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PENAL MEDIATION BY POLICE INSTITUTIONS IN HANDLING MIDDLE CRIMES IN REALIZING RESTORATIVE JUSTICE PRINCIPLES

Aisyah Muda Cemerlang,¹ Heni Siswanto²

Abstract

Police duties as law enforcement has always put forward the principle of formal legality in an investigation. The investigators in performing their duties have a doubt in determining whether a case can be continued or not if a conciliation has been met. The problems of this research are to determine the implementation of mediation by the police in handling minor crime as an effort to realize restorative justice and to find out the inhibiting factors of the application of mediation by police in the effort to realize substantive justice. The police officers in Bandar Lampung often encountered cases where conciliation was finally made so that the victim revoke the report; thus, the investigators tried to put forward the importance of justice and expediency; while the inhibiting factors included: First, the absence of a legal rule concerning penal mediation in criminal cases. Second, there was a gap in the application of mediation by the officers. Third, the police officers were too firm in applying the formal legal principles. It is suggested that the police officers need to emphasize the application of progressive law by applying restorative justice through the authority of discretion. It is necessary to have a perception adjustment in implementing the principle of restorative justice. Further, it is important to implement a rule regarding mediation as a settlement of criminal cases.

Keywords: *Penal Mediation of Police Institution, Minor Crime, Restorative Justice.*

I. INTRODUCTION

The National Police of the Republic of Indonesia is part of the government administration whose function is to maintain order and order in society, enforce the law, detect crime and prevent crime. The police also have a function as a protector of the community from threats and crimes that disturb the sense of security and harm psychologically and materially, by maintaining social order and order, enforcing the law, or more accurately enforcing justice in society based on law.³

The task of the police in maintaining public order and security is closely related to human rights. Because of the nature of the job, the police often run the risk of being in the public eye. Highlights directed at the police were both positive

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and negative.⁴ This public spotlight is not unreasonable, if we look at the mass media reports, whether printed or electronic, where they report on law enforcement that does not reflect a sense of justice, such as the case of Minah's grandmother who stole 3 cocoa beans and the case of Basar Suyanto and Kholil which must be investigated. experience the cold prison wall for 70 days for eating 1 watermelon.

Based on the foregoing, it shows how law enforcement does not reflect human values and has no benefits for both perpetrators of crimes and victims. The police as law enforcement officers who are close to the community and are the initial gate for the community to seek justice, must be wiser in determining whether or not a case can advance to the next stage. Therefore, in carrying out the criminal law the police are not like drawing a straight line between two points, but full of sociological and humanitarian struggles.⁵

The police must position themselves as not just implementing the law, where they can choose between continuing the legal process or using mediation to stop the legal process. According to Gustav Radbruch, there are three basic values contained in the law, namely the value of justice, expediency, and legal certainty.⁶ The law is balanced, but in reality the three legal values conflict with one another.

Law enforcement officials in this case the police agency in carrying out their duties still always prioritize the regulatory aspects by adhering to the principle of formal legality in every handling of criminal cases. The use of this formal legality principle makes the police apparatus rigid in enforcing the law. Handling cases that are not by what is mandated by law, the police officers are considered to have committed irregularities, even though they are carried out with the aim of justice and expediency. Such assumptions have resulted in the police tending to continue the process of the criminal justice system compared to carrying out effective case settlements with mediation between two parties to obtain justice.

In essence, people complain about their legal problems because they want justice, therefore the police as the front line of the criminal justice system has a large enough share and role. Investigators do not have to prioritize formal legalism that pursues legal certainty in every handling of criminal cases. Police investigators should not only use logic and law, but also use consciences, such as empathy, honesty, and courage.⁷ Because the law does not exist for itself, but human values to achieve justice, welfare, and human happiness.

Police investigators in handling cases of minor crimes are certainly faced with a choice between legal certainty with justice and expediency. Therefore, in carrying out their duties, police investigators have the discretionary authority to

⁴ Sitompul, 2000, *Beberapa Tugas dan Peranan Polri*, Cv. Wanthi Jaya, Jakarta, p. 1.

⁵ Satjipto Raharjo, 2007, *Membangun Polisis sipil, Perspektif Hukum, Sosial, dan Masyarakat*, PT Kompas Media Nusantara, Jakarta, p. 216.

