



ISSN NO. 2320-5407

Journal homepage: <http://www.journalijar.com>

INTERNATIONAL JOURNAL
OF ADVANCED RESEARCH

RESEARCH ARTICLE

Penal Mediation Role In Solving The Criminal Case

* Reimon Supusepa¹, Syukri Akub², Andi Sofyan² and H. M. Said Karim²

1. Faculty Of Law. Pattimura University, Ambon Indonesia

2. Faculty Of Law. Hasanuddin University, Makassar.Indonesia

Manuscript Info

Manuscript History:

Received: 12 December 2013

Final Accepted: 12 January 2014

Published Online: February 2014

Key words:

Penal Mediation, Criminal Cases

*Corresponding Author

Reimon Supusepa

Abstract

The background of this research is justice system through the legal product of Indonesia, specifically on Penal Law that have been issued under Law number 8 year 1981, which based to held the criminal justice system. While it didn't mentioned the value in the Republic Indonesia constitution and the State of Philosophy Pancasila. The issues of criminal justice system is how the victim get the compensation, people empowerment in order to handle the crimes and re integration of perpetrator back to the community. The research is implemented by using the descriptive analysis with legal normative approach and empirical approach. The research is located in Maluku province, Police of Maluku, Middle Maluku regency, South East of Maluku, West East Maluku. The research is qualitative data. Collecting data Technique is by indept Interview to the respondents and literature study. Data analysis is by qualitative analysis. The result and discussion on this research is penal mediation by the investigator. The investigators mediated to parties between the victim and perpetrators. The investigator is to give the chance to the victim and perpetrator for peace. The penal mediation is for certain case to do the investigate earlier process in Maluku Police, such as; The cases of house hold violation, child as a petperators, certain crimes, article 315 about light, article 352 of light torture to human being, article 364 about light thieves, article 373 of light embezzlement ,article 379 of light chat article 482 light arrested. Crimes as mentioned under article 362, Crimes of neglect, article 359 and article 360 on penal code (KUHP). The investigator is accepted whether not accepted of peace between two parties by seeing the interest consideration or benefit for the community and the real between perpetrator and victims. If the mediation is failed and there is no solving of police that accepted the solution, then police officer who have received the disable report under cases register will make it as refer to penal code and deliver to the court. In this case, judge will make decision about guilty or not guilty of the perpetrators. The implementation of penal mediation on legal society of the lease Island tradition of South East of Maluku district and West east of Maluku district are from the act of perpetrators and victim which is handling through mediators. The person who is done the mediation is Kewan, The head of Soa, to the two parties followed by the sanction imposed, like fine. Beside that, the sanction is could be metaphysic sanction that binded the perpetrators in order have no vindictive.

Copy Right, IJAR, 2013., All rights reserved.

