

Realizing Restorative Justice through Mediation

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Abstract

Disputes can arise at any time in human life, unwanted and unexpected by anyone. Ideally, law enforcement can realize the objectives of the law, namely justice, benefit, and legal certainty. The settlement is often done through legal channels, and the most recognized by the public is dispute resolution through the courts, which usually takes a long time and is expensive. Mediation can be used as an alternative in dispute resolution because it can be done either inside or outside the court so that it can realize restorative justice. The purpose of this training is for each community to understand alternative ways to resolve various disputes through mediation, which is the right way to resolve legal issues without going to court. The outputs of this activity are 1) Knowing the role of the mediator and 2) Understanding the mediation process. 3) Improve skills to become a competent mediator.

Keywords: Restorative Justice, Mediation, Dispute Resolution, Legal Alternatives, Mediator Role

1. Introduction

Law is mandated to fulfill various functions, which Gustav Radbruch famously termed the three basic values of law: justice, utility, and legal certainty. These foundational values, while essential to the legal framework, inherently present a tension among themselves. This tension arises from their divergent demands, which contain the potential for conflict. For instance, prioritizing legal certainty as a value immediately sidelines justice and utility. The primary concern of legal certainty lies in the existence of regulations themselves, regardless of whether these regulations are just or beneficial to society, indicating an omission of justice and utility values from the primacy of legal certainty (Radbruch, 1950; Fuller, 1969).

Disputes are an inevitable part of human existence, arising unexpectedly and undesirably. Traditionally, disputes are resolved through legal channels, with court litigation being the most recognized form by the public. However, court proceedings are notoriously time-consuming and costly, prompting the exploration of alternative dispute resolution methods, one of which is mediation. Mediation has gained traction as an efficacious means to settle disputes, both within and outside the judicial system, as reinforced by the Supreme Court Regulation No. 1 of 2016 on Mediation Procedures in Courts (Supreme Court of Indonesia, 2016).

Mediation serves as a method where disputing parties agree to engage a third-party neutral to act as a mediator. The mediator's role is to remain impartial, siding with neither party and refraining from intervening in the mediation process. Conducting mediation according to the Supreme Court Regulation No. 1 of 2016 ensures its alignment with judicial standards and emphasizes mediation as a viable alternative for dispute resolution. The advantages of mediation include time, cost, energy, and mental savings (effective and efficient), besides being easily monitored by judicial institutions (Menkel-Meadow, 2001; Riskin & Westbrook, 1987).

The mediation process has proven highly effective in resolving disputes involving community interests, such as environmental degradation, land acquisition, consumer protection, and more. Utilizing a mediator's services obviates the need for parties to resort to court or individually tackle the dispute,

offering more benefits compared to the litigation process due to reduced adversarial losses (Brazil, 2006; Moore, 2003).

In the evolution of the Indonesian criminal justice system, incarceration has been the primary sanction for criminals. However, societal needs extend beyond mere imprisonment towards restoring the pre-crime state. This societal demand has propelled the implementation of restorative justice, focusing on repairing the damage caused by crime through material and symbolic restitution, rebuilding the offender's self-esteem, and reintegrating them into society (Zehr, 1990; Johnstone, 2002).

Hence, the community service program through this webinar, themed "Realizing Restorative Justice through Mediation," aims to enlighten the community on alternative dispute resolution methods via mediation. This approach provides a viable solution to legal issues without resorting to court proceedings. The goals of this initiative are to broaden the understanding of resolving disputes through third-party involvement, fostering a neutral and impartial resolution process. By participating in this webinar, attendees are expected to 1) Recognize the role of mediators, 2) Grasp the mediation process, and 3) Enhance skills to become competent mediators (Auerbach, 2000; Goldberg, Sander, & Rogers, 1999).

2. Method

The research methodology to be employed in this study is a hybrid of normative and empirical legal methods. Normative legal research is grounded in the normative science of law, drawing from statutes, legal comparisons, prevailing principles, and existing theories relevant to the subject matter. Conversely, empirical research is rooted in factual occurrences and realities. The choice of a normative-empirical method is predicated on the integration of the normative legal approach with the inclusion of empirical elements to apply normative law in its practical context within the various legal events occurring in society (Cotterrell, 2003; Twining, 2006).

This blended methodological approach enables a comprehensive examination of legal phenomena, combining the theoretical framework provided by normative analysis with the tangible insights gained from empirical observations. Such a methodology is particularly valuable when exploring the application and impact of legal norms within societal contexts, allowing for a nuanced understanding that encompasses both the doctrinal aspects of law and its real-world implications (Banakar & Travers, 2013; Hutchinson, 2019).