⁶ Faisal, 2010, *Menerobos Positivisme Hukum*, Rangkang Education, Yogyakarta, p. 84

⁷ *Ibid*, p. 85.

determine the actions to be taken. Understanding the concept of police discretion is simply to understand that the police have the authority to make decisions or choose various actions in resolving criminal cases they handle based on the law based on situations and conditions, according to the considerations and decisions of their conscience in the public interest.⁸

Police discretion can indirectly be used in implementing mediation in handling cases between the two parties, perpetrators and victims, to resolve legal issues both to achieve justice and expediency, which are the objectives of the law. So that the police can become heroes for their nation, by making the right choices in their work.⁹ Mediation is a form of dispute resolution outside the judiciary (non-litigation) with the help of other people or third parties who are neutral and impartial and not as a decision-maker called a mediator. The goal here is to reach an agreement to resolve the dispute they are facing without anyone feeling defeated.¹⁰ The resolution of legal issues through mediation is to provide the best legal dispute resolution between the two parties, where neither party wins or loses so that the dispute does not last long and is protracted and can improve relations between the disputing parties. The advantages of resolving a dispute using mediation are many, including low cost, fast, satisfying the disputing parties because it is cooperative, preventing the accumulation of cases, eliminating grudges, strengthening friendly relations, and being able to strengthen and maximize the function of the judiciary in resolving disputes in addition to court proceedings. which is adjudicative.

The application of mediation in the settlement of criminal cases in the police in addition to fulfilling a sense of justice in the community can also support crime prevention efforts. This is because if the perpetrator of a minor crime is threatened with a short sentence which can be resolved by mediation efforts, but sometimes it is forwarded to the court level which in the end undergoes a period of confinement (prison) in a Correctional Institution. So that the results can be worse due to the scope of association in the correctional institution. The problem that will be discussed in this paper is how is the application of mediation by the police in handling minor crimes as an effort to realize restorative justice and the factors that hinder the application of mediation by the police to realize substantive justice.

⁸ Sitompul, 2000, *Beberapa Tugas dan Peran Polri*, CV. Wanthi Jaya, Jakarta, p 2.

⁹ Saitjipto Raharjo, Op. Cit., p. 262.

¹⁰ I Ketut Artadi dan Dewa Nyoman Rai Asmara Putra, 2009, *Pengantar Umum Tentang Alternatif Penyelesaian Sengketa dan Perancangan Kontrak*, Fakultas Hukum Universitas Udayana, Denpasar, p 12.

II. DISCUSSION

1. Application of Mediation by the Police in Handling Minor Crimes as an Effort to Realize Restorative Justice

The investigation of a criminal case begins with a report or complaint about an incident / criminal case experienced or known to the public to the police. Before receiving the report, the investigator/assistant investigator together with the police service center officer will first study the report from the public into the criminal or civil realm. After the police report is made, the investigator/assistant investigator will carry out a series of investigative and investigative steps to make light of a crime and determine the suspect.

The settlement of criminal cases at the investigation stage is marked by a letter from the prosecutor's office that the case file is declared complete (P-21) and then the suspect, along with the case file will be transferred to the prosecutor's office for the prosecution process. The settlement of criminal cases can also be in the form of stopping the investigation by issuing a Termination of Investigation Order (SP3) issued by an authorized police official. The reason for the issuance of SP3 by Article 109 Paragraph 2 of the Criminal Procedure Code is as follows: "If the investigator stops the investigation because there is not enough evidence, or the incident does not constitute a criminal act, or the investigation is terminated for the sake of law, the investigator will notify it to the public prosecutor". The reason for the investigation to be terminated for the sake of law is if there are reasons for the abolition of the right to sue and the loss of the right to carry out a crime, namely, among others, because of debris in idem, the suspect dies or because the case has expired.

The case is also considered completed if the case has been revoked by the special rapporteur for a criminal case categorized as a complaint offense. Complaint offenses mean offenses that are usually processed if there are complaints or reports from people who are victims of criminal acts, for example, cases of defamation (Article 310 of the Criminal Code), theft in the family (Article 367 of the Criminal Code).

