

REFORMULATION OF THE PENAL MEDIATION ARRANGEMENT IN TRAFFIC OFFENSES

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Abstract

The implementation of penal mediation within the Indonesian legal system presents a promising alternative to traditional criminal proceedings, especially in cases involving traffic accidents caused by negligence. Penal mediation offers a non-litigation mechanism that prioritizes rehabilitation, the restoration of relationships between victims and offenders, and the promotion of peace. While traffic accidents cause significant harm to victims, involving them in the mediation process helps clarify the offender's responsibilities and provides an opportunity for restorative justice. Moreover, penal mediation can help prevent the negative consequences of imprisonment, which not only affects the offender but also their family and society at large. However, the absence of specific legislation governing penal mediation within the Criminal Justice System poses challenges, making it difficult for law enforcement officials to provide legal certainty in cases involving traffic violations under the Traffic Law. Therefore, it is essential for future reforms to address these gaps, ensuring that penal mediation can be effectively implemented in traffic accident cases to achieve more humane and restorative outcomes.

Keywords: *Negligence; Penal Mediation; Reformulation; Traffic Offenses;*

INTRODUCTION

Traffic violations on public roads by road users are one of the leading causes of traffic accidents. These violations include negligence and carelessness committed by road users. A concrete example of such violations, as stated by Wirjono Prodjodikoro, includes failing to signal when turning, not driving in the left lane, failing to yield to vehicles coming from the left at an intersection, or driving too fast beyond the speed limit indicated by traffic signs. In line with this view, according to Naufal M Yahya, the Director of the Traffic Directorate of the Central Java Regional Police, the leading cause of traffic accidents is driver negligence, ranging from drowsy driving, lack of caution, insufficient familiarity with the road, to the inability to control the vehicle's speed.

Penal mediation is introduced as part of criminal law reform as an alternative dispute resolution for minor theft cases and represents a form of restorative justice aimed at restoring better legal conditions in society. In cases of criminal offenses in society, the police are expected to provide justice at the initial stage of resolving a case.

Penal mediation was first introduced in Indonesia's positive legal terminology with the issuance of the National Police Chief's Letter No. Pol: B/3022/XII/2009/SDEOPS dated December 14, 2009, concerning the Handling of Cases Through Alternative Dispute Resolution (ADR), although its nature was partial. In essence, the principles of penal mediation emphasized in this letter assert that criminal cases resolved through ADR must be agreed upon by the parties involved, but if no agreement is reached, the matter will be resolved according to the applicable legal procedures in a professional and proportional manner.

The implementation of penal mediation within the Indonesian legal system can be seen as an effort to balance the need for law enforcement with the opportunity for a more humane, restorative resolution that prioritizes peace between the parties involved. Penal mediation, or the resolution of criminal cases through a non-litigation mechanism, offers a solution outside the judicial process that focuses on rehabilitation and the restoration of relationships between the victim and the offender, while promoting the achievement of more sustainable peace. Article 359 of the Penal Code (KUHP) regulates criminal negligence resulting in the death of another person. The provision of Article 359 of the Penal Code reads as follows: "Anyone who, due to negligence, causes the death of another person, shall be punished for negligence with a prison sentence of up to five years or a fine of no more than

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nine hundred rupiahs." This article covers situations where an individual acts negligently (carelessness) that results in the death of another person. It establishes criminal sanctions for those who commit such negligence. The equivalent law or article to Article 359 of the Penal Code (KUHP) in this context, which addresses negligence or accidents leading to death or serious injury to another, can be found in other legislation such as Law No. 22 of 2009 on Road Traffic and Transportation, which regulates negligent acts in driving that result in accidents.

For example, in the Road Traffic Law, there are provisions that govern negligence leading to traffic accidents resulting in fatalities, which can lead to criminal sanctions equivalent to Article 359 of the Penal Code, such as Article 310 of Law No. 22 of 2009 on Road Traffic and Transportation. This article addresses negligence in driving that causes accidents, with criminal penalties for the offender responsible for such negligence. Therefore, the Road Traffic and Transportation Law can be considered equivalent in the context of negligence causing death, particularly concerning traffic accidents, even though it does not directly reference Article 359 of the Penal Code.

