PENAL MEDIATION IN INDIGENOUS DISPUTE SETTINGS IN THE REGIONAL REGION OF MALIND ANIM MERAUKE DISTRICT

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ABSTRACT

In the settlement process that occurs in Indonesia, it can be reached through litigation channels and also through non-litigation channels. However, seeing the many conflicts that have occurred lately has made the litigation path, namely dispute resolution through the court, quite time consuming because it is influenced by the accumulation of a lot of case files in the court, causing overload in settlement in court. This is the background so that resolutions arise out of court or through non-litigation channels. In terms of resolving customary disputes that occur in the Malind-Anim customary law area in Merauke Regency, customary law communities still hold very strong cultural values both civil dispute resolution and criminal dispute resolution. Peaceful settlement of crimes has been practiced in Merauke regency, this is often seen in criminal cases both minor cases and cases that are classified as severe and the process of resolution through customary law and carried out by adat leaders by presenting police and the community itself. This is what drives so that the authors want to know about how the reason mediation in settling indigenous disputes in the indigenous Malin anim region in Merauke Regency. This study uses an empirical juridical research method, which examines legislation relating to this research and looks at the reality that exists in society. Penal mediation is criminal settlement through deliberation with the help of a neutral mediator, attended by victims and perpetrators along with parents and representatives of the community, with the aim of recovery for victims, perpetrators and the community. In the case of reason mediation, the settlement of the case will be resolved by the customary head, the victim and the perpetrator. The problems that occur in the Malind Anim customary community in Merauke Regency vary greatly, some of which are resolved at the local indigenous community institutions on the customary houses which are completed at the adat level. To get the values of justice that are expected by the victims and the perpetrators, the adat groups play an important role in the process of resolving these crimes to seek a fair decision.

Keywords: Mediasi Penal, Sengketa Adat, Wilayah Adat Malind Anim


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1. INTRODUCTION

Indonesia is a country that deeply recognizes the rights of its indigenous peoples. In the 1945 Constitution of the Republic of Indonesia in Article 18B paragraph (2) regulates: "The State recognizes and respects customary law units along with their traditional rights insofar as they are alive and in accordance with the development of society and the principle of the Unitary Republic of Indonesia regulated in law (UUD, 1945).

In addition, customary law which is an unwritten law is recognized as being. Indonesia as a legal state plays an important role in the process of resolving a dispute that occurs. In the process of settlement that occurs in the country of Indonesia can be reached through litigation channels and also through non-litigation channels. However, seeing the many conflicts that have occurred lately has made the litigation path, namely dispute resolution through the court, quite time consuming because it is influenced by the accumulation of a lot of case files in the court, causing overload in settlement in court. This is the background so that resolutions arise out of court or through non-litigation channels.

This non-litigation path is often used in peaceful dispute resolution processes through deliberations between the parties in conducting deliberations to reach consensus. In the case of resolving disputes outside the court this is also recognized by customary law and customary law communities.

The existence of customary communities in Merauke Regency is part of Papua's special autonomy, as is the special authority granted to the Papua Province to regulate and manage the interests of local indigenous peoples according to their own initiatives based on the aspirations of the basic rights of the Papuan people (UU21, 2001). The special autonomy of the Papua Province is intended to realize justice, uphold the rule of law, respect human rights (human rights), accelerate economic development, improve the welfare and progress of the Papuan people, in the context of equality and balance with the progress of other provinces.

In terms of resolving customary disputes that occur in the Malind-Anim customary territory in Merauke Regency, indigenous peoples still hold very strong cultural values, both civil dispute resolution and criminal dispute resolution.

Criminal dispute resolution is now known as penal mediation. Penal mediation is one of the dispute resolution processes outside the court. For this reason, there is a need for a breakthrough in the criminal justice system to strive for reasoning mediation.

Peaceful settlement of crimes has been practiced in Merauke regency, this is often seen in criminal cases both minor cases and cases that are classified as severe and the process of resolution through customary law and carried out by adat leaders by presenting police and the community itself. This is what drives so that the authors want to know about how the reason mediation in settling customary disputes in the indigenous Malind anim region in Merauke Regency.