Criminal cases that are categorized as ordinary offenses must still be processed by investigators even though there has been a revocation from the complainant based on the peace between the reporting party and the reported party. If investigators always prioritize formal legalism, then the community's sense of justice will not be fulfilled. The application of progressive law by investigators is needed in such conditions so that the legal objectives can be achieved.

The application of mediation by the police, especially investigators, is an effort to implement or realize restorative justice, this is applied by the police not only to my minor crimes but to ordinary crimes. The efforts of the police officers are intended for the benefit of the people or society at large where the application of the

law does not always have to be in the form of suffering (criminal sanctions), but creating justice for victims and making suspects aware of their mistakes is the best way out to create a better society.

The implementation of the settlement of ordinary criminal cases, including minor crimes as described by the respondents above, is an effort to implement restorative justice in law enforcement by the police. This effort is in line with progressive legal thinking in determining whether the case is handled will be continued to the next stage or not. By what is the basic thought of progressive law brought by Satjpto Raharjo, that law is for humans, not humans for law. Investigators must try to place the law as a means to achieve the goals desired by humans as individuals, groups, and communities, not the other way around because they have collided with existing legal procedures (formal legalism) so that the legal goals that humans want are not achieved.

Based on the results of interviews with the application of penal mediation to realize restorative justice, according to the results of interviews with Renaldi Sucipno and Andre Jaya Saputra, that in the face of revocation of reports in criminal cases that are classified as ordinary offenses, investigators must take steps by implementing restorative justice. This is done by mediating the parties involved and trying to restore the “damage” caused as a result of a crime. Efforts to repair the “damage” are accompanied by efforts to improve the relationship between victims and perpetrators as well as the community. Community relations are improved by involving elements of the local community such as the head of the RT, RW, Lurah, and so on, who have positions in the community.

The settlement mechanism with restorative justice can place the position of the community not only as observers, but also play an active role in supervising the implementation of the results of the agreement which is the settlement of criminal cases. The application of restorative justice with penal mediation is indeed a solution outside the provisions of the Legal System. However, the application of penal mediation by police investigators is seen from the point of view of justice and benefit, both from the side of victims and suspects of criminal acts, so that sometimes legal certainty is ruled out.

The advantages and disadvantages of resolving criminal cases outside the system that are not recognized by applicable formal law, restorative justice has become a necessity in society. Because it is very closely related to the principles and culture of the community which is more concerned with deliberation and consensus to solve a problem, but it has not been accommodated in the formal law that is codified in the Criminal Code and the Criminal Procedure Code which is still filled with colonial cultural heritage.

The settlement of ordinary criminal cases by prioritizing restorative justice can be said to be a manifestation of the implementation of progressive law because

basically, the main goal is the interests of the community. In this case, police investigators place the law more in line with what is desired by the community, so that the true legal objectives can be achieved.

Implementing penal mediation as an effort to apply the principles of restorative justice, placing the police as investigators in the criminal justice system as the front line, so that the police are required to be able to select or choose which cases are appropriate to be submitted to the court stage or not, which are based on statutory regulations. Without the sorting of cases by the police investigators at the time of the investigation, there will be a buildup of cases which ultimately results in inefficient handling of cases for all parties.

Investigators at the Bandar Lampung Police in carrying out their investigative duties on a criminal case as previously stated, always consider continuing the case they are handling to the next stage, namely examination before the court. Police investigators tend to focus on mediating cases that are considered to have small losses and can be resolved amicably. In this situation, the investigator uses his authority in the form of police discretion in the investigation.

The application of mediation as a means of realizing the principle of restorative justice through police discretion is based on the reasons, namely: the existence of peace between the complainant and the reported party. Investigators at the time of carrying out the stages of the investigation are often faced with a position where both parties have forgiven each other, compensated for the losses incurred, and withdrawn the report to the police as a result of peace. The revocation of the report in a case that is classified as not a complaint offense, actually police investigators can continue the judicial process, but in certain cases that do not disturb the public and the resulting loss is small, Bandar Lampung Police investigators take the policy not to proceed with the case to the judicial process. next. The steps taken by police investigators use police discretionary measures by prioritizing the principles of justice and expediency, even though legal certainty is ruled out.

