

## Implementation of Resolving Minor Crimes through Penal Mediation in the Central Java Legal Area

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**Abstract.** *The research objective in this study is to examine and analyze the implementation of resolving minor crimes through penal mediation, to examine and analyze the obstacles and solutions faced in the implementation of resolving minor crimes through penal mediation. This research uses a sociological juridical approach, with qualitative descriptive research methods. The data used is primary and secondary data which will be analyzed qualitatively. Research problems are analyzed using the theory of legal objectives, the theory of legal certainty. The results of the research conclude that the implementation of resolving minor crimes through penal mediation as a solution to resolving criminal problems at least provides relief to the applicable criminal law system. Obstacles in implementing restorative justice in minor criminal cases are the lack of understanding by members of the National Police regarding restorative justice and discretionary authority; inadequate means of socialization; social conditions and public distrust of law enforcement institutions; the culture of taking the law into their own hands and providing a deterrent effect by the community against perpetrators of minor crimes. The solution to this obstacle is that the government should provide outreach to the community and law enforcement officials regarding mediation of penalties for minor crimes.*

**Keywords:** *Crime; Implementation; Mediation.*

### 1. Introduction

The settlement of criminal cases within the framework of the Republic of Indonesia cannot be separated from Dutch criminal law which was adopted as

Indonesian national criminal law. The implementation of Dutch criminal law in Indonesia is based on Law Number 1 of 1946 which is an affirmation of the Indonesian government to implement the Dutch Criminal Code (Criminal Code) which came into effect on March 18, 1942 as the criminal law applicable in Indonesia.<sup>1</sup> The settlement of minor crimes in Indonesia is currently attracting public attention, because its handling is considered no longer proportional to the level of seriousness of the regulated crime. The main problem, according to several analyses, is that the limits of the crime have never been updated since 1960. The current regulation of minor crimes is assumed to be a kind of protection from disproportionate law enforcement against crimes that (the losses) are considered not serious. The logic that the determination of minor crimes is related to the handling process in court, although perhaps for different reasons, can be found again in the Criminal Procedure Code which then applies in Indonesia.<sup>2</sup> Restorative justice is a settlement process carried out outside the criminal justice system by involving the victim, perpetrator, the victim's and perpetrator's families, the community and parties with an interest in a crime that has occurred to reach an agreement and resolution.<sup>3</sup> In criminal law politics, it is not easy to determine an act as a crime and must first go through several in-depth study processes.<sup>4</sup>

Minor Crimes are types of crimes that can be classified into minor criminal proceedings. However, Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP) does not explain the crimes that are included in minor criminal proceedings. However, the Criminal Procedure Code determines the benchmark in terms of "criminal threats". Article 205 paragraph (1) of the Criminal Procedure Code explains that minor crimes are cases that are threatened with imprisonment or confinement for a maximum of 3 (three) months and/or a maximum fine of Rp. 7,500 (seven thousand five hundred rupiah); Minor insults, except those specified in paragraph 2 of this section (Traffic Violation Case Examination Procedure) (Article 205 paragraph (1) of the Criminal Procedure Code); Cases that are threatened with imprisonment for a maximum of 3 (three) months or a fine of more than Rp. 7,500 are also included in the authority of the Tipiring examination (Supreme Court Circular (SEMA) Number 18 of 1983).

Criminal law enforcement in Indonesia in the current state, refers to Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP). It is also undeniable that the KUHAP generally adheres to the principle of formality adopted from the colonial legacy law which views that every criminal act is

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<sup>1</sup> Eman Sulaeman, 2008, Licensing Offenses, Walisongo Press, Surabaya, p. 132.

<sup>2</sup> Leonardo OA Pandensolang, 2015, Study of Minor Crimes in the Criminal Justice Process. Lex Crimen Vol. IV/No. 1/Jan-Mar/2015 24, Sam Ratulangi University. Pg. 75

<sup>3</sup> Fiska Ananda, Implementation of Diversion as an Effort for Legal Protection of Child Criminals, Jurnal Daulat Hukum, Vol. 1, No. 1 (2018).

<sup>4</sup> Timbul Mangaratua Simbolon, Criminal Law Policy Against Criminal Acts of Insult or Defamation Through the Internet in Indonesia as Cybercrime, Jurnal Daulat Hukum, Vol. 1, No. 1 (2018).

resolved legally and formally in an institution called a court (judicial law enforcement). The settlement of criminal cases themselves begins with the investigation process and is continued with an investigation at the police level, followed by prosecution and trial in court. This is related to the criminal justice system which is a series of manifestations of the power to enforce criminal law, namely the power of investigation (by the investigative agency), the power of prosecution (by the public prosecutor), the power to try (by the court), and the power to implement decisions (by the executor)<sup>5</sup>.

