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Penal Mediation of Petty Theft Cases Towards Restorative Justice

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Abstract
Discussing legal inequality in the phenomenon of some cases of petty theft (gepriviligeerde diefsal) hurts the sense of justice in society. Because there is a conflict between legal certainty and justice. In the process of the criminal justice system, it takes a rather long and long time and sometimes even convoluted, so a legal breakthrough is needed using penal mediation. Penal mediation is closely related to restorative justice. While the spirit of penal mediation to realize restorative justice exists in each law enforcement institution for the reason of creating a sense of justice for witnesses so that the community is satisfied with the services carried out by investigators. The development of the idea of penal mediation cannot be separated from the development of the idea of restorative justice as one of the ideas of criminal law reform (penal reform), This qualitative research on normative juridical methods aims to find out how the form of penal mediation and the technical implementation carried out by law enforcement institutions, especially the Police Agency? The results of this academic study concluded that the form of penal mediation used in some cases of petty theft crimes at the Police Level is Victim Offender Mediation (VOM) with technical implementation through four phases. This VOM model is regarded as the most practical for implementation as it unites both parties, facilitating the accommodation of their interests to achieve restorative justice. Novelty: Political-legal construction in penal mediation arrangements as an attempt to adapt national legal development to global and international trends.

Keywords: Minor Crimes, Penal Mediation, Technical Implementation.

INTRODUCTION

Several notable cases, such as thefts involving low-value items that are brought to trial, capture the community's attention. These instances erode the public's sense of justice because the legal system of the country relies exclusively on formal legality.(Usman, 2014) Compare that to the big corruptors in this country, who are only punished so lightly, even though they are the cause of this country suffering from chronic diseases and deserve severe punishment. It is true what Lord Acton said, that the law is blunt upward and sharp downward.(Tanugraha, 2023).

One of them happened to Miniasih's mother, with her 2 children and niece who stole 2 kg of Randu fruit (kapuk), in 2009 which when nominated, the fruit collected was no more than Rp.10,000,-. As a result of her actions, Miniasih's mother was languishing in the Rowobelang detention center as a prisoner of the Batang police station. The same case also happened to Kolil (50) and Basar Suyanto (41), residents of Bujel Neighborhood, Sukorame Village, Mojoroto-Kediri District who were accused of stealing 1 watermelon in 2009 The defendant had no intention of controlling or benefiting himself and was not to be traded. They just try to treat

thirst by eating watermelon that has been complong (damaged). Another example is the case of Grandma Minah (50), a resident of Darmakradenan village, Banyumas Regency, who was by PT.

Rumpun Sari Antan was accused of stealing 3 cocoa beans in 2009 and has been under house arrest for three months. And the last one is the case of theft of flip-flops belonging to a police member with the defendant initialed AAL (15) a student of SMKN 3 South Palu, Central Sulawesi in 2012 which reached the trial as well. AAL must face Article 362 of the Criminal Code with a maximum threat of 5 years in prison. A similar case in 2012 also happened to 15-year-old Diyan Prayogo. He was caught committing theft at the MOG Malang center point. The stolen item is a garment whose price range is Rp.80.000,-.

The aforementioned phenomenon highlights the tension between the principles of legal certainty and justice (d'Amato, 1983). While the individuals have indeed committed theft and meet the criteria outlined in Article 362 of the Criminal Code, one must question whether it is appropriate to take the case to trial. The use of penal mediation as an alternative to the traditional criminal justice system, particularly for petty theft, is not a novel concept, nor is it an absolute requirement; its implementation largely depends on the disposition of law enforcement officials. However, as society evolves and the needs of victims change, penal mediation—representing a legal innovation—offers numerous advantages for both parties involved in the litigation and provides distinct benefits to both the perpetrator and the victim (James Hasudungan Hutajulu, 2015).

