



Police discretion using restorative justice approach in peaceful settlement on traffic accidents

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Abstract

The purpose of this study is to assess and formulate the construction of police discretion using restorative justice approach in peaceful settlement on traffic accidents. This research is juridical empirical by conducting an analysis of the problems and research through approaches to legal principles and referring to the legal norms contained in the legislation. The findings in this study are Law Number 22 Year 2009 on Traffic and Road Transport, non-penal policy after a peace between the victim and the perpetrator is not at all regulated. Under this law, peace can not be used as an excuse to end traffic accidents.

Keyword: police discretion, restorative justice, peaceful settlements, traffic accidents

Introduction

The influence of industrialization ties with the use of machines in various areas of life, also affect the development of the world of transportation [1].

The increasing standard of the people Liveliness and the needs of the people, actually demands increased means of transportation so that the number of transport will also increase as well. It can be said that the level of life of the community is getting higher, but the improvement of living standard can also cause problems in traffic. Traffic problems are an important part of safety, comfort and safety issues in traffic.

The rampant construction of connecting road, followed by the increasing number of road users. This can be seen by naked eye how the number of vehicles is increasing from year to year. This also requires the attention of the government as the state organizer. Therefore, in order to overcome the problems that are expected to arise in relation to all aspects of this traffic, the government has long considered and made efforts to realize security, safety, order and smoothness of traffic. Thus, Law Number 22 Year 2009 on Traffic and Road Transportation was established

When considering the traffic activity that is not as smooth as imagined, there are many occurrences of traffic violations and traffic accidents. In addition, there is also a clash between the interests of one road user with the other road users and this collision the longer the more frequent and the quality also increases in line with the development Means of roads and the increase of existing means of transportation.

Some traffic accidents that occur, in fact can be avoided if among road users comply with traffic regulations as regulated in Law Number 22 Year 2009, especially the provisions of Article 105, mentioning every person using the road must behave in an orderly manner; And / or prevent

any obstacles, endanger the security and safety of traffic and road transport, or which may cause road damage.

In particular, traffic accidents are caused by traffic accidents, especially in the form of dead human casualties (MD), serious injuries (LB) or minor injuries (LR) as well as other material losses. From the data at the Aceh Police Traffic Directorate, it can be seen that the number of accidents occurring in 2011 - 2015:

Table 1: Traffic Accident Data in Aceh Province Police Region Year 2011

| No | Police Resort | Accident | Victim | | | Material Loss | Selra | | | |
|--------|-----------------|----------|--------|-----|-------|---------------|-------------|-----|-------|----|
| | | | MD | LB | LR | | P21 | SP3 | ADR | |
| 1 | BANDA ACEH | 154 | 44 | 111 | 115 | 93.085.000 | 11 | 20 | 123 | |
| 2 | ACEH BESAR | 81 | 38 | 63 | 110 | 1.376.100.000 | 11 | 23 | 47 | |
| 3 | PIDIE | 160 | 82 | 60 | 197 | 453.900.000 | 12 | 26 | 122 | |
| 4 | BIREUEN | 188 | 77 | 221 | 184 | 530.000.000 | 5 | 13 | 170 | |
| 5 | LHOKSEUMAWE | 141 | 73 | 38 | 193 | 181.600.000 | 6 | 24 | 111 | |
| 6 | ACEH UTARA | 91 | 44 | 82 | 68 | 299.300.000 | 0 | 14 | 77 | |
| 7 | LANGSA | 66 | 56 | 34 | 77 | 275.200.000 | 4 | 25 | 37 | |
| 8 | ACEH TAMIANG | 62 | 39 | 58 | 58 | 197.200.000 | 6 | 18 | 38 | |
| 9 | ACEH TIMUR | 118 | 10 | 7 | 57 | 130 | 563.800.000 | 8 | 53 | 57 |
| 10 | ACEH BARAT | 40 | 34 | 22 | 19 | 342.400.000 | 13 | 1 | 26 | |
| 11 | ACEH JAYA | 21 | 16 | 18 | 12 | 516.000.000 | 6 | 3 | 12 | |
| 12 | NAGAN RAYA | 38 | 42 | 18 | 21 | 47.400.000 | 10 | 20 | 8 | |
| 13 | ACEH SELATAN | 69 | 30 | 11 | 91 | 218.300.000 | 4 | 28 | 37 | |
| 14 | SINGKIL | 42 | 33 | 15 | 24 | 101.700.000 | 3 | 6 | 33 | |
| 15 | SIMEULUE | 10 | 8 | 7 | 1 | 31.500.000 | 1 | 2 | 7 | |
| 16 | ACEH BARAT DAYA | 49 | 13 | 56 | 32 | 341.300.000 | 2 | 1 | 46 | |
| 17 | ACEH TENGAH | 34 | 15 | 25 | 35 | 115.500.000 | 6 | 11 | 17 | |
| 18 | BENER MERIAH | 20 | 21 | 6 | 9 | 65.600.000 | 1 | 13 | 6 | |
| 19 | ACEH TENGGARA | 68 | 29 | 56 | 83 | 79.550.000 | 13 | 9 | 46 | |
| 20 | GAYO LUES | 9 | 4 | 4 | 0 | 12.500.000 | 1 | 3 | 5 | |
| 21 | SABANG | 5 | 2 | 4 | 2 | 3.500.000 | 0 | 1 | 4 | |
| JUMLAH | | 1.466 | 807 | 966 | 1.461 | 5.845.435.000 | 123 | 314 | 1.029 | |