At the first level of the Integrated Criminal Justice system above is the task of the Police. The Police as one of the law enforcement agencies according to Law Number 2 of 2002 concerning the Police aims to realize domestic security which includes maintaining public security and order, orderly and upholding the law, providing protection, protection, and service to the community, and fostering public peace by upholding human rights.

Talking about law enforcement practices in indonesia, there are symptoms or tendencies of law enforcement officers who are influenced by the philosophy of Western thought that prioritizes legal certainty. This of course occurs due to the adoption of Dutch law as national criminal law which prioritizes the principle of legality and is positivistic. The result is a situation where every criminal violation must end in a settlement in court, even though personally in many cases the parties have reconciled. This is of course less relevant to the lives of Indonesian society which has been inherited from generation to generation a spirit of peace by the ancestors of the nation. Penal mediation is known in the criminal justice system in indonesia based on thoughts that are associated with ideas of criminal law reform (penal reform), and are associated with the problem of pragmatism. The background of the ideas of "penal reform" include the idea of victim protection, the idea of harmonization, the idea of restorative justice, the idea of overcoming rigidity/formality in the existing system, the idea of avoiding the negative effects of the criminal justice system and the current sentencing system, especially in seeking alternatives to imprisonment (alternative to imprisonment/alter-native to custody).

The background of pragmatism, among others, is to reduce stagnation or accumulation of cases, penal mediation in question is a restorative justice process in criminal law which is carried out by means of mediation between the perpetrator and the victim with the aim of repairing or repairing, where the perpetrator repairs what has been damaged, a perpetrator-victim conference that brings together families from both parties and community leaders. The government in its goal of realizing good governance has an obligation to provide services to the community (public service).

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<sup>5</sup> Barda Nawawi Arief, 2009, Reform of the Judicial System (Law Enforcement System in Indonesia), Diponegoro University, Semarang.

The penal mediation approach has not been fully implemented and used in Indonesia. However, in practice which the author found there were areas that implemented a penal mediation approach. In the past year, several cases have been resolved using the penal mediation approach, for example in the case of abuse that occurred in December 2020, in that case the parties agreed not to proceed to court, but the parties agreed to make a joint agreement letter, in the process towards a joint agreement or settlement through mediation, a mediator was appointed from the Police. To court, but the parties agreed to make a joint agreement letter, in the process towards a joint agreement or settlement through mediation, a mediator was appointed from the Police.

Based on the description background behind the above, the author is interested in writing a thesis entitled "Implementation of Settlement of Minor Criminal Offenses Through Penal Mediation".

This study aims to examine and analyze the obstacles and solutions faced in the implementation of resolving minor criminal acts through penal mediation.

## **2. Research Methods**

This study uses a sociological juridical approach. The type of research used in completing this thesis is a qualitative descriptive research method. The data used are primary and secondary data which will be analyzed qualitatively. Problem study analyzed using the theory of legal objectives, the theory of legal certainty.

## **3. Results and Discussion**

### **3.1. Implementation of Minor Crime Resolution Through Penal Mediation**

Problems or conflicts have quite a wide dimension and scope, this can occur in both public and private areas. so that it is closely related to the public interest. The public interest is certainly the interest of the state which is obliged to maintain stability in Indonesian society.<sup>6</sup>

In an effort to seek justice, the law currently in force in Indonesia is considered fair if the perpetrator has been tried in court and sentenced to a punishment appropriate to his actions. While the losses experienced by the victim are indirectly considered fulfilled by the punishment served by the perpetrator. If we pay attention to the procedures and substance of the punishment, it only focuses on the deterrent and prevention factors, on the other hand the victim needs recovery from the perpetrator's actions.<sup>7</sup>

If examined more deeply, the Criminal Procedure Code regulates more about the rights of suspects and defendants, while for the rights of victims, the regulations are not as explicit and not as many as the rights of suspects and defendants. It is possible that the rights of victims and the community have been represented by

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<sup>6</sup>Syahrizal Abbas, *Mediation in Sharia Law, Customary Law, and National Law* (Jakarta: Prenada Media Group, 2011), p. 21.

<sup>7</sup>G. Widiartana, *Victimology: The Perspective of Victims in Combating Crime* (Yogyakarta) : UAJY, 2013), p. 102.

the state. Unlike in the past, victims or their families can directly ask for compensation or revenge from the perpetrator.<sup>8</sup>

Based on data from the Central Statistics Agency (BPS), the crime rate in Indonesia has always increased from year to year. Throughout 2000-2015 there was an increase of up to 200 percent. In 2000 there were 172,532 cases throughout Indonesia, while in 2015 there were 352,936 cases. Every year, crime increases by 10 percent.<sup>9</sup>

Based on the data above, criminal acts have increased significantly every year, both in serious crimes, ordinary crimes and minor crimes such as Articles 364, 373, 379, 384, 407, 482 of the Criminal Code. In addition, the state facility factor in the form of Detention Centers and Correctional Institutions is no longer sufficient to accommodate convicts. Therefore, other solutions are needed for those who have cases that still have the possibility of reconciliation even with several conditions and agreements between the two parties.