Based on the presentation of the informants above, it shows that the Police in dealing with crimes, especially minor crimes, always try to mediate as the main solution in handling these cases. The application of mediation as the best solution in resolving crimes (especially minor crimes) is based on the idea that the impact caused by the crime can still be tolerated, so that the resulting conditions can be reversed. The punishment paradigm is known as restorative justice, where the perpetrator repairs the harm he has caused to the victim, family, and society.

Police investigators at the Bandar Lampung Police are aware that the law is not something that cannot be changed. The law must follow the dynamics of people's lives. When investigators emphasize legal certainty, the sense of justice and benefit will not be fulfilled. In carrying out their duties, police investigators try to better

understand what the parties want in a report, where police officers represented by police investigators try to override legal certainty to be able to fulfill the wishes of the parties through the peace process.

The resolution of criminal cases by the police using a restorative justice approach is focused on efforts to transform the mistakes made by the perpetrators with remedial efforts. Included in this effort is the improvement of relations between the parties related to the incident.

The application of restorative justice by the police through mediation efforts as a settlement of a crime involves all interested parties, namely the perpetrators of crimes and victims of crimes to jointly seek solutions and at the same time seek solutions that will produce the best results, namely a sense of justice for each party. (restorative justice).

Restorative justice is a concept of thought that responds to the development of the criminal justice system by focusing on the need for community involvement and victims who feel excluded from the mechanisms that work in the current criminal justice system.

Restorative justice can be implemented in the settlement of criminal cases through the actions of the police in applying mediation as a process of resolving cases outside the court through peaceful efforts that prioritize the best settlement, which can be used as a means of resolving disputes through the court process.

Settlement of cases through an out-of-court mechanism by the police through a mediation process is currently very common and acceptable to the community because it is perceived as more capable of reaching a sense of justice, although practitioners and legal experts believe that ADR can only be applied in civil cases, not for resolve criminal cases.

The settlement of criminal cases through mediation by the police cannot be separated from legal ideals that are based on legal philosophy, namely justice (law is justice), and the legal principle of the case settlement process which refers to written sources of law and unwritten sources of law. Therefore, the mediation pattern carried out by the police must refer to the values of justice, the value of legal certainty, and expediency. Meanwhile, the applied legal norms must take into account the philosophical, juridical, and sociological grounds.

2. Factors Inhibiting the Implementation of Mediation by the Police in Efforts to Achieve Substantive Justice

The settlement of criminal cases that are categorized as ordinary offenses (not complaint offenses) often contradicts existing formal procedures, when both parties have found peace. Bandar Lampung Police Investigators with their initiative apply progressive law to take policies not to advance criminal cases if there is peace and the victim withdraws the report. However, there are limitations in taking

discretion, as an effort to implement substantive justice. This is because so that the policies took still have good for the community.

Based on the results of interviews conducted, the authors see that there are obstacles to the application of law in the settlement of criminal cases with factors that influence the settlement of minor crimes at the Bandar Lampung Police, namely the difficulty of giving direction to the victim to resolve the case at the police level only, but there are victims who often insist on going to court. After the police gave input and gave many explanations regarding the consequences that the victim would receive if she wanted to proceed to the Court, it was as if there was a split within. These inhibiting factors are as follows:

1. The legal factor itself.

In the practice of applying the law, there is often a conflict between legal certainty and justice, this happens because the understanding of justice is abstract, while legal certainty is a normative procedure. So, in essence, the implementation of law does not only include law enforcement, but also peace maintenance, because the implementation of the law is a process of harmonization between the values of the rules and real behavior patterns that aim to achieve peace.

2. Law enforcement factors.

The inhibiting factors in law enforcement from the side of law enforcement include: First, the limited ability to socialize with the community; Second, the lack of community aspirations; Third, the lack of innovation or creativity of law enforcement in carrying out their duties.

3. Factors of facilities or facilities that support law enforcement officers.

Facilities and infrastructure factors are supporting factors that are needed by law enforcers, without these supporting factors it will result in less flexibility and effectiveness in law enforcement efforts due to inadequate supporting facilities for law enforcement officials.

4. Community factors.

The attitude of the people who are not aware of the police's duties are not supportive, and in fact, most are apathetic and consider the task of law enforcement solely a police matter, and reluctance to be involved as witnesses, and so on. This is one of the inhibiting factors in law enforcement.

