



Coordination Relationship Between Bhabinkamtibmas and Village Officials in Crime Cases of Theft through Penal Mediation

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Abstract

The concept in the criminal justice system is not known as mediation, but at present there is a growing reasoning mediation which is examined at the level of regulation under the law which is partial and limited in nature, so that the mediation mediation is regulated in the Letter of the Chief of the National Police No. Pol: B / 3022 / XII / 2009 / SDEOPS on Handling Cases through Alternative Dispute Resolution (ADR). Communities that are exposed to the scope of the Pekon Rembuk regulation in the Marga Tiga still have the trust of those whose level is higher than the community and the values contained in the settlement of criminal cases committed through the mediation of the said criminal. The problems in this thesis are: 1. What is the model for solving theft cases through reasoning mediation by Bhabinkamtibmas and village apparatus in Margatiga village? 2. How is the coordination between Bhabinkamtibmas and the village apparatus in settling cases of theft through criminal mediation? The approach to the problem in this paper uses a normative juridical approach and empirical jurisdiction. The sources and types of data used are primary data and secondary data. The data of collected by literature study and field studies. Data analysis used is qualitative analysis. Based on the results of the research and discussion, it was concluded that the problem solving was carried out by way of Pekon Rembuk. This settlement process was with a model of finding parties and village officials and police institutions or local village Bhabinkamtibmas with mekanisme: 1. Prepeace 2. Peace 3. Post peace. In the three processes that have been passed, this case of theft can indeed be resolved through reasoning mediation between the two parties with the mediator of the village apparatus and Bhabinkamtibmas. Because indeed problems like this can be done through village meetings or other languages in Rembuk Pekon which have often been carried out by village officials and other institutions that are indeed capable of law or understand how to solve cases or problems that exist within the village community in the Marga Tiga. The coordination relationship between Bhabinkamtibmas and the village apparatus in settling criminal cases through criminal mediation is based on the relationship between the village apparatus and members of the local village police namely Bhabinkamtibmas.

Keywords: Coordination; Bhabinkamtibmas; Village Apparatus; Theft; Penal Mediation.

A. Introduction

The Police of the Republic of Indonesia have an important role in society because of their main tasks that can create a national stability, namely as a guide, protector, and servant of the community. This is stated in Article 13 of Law Number 2 of 2002 concerning the State Police of the Republic of Indonesia which is contained in State Gazette Number 2 of 2002. Since the enactment of Law Number 2 of 2002 concerning the State Police of the Republic of Indonesia which is contained in the State Gazette of

2 then constitutionally there has been a change which confirms the formulation of the duties, functions and roles of the Indonesian National Police.

This causes members of the Indonesian National Police to submit to the powers of the general judiciary as regulated in Article 29 Paragraph (1) of Law Number 2 of 2002 which reads "Members of the Indonesian National Police are subject to the power of the general court". Thus the POLRI, which is now equated with ordinary civilians, is no longer members of the military as before the enactment of Law Number 2 of 2002 concerning the Indonesian National Police.

The National Police of the Republic of Indonesia has a disciplinary law for members who commit disciplinary violations. This provision is more fully contained in the Republic of Indonesia Government Regulation Number 2 of 2003 which regulates the discipline of members of the POLRI.¹ Polri carries out police duties throughout Indonesia. The police are one of the foremost state institutions guarding the community. The role of the police at this time is as guardians of security and order as well as law enforcement officers in society related to criminal law, the police should be able to carry out their duties professionally.

The State Police of the Republic of Indonesia is a state apparatus which has the main task of maintaining public security and order, enforcing law and providing protection, protection and services to the community, which is contained in Law Number 2 of 2002 concerning the State Police of the Republic of Indonesia. So that the Police are responsible for striving for, preventing, and eliminating every symptom that may arise and could disrupt security and order in society.