As a third party, the mediator designs, leads the discussion and acts as a referee who mediates and facilitates the problem towards a resolution of the case. The mediator's task is also an extension of the negotiation process that usually occurs in society, but mediation has the difference that it does not have the authority to determine or make decisions on the case.<sup>10</sup>

The definition of mediation can be found more concretely in the Supreme Court Regulation (PERMA) no. 1 of 2016 concerning mediation procedures in court. Substantially, mediation is a way of resolving cases or disputes carried out through a negotiation process to obtain an agreement from the parties assisted by a mediator.<sup>11</sup>

Seven years ago, in 2009, the Indonesian judicial world was shocked by the case of Grandma Minah from Dusun Sidoharjo, Banyumas. The case was tried at the Purwokerto District Court with case number No.247/PID.B/2009/PN.PWT. Grandma Minah's case was due to taking 3 cocoa beans from a plantation owned by PT. Rumpun Sari Antan 4. From this incident, the grandmother had to receive a sentence from the panel of judges in the form of 1 month and 15 days.<sup>12</sup>

However, the verdict also stated that Minah does not need to serve the sentence, unless during the 3-month probation period, Minah's grandmother is again involved in a criminal case. If this happens, then the person concerned must serve the 1 month and 15 days sentence. In addition, Minah's grandmother is also only charged Rp 1,000 in court costs.

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<sup>8</sup>Bambang Waluyo, *Victimology of Victim and Witness Protection* (Jakarta: Sinar Grafika Fourth edition, 2016), p. 2.

<sup>9</sup>Accessed from <https://www.bps.go.id/linkTabelStatis/view/id/1570> on December 7, 2023

<sup>10</sup>Gatot Soemartono, *Arbitration and Mediation in Indonesia* (Jakarta: PT. Gramedia Pustaka Utama, 2006), p.121-122

<sup>11</sup>Taken from Article 1 point 1 of PERMA no.1 of 2016 concerning the Mediation Process in Court.

<sup>12</sup>Accessed from [Republika.co.id](http://Republika.co.id) on December 7, 2023

According to the law, all criminal acts must be processed. However, to obtain legal justice, it does not always mean punishment and settlement in court. Lately, people have begun to look at one form of non-litigation dispute resolution, namely Mediation, Arbitration, Conciliation and Negotiation. These four things are called ADR (Alternative Dispute Resolution).<sup>13</sup>

In the current Indonesian Criminal Law, in essence, criminal cases cannot be carried out outside the court. Although in reality there is a settlement outside the court with the discretion of law enforcement officers, especially the police. In addition, there are also several other ways to resolve criminal cases outside the court, namely in the form of peace mechanisms, customary institutions and so on.<sup>14</sup> Dispute resolution through ADR has several advantages, namely fast and cheap resolution of cases, focusing on the interests of each party, and giving the parties the ability to control the process and its results.<sup>15</sup>

To maximize the resolution of minor crimes through ADR, the Chief of Police Regulation Number 7 of 2008 concerning Basic Guidelines for Strategy and Implementation of Community Policing in the Implementation of Police Duties and the Chief of Police Letter No. Pol: B/3022/XII/2009/SDEOPS concerning case handling through Alternative Dispute Solution (ADR) was issued. With the issuance of this Chief of Police Regulation, criminal cases with minor losses can be resolved without legal channels, in addition to respecting social/customary law and fulfilling the principle of justice.

Minor criminal cases have loss limits regulated by PERMA No. 2 of 2012 concerning Adjustment of Minor Criminal Act Limits and Fine Amounts in the Criminal Code. Cases that fall into the minor category are minor theft (364), minor embezzlement (373), minor fraud (379), minor receiving (482), minor letter crimes (384), minor vandalism (407) which will be discussed in the next CHAPTER.<sup>16</sup>

Slowly, the changes and dynamics of society are very complex on one side, while on the other side, regarding the regulation of making laws as a partial legislative policy, it turns out that the public nature of criminal law has shifted in nature because it has relatively also entered the private realm with the recognition and practice of penal mediation as a form of resolving cases outside the courts.<sup>17</sup>

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<sup>13</sup>Dwi Rezki Sri Astarini, *Court Mediation: One Form of Dispute Resolution Based on the Principles of Fast, Simple, Low-Cost Justice* (Bandung: PT. Alumni, 2013), p. 5

<sup>14</sup>Lilik Mulyadi, *Penal Mediation in the Indonesian Criminal Justice System* (Bandung: PT. Alumni, 2015), p. 3.