Introduction

Court system through the Indonesian Law product. It was classic matter, that court system as basic on solving the criminal cases is not recognized the victim existing in find equal justice, a victim would be more suffer caused of the law system itself, due they didn't actively involved as in civil system, not allowed to apply directly to the criminal court but must through the institution pointed (whether police or prosecutor (Mudzakir, 2001)). The issues of development of criminal court system is where the expectation object able to get compensation, empowerment in society and reintegration back to the society. Penal mediation is often called with many different words, like "mediation in criminal cases" or "mediation in penal matters" which under Dutch words is called strafbemiddeling, while in Germany called "Der Außergerichtliche Tatausgleich" (ATA) or in French called "de médiation pénale" because the penal mediation especially meet between the perpetrator of crime with the victim (Barda, 2007a). Then penal mediation is often called by "Victim-Offender Mediation" (VOM) or Täter-Opfer-Ausgleich (TOA). Penal mediation is trying to meet between the victim and perpetrator to find the solution that bring advantage to both parties with the help from mediator to released the impact from injury or loss of the victims. The Penal Mediation value in philosophy of Pancasila can be found in living Law through the society, like customary law of Indonesia which is show the traditional, religion, togetherness, concrete and visual, open and simple, changeable and adaptable, not codified, discussion and agreement. There are some of regulations that related to the Penal mediation like article 82 of KUHP, article 35 point c. Law number 16 year 2004. Law number 11 year 2012 of children criminal court system that mentioned in article 71. The Law number 23 year 2004 of abolishing the torture in household. The Law number 39 year 1999 of Human Rights article 1 point (7), article 76 point (1), article 89 point 4, article 96. Law number 2 year 2002 of Police Republic Indonesia, article 18 point (1). Law number 48 year 2009 of Judicature Power maintain under article 5, article 10, article 50. Qanun Aceh number 9 year 2008 of the empowerment of customary living and tradition under article 13, article 14, article 15. Collective decision of Head of Supreme Court, Attorney General, Head Of Police Of Republic Indonesia, Ministry of Law and Human Rights, Ministry of Social, and Ministry of Women empowerment and child protection. Certain Law must be reflected to the social justice, according to Thomas Aquinas that we keep obey it, because against the law that seemed un fair would caused the dangerousity and anarkhis (Theo Huijbers, 1982), although at the end, some regulation will miss the meaning and ignored by the community or lost it power (Franz von Magnis, 1979). Penal mediation need to implemented in simple way in order go along together with the value in living society. The certain Law is absolut. If there is contradiction between the justice and certain, so law is seemed un fair, then it allowed to ignore. However the justice must out on priority. The concept of mind that Law is Crystallisation from value system that exist in society, and Law demand to the adaptability from Law and value. The consequent is the changeable of the value system must follow by the change and or law implementation and must used to change the value.

Research Method

This research is done by using descriptive analysis method with legal normative and legal empiric approach. This research is done in Maluku, Regional Police of Maluku, Middle Maluku Regency, South East Maluku regency, West South East Maluku Regency. This research is qualitative data, collecting data by indept interview to the correspondents and literature study. Analysis data is qualitative analysis.

Result and Discussion

A. Penal Mediation Role in Solving Criminal Case

The history of existing pragmatism of penal mediation is like to reduced the stagnant or cumulation cases, to make easier the process of court, etc (Barda, 2007b). Sometimes can be called the principle of solving problem by cooperation. Also called that the alternative of conflict solve able to get better result than through court system. The implementation of criminal case outside the court is not have a formal regulation yet, so often happen a cases that have finished to solve informally (through customary law mechanism) but still process to the court.

B. Penal Mediation in Solving Criminal Case on Regional Police of Maluku

According to Mardjono Reksodiputro, It should be understading that fair law process contain the attitude that respect to the rights that belong to each of citizen, eventhough he is a perpetrator of crime. Pre-Step of adjudication relating to the earlier investigating open space to police officers to solve the criminal cases between the perpetrator and the victim. The justice of victim is representing by the police in imposed the sanction with the purpose that sanction imposed is must appropriate with the loss of victim. According to the respondent in this research, the criminal cases that used mediation are refer to article 310 KUHP (insulting/libel), article 311 KUHP

defamation, article 351 KUHP point (1) KUHP Torture, article 352 point (1) KUHP light torture, article 359 because of neglect caused of death other people, article 372 KUHP Fraud. Apart from all those cases mentioned above, also the cases under article 285 KUHP intimacy, article 332 KUHP run away with woman under age, article 367 KUHP point (2) KUHP stealing by family member, also can be solve through this way. Some of case outside the KUHP that have through mediation is the torture in house hold (Law number 23 year 2004). The investigator will accept or reject the mediation between perpetrator and victim by consider the interest or benefit to the society and in the reality between those parties. If the mediation process failed and without any solution so the police whom accepted the report will continue to bring it to the court, while Judge will make the final decision.