Source: Direktorat Lalu Lintas Kepolisian Daerah Aceh

Table 2: Traffic Accident Data in Aceh Province Police Region Year 2012

| No | Police Resort | Accident | Victim | | | Material Loss | Selra | | |
|--------|-----------------|----------|--------|-----|-------|---------------|-------|-----|-----|
| | | | MD | LB | LR | | P21 | SP3 | ADR |
| 1 | BANDA ACEH | 162 | 46 | 117 | 122 | 158.600.000 | 15 | 24 | 113 |
| 2 | ACEH BESAR | 99 | 38 | 57 | 99 | 920.150.000 | 9 | 20 | 69 |
| 3 | PIDIE | 126 | 91 | 52 | 121 | 291.050.000 | 4 | 57 | 61 |
| 4 | BIREUEN | 142 | 54 | 140 | 121 | 790.300.000 | 6 | 45 | 80 |
| 5 | LHOKSEUMAWE | 202 | 74 | 41 | 328 | 366.100.000 | 12 | 33 | 117 |
| 6 | ACEH UTARA | 81 | 42 | 62 | 58 | 304.600.000 | 7 | 33 | 41 |
| 7 | LANGSA | 77 | 43 | 49 | 66 | 209.400.000 | 1 | 21 | 38 |
| 8 | ACEH TAMIANG | 53 | 29 | 45 | 47 | 212.000.000 | 1 | 20 | 31 |
| 9 | ACEH TIMUR | 110 | 81 | 75 | 121 | 482.000.000 | 1 | 43 | 51 |
| 10 | ACEH BARAT | 32 | 30 | 24 | 21 | 214.150.000 | 12 | 13 | 7 |
| 11 | ACEH JAYA | 17 | 14 | 8 | 9 | 129.700.000 | 1 | 9 | 7 |
| 12 | NAGAN RAYA | 33 | 33 | 17 | 22 | 39.500.000 | 3 | 30 | 0 |
| 13 | ACEH SELATAN | 85 | 36 | 65 | 82 | 339.150.000 | 4 | 6 | 75 |
| 14 | SINGKIL | 40 | 45 | 8 | 23 | 197.600.000 | 6 | 1 | 29 |
| 15 | SIMEULUE | 13 | 7 | 13 | 15 | 80.500.000 | 1 | 4 | 8 |
| 16 | ACEH BARAT DAYA | 52 | 26 | 40 | 26 | 191.750.000 | 1 | 10 | 38 |
| 17 | ACEH TENGAH | 24 | 13 | 21 | 30 | 87.200.000 | 8 | 5 | 9 |
| 18 | BENER MERIAH | 20 | 18 | 8 | 4 | 35.900.000 | 5 | 11 | 4 |
| 19 | ACEH TENGGARA | 88 | 48 | 61 | 126 | 101.250.000 | 15 | 12 | 47 |
| 20 | GAYO LUES | 12 | 6 | 4 | 16 | 33.100.000 | 1 | 5 | 5 |
| 21 | SABANG | 5 | 1 | 5 | 6 | 11.000.000 | 0 | 0 | 5 |
| JUMLAH | | 1.473 | 765 | 902 | 1.463 | 5.195.000.000 | 113 | 402 | 835 |