<sup>15</sup>Gatot Soemartono, *Arbitration and Mediation in Indonesia*, p. 139

<sup>16</sup>The adjustment of the limits of minor crimes here is regulated in PERMA No. 2 of 2012 which explains that the nominal contained in the articles in this PERMA is multiplied by 10 thousand rupiah to 2.5 million rupiah. With this PERMA, the panel of judges handling the case must pay attention to the value of the goods that are the object of the case, and if it is less than 2.5 million, it is appointed by a single judge with a fast examination procedure.

<sup>17</sup>Lilik Mulyadi, *Penal Mediation in the Indonesian Criminal Justice System*, p. 2.

The consensus model that is considered to cause new conflicts must be replaced with the asensus model, because dialogue between the disputants to resolve their problems is a positive step. With this concept, the term ADR emerged which in certain cases according to Muladi better meets the demands of justice and is efficient. ADR is part of the Restorative Justice concept that places the judiciary in the position of mediator.<sup>18</sup>

If there is no law regulating penal mediation, then we can look at the regulations below the law. First, reviewed from the level of regulations below the law which are partial and limited in nature, penal mediation is regulated in the letter of the Chief of Police No. Pol: B/3022/XII/2009/SDEOPS dated December 14, 2009 concerning Handling of Cases through Alternative Dispute Resolution (ADR) and PerKap No. 7 of 2008 concerning Basic Guidelines for Strategy and Implementation of Community Policing in the Implementation of Police Duties. Both of these regulations basically regulate the handling of criminal cases that have small material losses, are agreed upon by the parties, are carried out with the principle of deliberation and consensus, and fulfill the principle of justice and if this is achieved through ADR then the perpetrator is no longer touched by other legal actions.<sup>19</sup>

Second, the practice of penal mediation, although normative, is not regulated by law (Positive Law), but the community practices it. For example, the customary trial of Prof. Dr. Tamrin Amal Tamagola conducted by the National Dayak Customary Council (MADN) which was named the Dayak Maniring Tuntang Manates Hinting Bunu Trial between the Dayak community and Tamrin in Betang Nagnderang, Palangkaraya, Central Kalimantan on Saturday, January 22, 2001.<sup>20</sup>

Third, reviewed from the jurisprudence of the Supreme Court of the Republic of Indonesia, penal mediation through the existence of customary justice still recognizes it. One example is in the decision of the Supreme Court of the Republic of Indonesia Number 1644 K/Pid/1988 dated May 15, 1991 that in the ratio decidendi of the decision it is stated that if someone violates customary law and then the head and customary leaders give a customary reaction (sanction), it means that the person concerned cannot be brought forward again (a second time) as a defendant in the trial of the State Court with the same charges. This shows that the existence of customary justice is recognized, and if there is penal mediation between the perpetrator and the victim, then the imposition of customary sanctions is carried out as a restoration of balance between the perpetrator and his customary community.<sup>21</sup>

Fourth, the practice of penal mediation in the first instance court as stated in the

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<sup>18</sup>Muladi, *Human Rights, Politics and the Criminal Justice System* (Semarang: Diponegoro University Publishing Agency, 1997), p.67.

<sup>19</sup>Lilik Mulyadi, *Penal Mediation in the Indonesian Criminal Justice System*, p.12.

<sup>20</sup>Lilik Mulyadi, *Penal Mediation in the Indonesian Criminal Justice System*, p.13.

<sup>21</sup>Lilik Mulyadi, *Penal Mediation in the Indonesian Criminal Justice System*, p.14.



Decision of the North-East Jakarta District Court Number: 46/Pid/78/UT/wan dated June 17, 1978 that in the case there was a "peaceful" settlement in the case of Mrs. Ellya Dado, so that the actions between the parties were no longer a crime or violation that could be punished, and therefore released the accused from all legal charges.<sup>22</sup>

In the Letter of the Chief of Police number: B/3022/XII/2009/SDEOPS which contains matters concerning the resolution of cases through the ADR (alternative dispute resolution) concept, namely as follows:

1. Attempt to handle criminal cases that have small material losses, the resolution of which can be directed through the ADR concept.
2. Settlement of criminal cases using ADR must be agreed upon by the parties to the case, but if there is no agreement, it will be resolved in accordance with applicable legal procedures in a professional and proportional manner.
3. Settlement of criminal cases using ADR must be based on the principle of consensus and must be known by the local community by including the local RT RW.
4. Settlement of criminal cases using ADR must respect social/customary legal norms and fulfill the principles of justice.
5. Empower members of the Police/Community Policing ("Polmas") and play a role in the Police and Community Partnership Forum ("FKPM") in their respective areas to be able to identify criminal cases that have small material losses and can be resolved through the ADR concept.
6. Cases that have been resolved through the ADR concept should no longer be touched by other legal actions that are counterproductive to the objectives of Community Policing.