The situation of kamtibmas is highly expected by all people to be realized, so as to create a feeling of peace and peace for each community and can increase motivation and enthusiasm at work, because there is no fear due to possible disturbances that will befall them. The National Police has a fairly heavy duty in preventing violations and crimes, serving the community and protecting and curbing society.²

The activities of the National Police to encourage, direct and mobilize the public to play a role in Binkamtibmas (Community Security and Order Development) through the form of Pamswakarsa and the application of the community policing model, among others, by assigning members of the National Police to become Bhayangkara Pembina Kamtibmas, hereinafter referred to as Bhabinkamtibmas as the basis reference is the Letter of the Head of the National Police of the Republic of Indonesia Number: B / 3377 / IX / 2011 / Baharkam dated 29 September 2011 concerning the Organizing of Bhabinkamtibmas in Villages / Kelurahan.

The goal to be achieved in Bhabinkamtibmas activities is the realization of a stable and dynamic community and community service situation in order to secure and make national development successful. Meanwhile, what is meant by kamtibmas is a dynamic condition of society which is marked by the assurance of order and the upholding of the law and the building of peace which contains the ability to foster and develop the potential and strength of the community in preventing, preventing and overcoming all forms of lawlessness.

The main duties of Bhabinkamtibmas are:

¹Sitompul. Some of the Duties and Roles of the Police. Jakarta. CV Wanthi Jaya. 2000. p. 2.

²Standard Operational Procedure Regarding Implementation of Bhabinkamtibmas Tasks in Villages / Kelurahan, 2012, p. 1.

- 1) Community advisor for the realization of legal awareness and community service as well as improving society participation.
- 2) Protectors, protectors, and public servants for the realization of a sense of security and peace in society.
- 3) Mediators, negotiators and facilitators in solving social problems that occur in society.³

In an area or region there are also village officials who assist in every village welfare or an area which consists of various apparatuses. For example, village officials in a district. Village apparatus are all elements that have an important role and are involved in the village environment. The village apparatus consists of various sections such as BPD LKMD, Karang Taruna, PKK, traditional leaders, RT, RW, Kadus, Sekdes, and Kades. And within the village there are various types of criminal acts or various problems such as theft, robbery, murder, rape, corruption of village officials, and many other problems faced in the village which are a factor in the decline in the level of security and welfare of the village community.⁴

Examples of problems that have been resolved by Bhabinkamtibmas by involving village officials are in the Margatiga area, East Lampung, namely teenage fights, domestic disturbances, minor theft (usual), consultation pekon siskamling, discussion about chaos between neighbors, and many others. With an example from the village of Margatiga, East Lampung. On Tuesday, 11 September 2018 at 14:15 WIB a meeting or Pekon Conference was held at Mr. Jono's residence regarding a misunderstanding between the two parties where the first party had taken several pieces of mindi wood belonging to the second party on Tuesday 11 September 2018 at 08.00 WIB in the garden Mr. Sulismanto in Dusun I Negeri Agung. Mr. Jono admitted that he had taken the sebetan wood because he thought it was no longer used. Mr. Jono apologized to Mr. Abdulah as the owner of the timber. Mr Abdulah accepted Mr Jono's apology and resolved this misunderstanding in a family manner and would not make any demands on Mr Jono. Mr Jono returned the sebetan wood to Mr Abdulah.

In the settlement of this case, there were parties as intermediaries who helped the theft case due to the misunderstanding, including Bhayangkara Pembina Idham Kholik and Muchsin as witnesses.⁵ The concept in the criminal justice system is not known as mediation, but currently penal mediation is developing by being examined at the regulatory level under a partial and limited nature of law, so penal mediation is regulated in the Chief of Police Letter No. Pol: B / 3022 / XII / 2009 / SDEOPS dated December 14, 2009 concerning Case Handling through Alternative Dispute Resolution (ADR) and Regulation of the Chief of the National Police of the Republic of Indonesia Number 7 of 2008 concerning Basic Guidelines for Strategy and Implementation of Community Policing in the Implementation of Polri Duties.

Basically, the regulation regulates the handling of criminal cases through ADR with the nature of minor material losses, agreed by the parties, carried out through the principle of deliberation, consensus, must respect norms / customs and fulfill the principle of justice. Based on the definition, penal mediation is one of the alternative forms of dispute resolution outside the court which is commonly known as the

³ BHABINKAMTIBMAS Smart Book, 2014.Hlm.3

⁴ Adami Chazawi, Crimes Against Property, Malang: Bayu Media, 2003, p. 5

⁵ Resource information by Bhabinkamtibmas Margatiga.