Sociologically, the application of Article 359 of the Penal Code (KUHP), which addresses negligence resulting in death within the context of criminal law in Indonesia, must be viewed through an approach that avoids a transactional nature or one that solely focuses on the benefit of certain parties without considering the broader social aspects. This approach emphasizes the importance of social justice and restoration within the legal system, while avoiding resolutions driven solely by personal, material interests or compromises that do not reflect true justice values. Therefore, the application of Article 359 of the Penal Code, in a sociological context, can be optimized to create a legal system that is more just, restorative, and prioritizes the sustainability of social relationships, as well as the prevention of future crimes. Based on the above explanation, the author is interested in discussing this matter in a thesis titled: "REFORMULATION OF THE PENAL MEDIATION ARRANGEMENT IN TRAFFIC OFFENSES."

LITERATURE REVIEW

The writing presented by the author is a continuation of the research titled "Case Study On The Decision Of The Bandung District Court No: 310/Pid.B/2010/PN.Bdg Regarding Negligence Resulting In Serious Injury Under The Defendant Dedi Romansah Bin Aso, In Connection With The Theory Of Criminal Liability On Negligence And Restorative Justice," which was authored by the writer in 2014 as a final assignment to obtain a Bachelor of Laws degree from Padjadjaran University, Bandung.

METHOD

Legal research is a comprehensive activity based on scientific discipline aimed at collecting, classifying, analyzing, and interpreting existing facts and the relationships within the field of law, based on knowledge that is obtained and can be developed to respond to these facts and relationships. The type of research used in this study is normative legal research. Normative legal research is a study that views law as a system of norms (principles, rules, standards contained in statutory regulations, final and binding court decisions, agreements, as well as doctrines of legal experts).

RESULTS AND DISCUSSION

The urgency of reformulating penal mediation in cases of negligence leading to traffic accidents resulting in minor injuries

Penal mediation brings together the offender and the victim, and is often referred to as "Victim Offender Mediation" (VOM), "Täter Opfer-Ausgleich" (TOA), or "Offender Victim Arrangement" (OVA) (Barda Nawawi, 2008:1). According to Martin Wright, penal mediation is "a process in which victim(s) and offender(s) communicate with the help of an impartial third party, either directly (face-to-face) or indirectly via the third party, enabling victim(s) to express their needs and feelings and offender(s) to accept and act on their responsibilities" (Trisno Raharjo, 2010:492-519). Therefore, mediation in criminal case resolution is a process in which the victim and the offender meet and communicate with the assistance of a third party, either directly or indirectly, using the third party as an intermediary, allowing the victim to express their needs and emotions, while enabling the offender to accept and take responsibility for their actions.

Penal mediation is an alternative dispute resolution mechanism outside of the court system (also known as ADR or "Alternative Dispute Resolution," or "Appropriate Dispute Resolution" as some refer to it) (Lilik Prihartini, 2015:2). ADR is typically applied in civil cases, rather than criminal cases. According to the current legislation in Indonesia, under positive law, criminal cases cannot generally be resolved outside of court, although under certain circumstances, the resolution of criminal cases outside the court may be allowed. Additionally, Toulemonde asserts that penal mediation serves as an alternative to prosecution, offering the possibility of negotiating a resolution

between the offender and the victim. The idea and principles behind this approach include conflict resolution, a focus on process, an informal procedure, and active, autonomous participation from both parties (Stefanie Tränkle:7-12).

In general, the principles of penal mediation in Indonesian positive law can be classified into several principles, as follows (Sandy Ari, 2014:518):

- a. Principle of Victim Rehabilitation, which focuses on the recovery and protection of the victim's rights, ensuring their protection, welfare, and freedom from discrimination.
- b. Principle of Effectiveness and Social Stabilization, which aims for the effective resolution of criminal cases that involve complex legal processes and contributes to the stabilization of social balance in society.
- c. Principle of Protection and Ideal Justice, which provides balanced justice and protection for both the victim and the offender, while firmly upholding human rights enforcement.