Source: Direktorat Lalu Lintas Kepolisian Daerah Aceh

¹ Meta Suryani, Anis Mashdurohaturun, *Penegakan Hukum Terhadap Eksistensi Becak Bermotor Umum (Bentor) Berdasarkan Undang-Undang Nomor 22 Tahun 2009 Tentang Lalu Lintas Dan Angkutan Jalan*, article in *Jurnal Pembaharuan Hukum*, Program Doktor Ilmu Hukum Unissula. Volume III No.1 Januari-April 2016 p : 21

Table 3: Traffic Accident Data in Aceh Province Police Region Year 2013

| No | Police Resort | Accident | Victim | | | Material Loss | Selra | | |
|---------------|-----------------|--------------|------------|------------|--------------|----------------------|------------|------------|------------|
| | | | MD | LB | LR | | P21 | SP3 | ADR |
| 1 | BANDA ACEH | 134 | 43 | 93 | 107 | 66.650.000 | 15 | 27 | 78 |
| 2 | ACEH BESAR | 110 | 46 | 67 | 108 | 943.300.000 | 5 | 17 | 54 |
| 3 | PIDIE | 122 | 65 | 107 | 103 | 244.000.000 | 5 | 44 | 55 |
| 4 | BIREUEN | 103 | 18 | 74 | 97 | 226.000.000 | 18 | 54 | 20 |
| 5 | LHOKSEUMAWE | 205 | 50 | 51 | 377 | 496.200.000 | 10 | 24 | 119 |
| 6 | ACEH UTARA | 73 | 34 | 64 | 70 | 275.700.000 | 7 | 27 | 29 |
| 7 | LANGSA | 59 | 43 | 48 | 53 | 664.100.000 | 4 | 22 | 19 |
| 8 | ACEH TAMIANG | 40 | 31 | 26 | 34 | 155.000.000 | 4 | 16 | 19 |
| 9 | ACEH TIMUR | 102 | 78 | 76 | 113 | 591.000.000 | 2 | 24 | 46 |
| 10 | ACEH BARAT | 38 | 26 | 24 | 17 | 116.550.000 | 14 | 18 | 6 |
| 11 | ACEH JAYA | 46 | 19 | 32 | 48 | 906.100.000 | 1 | 15 | 24 |
| 12 | NAGAN RAYA | 51 | 45 | 18 | 26 | 81.000.000 | 6 | 33 | 11 |
| 13 | ACEH SELATAN | 60 | 38 | 40 | 62 | 299.300.000 | 5 | 15 | 36 |
| 14 | SINGKIL | 37 | 29 | 20 | 28 | 261.400.000 | 4 | 9 | 17 |
| 15 | SIMEULUE | 15 | 9 | 12 | 38 | 66.800.000 | 0 | 15 | 0 |
| 16 | ACEH BARAT DAYA | 41 | 16 | 38 | 19 | 213.550.000 | 1 | 13 | 25 |
| 17 | ACEH TENGAH | 37 | 7 | 26 | 33 | 120.750.000 | 2 | 3 | 22 |
| 18 | BENER MERIAH | 39 | 25 | 16 | 31 | 170.700.000 | 4 | 13 | 13 |
| 19 | ACEH TENGGARA | 68 | 36 | 34 | 83 | 78.900.000 | 14 | 10 | 33 |
| 20 | GAYO LUES | 17 | 9 | 7 | 10 | 113.100.000 | 3 | 6 | 7 |
| 21 | SABANG | 17 | 5 | 15 | 13 | 110.500.000 | 3 | 2 | 10 |
| JUMLAH | | 1.414 | 672 | 888 | 1.470 | 6.200.600.000 | 127 | 407 | 643 |