Alternative Dispute Resolution (ADR), where the criminal penal mediation developed is based on the following work principle ideas:

- 1) Conflict Handling
- 2) Process oriented
- 3) Informal process of Community Security and Order (Bhabinkamtibmas), village officials, father.
- 4) There is active and autonomous participation of the parties.⁶

Settlement of cases through mediation is an alternative form of problem solving in the community through non-litigation, which is commonly known as ADR (Alternative Dispute Resolution), some call it the Appropriate Dispute Resolution.⁷ Based on the description above, the writer is interested in taking the title of the thesis entitled "The Coordination Relationship Between Bhabinkamtibmas and Village Officials in the Settlement of Crime Cases of Theft through Penal Mediation".

B. Research methods

Method The approach to the problem in this thesis uses a normative juridical and empirical juridical approach. Sources and types of data used are primary data and secondary data. The data collection method was carried out by literature study and field study. The data analysis used is qualitative analysis.

C. Results and Discussion

1. Theft Case Settlement Model Through Penal Mediation by Bhabinkamtibmas and Village Officials in Margatiga Village

Penal mediation is generally used in civil cases, not for criminal cases. However, in the development of theoretical discourse and reform of national law, there is a strong tendency to use penal mediation as a form of Alternative Dispute Resolution (ADR).⁸The essence of mediation is deliberation to reach a consensus to resolve disputes. Even though it is called by various names, the point still refers to the compromise of the victim and the offender to reach a common ground that benefits the parties in dispute resolution.⁹

Arief Barda Nawawi, revealed that although generally the settlement of cases outside the judiciary only exists in civil disputes, in practice criminal cases are often resolved outside the court through various discretions of law enforcement officials or through deliberation / peace mechanisms or forgiveness institutions in the community (musyawarah family, village meetings, customary deliberations).¹⁰

According to the village structure, the existence of penal mediation gives hope that criminal law policies will pay more attention to social values that grow and develop in society. Penal mediation is developed on the basis of the working principle which includes:

⁶Barda Nawawi Arief. *Out-of-Court Case Settlement Penal Mediation*, Pustaka Magister, Semarang, 2008. p. 5.

⁷Soerjono Soekanto. *Introduction to Legal Research*. University of Indonesia Press. Jakarta. 1986. p. 123.

⁸Barda Nawawi, arief. *Loc. Cit.* p. 36

⁹Gatot Soemartono. *Arbitrase and Mediation in Indonesia*, Gramedia Pustaka Utama. Jakarta. 2006. Pg. 20.

¹⁰Barda Nawawi, arief. *Op Cit.* p. 3-4.

- a) **Conflict Handeling**
Mediators in the context of national criminal law are generally law graduates who have received certain education / training, while in villages the mediator position is occupied by village structures such as the village head, village secretary, other village officials or other legal institutions such as the village police, or Bhabinkamtibmas.
- b) **Process oriented (Process Orientation)**
Mediation is more oriented to the quality of the process than the results, namely, among other things, to make the offender aware of his mistakes, needs conflict resolved, and the victim calms down from fear.
- c) **Informal Process (Informal Proceeding)**
Penal mediation is an informal, non-bureaucratic process, avoiding strict legal procedures.
- d) **Active and autonomous participation of the parties (active and automatic participation)**
Perpetrators and victims are not seen as objects of criminal law procedures, but rather as subjects who have personal responsibility and the ability to act. They are expected to act on their own.¹¹

The working principle of penal mediation as quoted above is based on the paradigm of non-litigation dispute resolution to get justice. This non-litigation paradigm aims to achieve justice that prioritizing consensus by bringing together the interests of the disputing parties and by achieving the goal of a win-win solution.¹²

Based on the provisions in article 364 of the Criminal Code, if the theft is not committed in a house or a closed yard where there is a house, if the price of the stolen item is not more than twenty-five rupiahs, he will be threatened for minor theft with a maximum imprisonment of three months or a maximum fine. two hundred and fifty rupiah. This case was handled by the police and local village officials because this minor theft was an offense in a common complaint, so the first party (the perpetrator) and the second party (the victim) submitted the settlement of this case to the police agency and local village officials. Article 18 Paragraph (1) Law No.