2. METHODS

This study uses an empirical juridical research method, which examines the laws and regulations relating to this research and looks at the reality in malind anim indigenous peoples. By collecting primary data and secondary data which will later be processed qualitatively (Betaubun et al., 2018a, 2018b; Fitriani et al., 2018; Kore et al., 2018; Lamalewa et al., 2018a, 2018b).
3. RESULTS AND DISCUSSION

3.1. Existence of Penal Mediation

Etymologically, the term mediation comes from Latin, mediare, which means being in the middle. This meaning shows the role displayed by the third party as a mediator in carrying out his duties to mediate and resolve disputes between the parties. ‘Being in the middle’ also means that the mediator must be in a neutral and impartial position in resolving disputes. The mediator must be able to protect the interests of the parties to the dispute fairly and equally, thereby fostering trust from the parties to the dispute (Abbas, undated).

The ideas and principles of Penal Mediation are:

1. Conflict Handling/Konfliktbearbeitung: The task of the mediator is to make the parties forget the legal framework and encourage them to be involved in the communication process. This is based on the idea that crime has caused interpersonal conflict. That conflict is addressed by the mediation process.

2. Process Orientation/Prozessorientierung: The reasoning mediation is more oriented to the quality of the process than to the results, which is to alert the criminal to his mistakes, solve the needs of the conflict, calm the victim from fear and so on.

3. Informal Proceeding/Informalität: Penal mediation is an informal process, not bureaucratic, avoiding strict legal procedures (Tränkle, 2001).

Active and Autonomous Participation/Parteiautonomie/Subjektivierung: The parties (perpetrators and victims) are not seen as objects of criminal law procedures, but rather as subjects who have personal responsibility and the ability to act. They are expected to act at their own volition. Mediation is a process of resolving disputes outside the court both in settling civil disputes and criminal disputes. In the case of settlement of criminal disputes known as term mediation. The existence of reasoning mediation according to a philosophical perspective is by applying the principle of win-win (win-win) and not losing-losing or win-lost (Abbas, undated).

The reasoning mediation is regulated in the National Police Chief Letter No: B / 3022 / XII / 2009 / SDEOPS dated 14 December 2009 concerning Case Handling through Alternative Dispute Resolutions (ADR) as well as Regulation of the Head of the Indonesian National Police Number 7 of 2008 concerning Basic Strategy Guidelines and Implementation of Community Policing in the Implementation of National Police Tasks. In the Kapolri Letter No. Pol: B / 3022 / XII / 2009 / SDEOPS dated December 14, 2009 a number of steps for handling cases through ADR are determined, namely:

1. Trying to handle criminal cases that have small material losses, the solution can be directed through the ADR concept;
2. Settlement of criminal cases using ADR must be agreed upon by litigant parties, but if not known to the surrounding community by including the local RT / RW;
3. Settlement of criminal cases using ADR must respect social / customary norms and fulfill the principle of justice;
4. Settlement of criminal cases using ADR must respect social / customary norms and fulfill the principle of justice;
5. Empower Polmas members and play FKPM in their respective regions to be able to identify criminal cases that have small material losses and are possible to be resolved through the ADR concept (Abbas, undated).

Although reasoning mediation is a new thing in the process of resolving disputes or conflicts in criminal law issues, the position of Penal Mediation has long been practiced in an effort to fulfill the expertise in the community especially indigenous peoples.
3.2. Criminal Settlement Through Penal Mediation in the Malind Anim community in Merauke Regency

With so many developments and human needs, this has triggered more conflicts that have occurred at both the national and regional levels. In the case of resolving disputes or conflicts that occur in the indigenous Malind Anim community of Merauke Regency, many practices for resolving disputes are used both legally as well as in adat law. One of the many resolutions of disputes or conflicts is carried out, namely the settlement of mediation by reason.

As one of the regions which is given special privileges as an autonomous region, there is also a specificity in the dispute resolution process. One of the specificities of Papua's special autonomy is the implementation of customary courts listed in Law No. 21 of 2001 concerning Special Autonomy for Papua Province, namely Article 50 paragraph (2) and Article 51 paragraph (1) to (8).

In the case of the Papua Special Regulation No. 20 of 2008 concerning Customary Justice in Papua in Article 10 it regulates:

1. The mechanism of decision making is carried out according to the customary law of the customary law concerned.
2. Provisions as stipulated in paragraph (1) can be regulated through Regency / City Regional Regulations.