Source: Direktorat Lalu Lintas Kepolisian Daerah Aceh

Table 4: Traffic Accident Data in Aceh Province Police Region Year 2014

| No | Police Resort | Accident | Victim | | | Material Loss | Selra | | |
|---------------|-----------------|--------------|------------|------------|--------------|----------------------|------------|------------|------------|
| | | | MD | LB | LR | | P21 | SP3 | ADR |
| 1 | BANDA ACEH | 129 | 41 | 84 | 105 | 108.500.000 | 12 | 29 | 54 |
| 2 | ACEH BESAR | 121 | 51 | 59 | 138 | 1.385.350.000 | 7 | 37 | 59 |
| 3 | PIDIE | 133 | 76 | 135 | 125 | 764.000.000 | 5 | 44 | 63 |
| 4 | BIREUEN | 123 | 24 | 57 | 147 | 173.350.000 | 12 | 48 | 45 |
| 5 | LHOKSEUMAWE | 241 | 65 | 8 | 390 | 618.800.000 | 13 | 15 | 117 |
| 6 | ACEH UTARA | 116 | 58 | 66 | 115 | 334.500.000 | 6 | 30 | 47 |
| 7 | LANGSA | 67 | 52 | 45 | 57 | 619.300.000 | 1 | 22 | 30 |
| 8 | ACEH TAMIANG | 68 | 41 | 57 | 62 | 795.300.000 | 3 | 15 | 36 |
| 9 | ACEH TIMUR | 108 | 103 | 63 | 85 | 702.200.000 | 4 | 36 | 37 |
| 10 | ACEH BARAT | 36 | 25 | 18 | 42 | 86.450.000 | 5 | 20 | 9 |
| 11 | ACEH JAYA | 23 | 20 | 11 | 22 | 164.100.000 | 2 | 10 | 4 |
| 12 | NAGAN RAYA | 36 | 35 | 18 | 32 | 47.500.000 | 6 | 25 | 2 |
| 13 | ACEH SELATAN | 49 | 32 | 41 | 47 | 418.300.000 | 5 | 11 | 22 |
| 14 | SINGKIL | 53 | 36 | 27 | 42 | 259.300.000 | 7 | 11 | 8 |
| 15 | SIMEULUE | 10 | 9 | 2 | 7 | 28.000.000 | 1 | 4 | 5 |
| 16 | ACEH BARAT DAYA | 38 | 22 | 31 | 34 | 185.600.000 | 0 | 16 | 16 |
| 17 | ACEH TENGAH | 32 | 15 | 31 | 36 | 285.500.000 | 0 | 10 | 20 |
| 18 | BENER MERIAH | 28 | 12 | 18 | 32 | 117.400.000 | 2 | 9 | 15 |
| 19 | ACEH TENGGARA | 60 | 33 | 32 | 73 | 55.100.000 | 10 | 10 | 23 |
| 20 | GAYO LUES | 22 | 8 | 9 | 35 | 142.500.000 | 2 | 9 | 11 |
| 21 | SABANG | 16 | 2 | 17 | 14 | 33.100.000 | 0 | 1 | 13 |
| JUMLAH | | 1.509 | 760 | 829 | 1.640 | 7.324.150.000 | 103 | 412 | 636 |

Source: Direktorat Lalu Lintas Kepolisian Daerah Aceh

Table 5: Traffic Accident Data in Aceh Province Police Region Year 2015

| No | Police Resort | Accident | Victim | | | Material Loss | Selra | | |
|---------------|-----------------|--------------|------------|------------|--------------|----------------------|------------|------------|------------|
| | | | MD | LB | LR | | P21 | SP3 | ADR |
| 1 | BANDA ACEH | 111 | 48 | 58 | 94 | 62.350.000 | 7 | 42 | 33 |
| 2 | ACEH BESAR | 108 | 54 | 41 | 147 | 1.214.300.000 | 3 | 22 | 63 |
| 3 | PIDIE | 137 | 87 | 142 | 94 | 783.500.000 | 7 | 33 | 56 |
| 4 | BIREUEN | 248 | 110 | 55 | 410 | 277.350.000 | 14 | 67 | 117 |
| 5 | LHOKSEUMAWE | 347 | 64 | 3 | 574 | 397.050.000 | 19 | 15 | 187 |
| 6 | ACEH UTARA | 169 | 48 | 48 | 247 | 267.350.000 | 3 | 31 | 86 |
| 7 | LANGSA | 167 | 47 | 78 | 226 | 773.350.000 | 5 | 26 | 81 |
| 8 | ACEH TAMIANG | 76 | 29 | 36 | 84 | 361.100.000 | 4 | 21 | 39 |
| 9 | ACEH TIMUR | 153 | 81 | 73 | 187 | 583.450.000 | 11 | 38 | 43 |
| 10 | ACEH BARAT | 45 | 30 | 27 | 44 | 248.900.000 | 5 | 24 | 10 |
| 11 | ACEH JAYA | 37 | 27 | 18 | 39 | 163.900.000 | 6 | 21 | 7 |
| 12 | NAGAN RAYA | 39 | 38 | 27 | 35 | 68.400.000 | 3 | 32 | 1 |
| 13 | ACEH SELATAN | 60 | 28 | 46 | 44 | 351.800.000 | 2 | 8 | 11 |
| 14 | SINGKIL | 40 | 28 | 11 | 47 | 190.900.000 | 3 | 9 | 3 |
| 15 | SIMEULUE | 10 | 8 | 1 | 7 | 5.000.000 | 0 | 5 | 0 |
| 16 | ACEH BARAT DAYA | 49 | 29 | 51 | 50 | 289.650.000 | 0 | 17 | 41 |
| 17 | ACEH TENGAH | 34 | 13 | 7 | 75 | 179.700.000 | 0 | 6 | 26 |
| 18 | BENER MERIAH | 20 | 15 | 19 | 28 | 56.600.000 | 1 | 9 | 17 |
| 19 | ACEH TENGGARA | 68 | 32 | 21 | 59 | 52.200.000 | 11 | 12 | 9 |
| 20 | GAYO LUES | 9 | 5 | 22 | 50 | 260.300.000 | 4 | 1 | 18 |
| 21 | SABANG | 5 | 4 | 14 | 17 | 47.500.000 | 0 | 1 | 10 |
| JUMLAH | | 1.980 | 825 | 798 | 2.558 | 6.634.650.000 | 108 | 440 | 858 |