According to positive law in Indonesia, ADR is only permissible in civil cases (See Article 6 of Law No. 30 of 1999 on Arbitration and Dispute Resolution). In criminal cases, as a general rule, matters cannot be resolved outside the court, although under certain circumstances, criminal cases may be resolved outside the court. These circumstances include: First, in cases of offenses punishable only by fines. According to Article 82 of the Penal Code, the authority to prosecute such offenses is nullified once the defendant has paid the maximum fine for the violation and any costs incurred if prosecution has been carried out. This provision, known as "afkoop" or "peaceful fine payment," serves as a ground for the termination of prosecution. Second, in cases where the offense is committed by a child. A child is defined as a person aged between 12 and 18 years, and in the case of detention, it applies to children aged 14 or older who are suspected of committing a criminal act punishable by imprisonment for 7 years or more.

The high number of traffic accidents each year in Indonesia indicates that completely eliminating traffic accidents is a difficult task. Factors such as road safety awareness and the availability of adequate road infrastructure significantly influence accident rates. Given this, high traffic accident rates directly correlate with the handling of traffic accident cases through criminal proceedings, which subsequently increases the caseload of courts and the number of prisoners in correctional institutions (Fitri Nuraini, 2014:109). Traffic accidents can be viewed from two perspectives: the victim and the offender. From the victim's perspective, there is undoubtedly suffering and/or loss, ranging from material losses, minor injuries, serious injuries, to fatalities. In the case of fatalities, the impact extends to the victim's family and their future. Therefore, it is essential to involve the victim in the process of restoring their rights, as it positively impacts the parties involved by clarifying what the offender is expected to provide as a form of accountability (Fitri Nuraini, 2014:110).

From the offender's perspective, they may perceive a traffic accident as an unintentional act or "culpa." This aligns with the Traffic Law, which defines a traffic accident as an unforeseen and unintended event on the road involving vehicles, with or without other road users, resulting in personal injury or material loss. "Unintentional" in this context refers to "culpa," "alpa," or negligence. Therefore, the cause of death is not solely due to the victim's actions but is a consequence of an accident, unless the incident is proven to be intentional, in which case it could be classified as murder.

Furthermore, based on the Chief of Police Circular No. B/3022/XII/2009/SDEOPS dated December 14, 2009, regarding case handling through Alternative Dispute Resolution (ADR), as well as the Police Regulation No. 7 of 2008 on the Basic Guidelines for the Strategy and Implementation of Community Policing in carrying out police duties, ADR can be applied in the following cases: criminal offenses with minimal damage, provided the parties agree, with principles of consensus and involvement of community leaders such as RT/RW, while respecting social norms and ensuring justice. Additionally, the involvement of Community Police in identifying minor criminal cases and ensuring that cases previously settled through ADR are prohibited from being subjected to other legal actions is also part of this approach.

The process of criminal investigation before implementing penal mediation must meet both material and formal requirements, in accordance with the Chief of Police Regulation No. 6 of 2019 on Criminal Investigation, as amended by the Chief of Police Regulation No. 8 of 2021 concerning restorative justice in criminal case resolution. Material requirements include ensuring no public disturbance, no social conflict, and obtaining statements from all parties involved agreeing to penal mediation. Formal requirements include a peace agreement request from both parties, dispute resolution documents, and the offender's voluntary acceptance of responsibility and compensation.

The urgency of implementing penal mediation in traffic accident cases due to negligence causing material damage is based on the negative consequences of imprisonment, even if it is for a short term. These negative

consequences are not only experienced by the convict but also by their family and society. The negative effects of imprisonment include loss of identity, constant surveillance leading to suspicion, deprivation of individual freedom, limited communication, restricted movement, mistreatment, loss of self-confidence, lack of societal acceptance, and increased stress (Wahyuni P, 2011:15-16). In general, the principles of penal mediation in Indonesian positive law can be classified into several categories: first, the principle of victim rehabilitation, which focuses on restoring and protecting the victim's rights, ensuring their protection, welfare, and freedom from discrimination; second, the principle of effectiveness and social stability, which aims at the effective resolution of criminal cases that involve legal complexities, while promoting social balance; and third, the principle of protection and ideal justice, which ensures balanced justice and protection for both the victim and the offender, while firmly upholding human rights enforcement (Sandy Ari, 2014:516-525).

The regulation of penal mediation in criminal offenses under the Traffic Law in the future

Penal mediation is used to resolve traffic offenses or traffic accident cases between the victim and the offender outside the courtroom, which may conflict with the existing penal system. As a result, law enforcement officials face a dilemma in applying penal mediation in traffic offense cases or traffic accidents, particularly those involving fatalities. Penal mediation is considered an alternative for resolving traffic offenses and/or traffic accidents with minor damages.