In the Special Regional Regulation No. 20 of 2008 concerning Customary Justice in Papua which regulates the authority in implementing customary justice, namely Article 51 paragraph (1) regulates:

1. Customary justice is a peace court in the community of customary law, which has the authority to examine and adjudicate customary civil disputes and criminal cases among the residents of the customary law community concerned.
2. Customary justice is prepared according to the provisions of the customary law of the customary law community concerned.
3. Customary courts examine and adjudicate customary civil disputes and criminal cases as referred to in paragraph (1) based on the relevant customary law.
4. In the case of one of the parties to the dispute or file or objecting to the decision that has been taken by the customary court which checks the court and adjudicates the dispute or case in question.
5. Customary courts are not authorized to impose sentences of imprisonment or imprisonment.
6. Decisions of the customary court regarding criminal offenses whose case is not requested for re-examination as referred to in paragraph (4) shall be the final ruling with permanent legal force.
7. To release a criminal offender from criminal prosecution according to the provisions of the applicable criminal law, an agreement statement is required to be carried out from the Chairperson of the District Court whose territory is obtained through the Head of the District Attorney concerned with the place of criminal incident referred to in paragraph (3).
8. In the event that the request for a statement as referred to in paragraph (7) is rejected by the District Court, then the decision of the adat court as referred to in paragraph (6) shall be subject to consideration by the District Court in deciding the person concerned.

So that in terms of resolving customary disputes in terms of criminal acts, the indigenous people are given the opportunity to settle the punishment in accordance with the customary law.
in force in this custom as stated in Article 51 paragraph (1), namely the customary court checks and adjudicates custom civil disputes and criminal cases as referred to in paragraph (1) based on the customary law of the community concerned.

In terms of resolving customary disputes that occur in the Malind Anim community in Merauke Regency, there are several criminal cases which are settled by reason mediation so that these cases are only settled by the adat leader in the customary law that applies in the indigenous community.

The existence of reason mediation can be studied from a philosophical, sociological, and juridical perspective. In a philosophical perspective, reason mediation applies the principle of "win-win" (win-win) and not end in a "losing-losing" situation (lo-st-lo st) or "win-lose" (w in-los t) as desired by the judiciary with the achievement of formal justice through litigation law processes. Through the reasoning mediation process, the highest peak of justice is obtained because of the agreement between the parties involved in the criminal case, namely between the perpetrators and the victims. Victims and perpetrators are expected to be able to find and reach the best solutions and alternatives to resolve the case. So with this achievement, the perpetrators and victims can propose compensation offered, agreed upon and negotiated between them together so that the solutions achieved are "win-win". In addition, through this mediation, this will have positive implications when philosophically the achievement of justice is carried out quickly, simply, and at a low cost because the parties involved are relatively less compared to the judicial process with the component of the Criminal Justice System (SPP) (https).

In the case of reason mediation, the settlement of the case will be resolved by the customary head, the victim and the perpetrator. The problems that occur in the Malind Anim customary community in Merauke Regency vary greatly, some of which are resolved at the local indigenous peoples' institutions in the customary houses which are completed at the adat level. To get the values of justice that are expected by the victims and the perpetrators, the adat groups play an important role in the process of resolving these crimes to seek a fair decision.

From the sociological perspective, this aspect is oriented towards Indonesian society when the cultural roots are oriented towards family cultural values, prioritizing the principle of deliberation and consensus to resolve a dispute within a social system. Strictly speaking, these aspects and dimensions are resolved through the dimensions of indigenous wisdom. Through the history of law, it can be seen that the first law came into force and is a reflection of the legal awareness of the Indonesian people is the local wisdom of customary law

The sociological perspective that plays a role in the Malin anim community in the process of solving mediation is because society still adheres to traditional values that are able to resolve issues in consensus so that the balance of family life between indigenous peoples is not disturbed and remains in harmony.

Then studied from a juridical perspective, reason mediation in the dimension of state law (ius constitutum) in fact it has not been widely known and still leaves controversy, among parties who agree and disagree to apply. The essential problem is the choice of patterns of settlement of criminal disputes, related to the domain of state superiority and the superiority of the local wisdom community.

The implementation of dispute resolution through reasoning mediation on malind anim communities is quite diverse, this is because there are some that are temporarily resolved by the police but on the agreement of the parties, namely the perpetrators and the victims, the case is resolved in a customary manner. This is because these cases resulted in imbalances occurring within the scope of indigenous peoples so that they were resolved through reasoning mediation by conducting customary meetings at traditional houses and involving adat leaders and witnesses from both the police, religious leaders and village heads.
In Indonesian Positive Law criminal cases cannot be resolved outside the court process, but in certain cases it is possible to implement them. In practice, the enforcement of criminal law in Indonesia, although there is no formal legal basis, criminal cases are often resolved outside the court process through the discretion of law enforcement officers, peace mechanisms, customary institutions and so on. The consequences of the increasingly applied existence of reason mediation as an alternative solution to cases in the field of criminal law through restitution in criminal proceedings indicate that the difference between criminal and civil law is not so great and that the difference does not function. 5 According to Barda Nawawi Arief criminal case settlement is because the idea of penal mediation is related to the problem of renewal of criminal law (Penal Reform), also related to the problem of pragmatism, another reason is the idea of victim protection, the idea of harmonization, the idea of restorative justice, the idea of overcoming rigidity (formalities) and negative effects from the criminal justice system and the applicable criminal system, as well as efforts to seek alternative criminal prosecution (other than prison) (Arief, 2008).