Source: Direktorat Lalu Lintas Kepolisian Daerah Aceh

Note :

Md : Dead

P21 : Accident are solved through Lawsuit

Lb : Heavy Injuries

SP3 : Lawsuit are stopped in Investigation

Lr : Minor Injuries

ADR : Accident are solved outside the court

he jurisdiction of Aceh police district and the impact of losses incurred. Although the Law on Traffic and road transport has been implemented up to now but it can not be

denied that the level of accidents still persists in the jurisdiction of the Aceh Police district.

In the process of solving crimes of traffic accidents by Bireuen police resort traffic unit legally, and applying the applicable legal provisions, the settlement of this case is also often done through out of court or in other words resolved through peace between the parties. This mechanism is often referred to as Alternative Dispute Resolution (ADR).

Based on the background of the above problem, the problem formulation is How is the construction of police discretion

law with restorative justice approach in peaceful settlement on traffic accidents ?

This study is using a juridical empirical as a method of research by analyzing the problems and research through approaches to legal principles and referring to the legal norms contained in legislation. The values of this restorative justice approach that distinguishes the restorative justice of the judicial system or criminal justice Conventional. Howard Zehr in his book *Changing Lenses: anew focus for crime and justice*, making the difference between restorative justice and retributive justice that can be summarized in the following table ^[2].

Table 6: Retributive Justice and Restorative Justice Differences

| Retributive Justice | Restorative Justice |
|---|--|
| <i>Crime defined as violation of the state</i> | <i>Crime defined as violation of one person by another</i> |
| <i>Focus on establishing blame, on guilt, on past (did he/she do it?)</i> | <i>Focus on problemsolving, on liabilities and obligations, on future (what should be done?)</i> |
| <i>Adversarial relationships and process normative</i> | <i>Dialogue and negotiations normative</i> |
| <i>Imposition of pain to punish and deter/prevent</i> | <i>Restitution as a means of restoring both parties; reconciliations/restorations as goal</i> |
| <i>Justices defined by intent and by process: right rules</i> | <i>Justices defined as right relationships: judge by the outcomes</i> |
| <i>Interpersonal, conflictual nature of crime obscured; conflict seen as individual vs. state</i> | <i>Crime recognized as interpersonal conflict: value of conflict recognized</i> |
| <i>One social injury replaced by another</i> | <i>Focus on repair of social injury</i> |
| <i>Community on side line, represented abstractly by state</i> | <i>Community as facilitator in restorative process</i> |
| <i>Encouragement of competitive, individualistic values</i> | <i>Encouragement of mutuality</i> |
| <i>Action directed from state to offender: Victim ignored and Offender passive</i> | <i>Victim's and offender's role recognized in both problem and solution: Victim rights/needs recognized and Offender encouraged to take responsibility</i> |
| <i>Offender accountability defined as taking punishment</i> | <i>Offender accountability defined as understanding impact of action and helping decide how to make things right</i> |
| <i>Offense defined in purely legal terms, devoid of moral, social, economic, political dimensions</i> | <i>Offense understood in whole context-moral, social, economic, political</i> |
| <i>Debt owed to state and society in the abstract</i> | <i>Debt/liability to victim recognized</i> |
| <i>Response focused on offender's past behaviour</i> | <i>Response focused on harmful consequences of offender's behaviour</i> |
| <i>Stigma of crime unremovable</i> | <i>Stigma of crime removable through restorative action</i> |
| <i>No encouragement for repentance and forgiveness</i> | <i>Possibilities for repentance and forgiveness</i> |
| <i>Dependence upon proxy professional</i> | <i>Direct involvement by participants</i> |