Factors that can influence the use of penal medasi forms include the type of criminal act, customs, and wishes of both parties, both suspects and victims. (Syam, 2022) the form of penal mediation used at the police level is Victim Offender Mediation. In cases with minor crimes, the police actively offer to settle them out of court through mediation then for cases with ordinary crimes, the initiative to resolve through penal mediation arises from the complainant or the reporter. The legal foundation for implementing penal mediation at the police level is established in the Chief of Police Letter No Pol: B/3022/XII/2009/SDEOPS dated December 14, 2009, which addresses case handling via Alternative Dispute Resolution (ADR). According to law enforcement officials, particularly the police, play a crucial role in resolving cases through penal mediation (Wulandari, 2018). First, the police as facilitators for both parties. Second, the police also often act as mediators in penal mediation.

RESEARCH METHODS

The Police Agency as the spearhead in criminal law enforcement has the duty and authority, whether an act needs to be stopped or needs to be followed up in the criminal justice process for certain reasons because in general, criminal provisions fall into the realm of public law, meaning that the state has a very vital role to enforce it. Therefore, this study seeks to explore the technical aspects of implementing penal mediation, carried out by law enforcement institutions, especially the Police Agency? The sources of academic research data utilizing a qualitative approach within this normative juridical method include primary legal materials derived from laws and regulations, such as the Chief of Police Letter No Pol: B/3022/XII/2009/SDEOPS regarding Case Handling Through ADR, Perkap Number 7 of 2008 concerning Polmas, and PERMA Number 02 of 2012. Additionally, secondary data sources include books, legal journal literature, the internet, and mass media, which are relevant, as well

as the results of previous research with literature and virtual data collection methods to photograph the phenomenon of theft of light value that occurs with descriptive depictions.

RESULTS AND DISCUSSION

Mediation and Restorative Justice

Mediation and restorative justice are two approaches that offer alternative solutions for resolving conflicts or disputes, differing from traditional judicial systems that often focus on punishment (Mok & Wong, 2013). Both approaches emphasize dialogue, responsibility, and restoring relationships between conflicting parties.

Mediation is a voluntary process where parties involved in a dispute are assisted by a neutral mediator to reach a mutual agreement (Bercovitch, 2009). In mediation, the mediator acts as a facilitator who helps the parties discuss their issues constructively without imposing decisions or solutions. This process is confidential, flexible, and provides an opportunity for all parties to express their perspectives. The advantages of mediation lie in its time efficiency, lower costs, and the potential to rebuild relationships that may have been damaged due to the conflict (Moore, 2014).

On the other hand, restorative justice is a recovery-oriented approach where victims, offenders, and the community are invited to participate in resolving the issues (Alam & Fajrin, 2024). Restorative justice focuses primarily on the needs of victims, such as acknowledgment of the harm they have experienced, sincere apologies, and efforts to repair the damage. Moreover, offenders are encouraged to take responsibility for their actions and take concrete steps to address their impact. This process often involves the community in finding solutions that restore social balance and prevent similar conflicts in the future (Johnstone & Van Ness, 2007).

Mediation often becomes an integral part of restorative justice, particularly in creating a dialogue space between victims and offenders (Umbreit, 2023). In this context, mediation allows for deep reconciliation, providing an opportunity for both parties to understand each other's perspectives and find mutually acceptable solutions.

By emphasizing principles such as dialogue, responsibility, and empathy, mediation and restorative justice not only resolve conflicts but also create opportunities to build better relationships in the future (Vogel, 2006). These approaches have proven effective in various fields, including criminal and civil law as well as community life, offering a more humane and sustainable form of justice.

Misdemeanor-Misdemeanor Theft

Petty theft, as defined in Article 364 of the Criminal Code, involves actions described in Articles 362 and 363, point 4, as well as Article 363, point 5, provided they are not committed within a residence and the stolen items' value does not surpass Rp 250. This offense is considered petty theft and is subject to a maximum imprisonment of 3 months or a fine of up to IDR 900. Additionally, the classification of a minor crime is provided in Article 205, number 1, of the Code of Criminal Procedure, which covers offenses with a maximum penalty of three months' imprisonment or a fine no greater than seven thousand five hundred rupiah, including minor insults, but excludes cases related to traffic violations.

According to Article 364 of the Criminal Code, petty theft can fall into three categories (Lubis, 2024):

1. Ordinary theft as defined in Article 362, along with the mitigating factor that the value of the stolen item is not more than Rp 250.
2. Theft carried out by two or more individuals acting in concert, as long as the stolen item's value does not exceed Rp 250.
3. Theft carried out by unlawfully entering a location (the crime scene) through methods such as dismantling, damaging, climbing, using false keys, false orders, or impersonating an official, with the stipulation that the value of the stolen goods is not more than Rp 250.