The incorporation of empirical elements into normative legal research addresses the often-cited critique that purely normative studies may neglect the practical enforcement and social effectiveness of legal norms. By observing how legal principles operate within society, researchers can better assess the efficacy of the law and identify potential discrepancies between legal theory and practice, contributing to a more dynamic and responsive legal scholarship (Sarat & Simon, 2004; Epstein & King, 2002).

3. Result and Discussions

Law has the main task of creating order, considering that order is an essential requirement of an organized society. To create order in society, efforts are made to establish certainty. Certainty is defined as legal certainty in law and certainty because of the law. This is because the notion of law has two aspects. The first aspect is that there is a definite law for concrete events. The second aspect is the existence of legal protection against arbitrariness. Legal certainty is a certainty about how citizens solve legal problems, the role and use of legal institutions for society, etc (Tyler, 2006).

The theoretical aspect of legal certainty and legal protection is that if the law and legal protection execution goes as it should, it will provide legal certainty because with the execution, what is envisioned by the purpose of the law to seek legal certainty is carried out and is also a legal protection for those who get the rights of the civil case decision to get legal protection from the execution (Dworkin, 1986). Mediation is one of the alternative ways to resolve disputes. Regulations governing mediation include Law No.30 of 1999 on Arbitration and Alternative Dispute Resolution. Supreme Court Regulation

(Perma) No.2 of 2003 concerning Mediation Procedures in Courts has been amended several times, most recently through Perma No.1 of 2016. Mediation is a way for parties to resolve problems outside the court mechanism. Peace agreements reached in the mediation process can be strengthened into a deed of peace by the court of first instance (Mnookin & Kornhauser, 1979).. For the mediation process to run smoothly, various things need to be observed, including the stages of mediation. Mediation can be conducted either inside or outside the court. One of the institutions that organizes the mediation process is the National Mediation Center (PMN).

The objectives and benefits of mediation include:

1. Speeding up the dispute resolution process and costs
2. Court decisions are resolved with a win-win solution.
3. Can reduce the accumulation of cases in court
4. Increase community involvement in the field of law or empower the parties to the dispute in the dispute resolution process.
5. Streamlining the path of justice in the community.
6. Provide an opportunity to achieve dispute resolution that results in a decision that can be accepted by all parties so that the parties do not pursue appeals and cassations.
7. Confidential.
8. The possibility of implementing the agreement is higher, so good relations between the parties to the dispute in the future are still possible.

Mediation as an alternative in dispute resolution is a continuation of the negotiation process in court. In the mediation process, the values that live in the parties themselves, such as law, religion, morals, ethics, and a sense of fairness, are used against the facts obtained to reach an agreement. The mediator's role in mediation is only to assist the parties in reaching a consensus because, in principle, the parties, not the mediator, determine the decision. Mediation has positive goals and benefits for the disputing parties if a mutual agreement is obtained because the dispute can be resolved faster, so it is more efficient and effective and saves costs. Mediation in dispute resolution is necessary to obtain peace and justice for the disputing parties. The mediation process must strive to reach an agreement, and the role of the mediator is vital for peace efforts through mediation (Menkel-Meadow, 1984).

Then, the Supreme Court issued PERMA No. 1 of 2016 concerning Mediation procedures in Court. The presence of PERMA No. 1 of 2016 is intended to provide certainty, order, and smoothness in reconciling the parties to resolve a civil dispute. This can be done by intensifying and integrating the mediation process into court procedures. Mediation has an essential position in PERMA No. 1 of 2016 because the mediation process is an integral part of the litigation process in court. Article 4 paragraph 1 of PERMANo. 1 Year 2016 determines that cases that must undergo mediation are all civil disputes submitted to the Court, including cases of opposition (*verzet*) to a verdict of *verstek* and opposition of litigants (*partij verzet*) or third parties (*derden verzet*) to the implementation of a decision that has permanent legal force, must first be resolved through mediation, unless otherwise determined based on this Supreme Court Regulation (Supreme Court Regulation No. 1, 2016). Settlement of cases under appeal, cassation, or judicial review shall be conducted at the court hearing the case at first instance or elsewhere upon the parties' agreement. Through the president of the court of first instance, the parties may submit a peace agreement in writing to the panel of judges at the appeal, cassation, or judicial review level to be confirmed in the form of a peace deed (Strang & Braithwaite, 2001).

In developing the criminal justice system in Indonesia, punishment by imprisoning criminals is the primary sanction against criminals who are proven guilty in court. Meanwhile, if we examine more deeply, the community needs not only the imprisonment of the criminal but also the ability to restore the situation before the crime occurs. This public expectation is urgent and must be resolved by restorative justice (Braithwaite, 1989).

Restorative justice is the resolution of criminal acts by involving perpetrators, victims, families of perpetrators, families of victims, community leaders, religious leaders, traditional leaders, or stakeholders to jointly seek a fair settlement through peace by emphasizing the restoration of the original state (Zehr, 2002).

