

Application of Penal Mediation As An Alternative Settlement Of Domestic Violence Disputes

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Abstract. *Today violence against women continues to increase even though several efforts have been made from all levels of society to overcome it. Therefore, violence experienced by women is not only found in the community environment but can also be found in the household sphere. This research aims to find out how penal mediation is implemented along with the obstacles and solutions in its implementation, and also to find out how the ideal concept of penal mediation will be in the future. This study uses a sociological juridical approach with descriptive analytical specifications. Data obtained from interviews and literature studies. The data was then analyzed qualitatively. The results of this study are (1) In the application of Penal Mediation as an alternative to resolving domestic violence cases disputes can be carried out by bringing together the two parties to the dispute accompanied by several parties including family and community leaders, (2) obstacles in implementing Penal Mediation as an alternative to resolving domestic violence disputes can be resolved with procedural requirements and substantive requirements (3) How can the ideal concept of penal mediation as an alternative to dispute resolution in domestic violence cases certainly be implemented in the future.*

Keywords: *Concept; Domestic; Mediation; Violence.*

1. Introduction

Today violence against women continues to increase even though several efforts have been made from all levels of society to overcome it. However, it seems that the perpetrators of violence are not afraid of law enforcement. This is because there is a public view that women are lower beings than men who have a higher position. The existence of structuralization in society creates gender inequality or injustice.

Gender inequality is the difference in roles and rights between women and men in society that places women in a lower status than men. This “privilege” that belongs to men seems to make women the property of men who have the right to treat them arbitrarily, including by means of violence. This societal view has erased the rights of women both in the household and in the environment that actually exist. Violence experienced by women is not only found in the community environment but can also be found in the household sphere.

Law number 23 of 2004 concerning the elimination of domestic violence states that domestic violence is any action against someone, especially women, which results in physical, sexual, psychological misery or suffering, and/or neglect of the household including threats to commit acts, coercion, or unlawfully seizing independence within the household sphere (article 1 paragraph 1).

Based on Article 2 paragraph 1 of the Law on the Elimination of Domestic Violence, the parties constituting the scope of the family are 1) husband, wife and children. 2) People who have a family relationship with the person referred to in letter a because of blood relations, marriage, permanent arrangement, care, and guardianship in the household and or 3) the people working are helpful.

Violence that occurs in the household is more experienced by women who here are domiciled as a wife or child who is a victim, while the perpetrators are dominated by men who are domiciled as a husband or child. Domestic violence can be caused by various factors, both internal and external factors within the household.

2. Research Methods

This research used sociological juridical approach method, specification of analytical descriptive research, method of collecting data by interview and bibliography, data analysis used in this research is qualitative data analysis

3. Result and Discussion

Penal mediation as an instrument of restorative justice is known with a variety of different terms. The earliest known terminology is the Victim-Offender Reconciliation Program. This term is rarely used because many experts judge usage the term reconciliation is not suitable because it is too religious and does not describe the peace process. The term that is more widely used hereinafter is Victim-Offender Mediation (Mediation between Victims and Perpetrators). One of the penal mediation experts in the world, Mark Umbreit uses the term humanistic mediation approach because of the specific nature of domestic violence. The term penal mediation is used because mediation is used to reconcile criminal cases, not because civil cases are usually the function of mediation. The term penal mediation in the Netherlands is known as *strafbemiddeling*, while in France this term is known as *de mediation penalty*.

Using mediation as an alternative in resolving cases of domestic violence is considered appropriate because of the nature of mediation which gives full power to the parties to determine the course of the process and the desired outcome of the agreement. The decision taken is not the decision of a third party, but the full will and power of the disputing parties. Mediation offers the flexibility of the mechanism to be adapted to the conditions of the disputing parties, the mediator and the dispute they are facing. The flexibility of mediation is related to many aspects, such as the method/approach used as well as the place and time of mediation.

The penal mediation method is suitable for use in Indonesia because it is in accordance with the theory of Pancasila Justice where the values of Pancasila are upheld in terms of the following:

1. The culture of Indonesian society prioritizes peaceful dispute resolution based on deliberation for consensus, especially in household conflicts.
2. Customary law and Islamic law that are still alive and practiced by the community support and even prioritize the use of mediation in peaceful dispute resolution, including in cases of domestic violence.
3. The majority of people still think domestic violence is an internal household problem that the public should not know about. This is in accordance with the nature of mediation which is obliged to maintain the confidentiality of the settlement of a dispute.
4. Mediation promises a quick, inexpensive and simple settlement of domestic

violence compared to settlement in court. This factor is important to shorten the suffering experienced by victims of domestic violence.

5. Providing opportunities for victims to be heard in telling stories of their suffering and expressing their feelings as women's empowerment, where this is usually not given due attention in court proceedings.