From The difference table between the conventional criminal justice approach or retributive justice with the above restorative justice shows different sides of procedures and outcomes. From the process side, retributive justice emphasizes the element of exclusion (closed), single interests (punish offenders), use of violence (police, prison), and repayment (bear the consequences). These elements are different from restorative justice that emphasizes inclusion (open to all), the balance of interests (victims, actors, communities), demands voluntary, and problem-solving.

Research Results and Discussion

1. Concept of Penal Mediation with Approach as Alternative in Criminal Case Settlement

Since Pancasila was established as the basis of the State of Indonesia, Philosophically Pancasila as a filter in

harmonizing legal development in the context of legal globalization ^[3].

Pancasila is inclusive, referring to the legal System of every civilized state can still be done to free legal notions in the field of other legal systems ^[4]. Just as in Mediation penal is one form of restorative justice implementation, which is a concept that views crime more broadly. This concept considers that crime or criminal act is not merely a criminal offender affair with a country that represents the victim, and leaves the settlement process only to the perpetrator and the state (Public Prosecutor).

Restorative justice requires the criminal justice process to provide the fulfillment of the interests of the victim as a party who is harmed as a result of the act of the perpetrator. Thus a paradigm shift in punishment is required to place mediation of penal as part of the criminal justice system.

Penal mediation according to the European Forum For Victim Service is described as a process which involves contact between the victim and the offender, either directly or through the mediator. The process of mediation is generally regarded as part of the broader issue of restorative justice ^[5]. Meanwhile, the Belgian Criminal Procedure Act of Belgian Law of 22 June 2005 describes the mediation in criminal matter as a process that allows people involved in a conflict to have voluntary, active participation in a confidential process for solving difficulties that arise from a criminal Offence, with the help of a neutral third person and based on a certain methodology. The goal of mediation is to facilitate communication and to help parties to come to an agreement by themselves concerning pacification and restoration.

Trends in criminal law development and criminal prosecution and criminal justice reforms in both theory and practice, more developed forms of reconciliation or mediation in the settlement of criminal cases.

This ethical recall, this trend rests on the principle of individual accountability, in substantive criminal law, with reference to the perpetrator's accountability of its criminal sanctions, in the law of sanctions implementation. The alternative method of resolution of this agreement also gives greater interest to the victim and makes room for Rational conflict management. Considering the ethical view of a reaction to a crime is a crime of its own, but there is no need for any new injury or harm to the offender ^[6].

The idea underlying penal mediation is to unite those who want to reconstruct a very long criminal justice model with a resolution model that will reinforce the victim's position and seek criminal alternatives, as well as seek ways to reduce losses and heavy burdens on the criminal justice system in view of this system More effective and efficient ^[7].

³ Anis Mashdurohatun, *Mengembangkan Fungsi Sosial Hak Cipta Indonesia* (studi pada karya cipta buku), UNS Press, Surakarta, 2016. P : 260

⁴ Teguh Prasetyo, *Pancasila The Ultimate of All the Sources of Laws (A Dignified Justice Perspectiv)*, Journal of Law, Policy and Globalization, ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online), Vol.54, 2016, p : 103

⁵ *Statement on the Position of the Victim within the Process of Mediation, the Executive Committee of the European Forum for Victim Services, November 2003.*

⁶ Dieter Rössner, *Mediation as a Basic Element of Crime Control: Theoretical and Empirical Comments*, www.buffalo university journal.

⁷ Recommendation Nomor R (99) 19. (the Committee of Ministers of the

² Howard Zehr, *Changing Lenses: a new focus for crime and justice*, Herald Press, Scottsdale, 1995, hlm. 211. Lihat juga Marian Liebmann, *Restorative Justice: How It Works*, Jessica Kingsley Publishers, London and Philadelphia, 2007, p : 32.

