, the victim gets compensation/compensation, increases the image/authority of the National Police as the protector and partner of the community in resolve problems in the field of law and human rights, reduce the burden/arrears of cases so that law enforcers (police, prosecutors, judges) can focus more on handling more serious or priority cases, reduce the risk of state expenditure/costs both for investigations and investigations, prosecutions , or court proceedings, and coaching in prisons, as well as avoiding losses for victims and suspects from loss of costs, time, and others because they have to go back and forth to the Police, Prosecutor's Office and Court. Settlement of criminal cases outside the court also has several weaknesses, including the lack of a deterrent effect, lack of legal certainty, the mediation process is less objective and transparent so that it is easily misused by officials (police officers).

Currently there are several cases that are resolved through informal mechanisms that exist in the community, namely the mechanism of customary law or the role of influential community and religious leaders. However, for criminal cases which are ordinary criminal offenses that are reported to the Police and an investigation has been carried out, the Police cannot stop the investigation of the case even at the request of the victim or reporter. Unless there are considerations stipulated in the law, that is, the reported case is not a

crime, there is not enough evidence and it is terminated by law. For a more official legal viewpoint, The resolution of legal disagreements outside of the judicial system is governed by Act No. 30 of 1999, which covers Arbitration and Alternative Dispute Resolution. In this law, the parties are given several alternatives to resolve disputes, including through mediation institutions. The third party's role in this mediation process is only as a facilitator. Those who settle disputes are the parties to the dispute themselves. Examples of criminal cases that fall into the category of ordinary criminal offenses that often occur in society, which are usually resolved through out-of-court mechanisms are traffic accident cases as described in Article 360 of the Criminal Code, especially those that only result in minor injuries or vehicle damage.

According to Article 360 of the Criminal Code, traffic accident cases caused by someone's negligence and causing other people to be seriously injured or slightly injured, are included in the category of ordinary criminal offenses which are subject to criminal law threats. However, in reality, in several traffic accident cases, the perpetrators who caused the accident generally admit their mistakes and are willing to be responsible for the accident victims, starting from the cost of treatment while being treated at the hospital, the cost of repairing the vehicle and monetary recompense to the victim's family for the victim's lost earning potential. Nonetheless, the victim consciously decided to forgive the offender and drop the lawsuit. The agreement between the victim and the perpetrator was not limited to verbal, but was also stated in a statement which was known by the customary leader or the village/RT/RW where the victim lived as a witness.

However, the Indonesian system of criminal justice does not acknowledge the practice of resolving legal disputes outside of the courtroom (also known as "non-litigation"). Because the act is included in the category of ordinary criminal offenses, the settlement of which must go through a litigation process. If the case has been handled by the police, then legally, the police cannot stop investigating the case even though the perpetrator and victim have forgiven each other and have not filed charges. The necessity of settlement through litigation for all cases that fall into the category of ordinary criminal offenses in practice often creates a sense of injustice in society, ignoring the principle of "ultimum remedium" of criminal law (last resort in enforcing the law), as well as other disadvantages seen from various aspects.

One of the institutions in charge of providing social oversight to the community is the Police. In accordance with Regulation No. 7 of 2008 issued by the Chief of Police Concerning Fundamental Principles for

Planning and Implementation of Neighborhood Monitoring in the Course of the Performance of Police Responsibilities, members of Polri are required to enter into partnerships and solve social and legal problems (problem solving) together with the community. This regulation was issued to address when carrying out their responsibilities, police officers should follow these fundamental principles for the strategy and implementation of community enforcement. Polri must be able to balance law enforcement duties with national and local dimensions and at the same time provide services to the community based on the needs of the local community.

In accordance with the provisions of Article 18 paragraph 2 of Law No. 2 of 2002 pertaining to the Indonesian National Police, Polri is granted the authority to act in accordance with its own judgment. This authority originates from the "plichtmatigheids beginsel," which is also referred to as the "universal police responsibilities principal." Within the framework of their general obligation to defend, maintain, and safeguard public security, this is a principle that allows police officials the authority to act or not act according to their own assessment, providing that they are fulfilling their general obligation to protect the public. This type of authority is generally referred to as police discretion, and the justification for its existence comes from taking into account the requirement for responsibilities and obligations.

The Indonesian National Police (Polri) is tasked with a number of responsibilities, all of which are outlined in Article 13 of Law No. 2 of 2002 Concerning the Indonesian National Police.