6. Victims get the opportunity to get an explanation about the violence that occurred, receive an apology, or receive compensation for the suffering they have experienced which cannot be obtained from the court process.

7. The perpetrator (husband) as one of the pillars of the household gets the opportunity to improve himself by avoiding prison in order to protect the future of the family, especially the children.

Based on the research conducted by the author, the author would like to describe a case regarding Penal mediation as an alternative settlement of domestic violence disputes in Semarang City;

Settlement with mediation related to domestic violence disputes, especially victims, namely women and children, can be done by making a report to the Office of Women's Empowerment and Child Protection (DP3a). in the city of Semarang itself there is already a SERUNI Integrated Service Center (PPT).

Penal Mediation Steps can be carried out in the following way (Semarang City):

- Especially for victims of Domestic Violence, namely Women and Children, can make a report which is directly given to the Integrated Service Center (PPT).
- After the report is received, PPT SERUNI will check the file and analyze the problems that occur.
- After the Chrysanthemum party has confirmed the complete file, the PPT SERUNI will immediately contact the two parties to the dispute, as well as contact the sub-district where the victim lives to mediate in the sub-district.
- The implementation of mediation between the two disputing parties was accompanied by several parties, namely from the PPT SERUNI, the Police (BHABINKAMTIBNAS), the Kelurahan and the families in the dispute.
- The result of the mediation implementation will be in the form of a statement agreed upon by both parties to the dispute and witnessed by the accompanying party.

The Religious Courts have actually used the concept of mediation in resolving marriage cases. This is proven by the obligation of the judge to reconcile the parties. However, the Religious Courts have not included the PKDRT Law in deciding cases, even though quantitatively cases involving domestic violence have mostly gone to the District Courts. This is because domestic violence cases are not the absolute authority of the Religious Courts. On the other hand, the District Court which handles domestic violence cases does not recognize mediation.

Using penal mediation in resolving domestic violence will provide several advantages, including:

1. Mediation has a significant effect in reducing anxiety and feelings of weakness from victims.
2. Mediation provides an opportunity for the victim to convey to the perpetrator about the effects of the criminal act committed, obtain answers as to why the act was committed, and negotiate restitution.
3. Mediation is a medium for perpetrators to explain to victims about what they have done, apologize, negotiate and pay restitution.

However, it is feared that this concept will face several problems, including:

1. Operational problems
 - a. Case recommendations for mediation

Understanding and cooperation between law enforcement officials is still lacking, making it difficult to convince them to recommend cases to be resolved through penal mediation.

- b. Limited time

Penal mediation is incorporated in the criminal justice system, so there is limited time in mediating a case, even though the case is very complex or sensitive.

- c. Lack of preparation and follow-up

Many mediators are not well prepared in dealing with cases, even though the level of complexity and sensitivity of each case is different. Some mediators often think that their task has been completed when an agreement has been

made, even though follow-up in the form of monitoring the implementation of the agreement must also be carried out.

d. Indirect mediation

If this mediation process is used, it will take a lot of time and be less productive than if the victim and perpetrator meet each other.

e. Lack of resources

Limitations of human resources, both quantity and quality or facilities, of course, will interfere with the mediation process.

2. Failure to maintain the original objective

This happens because of the dominance of the paradigm and culture of the criminal justice system, so that the goal of penal mediation that is incorporated in the system can fade or falter.

3. Compensation

Often the perpetrators of criminal acts are poor, so they are unable to pay the compensation proposed by the victim which results in the failure to reach an agreement.

4. Actor accountability

Many perpetrators only use penal mediation as a way to avoid criminal justice (prison). After reaching a peace agreement, they do not want to carry it out

For this reason, several things are needed so that penal mediation can work effectively, including:

a. Substantive requirements:

a) The perpetrator must be aware of his actions and be willing to take responsibility.

The perpetrators showed their awareness and were willing to improve themselves so that domestic violence was not repeated.

b) Penal mediation is preferably aimed at novice offenders who have never been convicted in a court of law before.

c) Victims are willing to go through the penal mediation process with sufficient information and be realistic about the possible results achieved.

d) Both parties (victims and perpetrators) were present at the initial trial to be asked about their willingness to undergo the penal mediation process and were always present at every stage of the penal mediation process

e) Perpetrators are required to attend counseling to cure violent behavior

f) The perpetrator is obliged to pay compensation to the victim for the cost of recovering the suffering from the violence experienced if the victim of domestic violence wants, especially if a divorce still occurs. Thus penal mediation as well giving justice to victims where so far the perpetrators have actually paid fines to the State.

b. Procedural requirements:

a) Mediators must have good mediation skills, sufficient experience, and have a gender perspective in dealing with domestic violence

b) Considering that judges do not have an appropriate scientific background in mediating domestic violence cases, it is necessary to think about whether non-judge professionals who have taken court mediator certification and have special expertise in handling domestic violence cases (such as doctors, psychologists, social workers, etc.), can be involved as a mediator

c) The mediator needs to be assisted by a co-mediator who has special expertise besides functioning as an assistant mediator in dealing with the specifics of domestic violence cases, this co-mediator who has special expertise can also provide counseling for the perpetrator to change his attitude (curative) in order to prevent domestic violence in the future.

