

THE EXISTENCE OF PANCASILA AS A BASIC RULE TOWARD THE DISPUTE SETTLEMENT OF COMPLAINT OFFENCE THROUGH PENAL MEDIATION OUTSIDE THE COURT OF INDONESIA

I Nyoman Putu Budiarta, Universitas Warmadewa Denpasar

ABSTRACT

Penal mediation is one of the best ways of settling disputes of complaint offense outside the court. The purpose of this study is to determine how the existence of Pancasila as the basic rule for the settlement of criminal cases of complaint offense outside the court in the future and how to resolve a complaint offense outside the court in Indonesia. This study concluded that the settlement of cases toward the offender of complaint offense outside the court through penal mediation in the jurisdiction of Indonesia is by deliberation and consensus in accordance with the basic principles of Pancasila. The utilizable model of settlement through penal mediation is informal mediation, traditional village or tribal moots model, victim offender mediation model, reparation negotiation programmers model, family and community group conference and also community panel or courts.

Keywords: Pancasila, Complaint Offence, Penal Mediation.

INTRODUCTION

The existence of Pancasila as a means of settling cases through penal mediation is actually directed to reconcile the parties (perpetrators with victims, Plaintiff/Petitioner with Defendant/Respondent). According to Andi Hamzah, mediation can only be done at the level of prosecution as well as in the court session with consideration of legal certainty, legal benefit and legal justice (Hamzah, 2009). At the stage of the trial in the Penal Mediation Court it is still possible to do so with the consideration that the parties are fully aware of the importance of resolving the conflict through deliberation and awareness of the benefits of peace and forgiveness. The description confirms that penal mediation has a very high value that can be observed from any dimension as well, including philosophical, juridical, sociological perspectives.

The basic philosophy of penal mediation is based on the basic philosophy of the Republic of Indonesia, Pancasila, as mandated in the fourth paragraph of the Preamble of the 1945 Constitution of the State of the Republic of Indonesia (reach Law and Regulation, 1945) and also regulated in Article 2 of the Law Number 12 Year 2011 on The Establishment of Laws and Regulations (Law and Regulation, 2011), which specifies that: "*Pancasila is the source of all sources of law*". Sociologically, the reality of Indonesian society proves that in everyday life Indonesian society consists of various tribes, religions, cultures, but still maintaining and practicing the five precepts of Pancasila. If there is a violation of the law against the rights of citizens, it is resolved by deliberation; if a consensus cannot successfully, the disputing parties

can process the case in litigation through the court. The practice of settling criminal cases outside the court so far has no formal legal basis, so it is necessary to establish legislation concerning Penal Mediation, particularly on property crime and family neglect. Based on this elaboration, there are two issues to raised in this study: first is how the existence of Pancasila as the basic rules on for the settlement of criminal cases of complaint offence outside the court in the future is and how the complaint offence can be resolved outside the court in Indonesia.

METHOD

This research used juridical-normative research method, especially to examine the void norm of the law of Penal Mediation. It used statute approach, case approach, historical approach, comparative approach, conceptual approach and also some relevant theories, which are related to the criminal law. The legal materials for this research are primary legal materials and secondary legal materials. Afterwards, all of the legal materials were analyzed by making use of descriptive legal material analysis technique.

Peter Mahmud Marzuki writes that the range of studies using the normative approach is: statute approach, case approach, historical approach, comparative approach, conceptual approach (Marzuki, 2006). While J. Ibrahim is the same as Peter Mahmud Marzuki but added an analytical approach, philosophical approach (Ibrahim, 2006). The approach used is the approach of legislation, concept approach, historical approach, analytical approach and philosophical approach.

RESULTS AND DISCUSSION

The Existence of Pancasila as Basic Rules for the Settlement of Criminal Cases of Complaint Offense Outside Court in The Future

Crime/crime offenses are in the form of offense complaints other than settled through Penal Efforts (application of Criminal law) also through Non Penal Penalty (Penal Mediation). In the writing of this paper only discussed the efforts of non-penal. The legal argument shows the criminal law politics in Penalties against perpetrators of criminal action in the future of criminal offense in Indonesia explains that the criminal punishment process is the ultimate endeavor (ultimum Remedium), because prior to the first criminal proceedings a “*non-penalty*” According to the theory of Criminal Politics/Criminal law policy which explicitly explains that crime prevention policy through 2 (two) ways namely, non-penal and penal.

A crime prevention policy or commonly known as “*criminal politics*” can cover a wide range of scope. G.P. Hoefnagels writes that crime prevention efforts can be pursued by:

1. Application of criminal law (criminal law application)
2. Prevention without punishment (Hoefnagels, 1973)

Influencing people's views on crime and punishment through mass media (influencing views of society on crime and punishment / mass media).

G. Peter Hoefnagels's opinion illustrates that, efforts to overcome crime in general can be divided into 2 that is through the “*penal*” (criminal law) and through the “*non-penal*” (not/outside the penal law). A crime prevention policy or commonly known as “*criminal*

politics” can cover a wide range of scope. G. P. Hoefnagels claims that crime prevention efforts can be pursued by application of criminal law, the prevention without punishment, influencing people's views on crime and punishment through mass media (influencing views of society on crime and punishment/mass media) (Hoefnagels, 1973).

In the division of G.P. Hoefnagels above, the prevention without punishment, influencing people's views on crime and punishment through mass media (influencing views of society on crime and punishment/mass media) classified into the “*non-penal*”. Based on the provisions and policy of the criminal law, there are several criminal offenses of criminal complaint in the form of criminal offense, domestic offense, offense related to criminal provision of criminal property/violation against land grabs, land grabbing, falsifying documents of land ownership, ownership of land, and embezzlement of immovable property rights, such as land, houses and rice fields; except the corruption and murder, they must be settled through Mediation Penal (Nahak, 2017).