Actually in Indonesian society the settlement of a matter both civil and criminal with Penal Mediation is not new, this is evidenced by the settlement with the deliberation approach. If historically the culture (culture) of Indonesian society highly upholds the consensus approach (Arief, 2000), which prioritizes traditional decision-making and settlement through customary mechanisms.

According to Mudzakkir, some categorizations as benchmarks and scope of cases that can be resolved out of court through Penal Mediation are as follows:

a. Violation of the criminal law is included in the category of complaint offense, both complaints that are absolute and relative complaints.

b. Violations of the criminal law have criminal penalties as a criminal threat and the violator has paid the fine (Article 80 of the Criminal Code).

c. Violations of criminal law include the category of "violation", not "crime", which is only threatened with criminal penalties. Violations of criminal law include criminal acts in the field of administrative law which places criminal sanctions as ultimum remedium.

d. Violations of criminal law include the mild / all-lightweight category and law enforcement officers use their authority to conduct discretion.

e. Violations of ordinary criminal law which are stopped or not processed into court (Deponent) by the Attorney General in accordance with the legal authority they have.

f. The violation of criminal law is categorized as a violation of customary criminal law which is resolved through customary institutions.

In terms of clarifying positive legal rules that can be resolved peacefully are only minor crimes, but in fact there are serious cases which are settled by reason mediation between the victim and the perpetrator. One example of a criminal act that was resolved by custom is the crime of murder where the perpetrator had undergone an inspection process through the police department and had been sentenced to 2 (two weeks) imprisonment at the police station and after two weeks the family of the perpetrator and victim made a mutual agreement and facing the police department to ask that the problem be resolved by mediation. So that the problem was returned to Wayau village and completed by the traditional law of Marind Deg which prevailed in Wayau village and the perpetrators were charged with customary law which had been shared with the elders of adat, the old adat representatives and village heads, and the village community and in witnessed by the traditional elders of the village head and the police agency.

The purpose of marind Deg's customary sanctions is: The customary sanction can ensnare the offender who has lost the life of another person and is given the customary sanction because it
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applies to the indigenous community, and the customary sanction is a statement of prevention against the perpetrator’s actions.

Customary sanctions that have been established by the old customary / traditional stakeholders in Wayau District, Anim Ha District, Merauke Regency, marind customary sanctions which were carried out in the settlement of criminal acts of murder committed by the old adat marind Deg kampung wayau, in solving criminal cases murder and the problem are resolved by custom. So that in the case of a criminal act settlement mediation mediation is recognized by the indigenous people in the Merinduke district of Malind Anim.

However, in the use of the term "mediation mediation" it has not been too understood and used so that the indigenous people use the term more traditionally However, customary settlement of criminal law problems is commonly known as penal mediation. In addition, another case is also the Chairperson of the Marind Tribe Customary Institution, Wayau District, Anim Ha District, Merauke Regency, saying that the community understands in making a decision to settle a case or criminal act through customary law because the community considers customary law to be more just than the law positive.

4. CONCLUSION

1. The process of settling criminal cases should use a reasoning mediation approach and make reason as a minimum remedium or criminal is the last resort. So that in the implementation of the reasoning mediation must go through deliberations with the help of a neutral mediator, which is attended by victims and perpetrators along with parents and community representatives such as religious leaders and local traditional leaders with the aim of recovery for victims, perpetrators and the community.

2. In the case of reasoning mediation, the settlement of the case has been resolved by the customary head, the victim and the perpetrator. The problems that occur in the Malind Anim customary community in Merauke Regency vary greatly, some of which are resolved at the local indigenous community institutions on the customary houses which are completed at the adat level. To get the values of justice expected by the victims and the perpetrators, the adat leader and the perpetrators and victims who play an important role in the process of resolving the crime to seek a fair decision because the community considers that customary law is more just than positive law.

REFERENCES