The developed criminal mediation proceeds from the following working ideas and principles^[8].

The developed criminal mediation proceeds from the following working ideas and principles:

1. Conflict Handling (Konflikt bearbeitung)

The mediator's job is to make the parties forget the legal framework and encourage them to engage in the communication process. It is based on the idea that crime has created interpersonal conflict. Conflict is what the mediation process leads to.

2. Process-oriented (Process Orientation, Prozessorientierung)

Penal mediation is more oriented towards the quality of the process than the outcome, namely: bringing the perpetrators of the crime of wrongdoing to repent, the needs of the conflict is solved, the victim's calm from fear so that penal mediation can be said to complete the case thoroughly.

3. Informal Proceeding (Informal Proceeding-Informalität):

Penal mediation is an informal, non-bureaucratic process, avoiding strict legal procedures.

4. There is active and autonomous participation of parties (Active and Autonomous Participation-Partei autonomie / Subjectivierung)

The parties (perpetrators and victims) are not seen as the object of criminal procedure, but rather as subjects with personal responsibility and ability to act. They are expected to act on their own free will, voluntarily in settling their criminal cases.

Meanwhile the European Forum for Victim Service provides the Guiding Principles in mediation as follows^[9].

1. Mediation requires the involvement of the victim and it is therefore important that their interests are considered fully
2. Mediation processes should only be used with free and informed consent of the parties and the parties should be able to withdraw consent at any time;
3. Victim/ offender mediation in criminal cases is different from similar processes of mediation in other areas of life- the mediation process must include the offender accepting responsibility for his act and the acknowledgement of the adverse consequences of the crime for the victim;
4. It is vital that the mediator and everyone involved in the mediation process has received appropriate training on the special issues concerning victims of crime which will be relevant to the mediation process.

Based on the experience in penal mediation practices developed in North Carolina whose implementation is based on G.S. 7A-38.3D and the Supreme Court's Rules Implementing Mediation in Matters Pending In District Criminal Court, the reasons for choosing mediations are for the following benefits

There are many reasons why you should consider mediation. Mediation is usually less stressful and time

consuming than a trial. You will not have to take the stand and testify, nor will you have to bring witnesses. You don't even need a lawyer. Mediation offers you and the other party (ies) the opportunity to be in control of the outcome of your dispute. Some research indicates that people are more likely to follow through on agreements that they make as opposed to ones forced upon them by a court. If you are a defendant, a successful mediation may mean that you can avoid a criminal record and more expensive fines and costs. If you are a complaining witness, an opportunity to sit down with others involved in the dispute and work out your conflicts may provide more satisfaction than a judge's verdict. Sometimes mediation can help bring people together. If those involved in a dispute are relatives, neighbors, or were once friends, talking about and working through conflict can often be an important first step in repairing damaged relationships. People may be angry or hurt when they come to mediation and the mediator(s) will try to help everyone understand the differing perspectives of those involved in the conflict. When underlying causes of a conflict are brought to light, people often settle the case at hand and also learn how to avoid future conflicts^[10].

Based on the above description, it can be concluded that penal mediation benefits are as follows:

1. The advantage of mediation for victims, less pressure than if litigation in court, no need to bring witnesses, no need to hire a lawyer, and get a chance to control the results.
2. For offender criminals may get benefit from avoidance of criminal prosecution, crime records, or greater fines and court fees.
3. Mediation may also reinforce or re-unite neighbors, friends and relatives if the parties involved to include in peace and compensation agreements, and provide lessons for perpetrators to avoid future conflicts.

In the Explanatory Memorandum of the Council's European Recommendations on Mediation in Penal Matters, several penal mediation modes are proposed as follows^[11].

1. Informal mediation Model

This model is carried out by criminal justice personnel in its normal duty, which can be done by the Public Prosecutor by inviting the parties to an informal settlement with a goal of not continuing prosecution if an agreement is reached. The mediator may be performed by a social worker or a probation officer or a police officer or a Judge. This type of informal intervention is common in all legal systems.

2. Traditional village or tribal moots model

According to this model the whole community meets to break the criminal conflict among its citizens. This model exists in some less developed countries and in rural / inland areas. This model prefers the benefits to the wider community. This model precedes western law and has inspired much of modern mediation programs. Modern programmembers often try to introduce different benefits

Council of Europe) 15 September 1999.