In the application of mediation in criminal acts, in the author's opinion, mediation can be implemented in minor crimes. because minor crimes have small losses, so it is very likely that a victim can forgive the perpetrator's mistake with the compensation experienced by the victim.

In order to create peace in the community, it is necessary to have general rules that regulate everything that is coercive. Remmelink argues that criminal law does not exist for its own purposes, but for the sake of creating orderly law enforcement. In addition, criminal law also aims to protect society and maintain social order. In realizing this, the existence of criminal law must be coercive.<sup>23</sup>

In the theory of punishment contained in the Continental European legal system, there are 3 theories of punishment that explain the purpose of punishment itself, namely absolute theory, relative theory and combined theory. First, the absolute

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<sup>22</sup>Lilik Mulyadi, Penal Mediation in the Indonesian Criminal Justice System, p.14.

<sup>23</sup>Andi Hamzah, Principles of Criminal Law, (Jakarta: PT. Yasrif Watampoe, 2005), p. 30



theory aims to satisfy the vengeful party, be it the community or the injured party or victim.<sup>24</sup> Then the relative theory aims to prevent the wider community (general prevention) from the possibility of committing crimes, whether crimes that have been committed by convicts or other criminal acts.<sup>25</sup> Meanwhile, the combined theory aims to combine absolute theory and relative theory, which can be interpreted as the imposition of criminal sanctions as retribution for the actions that the perpetrator has committed, and is also intended so that the perpetrator can be corrected so that he can return to society.<sup>26</sup>

To return the perpetrator to society and improve the condition of the victim, a justice approach is needed, namely restorative justice. Restorative Justice is not a new concept in the world of law in Indonesia. Its existence is even the same as criminal law itself. This is in line with the objectives of criminal law, so that the approach through restorative justice is placed as the main mechanism in handling criminal cases. According to Marc Levin, the approach that was previously stated as an old and outdated approach has now become a progressive approach.<sup>27</sup>

In the process of resolving criminal cases through a restorative approach, a sanction is attached as a form of the perpetrator's sense of responsibility to the victim. This form of sanction is restorative and keeps away from imprisonment. The form of sanction must come from an agreement as a condition for the perpetrator to be accepted in a conflict resolution institution and a condition for the perpetrator's return to society.<sup>28</sup>

The restorative approach also has positive impacts that will be obtained if applied to the criminal justice process:

1. Providing alternatives for handling criminal acts by providing space for achieving an out of court settlement within the scope of criminal law.
2. Can eliminate the prosecution and trial process which takes a long time, the backlog of cases and saves on court costs.
3. Can avoid the imposition of prison sentences which are no longer relevant today, because imprisonment tends to provide more learning space for perpetrators to be even more evil.
4. Can avoid over capacity as has happened recently
5. Can save the state financial budget so that it can be used for more important

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<sup>24</sup>Ali Mahrus, *Basics of Criminal Law* (Jakarta: Sinar Grafika, 2008), p. 187.

<sup>25</sup>Ali Mahrus, *Basics of Criminal Law*, p. 191.

<sup>26</sup>Lilik Mulyadi, *Penal Mediation in the Indonesian Criminal Justice System*, p. 64.

<sup>27</sup>Lilik Mulyadi, *Penal Mediation in the Indonesian Criminal Justice System*, p. 64.

<sup>28</sup>Rufinus Hotmaulana Hutaauruk, *Combating Corporate Crime through a Restorative Approach: A Legal Breakthrough* (Jakarta: Sinar Grafika, 2013), pp. 255-256

things.<sup>29</sup>

Talking about the ideal concept of mediation for criminal cases also means discussing what kind of mediation and at what level it can be done. At the level of investigation and inquiry by the police there are regulations in the form of the Chief of Police Letter Number: B/3022/IX/2009/SDEOPS and PerKap Number 7 of 2008 concerning Basic Guidelines for Strategy and Implementation of Community Policing in the Implementation of Police Duties Article 14 letter f which explains the application of Alternative Dispute Resolution (ADR) on social problems by means of peace. This can be said to be a diversion from the police.<sup>30</sup>

According to Apong Herlina, in addition to getting justice for all, the purpose of diversion is to avoid detention; to avoid being labeled as a criminal; to improve life skills for the perpetrator when he is outside; the perpetrator can be held responsible for his actions directly to the victim; and prevent the repetition of the criminal acts that have been committed by the perpetrator.<sup>31</sup>

In the previous discussion in Chapter II, models in penal mediation have been presented. The first is the Information Mediation model carried out by criminal justice personnel, be it police, prosecutors and judges in their normal duties. The judicial personnel invite the parties to resolve the case informally with the rule that if an agreement is reached, the case will not be continued to the prosecution process.