The Settlement of Criminal Complaints outside the Court in Indonesia

The handling of crimes against perpetrators of criminal complaints and wealth is through the social policy (social policy) is basically a policy or rational efforts to achieve the welfare of the community as mandated basic State Pancasila. Barda Nawawi Arief writes that: “*Criminal remedies through non-penal*” are more preventive measures for crime, so the main objective is to address the factors conducive to the occurrence of crime (Arief, 1996). Criminal law is codified in “*wetboek*”, it is not yet seen in many countries, especially in Anglo Saxon Countries (UK, America, Australia and Singapore), These countries have a common criminal law under Common Law (customary law) and Statute Law that is the legal rules written in the law.

The discussion of this second problem was analyzed on the basis of integrative legal theory, which developed a comprehensive and holistic analysis in dealing with and anticipating national and international developments in various areas of community life and was also analyzed using the theory of restorative justice, in the form of non-penal criminal sanctions (penal mediation).

The description is explicitly examined in the aspect of justice and legal certainty. As a result, there is an unclear or vagueness of norms in the articles of the Criminal Code, which are used to overcome crime in the field of land because minimum punishment is not formulated,. If from the aspect of justice the formulation is quite unfair when the perpetrators, who harmed the victim of even billions trillions of rupiah, are punished in the same way as harming victims of tens to hundreds of rupiah, so that required settlement through penal mediation countermeasures efforts. Model of settlement through penal mediation is-realised through local traditional custom settlement that is through consensus in the jurisdiction of Indonesia according to the state philosophy, *Pancasila*. In addition, the models that can be used is informal mediation, traditional village or tribal moots model, victim offender mediation model, the model of reparation negotiation programmers, family and community group conference, and also community panel or courts (Arief, 1996).

Model of Settlement through penal mediation as follows: model of local custom settlement through consensus agreement in jurisdiction of Indonesia according to Pancasila state philosophy.

In addition, the model used is:

“Informal mediation carried out by the personal criminal justice system, in its normal duty, the Public Prosecutor invites the parties to informal settlement not the purpose of not continuing prosecution if the agreement occurs, may also be done by social worker or supervisory official, by Police or judge, Traditional village or tribal moots model, the whole community meets to solve the crime conflict among its citizens, the victim offender mediation model, the mediation between the victim and the perpetrator by conducting a meeting involving an independent mediator through the process stages both at the stage of Police policy, The stage of punishment or after the punishment, this model can be applied to the offender and the victim of the crime, the model of reparation negotiation programmers, this model solely to assess the value of compensation or repayment that must be paid to the perpetrator of the crime to the victim, usually at the time of trial in the Court of this model is most appropriate for perpetrators and victims of criminal land affairs including property, criminal field of taxation, the environment, and other models of community panels or courts is a program to deflect criminal cases from prosecution or justice in more community procedures Flexible and informal and often involving elements of mediation or negotiation, family and community group conferences models, models involving community participation in the Criminal Justice System not only involve victims and perpetrators of criminal acts but also the families of perpetrators and other citizens, certain perpetrators Police And Judges and victim supporters, perpetrators and their families are expected to produce a comprehensive and satisfying agreement on the victim and can help to keep my siphons out of the next trouble/problem”.

The local traditional custom model can be used to settle the cases of complaints offence, criminal field of land including property, criminal field of taxation, environment, and others. The theory of restorative justice is a concept that responds to the development of the criminal justice system by focusing on the need to involve the community, which in this case maintains harmonious relations between the families of the perpetrators, the families of the victims, and especially between the perpetrators and victims of certain criminal acts.

CONCLUSIONS

Penal mediation policy in the settlement of criminal cases of complaint offense, the offense of property assets, and criminal offenses in the field of taxation the outside court in the future is a fair, lawful and legitimate policy. This is because penal mediation departs from the idea and work principle of handling conflict by mediators that are process-oriented rather than result-oriented, so that the perpetrator is aware of his mistakes; conflict are resolved; the peace or calmness is created; the victim is free from fear; informants' processes are not bureaucratic, avoid strict legal procedures; and there is active and autonomous participation.

The way of settlement of Penal Mediation against the offender of complaint offense, the offense of property assets - such as land, taxation and the environment - outside the court is through the local traditional custom model that is through deliberation and consensus in the jurisdiction of Indonesia in accordance to the basic principles of *Pancasila*. Other than that, the model that can be used is informal mediation, traditional village or tribal moots model, victim offender mediation model, reparation negotiation programmers' model, family and community group conference, and also community panel or courts. In the future, the legislators are expected to establish law concerning penal mediation, so that the accumulation of criminal cases at the police, attorney and district courts, high courts to the Supreme Court of the Republic of Indonesia can be minimized.

REFERENCES

- Hamzah, A. (2009). *Terminology of Criminal Law*. Sinar Grafika, Jakarta.
- Arief, B.N. (1996). *Legislative policy in crime management with prison crimes*. Universitas Diponegoro, Semarang.
- Hoefnagels, G.P. (1973). *The Other Side of Criminology*. Holland: Kluwer, Deventer.
- Ibrahim, J. (2006). *Theory and Methodology of Normative Research*. Bayu Media Publishing, Malang.
- Marzuki, P.M. (2006). *Legal research*. Kencana Prenada Media Group, Jakarta.
- Nahak, S. (2017). Penal mediation policy of land criminal offence resolution in the outer court of Indonesia. *International Research Journal of Engineering, IT & Scientific Research*, 3(2), 24-54.
- Law and Regulation. (1945). *Constitution of the Republic of Indonesia*.
- Law and Regulation. (2011). *Law number 12 Concerning the Formulation of Legislation*.