C. Penal Mediation in Solving Customary Criminal Cases

The discussion will be made earlier to mediation the conflict in customary law. The next development of solving conflict through customary law is similar that refer to the harmonise or togetherness of the society and to keep the peace around them (Sudargo Gautama, 2001). The mediation mechanism through it as mentioned below :

1. Solving Criminal Case Through Penal Mediation For Local Tribes in Lease Island

Tradition of Maluku in Lease island of Middle Maluku Regency well known called "Sasi". Sasi is a regulation that mainly together by all member of the tribes, if against then will get sanction as mentioned above. Sasi or forbidden sign made in order people who come to the farm will not take the fruits, take the woods to burn or make a house. Sasi also put around edge of the sea so people not just catch any fish carelessly or through their garbage around it (Research And Assessment Project Archipelago Culture, 1998). Relating to penal mediation for sasi customary crime imposed in Lease island. The relationship between perpetrators and victim are binded to the Sasi Law. While a person who own the land will be giving sasi sign through the government of the trees or the whole private trees in it country and taking away the product of it land without permission from the owner will imposed sanction of customary crime. Kewang, as local police will do the controlling to the implementation of sasi. When it break the sasi, so the member of kewang will catch the person as mentioned on it regulation. The head of Kewang will decide each of breaking law of sasi like punishment refer to the existing sasi regulation. Apart of the fine sanction as mentioned above, also sanction on metaphysics or according to their belief as its ancient that because of breaking the law, will caused the disease to the perpetrator.

2. Solving the Penal Case Through Penal Mediation on local Society of South East Maluku

Solving the stealing case in customary law of South East Maluku like when the victim report of the case (including taking away woman under age). The victim will submit report to "ATBITAN" that have loss both in material or non material. "ATBITAN" will investigate by calling all the parties, if they live in different are, then the "ARBITAN" will send them mail to ORAN KAY/KEPALA SOA (head of) to call the parties. ORAN KAY/KEPALA (head of) SOA will determined the day of meeting to solve the criminal case in stealing. On that day, all parties will call to come by MARIN to solve the conflict. Before begin the customary solve, oran kay/kepala (head of) soa as mediator must be fair to all parties and request them to tradition curse before start so the session will go smoothly and effective. After that, oran kay/kepala (head of) soa as mediator will give first chance to the victim to describe the chronologic of the problem, while oran kay/kepala (head of) soa will also give a chance to the perpetrator to describe the reason of stealing. After hearing both explanation from those parties, the NGUN NGOD RAT will demand the perpetrator refer to the law of Larvul Ngabal, then the oran kay/kepala (head of) soa will investigate the local witness. If the case is stealing woman under age or wife, the punishment are change the whole finance expense of marriage also with gold. The end of session, oran kay/kepala (head of) soa and the tradition scholars will give some words to both of the parties for not revenge each other since they all are bind to the family community called "AIN NI IAN" while any one against then will get malediction from their ancient like disease or even caused of death. The sanction on customary law have two function and as a stabilator to balance between reality and imagination.

3. Solving Penal Case through penal mediation on local society in South West Maluku.

One of the process of case in Lat Town in South West of Maluku relating to the torture from all level in customary law that exist to the society. The head of soa as mediator will call the victim and perpetrator on the day that maintain. If the perpetrator have different place to the victim, so both of the head of Soa will discuss to decide one place selected to be place for meeting and solve the conflict of torture. On the day, both parties will call by Yamdena Tabwery, to attend the meeting. Before begin the tradition solving, head of soa as mediator will try to relax and pray together in order to get best decision. After praying, the head of Soa, will give first chance to the victim to describe the chronology of the matter, the give second chance to the perpetrator the reason of torture. After

hearing the chronology, the head of the soa will define sanction but before that, the old scholars will describe the hierarchy of family, since both of the parties are still relative each other and binded in community of Duan Lolat. If the perpetrator as Duan, the sanction imposed is give a piece of cotton as sign of blood wash, that known as Yamdena (Kukur Dare). In other hand, if the perpetrator as Lolat, the sanction is one bottle of sopi with money as much as Rp. 500.000- to close the bottle. Then the perpetrators and victim will give the fine to head of soa as much as Rp. 100.000,- as administration of soa due to break the law.