Second, the Traditional Village or Tribal Moots model describes a mediation model to resolve disputes between tribes or community groups. By bringing together all residents, it is hoped that it can solve criminal conflicts between residents themselves.

Third, Reparation Negotiation Programs are a form of mediation that focuses on negotiations between the parties regarding the amount of compensation that must be paid by the perpetrator to the victim. Usually, this mediation takes place in court with the aim of providing a form of responsibility from the perpetrator so that the judge can consider reducing the perpetrator's sentence.

Fourth, Community Panels of Courts is a mediation model that diverts or changes criminal case demands in court to more flexible and informal community procedures.

Fifth, Family and Community Group Conference is a mediation model that involves the community, the victim's family and their supporters, and law enforcement officers such as the police in the SPP (Criminal Justice System). This model emphasizes an agreement between the perpetrator and the victim's

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<sup>29</sup>Rufinus Hotmaulana Hutaauruk, *Combating Corporate Crime through a Restorative Approach: A Legal Breakthrough*, p. 257.

<sup>30</sup>Diversion is a process whereby offenders are moved from conventional court proceedings to alternative proceedings.

<sup>31</sup>Apong Herlina, *Restorative Justice*, Indonesian Journal of Criminology, Vol.3 No.III September 2004, p.26-27.

family.

Sixth, Victim Offender Mediation, a mediation model that brings together the victim and the perpetrator. This mediation model is the most well-known by many people. In this model, the perpetrator and the victim are brought together with the help of a mediator, the mediator can come from a formal official, independent or a combination. In this model, mediation can be carried out at every stage of the criminal process and can be carried out for all forms of criminal acts.<sup>32</sup>

Penal mediation when carried out at the prosecution stage is a combination of penal mediation in the form of Victim Offender Mediation and Reparation Negotiation Programmer. The implementation of penal mediation at the prosecution stage can be described as follows:

1. The public prosecutor, by studying the criminal acts committed by the perpetrator based on certain criteria, can offer mediation to the victim and the perpetrator of the crime.
2. Mediation is carried out based on the voluntary agreement of the perpetrator and victim of the crime. If both parties agree to mediation, then the approval for mediation is given to the Public Prosecutor.
3. The public prosecutor can act as a mediator or can appoint a certified external mediator.
4. The mediator brings together the perpetrator and victim of the crime.
5. The mediation process is carried out confidentially, meaning that all events that occur and statements that emerge during mediation cannot be published by all parties involved.

Furthermore, if the mediation does not reach an agreement, the criminal case will be continued with the litigation process, namely an examination in court and prosecution of the crime. When the process goes to trial, the mediator cannot testify about what happened during the mediation or the failure to reach an agreement between the parties.

At the level of the case that has entered the court, the Judge can also act as a mediator outside the court who has met the requirements and certification. At the time of mediation by the Judge, it is the same as mediation at the investigation and prosecution stage, namely bringing together the defendant and the victim. If no agreement is reached, the trial process is carried out as it should be, while if an agreement is reached and compensation is paid by the perpetrator, the agreement is stated in a deed of agreement which has permanent legal force as a court decision and is final. This means that the perpetrator can no longer be sued and tried again in the criminal justice

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<sup>32</sup>Lilik Mulyadi, Penal Mediation in the Indonesian Criminal Justice System, pp. 36-38

process.<sup>33</sup>

In realizing restorative justice through mediation, regulations are needed that regulate mediation in minor criminal acts. In addition, a paradigm shift is also needed from law enforcement officers in this case the Police, Prosecutors and also Judges in resolving minor criminal cases. The paradigm for all criminal acts that cannot be resolved other than in court is changed to criminal acts that result in minor losses can be resolved in a family way in this case the mediation process.

Furthermore, law enforcement officers provide education to the public about the importance of mediation and the values of peace between fellow human beings. The mediation that has been carried out by the perpetrator and victim does not eliminate the criminal element in it, if the criminal case has entered the trial, at least mediation can be used as one of the mitigating factors for the demands or verdict. Therefore, restorative justice and retributive justice should not be opposed to each other and must complement each other.<sup>34</sup>

The author in this case argues, for certain criminal acts such as cases of children, domestic violence in the household and minor criminal acts should be resolved through deliberation and consensus via mediation. Because it reduces the negative impact so that children can continue their future well without being labeled a criminal. Then, in a household, the relationship between husband and wife that is bound by a sacred marriage is a factor for not immediately criminalizing each other. As well as minor criminal acts that have small losses so that each other is easy to forgive and can reduce the workload of law enforcement officers so that they can focus on more complex problems.