From the wording of Article 364, the legal provisions indicate that petty theft can be understood as (Purba, 2017):

a. A principal form of theft as a criminal offense.
b. Theft executed collaboratively by two or more individuals.
c. The act of theft where, in attempting to access the crime scene or to obtain the targeted object, the perpetrator does not engage in actions such as demolition, destruction, climbing, or the use of false keys or false claims.

It must be acknowledged that the Criminal Code, which serves as the standard for defining petty theft, is centuries old. Originally, the petty theft threshold was established at 26 guilders. In 1960, Indonesia adjusted this limit to Rp 250 (two hundred and fifty rupiah), at a time when oil was priced at U$1.8 per barrel, and gold was valued at U$35 per ounce.

In contrast, current prices show global oil at approximately U$100 per barrel and gold at about U$1,700 per ounce (Jamal Wiwoho, 2013). The lack of adjustments to the currency values in the Criminal Code has resulted in situations like that of Grandma Minah, who was classified as an ordinary thief under Article 362 of the Code and faced a possible five-year prison sentence.

Similarly, thefts involving minor items—such as two cocoa pods, a pair of flip-flops, six plates, or two watermelons—can still result in suspects or defendants being detained by investigators and prosecutors, even though the value of these items clearly exceeds Rp 250,- (Madari, 2013).

Numerous minor cases are brought to court due to a provision in the Criminal Code that sets the maximum loss threshold for petty theft at Rp. 250. However, in the current socioeconomic climate, instances of theft involving such minimal amounts are nearly nonexistent. In response, the Supreme Court issued Regulation No. 02 of 2012, adjusting the limits for minor crimes and related fines in the Criminal Code. This regulation seeks to reduce the strain on suspects or defendants in minor crime (Tipiring) cases, preventing them from enduring lengthy legal processes that could reach the cassation stage. Such proceedings had previously affected individuals like Grandma Rasminah, who faced prosecution in 2011 for stealing six plates. Furthermore, this PERMA seeks to help judges expedite the delivery of justice, particularly by aligning minor crime resolutions with the severity of the offenses (Madari, 2013).

Supreme Court Regulation (PERMA) No. 02 of 2012 on the Adjustment of Minor Crime Limits and Fines in the Criminal Code has modified provisions concerning the threshold for minor crimes, specifically for cases governed by Article 364, Article 373, Article 379, Article 384, Article 407, and Article 482. The minimum limit, which was previously set at Rp.

250,000.00, has now been increased to Rp. 2,500,000.00. Meanwhile, the Criminal Code regulates maximum criminal fines ranging from Rp. 900 to Rp. 150,000 for criminal offenses and from Rp. 225 to Rp. 75,000 for violations. Article 3 of PERMA No. 02 of 2012 then stipulates that the fines in the Criminal Code will be increased by up to 1,000 times, except for the provisions in Article 303 sections (1) and (2) and Article 303 bis sections (1) and (2).

A Misdemeanor Crime (Tipiring) refers to an offense that is minor or poses little harm (Iskandar & Asmara, 2022). This type of misdemeanor encompasses not only violations but also minor offenses outlined in Book II of the Criminal Code. There are nine articles categorized as minor crimes, which are presented in Table-1 below.

Table.1 : TIPIRING Group

No	Forms of Misdemeanor Crimes	Regulated in the articles of the Criminal Code
1	mild mistreatment of animals	Article 302 section (1)
2	minor persecution	Article 352 section (1)
3	petty theft	Article 364.
4	light darkening	Article 373.
5	Minor fraud	Article 379.
6	fraud in sales	Article 384.
7	destruction of goods	Article 407 section (1)
8	light procurement	Article 482.
9	Mild humiliation.	Article 315.