4. Penal Mediation Model in Solving the Criminal Cased based on Research Result

a) Penal Mediation regarding to Law as a value system

Solving the penal cases outside litigation is part of existing value system in Indonesia. Solving penal case in local society of Lease island, local tribes on South East Maluku regency, Local tribes in South west Maluku regency is because of the balance between justice of the victim and perpetrator in solving of penal case. In Solving the penal case of the places mentioned above, can be seeing that the balance between the victim and perpetrator. Victim in one side feel fair of the loss compensation while the perpetrator can feel regret to what he is done and will no repeat it again. The imposed of punishment is not only traditional sanction but also sanction from the ancient. Living law on local tribes of Lease island, South East Maluku, and Sout wets Maluku are cristalisation of values that exist in society. The value are like certain law, public interest and individual interest.

b) Penal Mediation regarding to the Law as justice, certain and utility Law..

There are 2 (two) points that must seeing it carefully regarding to this rsearch, they are on pre adjudication in police like :

- Penal case investigating by the police with before the certain of law. When the penal cases occurs based on report, or catch by hand then continue by the police to investigate then deliver to the public prosecutor. The police implement the retributivisme theory, which is to reach the justice value while the morality right to punish based on the guilty that have proven and punishemt imposed should be balance with the act.
- The investigate to the penal case by the police with put the principle of justice for the victim and utility for the perpetrator.

Prison replace with reconciliation and restoration as main purposed. Both Police and Society recognized as facilitator in the restorative process and the role of the victim and perpetrator are recognized. Stigma must be released from the act of restorative and possible to open forgiveness as long as the help to fix the situation. Police must be a mediator to the mediation process both trough the scholars in society, scholar in tribes, family or the police itself, where the purpose is not only to punish or pillorying or to continue to the court, but more to get the truth that will bring benefit to help the reconciliation of rdisharmony relationship between the perpetrator, victim and society. Considering that three of them basicly are victim of the crime.

Conclusion

1. Penal Mediation in Solving the Penal Case in Indonesia. As Theoritic, the big attention to the victim of the crime have delivered the movement to grow what it called restorative justice which is place the court on mediator position.
2. Penal Mediation Role in solving Penal case. Penal mediation is done by the investigator that to mediate the both parties, victim and perpetrator. The investigator will accept or reject the mediation between them but consider the interest or utility for community and real condition between those parties. If the mediation process failed the will bring to the court. While the implementation of penal mediation for local society of Lease Island, South East Maluku regency and South west Maluku regency are done trough the mediator of Kewang, Head of soa.

References

- .Barda Nawawi Arief. 2007a. Kebijakan Mediasi Penal Dalam Masalah Pertanggungjawaban Korporasi Makalah disajikan dalam Seminar Nasional “ Pertanggungjawaban Hukum Korporasi dalam konteks Good Corporate Governance”. Program Doktor Ilmu Hukum UNDIP, di Inter Continental Hotel, Jakarta, 27 maret 2007.
- Barda Nawawi Arief 2007b. Mediasi Pidana (Penal Mediation) Dalam Penyelesaian Sengketa/Masalah Perbankan Beraspek Pidana Di Luar Pengadilan, Kapita Selektta Hukum (Menyambut Dies Natalis Ke 50 Fakultas Hukum UNDIP), Penerbit Fakultas Hukum UNDIP, Semarang, 2007.

Franz von Magnis 1979 Etika Umum, Masalah-Masalah Pokok Filsafat Moral, Kanisius, Yogyakarta.

Mudzakir, 2001. Posisi Hukum Korban Tindak Pidana Dalam Sistem Peradilan Pidana, Disertasi Penguahan Guru Besar di Universitas Indonesia, tanggal 6 April 2001

Sudargo Gautama 2001, "Penyelesaian Sengketa Secara Alternatif (ADR)," dalam Hendarmin Djarab, et al, (Editor), *Prospek dan Pelaksanaan Arbitrase di Indonesia Mengenang Alm. Prof. Dr. Komar Kantaatmadja, S.H., LL.M.*, Citra Aditya Bakti, Bandung.

Research And Assesment Project Archipelago Culture 1998. *Research And Manuscript Assesment "Kei Custom In The Islands.* Jakarta.

Theo Huijbers, 1982 *Filsafat hukum Dalam Lintasan Sejarah*, Kanisius, Yogyakarta.