### **3.2. Obstacles and Solutions to the Implementation of the Settlement of Minor Criminal Offenses Through Penal Mediation**

In general, the character of criminal law itself has been agreed upon and established as part of public law, and this form and nature determine how flexibly criminal law is made and applied, but in the end it still creates a rigid system pattern, where law enforcement only relies on the state as the main one for determining and providing a sense of justice.<sup>35</sup>Plato created the basic concept of justice, emphasizing that law as a moral and ethical system prioritizes the public interest.<sup>36</sup>In the same way, criminal law considers criminal acts as acts that damage or harm the interests of others. Therefore, the victim, as the injured

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<sup>33</sup>Herry Kandati, "Implementation of Mediation by the Indonesian National Police in Handling Criminal Acts as a Manifestation of Restoration of Justitia", Vol.1/No.5/October-December/2013, p.111.

<sup>34</sup>Yoachim Agus Tridiatno, Restorative Justice (Yogyakarta, Cahaya Atma Pustaka 2015), pp. 79-80

<sup>35</sup>Luhut MP Pangaribuan, Criminal Procedure Law Official Letters in Court by Advocates; Pretrial, Exception, Pledoi, Duplik, Cassation Appeal Memorandum, Judicial Review, Revised Edition, Djambatan, Jakarta, 2006, p.1

<sup>36</sup>Garuda Wiko, Development of a Just Legal System in Understanding the Law from Construction to Implementation, Editors Satya Arinanto and Ninuk Triyanti, Rajawali Pers, Jakarta, 2009, p. 10

party, has the right to give revenge to the person who harmed him. Retribution for violations is usually a joint obligation of the family in some cases, not just the victim's right. The important role of individuals in resolving criminal cases is not mentioned by the Indonesian criminal justice system, if we pay attention to the criminal justice system regulated by the Criminal Procedure Code. Justice seekers in criminal cases depend entirely on the ability to integrate the existing systems under the command of the police, prosecutors, courts, and correctional institutions. Over time, where every day there is an increase in the volume of cases with all forms and variations that enter the court, for example ordinary criminal cases or known as minor crimes or *Tipiring*, so that the consequences become a burden for the court in examining and deciding judicial cases.<sup>37</sup>Criminal law experts often use the term *strafbaarfeit* to describe a criminal act, criminal act, criminal event, or offense. This is because the lawmakers do not provide further explanation about *strafbaarfeit*. Consisting of three words, the Dutch term "*strafbaarfeit*" means punishment (criminal), "*baar*" means can (allowed), and "*feit*" means action, event, violation, and deed.

Penal mediation is an alternative to resolving criminal cases in addition to the courts, faster, cheaper and provides access to the disputing parties to obtain justice or a satisfactory resolution. Empowering community members to be able to identify criminal cases that have small losses and can be resolved through the ADR concept.

Settlement of criminal cases using ADR must respect social/customary legal norms and fulfill the principles of justice.<sup>38</sup>In the Letter of the Chief of Police No. pol: B/3022/XII/2009/SDEOPS, it is basically stated that the law enforcement process for criminal cases with very small losses needs to be attempted through ADR. The letter also explains that law enforcement efforts that can be implemented against the police institution are in cases of minor crimes through ADR where there is a penal mediation issued by the Chief of Police. The circular is intended to adjust to the development of the law enforcement system and methods in Indonesia which tend to follow the development of social justice, especially the development of the principle of restorative justice which shows justice as a form of balance in human life.

After the successful implementation of ADR, the police will take action to resolve the case by asking the reporter and the reported to make a peace statement and withdraw the report they made. The police then broadcast news about additional examination of the people involved in the case. In the minutes, all parties withdraw all their statements with the withdrawal of all statements. Furthermore, the police stated that the handling of the case had been

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<sup>37</sup>Barda Nawawi Arief, "Penal Mediation in Settling Criminal Banking Disputes Outside the Court", *Jurnal Law Reform*, 2006 p. 2

<sup>38</sup>Syamsul Bahri & Maisarah, "Resolving Minor Criminal Acts Through Communication Mediation of Customary Institutions", *Peurawi Journal: Media of Islamic Communication Studies*, Vol.3 No.2, 2020

stopped.<sup>11</sup> Letter of the Chief of Police No. Pol: B/3022/XII/2009/SDEOPS dated December 14, 2009 concerning Handling of Cases Through Alternative Dispute Resolution which contains the following:

- a. In an effort to handle criminal cases that involve small material losses, the resolution can be directed through the ADR concept.
- b. Settlement of criminal cases using ADR must be agreed upon by the parties to the case, but if there is no agreement, it will be resolved in accordance with applicable legal procedures in a professional manner.
- c. The settlement of criminal cases using ADR must be based on the principle of consensus and must be known by the surrounding community by including the local RT RW.
- d. Settlement of criminal cases using ADR must respect social/customary legal norms and fulfill the principles of justice.
- e. Empowering Polmas members in their respective areas to be able to identify criminal cases that have small material losses and can be resolved through the ADR concept.
- f. For cases that have been resolved through the ADR concept, they will no longer be touched by other legal actions.