In his book *Criminal Law 1*, Utrecht uses the term "light crime" as the Dutch equivalent of *Lichte misdrijven*, or "minor crimes," which is the term used in this paper. Finding a precise definition of minor crimes in the Criminal Code is challenging; however, a more understandable definition appears in the Criminal Procedure Code, which serves as the formal criminal law framework for the Criminal Code. Article 205, section (1), in particular, addresses the provisions for expedited proceedings, stating: *"cases handled under minor crime procedures are those punishable by imprisonment of up to three months and/or a fine not exceeding seven thousand five hundred rupiah, including minor insults, except as provided in Section 2 of this Article."*

Implementation of Penal Mediation towards Restorative Justice

Minor theft requires mediation and restorative justice because these approaches focus on recovery and accountability rather than mere punishment (Roche, 2003). They provide victims an opportunity to express their grievances directly and quickly receive compensation or restitution, while offenders can take responsibility without entering a burdensome judicial system.

Mediation also helps prevent social stigma for offenders, particularly first-time offenders, enabling them to reform without negative labels. This approach reduces the burden on the judicial system, accelerates conflict resolution, and preserves community harmony by repairing damaged relationships.

Penal mediation is often referred to by different names, such as "mediation in criminal cases" or "mediation in penal matters," and is termed *strafbemiddeling* in Dutch. Since penal mediation mainly focuses on fostering dialogue between offenders and victims, it is frequently

called "victim-offender mediation." The "Explanatory Memorandum" of the Council of Europe's Recommendation No. R (99) 19 on "Mediation in Penal Matters" describes several models of penal mediation, as summarized below:

1. "Informal mediation" involves a mediation process carried out by law enforcement officers, such as judges, public prosecutors, or police officers, as part of their professional duties.
2. "Traditional village or tribal moots" refers to mediation conducted in rural areas by indigenous communities, where local residents gather to resolve conflicts or issues that arise within the village.
3. "Victim-offender mediation" is a mediation approach that brings victims and offenders together directly, aiming to reach an agreement that fosters justice for both parties involved.
4. "Reparation negotiation programs" are mediation models that focus on reaching a settlement through compensation.
5. "Community panels or courts" refer to problem resolution conducted through local community courts.
6. "Family and community group conferences" are models originating in Australia and New Zealand that incorporate community involvement into the Criminal Justice System (CJS). This model brings together not only the victim and offender but also the offender's family, community members, relevant officials (such as police and juvenile judges), and victim advocates.

According to Faisal (2011), several benefits of penal mediation include:

a. Penal mediation reduces the victim's inclination toward revenge and provides added flexibility, as it operates independently of the standard procedures and processes of the criminal justice system. Consequently, it is generally more cost-effective and faster than court-based litigation.
b. It eases the burden on the criminal justice system by alleviating case backlogs and reducing the time-consuming nature of traditional case resolution, as mediation allows for direct interaction between the victim and the offender.
c. Mediation offers victims a chance to interact with offenders, share how the crime has affected their lives, express their emotions, and seek restitution.
d. Mediation fosters a harmonious relationship between the victim and offender, an outcome that the criminal justice process usually does not accomplish. By granting forgiveness, the victim alleviates the offender's guilt, fostering reconciliation between both parties.

The advantages and advantages of implementing Penal Mediation include: 1. Produce win-win solutions for the parties to the dispute. 2.The problem will not drag on because it is quick to give a decision. 3.Overcoming and avoiding the accumulation of cases in court.4. Creating a sense of justice for both parties is not justice according to law alone (Khovpun et al., 2024).

According to Teddy Lesmana (2014), Alternative Dispute Resolution (ADR) efforts are recognized not only in civil law but have also begun to emerge and evolve within criminal law practices. One form of ADR gaining traction in criminal law is mediation, known as "penal mediation." Penal mediation became formally recognized in Indonesia with the issuance of the National Police Letter No. Pol: B/3022/XII/2009/SDEOPS dated December 14, 2009, regarding Case Handling Through Alternative Dispute Resolution (ADR), though this recognition remains somewhat limited. Essentially, the principles of penal mediation outlined in the Chief

of Police's Letter emphasize that resolving criminal cases through ADR requires agreement from the parties involved. If no new agreement is reached, the case proceeds under standard legal procedures that are handled professionally and proportionately. Another legal foundation is found in the Chief of Police Regulation Number 7 of 2008 on Polmas, Article 14, section (f), which states: "The concept of Alternative Dispute Resolution includes addressing social issues through more effective alternative means, such as resolving disputes outside formal legal or litigation channels, for instance, through reconciliation efforts."