In the view of restorative justice, crime is not only a violation of the law but fundamentally a violation of human relations. Therefore, restorative justice emphasizes restoring the damage caused by crime through material and symbolic restitution, rebuilding offenders' self-esteem, and returning them to society. It further emphasizes that restorative justice facilitates the restoration of the community by affirming the values that the criminal damaged.

Furthermore, restorative justice argues that in the event of a criminal offense, the most important thing to do is not to punish the perpetrator of the crime but to prioritize the repair of damage arising from the crime, including damage to the value system in a community. Furthermore, Braithwaite, J. said that the way to resolve criminal cases through restorative justice is as follows:

First, from the offender's side, there must be an apology to the victim to achieve restorative justice. Such an attitude of expressed remorse shows that the criminal offender understands the impact of his actions and recognizes that the criminal acts committed are wrong in society. Such an attitude of remorse is necessary to repair the relationship between the criminal offender and the victim of the crime and restore their role in criminal offending in society.

Second, from the victim's side, through this conception, the attitude of regret expressing forgiveness from the perpetrator of the crime must be synergistic with the acceptance of the victim. The victim needs to see the offender with understanding and compassion as a fellow member of society. Modern society agrees that forgiveness can promote reconciliation. With reconciliation, the victim's desire for revenge will melt away. This can be an emotional basis to encourage the restoration of relationships, the criminal offender with the victim and the criminal offender with the community.

To realize justice, benefit, and legal certainty, which are the community's expectations, the National Police has opened opportunities to resolve criminal cases through restorative justice mechanisms. In resolving criminal cases through restorative justice, Investigators or Investigators must first complete both material and formal requirements as stated in the Indonesian Police Regulation No. 8 of 2021. After all the requirements are met, the investigator or investigator can stop the investigation or investigation on the grounds of law.

Material requirements that must be met in resolving cases with restorative justice include restorative justice includes:

- 1) Does not cause unrest and rejection from the community;
- 2) Does not result in social conflict;
- 3) Does not have the potential to divide the nation;
- 4) Not radicalism and separatism;
- 5) Not a repeat offender of a criminal offense based on a court decision and
- 6) Not a criminal act of terrorism, criminal acts against state security, criminal acts of corruption, and criminal acts against the life of a person.

While the formal requirements that must be met include Peace from both parties, except for drug crimes, this peace is evidenced by a peace agreement signed by the parties and Fulfillment of victims' rights and perpetrators' responsibilities, except for drug crimes. The fulfillment of this right can be in the form of returning goods, compensating for losses, replacing costs incurred due to criminal acts, and compensating for damage caused by criminal acts. If the material and formal requirements have been met, then the investigation or investigation can be stopped; of course, the termination of the investigation or investigation is carried out through a particular case title mechanism, and the reason for stopping the investigation and investigation is for the sake of the law.

Ideally, in enforcing the law, law enforcers must be able to realize the objectives of the law, namely justice, benefit, and legal certainty. However, in the application of restorative justice, there are problems faced by law enforcers, namely investigators, due to a lack of knowledge regarding the concept of restorative justice due to a lack of socialization related to police regulation no. 8 of 2021 and not all investigators have followed it, so they think that resolving cases through restorative justice is only an ordinary peace effort. Meanwhile, in its application, material and formal requirements must be met (Indonesian Police Regulation No. 8, 2021).

In addition, the litigants are greatly burdened by the additional examination as outlined in the minutes. In this case, the litigants, after making peace in front of the investigator, must come back to the investigator to clarify, which is outlined in the minutes. Ves community leaders, religious leaders, traditional leaders, or stakeholders in implementing a particular case title; this also involves difficulty for investigators.

4. Conclusion

Ideally, law enforcement can realize the objectives of the law, namely justice, benefit, and legal certainty. At the same time, disputes can arise at any time in human life, unwanted and unexpected by anyone. The settlement is often done through legal channels, and the most recognized by the public is dispute resolution through the courts, which usually takes a long time and is expensive. Mediation can be an alternative in dispute resolution because it can be done inside or outside the court. Mediation as an alternative in dispute resolution is a continuation of the negotiation process in court. What is used are the values that live in the parties themselves, such as legal values, religion, morals, ethics, and a sense of fairness, against the facts obtained to reach an agreement. The mediation process must strive to reach an agreement, and the role of the mediator is vital for peace efforts through mediation, which is essential in realizing restorative justice. Restorative justice, therefore, emphasizes restoring the damage caused by crime through material and symbolic restitution, rebuilding offenders' self-esteem, and returning them to society. It is further emphasized that restorative justice facilitates community restoration by affirming the values damaged by the criminal.

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