The process of resolving criminal cases by deliberation and consultation carried out by village officials with the Bhayangkara Development of Community Security and Order (Bhabinkamtibmas) uses the deliberation method for consensus which is also called mediation. While the mediation models in the Explanatory Memorandum, some penal mediation models are presented as follows:

- a) **The "informal mediation" model**
This model is implemented by criminal justice personnel in their normal duties, which can be carried out by the Prosecutor (Public Prosecutor) by inviting the parties to carry out informal settlements with the aim of not continuing prosecution if an agreement is reached; can be done by a social worker or a probation officer, by a police officer, or by a judge.

¹¹Rudini Hasyim Rado, Barda Nawawi Arief, Eko Soponyono, Penal Mediation Policy Against SARA Conflict Resolution in the Kei Islands in the Context of National Criminal Law Reform, *Journal of Law Reform* Vol. 2 No. 2 of 2016, Megister Program in Law, Faculty of Law, Diponegoro University.

¹²Arief Barda Nawawi, *Op Cit*, p. 5.

- b) Model "Traditional village or tribal moots"
According to this model, whole societies meet to solve criminal conflicts among their citizens and there are some less developed countries and in rural / interior areas. In principle this model predates western law and has inspired most modern mediation programs. Modern mediation programs often try to introduce the benefits of tribal moots in a form adapted to the structure of modern society and the legally recognized rights of individuals.
- c) The "Victim-offender mediation" model
Mediation between victim and perpetrator is the model that most people have in mind. This model involves various parties who meet in the presence of an appointed mediator. There are many variations of this model. The mediator can come from a formal official, an independent mediator, or a combination. This mediation can be held at any stage of the process, either at the police policy stage, the prosecution stage, the conviction stage or after conviction. This model exists which is applied to all types of criminal offenders; there is something special for children; some are for certain types of criminal acts (for example shoplifting, robbery and acts of violence). Some are primarily aimed at child offenders, novice offenders, but some are for serious offenses and even for recidivists.
- d) Reparation negotiation programs model
This model is solely for estimating / assessing compensation or reparation that must be paid by the perpetrator of the crime to the victim, usually during a court examination. This program is not related to reconciliation between the parties, but only with regard to planning material improvements. In this model, the perpetrator of a criminal offense can be subject to a work program in order to save money to pay compensation.
- e) Model "Community panels of Courts"
This model is a program to veer criminal cases from prosecution or justice into more flexible and informal community procedures and often involve elements of mediation or negotiation.
- f) Model "Family and community group conferences"
This model has been developed in Australia and New Zealand, which involves community participation in SPP (criminal justice system). It does not only involve victims and perpetrators of criminal acts, but also the families of the perpetrators and other members of the community, certain officials (such as police and child judges) and victim supporters. The perpetrator and his family are expected to produce an agreement that is comprehensive and satisfies the victim and can help to keep the perpetrator out of the next trouble / problem.¹³
The settlement of theft cases through penal mediation in Katon State, Marga Tiga sub-district, East Lampung district consists of several stages, namely as follows:
- a. The victim reported to the village apparatus and summoned the police agency, namely Bhabinkamtibmas.
 - b. Before conducting the Pekon Consultation, the village apparatus and Bhabinkamtibmas report to the police leadership to hold a Pekon Consultation

¹³Arief Barda Nawawi, Loc. Cit. p. 7.