In Indonesia's criminal justice system, outlined in Law Number 8 of 1981 regarding the Code of Criminal Procedure (KUHAP), the process starts with the police, moves to the prosecution, and concludes with the judiciary in the trial stage. This system can be lengthy and complex, often requiring a legal innovation such as penal mediation to improve efficiency. Penal mediation, a key component of restorative justice, represents a significant legal innovation aimed at reforming criminal law. According to James Hasudungan Hutajulu (2015), penal mediation, particularly as an alternative to criminal proceedings in cases of petty theft, is not a new approach and its application is at the discretion of law enforcement officials. However, as societal needs evolve and victims' interests grow, penal mediation offers substantial advantages for both the parties involved, providing unique benefits to both perpetrators and victims.

The law enforcement mechanism in Indonesia's criminal justice system is governed by Law Number 8 of 1981 on the Code of Criminal Procedure (KUHAP). This KUHAP establishes the framework for the procedures within Indonesia's criminal justice system, commonly known as procedural law, which is designed to enforce substantive criminal law. The enforcement of criminal law starts with the police investigation, followed by prosecution by the public prosecutor during the trial, and concludes with sentencing or sanctions imposed by the judge. Essentially, law enforcement represents a means of administering punishment (criminal penalties).

From past to present, criminal issues have consumed significant energy from the nation's youth in efforts toward social reconstruction. The rise in criminal activity across various forms requires substantial effort to develop fresh ideas about the future trajectory of policy. The aim of legal policy is to establish laws that protect citizens' rights and ensure a secure future for coming generations. Consequently, the legal system in every country continues to modernize in practice, as no nation can resist this evolution (Marlina, 2009)

As the primary entity for enforcing criminal law, the Police Agency is tasked with the responsibility and authority to decide whether to halt or pursue actions within the criminal justice process based on specific considerations. This authority is grounded in Article 18, section (1) of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia, which states that "in the interest of public welfare, officials of the National Police of the Republic of Indonesia may act according to their own judgment while performing their functions, duties, and powers." Section (2) clarifies that the implementation of the provisions in section (1) is only allowed under necessary circumstances, considering applicable laws, regulations, and the Code of Professional Ethics of the National Police of the Republic of Indonesia.

The phenomena described above reveal instances that erode public confidence in justice and are connected to the current legal framework. Two related concepts are involved: penal

mediation and the commonly recognized notion of discretion within the criminal justice system. Entities like the police and prosecutors utilize discretion to evaluate incoming cases and may choose not to pursue certain cases through the complete criminal justice process. However, discretion differs in essence from penal mediation. Penal mediation emphasizes both the offender's and victim's interests, aiming to reach a mutually beneficial, win-win solution. In penal mediation, the victim meets directly with the offender, allowing them to voice their demands and work toward reconciliation. On the other hand, discretion—originating from terms like "discretion" (English), *pouvoir discretionnaire* (French), *or freis ermessen* (German)—has various interpretations.

Saut P. Panjaitan defines discretion as a deviation from the principle of legality, specifically in terms of *wet matigheid van bestuur*, making it an "exception" to the legality principle. Meanwhile, Benjamin describes discretion as the freedom granted to officials to make decisions based on their own judgment. Consequently, he believes that all public officials possess discretionary authority. Similarly, Rycko Amelza Dahniel explains that discretion is the authority of the police in policing, allowing them to refrain from legal action in favor of the public interest, humanity, or to provide education and guidance to the community. According to him, discretionary actions can be exercised by any police officer managing a case or issue within the scope of their responsibilities and authority (Rycko Amelza Dahniel, 2009).

Penal mediation is one alternative way to resolve cases, especially petty theft. Penal mediation facilitates a transparent case-handling process, helping to minimize irregularities commonly found in the conventional criminal justice system. Recently, the National Police have increasingly adopted penal mediation following the release of the Chief of Police's Letter No. Pol: B/3022/XII/2009/SDEOPS on December 14, 2009, concerning Case Handling Through Alternative Dispute Resolution (ADR). This directive states that if both parties (the offender and the victim) consent to mediation and the offense is classified as a minor crime, the Chief of Police's letter will apply to their case.