Regarding the handling of cases through ADR, this letter is a reference for the police to resolve minor criminal cases that often occur in society. Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Determination Based on Restorative Justice was issued in response to this situation. This regulation was made to restore the situation to its original state and restore the balance between the protection and interests of perpetrators and victims that cannot be achieved through the regular criminal justice system.<sup>39</sup>

This is because the victim is represented by the state, so it is possible that what the state does through its representatives is not in accordance with the victim's wishes, while the perpetrator only receives appropriate punishment after committing a crime.<sup>40</sup> The opinion regarding penal mediation itself was also issued by Mrs. Flowerry Yulidas as one of the Judges at the West Jakarta District Court, according to her, actually so far the criminal justice system in Indonesia has started to implement penal mediation or has started to enter the realm of case resolution, only it is still limited and along with the times and the development of technology continues to experience changes, especially for certain cases and of course especially for minor criminal cases.

Such as traffic violation cases, and cases where the perpetrators are children.

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<sup>39</sup>AA Ngurah Bagus Krishna Wirajaya, "Minor Criminal Offenses Through Restorative Justice as a Form of Criminal Law Reform Efforts", *Journal of Legal Construction*, Vo.3 No.3, September 2022

<sup>40</sup>Ahmad Faizal Azhar, "The Concept of Restorative Justice in the Criminal Justice System in Indonesia", *The Court; Journal of Islamic Law Studies*, Vol.4 No.2 Year 2019

Seeing the similarities between the concepts of penal mediation and diversion, since the enactment of Law Number 11 of 2012 concerning Juvenile Criminal Justice, diversion has been expressly regulated in it.<sup>15</sup> In the criminal justice system starting from investigation, prosecution, court hearings, diversion must be attempted. Mrs. Flowerry Yulidas' opinion, penal mediation is not new to the criminal justice system in Indonesia. So far, the criminal justice system in Indonesia has actually implemented penal mediation, only its application is still limited, especially limited to certain cases. Of course, not all crimes can be resolved through the penal mediation method, only crimes that have a category of minor criminal threats. From the perpetrator of the crime itself, whether the perpetrator is a repeat offender or not. If viewed from the case, the risk or obstacle that can occur if applied to perpetrators who are repeat offenders is that it can be better or can take advantage of the opportunities given in the end, penal mediation cannot be fully applied in criminal cases.

The criminal justice system serves to enforce criminal law, and the process of resolving criminal acts is related to this system. The enforcement process begins with investigation, inquiry, prosecution, trial, and finally the judge's decision and execution. The Criminal Procedure Code allows exceptions for cases of minor crimes that require a speedy trial. It is reasonable to heed the characteristics of minor crimes, which means they are light and simple. Handling minor crimes in Indonesia in accordance with the regulations using a fast event.

In penal mediation, the parties involved in the dispute, namely the perpetrator of the crime, the victim, and the mediator, discuss to reach a mutual agreement on how to resolve the crime that has been committed. This agreement can be in the form of compensation for losses, an apology, or resolving the crime in another mutually agreed manner. Minor crimes are unlawful acts that are considered less serious than more serious violations. Minor crimes are generally subject to lighter penalties, such as fines or short prison sentences as an effort to punish the perpetrator and encourage recovery in society. In some jurisdictions, minor crimes can also be referred to as traffic violations or administrative violations. However, the application of penal mediation to resolve minor crimes must be carried out carefully and with due regard to the principles of justice. There are several cases where penal mediation can give the impression that the perpetrator of the crime is allowed to go free without appropriate punishment, which can damage the image of justice and the effectiveness of the law. Therefore, the application of penal mediation must be carried out with careful attention and still pay attention to the interests of all parties involved in the dispute. In addition, the views of the community and also law enforcement officers on the legal resolution of criminal violations which still hold the old paradigm that criminal cases cannot be resolved outside the court process can



be eliminated and renewed towards laws that create social harmony.<sup>41</sup>

#### 4. Conclusion

Obstacles in implementing restorative justice in minor criminal cases are the low level of understanding of Polri members regarding restorative justice and discretionary authority; inadequate means of socialization; social conditions and public distrust of law enforcement institutions; the culture of taking the law into one's own hands and the provision of a deterrent effect by the public against perpetrators of minor crimes. The solution to these obstacles is for the government to provide socialization to the public and law enforcement officers regarding mediation of minor criminal penalties.

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