5. Cultural factors.

In everyday culture, people often talk about culture. Culture has a very large function for humans and society, namely regulating so that humans can understand how they should act, act, and determine their attitudes when they relate to other people. Thus, culture is a basic line of behavior that establishes rules about what to do, and what not to do.

Based on the factors that influence the law, the obstacles found in the application of progressive law are the legal factors themselves and law enforcement factors. The obstacle factor from law enforcement is that there is no legal umbrella that regulates the application of progressive law through mediation in the settlement of criminal cases. This obstacle is the main obstacle for investigators to be able to apply the principles of restorative justice in the form of penal mediation in the settlement of criminal cases that are classified as ordinary offenses. Because it cannot be denied that the principle of legality is still upheld in Indonesian criminal law.

The absence of a law that regulates the application of progressive law through penal mediation causes investigators to exercise their discretionary authority. The limit of criminal cases that can be resolved by mediation depends on the case being a disgraceful act by the community, therefore cases that are classified as minor crimes can be mediated because the crime can still be tolerated by the community as a whole.

The role of culture owned by the community also affects the mediation process carried out by the police, especially the culture of the Lampung community where there is a philosophy, namely piil pesenggiri. Piil pesenggiri has the meaning as a source of motivation so that everyone is dynamic to fight for positive values, live honorably, and be respected in community life. However, this piil pesenggiri by the people of Lampung is only interpreted as self-respect, so that mediation efforts carried out by the police officers through police investigators are collided by the reluctance of one party (victim or complainant) who thinks that if they make peace, their pride will be hurt.

The Lampung community, which consists of several ethnic groups, often causes problems. In handling criminal cases, especially minor crimes that can be resolved amicably (mediation), the cultural diversity of the ethnic groups has collided. The diversity of ethnic groups which of course have different cultures will certainly cause problems in the application of mediation. For example: if there is a legal problem where the litigants are Lampung natives and immigrants, it is often the ethnic ego that appears as stated above where self-esteem is the problem, not common interests. Similarly, if fellow natives (the Lampung people) are experiencing legal problems, the self-esteem between the two parties is the problem, so that the mediation process is hampered.

The obstacles in terms of culture and society above, the authors express, are obstacles in the mediation process, because the community or individuals in the community itself sometimes become obstacles to the passage of mediation as a solution to resolving cases, especially cases of minor crimes. Especially the people of Lampung who are natives sometimes misinterpret piil pesenggiri which is the

philosophy of life, where the self-respect meant in the philosophy is not just a simple meaning but has a variety of meanings that need to be re-infused.

III. CONCLUSION

The application of mediation by the police in handling cases of minor crimes as an effort to realize restorative justice. Settlement of criminal cases, especially minor crimes by the police, in practice, before delegating the case files to the next stage, namely the prosecutor's office, first makes efforts, namely the mediation process between the two parties. This mediation process is carried out by police investigators so that there is a solution to legal problems that occur so that both parties feel that they get the justice they want. Based on the results of the research that the author did, the Police Officers of the Bandar Lampung Police, in addressing this legal problem by applying legal policies when faced with these problems. The efforts of the Bandar Lampung Police in applying the principles of restorative justice in several ways or methods:

- a. Conducting penal mediation with restorative principles.
- b. Applying police discretion.

The inhibiting factors for the application of restorative justice principles in the settlement of minor criminal cases are: First, the absence of legal rules governing the penal mediation process in the settlement of criminal cases, so that police investigators must exercise the existing authority, namely discretion. Second, the discretionary authority possessed by the police in taking steps to resolve criminal cases has a gap in deviation, this is because the authority is only owned by police investigators which can be used exclusively by the apparatus in handling cases that have found the word peace. Third, law enforcement officers sometimes always adhere to formal legalistic principles so that police officers, namely investigators, override the sense of justice and benefits that exist in society.

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The Director General of the Supreme Court of Justice of the Republic of Indonesia
No. 1691/DJU/SK/PS.00/12/2020 on Guidelines for the Implementation of Restorative Justice

Circular Letter of the Head of the State Police of the Republic of Indonesia Number SE/8/VII/2018 of 2018 concerning the Application of Restorative Justice in the Settlement of Criminal Cases