According to DS. Dewi and Fatahillah A. Thankfully, in 2011, penal mediation is essential as an alternative to the criminal justice system for petty theft cases for several reasons: a. it is anticipated to help reduce the backlog of cases; b. it is viewed as a faster, cheaper, and simpler method of dispute resolution; c. it allows the parties involved in the dispute greater access to justice; and d. it enhances and optimizes the role of the court and dispute resolution institutions, in addition to the conviction process.

In Indonesia's criminal law enforcement system, law enforcers are legally authorized to dismiss or resolve criminal cases without taking them to court (non-litigation resolution). Similar to the police, Article 18 of Law Number 2 of 2002 concerning the National Police grants police investigators the discretion to avoid legal action for certain criminal offenses when it aligns with public and moral interests, as discretion operates at the intersection of law and morality. This article interprets "acting according to self-judgment" as an action that members of the National Police may undertake, considering the benefits, risks, costs, and advantages, with a focus on genuinely serving the public interest.

In accordance with Article 18 of Law Number 2 of 2002, along with Article 5, section (1), letter a, number 4, and Article 7, section (1), letter j of Law Number 8 of 1981 regarding the Code of Criminal Procedure (KUHAP), police officers serving as investigators are empowered to carry out additional actions permitted by law. The phrase "other actions" in these

articles pertains to investigative steps taken by police investigators, provided that: (a) they do not contravene any legal provisions, (b) they align with legal responsibilities requiring official intervention, (c) they are appropriate and justified within the scope of duty, (d) they are based on sound judgment in light of pressing circumstances, and (e) they respect human rights.

Moreover, in carrying out their duties, the National Police of the Republic of Indonesia have the authority to terminate investigations. Investigators, by virtue of their roles, possess the power to end investigations. Article 109, section (2) of Law Number 8 of 1981 (KUHAP) states that police investigators may discontinue a criminal investigation if: (1) there is inadequate evidence, (2) the incident does not constitute a criminal offense, or (3) the investigation is legally concluded. When an investigation is halted for any of these reasons, the investigator must inform the public prosecutor, the suspect, or the suspect's family.

The evolution of penal mediation is intricately connected to the rise of restorative justice within the context of criminal law reform (penal reform), as penal mediation essentially functions as a method for applying restorative justice in the resolution of criminal cases. It serves as a mechanism for resolving criminal cases with the objective of attaining restorative justice.

When penal mediation is connected with the concepts of restorative justice and discretion, it can be argued that the principles or values underpinning penal mediation are rooted in restorative justice, while the drive to achieve restorative justice through penal mediation is present within each law enforcement institution. This can be known just as prosecutors have *deponeering* and police have *discretion*. Thus, the discretion possessed by the police institution is a spirit or something that can turn on or at least become a source of inspiration where penal mediation can be applied at the investigation stage by the police so that it will create peace for litigants and the realization of a sense of justice that can restore the parties and society in general.

The form of penal mediation and its technical implementation in petty theft cases as an implication of the application of Restorative Justice

Essentially, PERMA No. 2 of 2012, along with the Memorandum of Understanding's content, serves as an alternative approach to restorative justice for resolving cases of minor offenses, particularly petty theft, which is commonly encountered in society today. The aims and objectives in the form of a memorandum of understanding have been explained as in Article 2 sections (1) and (2) of this memorandum of agreement: (1) The aim of this memorandum of understanding is to: establish guidelines for setting limits on minor crimes and fines for offenders, considering the community’s sense of justice; and facilitate the implementation of Supreme Court Regulation No. 02 of 2012 concerning the Adjustment of Limits for Minor Crimes and Fines in the Criminal Code. Additionally, this memorandum seeks to: address the community's sense of justice in resolving minor crimes; and serve as a reference for law enforcement officials in handling minor criminal cases; Make it easier for judges to decide cases of minor crimes; Effective criminal fines; Overcoming the problem of overcapacity in prisons or RUTAN to realize justice with a human rights dimension; and Agree on implementation guidelines and technical instructions for the application of adjustments to the limits of minor crimes and the amount of fines (Madari, 2013).