At the request of the victim or the mediator, the victim can be accompanied by someone from the family, a social worker or a psychologist who strengthens the victim's psychological condition to negotiate constructively in the penal mediation process.

The use of penal mediation as an alternative to the settlement of criminal cases which are part of the criminal justice process is urgently needed, so that it can become a legitimate means of resolution and the results of the agreement are binding on the parties, law enforcement officers and the community. The penal mediation procedure must be carried out starting from the investigation stage at the Police to the trial stage at the court.

The formulation stage is the most strategic stage of efforts to prevent and overcome crime through criminal law policy. Legislative policy errors/weaknesses are strategic mistakes that can become an obstacle to efforts to prevent and deal with crime at the application and execution stages.

Penal mediation is an alternative to the criminal case settlement process to overcome this. By preventing someone from entering a Correctional Institution, in addition to avoiding the stigmatization of convicts, it can also save state costs. Another consideration is the need for mediation for the crime of domestic violence specifically for this complaint offense which can also be based on criminal threats that are alternative in nature to imprisonment or fines. In correctional institutions have not been able to function properly. With the existence of alternative threats, this can provide an opportunity or basis for consideration of rules informally.

Criminal law reform must also be carried out with a policy approach because in essence criminal law reform is only part of legal policy or politics in general and especially part of criminal law politics (criminal law/penal policy). There are several ideas underlying the discourse on the use of mediation in criminal matters. There are some penal mediation ideas associated with the problem of renewal of criminal law (penal reform) and some are associated with the problem of pragmatism. The background of the penal reform idea includes the idea of protecting victims, the idea of harmonization, the idea of restorative justice, the idea of overcoming rigidity/formality in the prevailing system, the idea of avoiding the negative effects of the current criminal justice system and criminal justice system, especially in finding other alternatives. from imprisonment (alternative to imprisonment/alternative to custody) 7 The background to pragmatism, among others, is to reduce the stagnation or accumulation of cases, and to simplify the judicial process.

It is this then that encourages the importance of establishing a penal mediation formulation as an alternative to dispute resolution which is part of the process that must be taken in settling domestic violence cases for complaint offenses, given the inherent peculiarities of these domestic violence cases. The formulation of penal mediation policies in domestic violence cases that must be considered by legislators include:

a) Determination of the Juridical Definition Formulation of Penal Mediation.

b) The Policy for Determining Penal Mediation Principles, where the penal mediation principles in domestic violence cases that need to be formulated include: the principle of freedom and voluntarily, the freedom of the parties to withdraw during the mediation process, the principle of confidentiality.

c) Policy on the Determination of Mediated Crimes, in the form of a minimum penalty of 5 (five) years or a fine, constitutes a complaint offense both absolute and relative, and is not a repetition or recidivist.

d) The penal mediation period, namely regarding the expiration of the case K

DRT that can be mediated and the length of the mediation process. The general principles in mediation penal are as follows:

1) Solving problems by mediation can only take place if the parties agree to mediation,

2) All kinds of matters discussed in penal mediation are confidential and will not be used after that, except with the agreement of the parties.

3) Penal mediation must be provided at every stage of the process in the criminal justice system,

4) The implementation of penal mediation must be given sufficient autonomy criminal justice system.

Penal mediation system which is used in several countries such as the Netherlands, Australia and the United States can be used as a reference. In the Dutch Criminal Code, which has the same legal system as Indonesia, it regulates forgiveness or forgiveness (*rechterlijk pardon*) from the judge because there has been peace between the victim and the perpetrator, so that the perpetrator does not need to be sentenced again. Meanwhile in the United States, there is a plea bargaining system which is part of the law enforcement system (criminal justice system) which is a formal and legal procedure. Meanwhile, Australia adheres to family law to resolve domestic violence cases.

4. Conclusion

Penal mediation is the most effective method in alternative efforts to resolve domestic violence disputes, where the values of Pancasila are upheld in its implementation. Penal mediation is the Indonesian legal system, in which the Indonesian people apply a culture of deliberation in society, namely the victim-offender mediation model where both parties the parties are facilitated by a neutral party, in this case law enforcers, who will listen to the opinions of the families of both parties, local environmental figures, religious leaders, professional psychologists.

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