However, the application of penal mediation in traffic offense cases or other traffic accident cases raises legal issues and conflicts. These conflicts present challenges in implementing penal mediation in cases involving traffic offenses or traffic accidents. In a traffic accident, several parties are involved: the offender, the victim, and law enforcement officers. Both the offender and the victim have an interest in resolving the case, which leads to conflicting interests in the application of the Traffic Law, among other issues (Fitria Nuraini, 2014:1).

- a. Conflict of Interest between the Offender and the Victim: The offender may be unable to provide compensation or support to the victim, or the victim or their family may not require compensation but rather seek punishment for the offender. Additionally, there may be coercion by the offender towards the victim to reach a settlement. In cases where the offender is merely a driver and the accident occurred due to orders from their employer, and where there are multiple victims, one party may accept compensation or support while the other does not.
- b. Conflict with the Existing Penal System: This encompasses the entire body of regulations governing how criminal law is enforced and operationalized, leading to the imposition of criminal sanctions.
- c. Conflict with Legal Certainty: According to Article 235 of Law No. 22 of 2009 on Traffic and Road Transport, it stipulates that in the event of a fatal traffic accident as referred to in Article 229, paragraph (1), letter c, the driver, owner, and/or Public Transport Company must provide assistance to the heirs of the victim, including medical and/or funeral costs, without affecting the criminal proceedings. Furthermore, the obligation to compensate, as mentioned in Article 229, paragraph (2), can be fulfilled outside of court if the parties involved agree to a settlement. This creates a conflict of legal certainty for the parties, particularly the offender, who may remain concerned that the case will continue in court despite a settlement and compensation being agreed upon.

In Indonesia, there is currently no specific legislation regarding penal mediation within the Criminal Justice System, which operates under the oversight of the General Courts and the control of the Supreme Court, as well as under the authority of law enforcement agencies. As a result, law enforcement officials in Indonesia face difficulties in providing legal certainty for cases involving traffic violations under the Traffic Law.

The application of restorative justice in Indonesia remains contentious, and there is no specific regulation addressing the implementation of this principle in criminal case resolutions. While some regulations support the concept of restorative justice, they are not yet sufficient to serve as a legal basis for its full implementation, as law enforcement must act in accordance with existing laws. This is due to the principle of legality that law enforcement must adhere to as part of Indonesia's commitment to the rule of law. Despite some challenges in implementing penal mediation for resolving traffic offenses or accidents, penal mediation is still essential as it can prevent offenders from being sentenced to prison. Currently, imprisonment is increasingly seen as an inappropriate penalty for traffic offenders who did not intend to cause accidents or were merely negligent, with no element of intent.

CONCLUSION

First, penal mediation presents a promising alternative for resolving traffic accident cases and other minor criminal offenses by allowing direct communication between the victim and the offender with the assistance of a neutral third party. While Indonesia's legal system currently lacks specific regulations on penal mediation within the

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criminal justice process, it aligns with the principles of restorative justice that emphasize victim rehabilitation, social stabilization, and balanced justice. Despite challenges such as the conflict with the existing penal system and the absence of legal frameworks, penal mediation offers a more effective resolution for cases involving negligence, reducing the negative consequences of imprisonment. Therefore, integrating penal mediation into Indonesia's legal framework could lead to more balanced and humane resolutions in criminal cases, benefiting both victims and offenders while easing the burden on the judicial system.

Second, penal mediation offers a viable alternative for resolving traffic offenses and accidents, particularly those involving minor damages, outside the courtroom. However, its implementation faces significant legal challenges, such as conflicts of interest between victims and offenders, contradictions with the existing penal system, and issues regarding legal certainty. While there is no specific legislation in Indonesia regulating penal mediation within the criminal justice system, the concept of restorative justice remains contentious and lacks comprehensive legal backing. Despite these challenges, penal mediation remains a crucial tool, especially in cases where imprisonment is an inadequate response, such as accidents caused by negligence or unintentional acts. Moving forward, integrating penal mediation into Indonesia's legal framework could provide more balanced and effective resolutions, benefiting both victims and offenders while alleviating the burden on the judicial system.

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