In addition to Circular Number: SE/8/VII/2018 regarding the Application of Restorative Justice in Criminal Case Resolution, the National Police also released Regulation Number 8 of

2021 concerning the Handling of Criminal Acts through Restorative Justice. This regulation covers activities related to criminal investigation functions, investigative actions, and inquiry actions (Article 2 Section (1)). Handling criminal investigation activities includes community development functions and Samapta Polri duties, as per their roles and responsibilities (Article 2 Section (2)), as well as resolving minor offenses (Article 2 Section (4)). Investigative and inquiry activities are conducted by National Police Investigators (Article 2 Section (3)), with the possibility to cease investigations when applicable (Article 2 Section (5)). The criteria for addressing criminal acts through restorative justice under this regulation must meet general and/or specific standards and pertain to activities within the scope of criminal investigations, inquiries, and prosecutions.

According to police statistics, following the issuance of Police Regulation Number 8 of 2021, there have been 275,500 recorded criminal cases, with the National Police resolving 170,000 of these, including 15,811 cases through restorative justice mechanisms. In dealing with cases related to ITE Law violations, the Chief of National Police released Circular Number SE/2/II/2021, which focuses on Ethical Cultural Awareness to Promote a Clean, Healthy, and Productive Digital Environment in Indonesia. This circular encourages members of the National Police to maintain law enforcement practices that instill a sense of justice in the public.

The release of Circular Letter Number: SE/8/VII/2018 regarding the Application of Restorative Justice in Criminal Case Resolution, Circular Letter Number: SE/2/II/2021 on Ethical Cultural Awareness for a Clean, Healthy, and Productive Digital Environment in Indonesia, and Police Regulation Number 8 of 2021 on Addressing Crimes Through Restorative Justice has changed the methods used to resolve specific crimes. In law enforcement, it is essential to ensure that victims' rights and interests are upheld during the enforcement process (Muhamad Ali Badrih: 2021).

Alongside the Police, the Prosecutor's Office, functioning as the public prosecutor, released Attorney General Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. The resolution of criminal cases at the prosecution stage, using restorative justice as specified in PERJA No. 15 of 2020, is supported by a reconciliation process outlined in Chapter IV, which addresses Peace Efforts and Peace Processes. Specifically, peace efforts are regulated in Articles 7 and 8 of the regulation, while the peace process itself is outlined in Articles 9 to 14. Since this regulation came into effect, the Attorney General has applied restorative justice to terminate prosecutions in 1,334 general crime cases out of 1,454 applications submitted to the Prosecutor's Office (Nonik et al., 2024).

The decision to terminate prosecution must take into account the interests of the victim, avoid negative stigma for the offender, take into account community response, and maintain decency and public order (Ashworth, 1986). In doing so, the Prosecutor fulfills the role of case controller, or the *dominus litis* principle. Alongside using Perja No. 15 of 2020, the Prosecutor's Office must balance established legal rules with interpretations focused on legal utility. This is in accordance with Article 8, sections (3) and (4) of Law Number 11 of 2021, which amends Law Number 16 of 2004 regarding the Prosecutor’s Office of the Republic of Indonesia. It states that prosecutions must be carried out "for the sake of justice and truth based on the One and Only God." In fulfilling their responsibilities, prosecutors are required to act in line with the law and their conscience, upholding religious principles, decency, and moral values, while also aiming to respect human dignity within society. Additionally, the Attorney General’s

Office has created a platform for implementing restorative justice, known as the Restorative Justice House or RJ House (Kuntadi, 2022).

At the trial stage, the Supreme Court, via the Director General of Badilum, released Guideline Number 1961/DJU/SK/PS.00/12/2020, which provides directives for implementing restorative justice within the General Court system. This guideline emphasizes that the principle of restorative justice is a core approach in law enforcement for resolving cases and can also be used as a means of recovery. The Supreme Court has applied this principle through policy enforcement, as reflected in Supreme Court Regulations and Circulars. However, its application within Indonesia's criminal justice system remains suboptimal (Febriansyah et al., 2023).