⁸ Stefanie Tränkle, *The Tension between Judicial Control and Autonomy in Victim-Offender Mediation - a Microsociological Study of a Paradoxical Procedure Based on Examples of the Mediation Process in Germany and France*, http://www.iuscrim.mpg.de/orsch/krim/traenkle_e.html.

⁹ *Statement On The Position Of The Victim Within The Process Of Mediation, the Executive Committee of the European Forum for Victim Services, November 2003*

¹⁰ *Frequently Asked Questions about Criminal District Court Mediation*, www.mnnc.org/pg1.cfm

¹¹ Barda Nawawi Arief, *Makalah Aspek Kebijakan Mediasi Penal Dalam Penyelesaian Sengketa di Luar Pengadilan*, Materi Perkuliahan Program Doktorat.

from tribal moots in a form adapted to the structure of modern society and the legal rights of individuals.

3. Model of victim-offender mediation

Mediation between the victim and the perpetrator is the most frequent model in the mind of the person. This model involves various parties who meet by the appointed mediator. Many variations of this model. The mediator may come from formal officials, independent mediators, or combinations. This Mediation may be held at each stage of the process, whether in the police examination stage, the prosecution stage, the punishment stage or after the punishment. This model applies to all types of offenders, some are specific to child offenders, some for certain crimes (eg Harassment, robbery and acts of violence). It is primarily aimed at acting, novice actors, but also for heavy offenses and even for recidivists.

4. Negotiation on Reparation programs

This model is solely to assess / assess compensation or remedies to be paid by the offender to the victim, usually at the time of the hearing. This program is not related to reconciliation between stakeholders, but only relates to the repair planning of the material. In this model the perpetrator of a crime may be subject to a work program in order to save money to pay compensation.

5. Community panels or courts model

This model is a program to deflect criminal cases from prosecution or diligence in more flexible and informal community procedures and often involves elements of mediation or negotiation.

6. Model Family and community group conferences

This model has been developed in Australia and New Zealand, involving community participation in the Criminal Justice System. Not only involving victims and perpetrators of criminal acts, but also the families of perpetrators and other citizens, certain officials (such as police and judges) and victims supporters. People and their families is expected to produce a comprehensive agreement and satisfy the victim and can help to keep the perpetrator out of the next trouble / problem.

In the theory of restorative justice the existence and status of the victim is recognized and the victim is involved in the process which will result in the recovery or correction of the harm suffered as a result of the act of the offender, usually this process is done through penal mediation.

2. The Existence of Peace-agreement in Law Enforcement against Traffic Accidents

The existence of peace is a form of Pancasila values. The values of communalism, spiritualism and inclusivism as a collective consciousness and norms core values of Indonesia [12].

Peace is taken into consideration to alleviate the punishment for the accused. Although peace in this case in an accident which resulted in death on the victim then it would not bind the judge though the judge can take a notice on the the presence or absence of peace, if the parties (the accused and

the victim's family) had made peace, where the defendant had paid the mourning money to the victim's family As it is, the judge will give a lesser punishment because the defendant's willingness to pay a mourning fee means he has admitted his guilt in good faith, so in itself there has been a reason or something to lighten up. It is therefore natural that judgment relief is granted.

Then when the defendant and the victim's family have made peace despite the session, the hostility of both parties (defendant and the victim's family) has diminished or has been prevented because the peace is done on the will or the will of both parties, not because of the element of coercion. Based on the above description it can be concluded that although the peace in the criminal case of hit-and-kill is not regulated in the law, but the peace still has a function as well, namely:

- a. To reduce the severity of the sentence imposed by the Judge on the defendant or the offender of the offense.
- b. To avoid or reduce hostilities between the parties (the defendant and the victim's family) in the future.
- c. To avoid any civil litigation from the victim's family for reasons of unlawful acts.

Conclusion

In Law Number 22 Year 2009 on Road Traffic and Transportation, the non penalty policy after the peace between the victim and the perpetrator is totally unregulated. Under this law, peace can not be used as an excuse to end traffic accidents.

The application of police discretion in law enforcement to the peaceful settlement of traffic accidents, based on Law Number 22 Year 2009 is not a regulated mechanism in the law, a clash of legal certainty, the absence of formal legal umbrella on the application of restorative justice in discretion Police force in cases of traffic accidents so that restorative justice efforts will not have legal certainty.

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