- a. Maintain public order and security
- b. Enforce the law, and
- c. Provide protection, shelter and service to the community.

The responsibilities of the Indonesian National Police in the sphere of investigation and investigation of criminal actions in compliance with the Criminal Procedure Code (KUHP) and other laws and regulations are specified in detail in Article 14 paragraph (1) letter g of Law no. 2 of 2002. The following are examples of investigations and investigative responsibilities that must be carried out by investigators and investigators who are employees of the Indonesian National Police:

- a. searching for and locating an occurrence that is thought to be an unlawful deed;
- b. determining whether or not it is possible to carry out an investigation;
- c. Seek and collect evidence;

- d. Make clear about the criminal act that occurred;
- e. Finding suspected criminals.

The granting of authority to the National Police to mediate in the settlement of criminal cases needs to be given carefully so as not to have a negative impact on society. According to Mudzakkir, in completing ADR, it is necessary to make arrangements, namely:

- a. In order to stay within the bounds of the criminal justice system, there needs to be a robust oversight mechanism that comes from both the community and the judges. As a result, alternative dispute resolution (ADR) needs to be carried out in a way that is open, impartial, and under control;
- b. Community empowerment, especially victims of crime, in ADR as a party whose legal position is recognized as a party who is disadvantaged in a criminal case and some parties in ADR other than suspects and the police (law enforcement officials) and the community;
- c. Supported by a strong legal basis in resolving criminal cases through ADR so that they do not become part of the formalization of abuse of power;
- d. There is the right of victims and the public to gain access to information regarding a criminal case that is resolved through ADR;
- e. Settlement through ADR may not close the victim's right to obtain compensation and furthermore the victim's rights are a concern in every decision making.

As of right now, the POLRI Act No. 8 of 2021 concerning the Administration of Crimes Based on Restorative Justice is in effect. This regulation lays the groundwork for an alternative procedure for dealing with criminal cases outside of the courtroom.

Apart from drug offenses, the formal requirement for a criminal offense to be resolved through a mechanism of restorative justice is the presence of peace from both parties. In addition, the formal requirement for a criminal offense to be resolved through a mechanism of restorative justice is the fulfillment of the rights of victims and the responsibilities of perpetrators. In the meantime, the formal requirement for a restorative justice mechanism to resolve a criminal offense is the existence of peace from both parties. Article 8 of the Republic of Indonesia National Police Regulation no. 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice includes special requirements for the realization of restorative justice for information crimes and electronic transactions. These requirements stipulate that the perpetrators who spread illegal

content must be willing to delete uploaded content, the perpetrators must convey an apology through videos that are uploaded on social media, and the perpetrator must be willing to cooperate with the authorities.

As a result of the progression of technology, the Online Conflict Resolution (also known as Online Dispute Resolution) will, in the not too distant future, be regarded as the most effective technique in ADR. Access obstacles are lowered, effectiveness is increased, software gets sharper, and certain aspects of ADR provide distinct opportunities to assist in conflict settlement. All of these benefits are brought about by online dispute resolution (ODR).

E-commerce disputes can be settled in tribunals or through other electronic procedures, according to Government Regulation (PP) No. 80 of 2019 Concerning Commerce Through Electronic Systems, which states that e-commerce conflict settlement can be carried out either way (ODR). As long as the ODR process is carried out electronically, it can be carried out by both legal institutions and organizations that are not part of the judicial system. It is generally accepted that the alternative dispute resolution (ADR) procedure provides a more effective means of conflict settlement than the traditional legal system does. Therefore, Online Dispute Resolution (ODR), which has developed in tandem with technological advancements, is regarded as the most effective technique in ADR. By utilizing ODR, access obstacles can be brought down, effectiveness can be raised, and software can become more savvy.

Conclusion

The expectation of the majority of people in a society in which justice is no longer viewed as retribution but rather as a move to improve or reestablish the situation is police mediation. This is an attempt by the police to resolve criminal cases outside of the court through police discretion. This is done as part of an attempt to break the cycle of case resolution, which can frequently take a long time, has a complicated process, and at times can cost a significant amount of money. Settlement of criminal cases outside of court through police discretion by the Police, which has legal certainty and reflects the sense of justice in society, is carried out while still paying attention to the existing principles of legality, but giving priority to the principle of justice. Legal certainty and a reflection of the sense of justice in society are both outcomes of this process. This is in compliance with Regulation No. 8 of 2021 issued by POLRI pertaining to the Administration of Offenses Based on Restorative Justice.

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