According to previous research by Cahya Wulandari (2018), a commonly used form of penal mediation for resolving minor crimes, such as petty theft, is victim-offender mediation (VOM). Factors that can influence the use of penal medicine include the type of criminal act, customs, and wishes of both parties, both suspects and victims. The main emphasis of Victim-Offender Mediation is to incorporate both offenders and victims as vital components of the criminal justice system (Fisher et al., 2011). Victims are given the opportunity to ask offenders about the motivations behind the incident, with the goal of holding them accountable for their actions. Additionally, victims can present other demands to ensure that the perpetrator is held responsible beyond mere punishment. In cases without a crime, resolutions can be reached that are perceived as fair to both parties, unlike penal mediation at the prosecution stage, which currently lacks a legal framework. As a result, criminal cases classified as ordinary offenses continue to be prosecuted even when there is an agreement between the perpetrator and the victim (Goldstein, 1982).

In cases involving complaint-based offenses, if the victim and offender come to an agreement that results in the victim withdrawing their complaint, this can provide a basis for halting prosecution, as stated in Article 75 of the Criminal Code (Beets & Killough, 1990). Furthermore, penal mediation conducted by the Public Prosecutor, with a legal foundation, can manifest as diversion or the resolution of juvenile cases, as outlined in Law No. 11 of 2012 regarding the Juvenile Justice System (SPPA), with the goal of achieving restorative justice.

According to Faisal, 2011 the steps taken in the application of penal mediation in the form of VOM are (Fisher et al., 2011):

1. Investigators assess whether a case is suitable for resolution through penal mediation, considering factors such as the type of offense, the perpetrator’s motive, and the victim's situation. The victim’s consent is crucial at this stage, as Victim-Offender Mediation (VOM) cannot proceed without their involvement. This approach prioritizes direct engagement from the offender, victim, and community in resolving criminal cases. Penal mediation focuses on three main aspects: the victim, the offender, and the community.
2. The second phase is preparation for confrontation. In this phase, the mediator explores the aspirations that will be voiced by the parties in order to reach an agreement and provide directions.
3. The third phase is mediation itself. The mediation process is more focused on dialogue than fulfillment of restitution agreements, creating a sense of empathy and understanding between victims and perpetrators. This phase begins with the rules that must be followed by both parties, then continues with giving the victim the opportunity to tell the crime that

happened to him. Following this, the offender is given the chance to address the victim's grievances, clarify the reasons behind the crime, and offer an apology.

The final phase is the implementation of the results of the mediation agreement. At the police stage, penal mediation does not have binding legal force so that the results of the agreement are stated in the form of a letter signed on a stamp so that it has legal force. At the agreement, witnesses from both sides were also recorded.

CONCLUSION

The conclusion drawn from the Indonesian case underscores the comprehensive fulfillment of both substantive and procedural elements in the legal protection theory. The government's preventive legal efforts are evident through regulations aimed at deterring forgery of authentic deeds, aligning with the substantive element of legal protection. These regulations, rooted in the Civil Code, not only serve as a preventive measure but also provide a foundation for initiating legal action, demonstrating a procedural aspect. Moreover, the plaintiffs' pursuit of an amicable settlement aligns with the procedural element, reflecting a repressive legal effort. However, the defendants' disregard for this attempt compelled the plaintiffs to resort to litigation, specifically an unlawful act lawsuit filed with the Kepanjen District Court. This legal action is grounded in Article 1365 and Article 1366 of the Civil Code, asserting that the defendants forged authentic deeds and unlawfully occupied, controlled, resided, and exploited the disputed land, infringing upon the inheritance rights of the rightful heirs—the plaintiffs.

The verdict, captured in Decision Number 55/Pdt.G/2021/Pn.Kpn, attests to the fulfillment of punitive elements within the legal protection theory. The panel of judges acknowledging the defendants' guilt, imposed penalties, requiring them to cover court costs and surrender the disputed object to the rightful owners. This decisive legal outcome reinforces the deterrent aspect of legal protection and serves as a tangible manifestation of justice within the Indonesian legal system. Comparatively, these legal mechanisms and outcomes align with the broader context of legal protection theories observed in other ASEAN countries, showcasing shared principles in preventing forgery and ensuring just resolutions through legal avenues.

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