- in a village to resolve cases of theft.
- c. Village officials and Bhabinkamtibmas as well as victims and witnesses came to the house of the perpetrator of the theft and asked for an explanation or clarification from the perpetrator in order to provide real information.
 - d. Victims, perpetrators, witnesses, village officials and Bhabinkamtibmas asked for an explanation of the sit of the case and explained about sanctions and threats.
 - e. Because it uses penal mediation to bring the two parties together, the threats and sanctions in the Criminal Code are not applied and prefer to settle the case or the criminal act of theft using a Pekon Conference / deliberation between parties and mediated by a higher-ranking party and the local police agency.
 - f. Consult and give decisions can be done by compensating, returning the stolen goods, or giving a written agreement and so on.
 - g. The settlement of the case is done by returning the stolen goods and making an agreement which states that:
 - h. The first party (the perpetrator) and the second party (the victim) then signed on the stamp and witnessed by the village officials, Bhabinkamtibmas and witnesses who were present.
 - i. After the settlement of the criminal case of theft through penal mediation has been completed, the parties and the mediator report to the head of the police institution that the settlement of the criminal case that has been settled through penal mediation has been completed.
2. Coordination Relationship Between Bhabinkamtibmas and Village Officials in the Settlement of Crime Cases of Theft through Penal Mediation

In the settlement of cases of criminal acts of theft committed by the village community, it becomes a case that is not easily resolved and is not in accordance with musyarawah or is based and accompanied by authorized institutions and the authorities. In a village there are also relationships between village officials with one rank below or above it. And in the problem of solving criminal cases through penal mediation in this village, a mediator relationship is also needed.¹⁴

The synergy relationship in the criminal case of theft which is settled through penal mediation in Katon State village is based on the relationship between the village apparatus and members of the local village police, namely Bhayangkara Pembina Security and Community Order (Bhabinkamtibmas). Where if a village finds a problem, what it will do is coordinate between the village apparatus and the local police.

In solving criminal cases in a village, cooperation between village officials, the community and other legal or police institutions is also needed. The relationship that exists between the village apparatus (government) and the Bhabinkamtibmas in Maga Tiga has been very well established down to the village level. Especially in cases experienced in villages, especially in Maga Tiga, East Lampung district.

The relationship between the village apparatus (government) and the Bhayangkara Development of Community Security and Order (Bhabinkamtibmas) in Maga Tiga is basically used in the form of consensus or the local village calls it Rembuk Pekon, so it can be said that the relationship between the village apparatus

¹⁴ Based on the results of an interview with Sunarto, a lecturer in the Criminal Law section of the Faculty of Law, University of Lampung, April 19, 2019 at 10.40 WIB.

(government) and Bhayangkara This Community Security and Order Development (Bhabinkamtibmas) can be done as well as possible because the local community must also use the coordination relationship between the village apparatus (government) and the Bhayangkara Community Security and Order Development (Bhabinkamtibmas).

And the people who are affected by the scope of the Rembuk Pekon arrangement in Marga Tiga still have the trust of parties at a higher level than society and the values contained in the settlement of criminal cases carried out through the mediation of the penalties. This provides a place for the village apparatus and the Bhabinkamtibmas to continue to provide guidance, direction and security among the people of Marga Tiga.

D. Conclusion

Based on the results of the research and discussion described above, the authors can draw the following conclusions: The model for the settlement of criminal cases of theft through penal mediation is as follows: Mediation models in the Explanatory Memorandum suggest several models of penal mediation as follows: "Informal mediation" model, Model "Traditional village or tribal moots ", Model" Victim-offender mediation ", Model"Reparation negotiation programs ", Model" Community panels of Courts ", Model" Family and community group conferences ",

The settlement of theft cases through penal mediation in Katon State, Marga Tiga sub-district, East Lampung district consists of several stages, namely as follows:

- 1) The victim reported to the village apparatus and summoned the police agency, namely Bhabinkamtibmas.
- 2) Before conducting the Pekon Consultation, the village apparatus and Bhabinkamtibmas report to the police leadership to hold a Pekon Consultation in a village to resolve cases of theft.
- 3) Village officials and Bhabinkamtibmas as well as victims and witnesses came to the house of the perpetrator of the theft and asked for an explanation or clarification from the perpetrator in order to provide real information.
- 4) Victims, perpetrators, witnesses, village officials and Bhabinkamtibmas asked for an explanation of the sit of the case and explained about sanctions and threats.
- 5) Because it uses penal mediation to bring both parties together, the threats and sanctions in the Criminal Code are not applied and prefer to settle the case or the criminal act of theft using Pekon consultation / deliberation between party and mediated by a higher-ranking party and the local police agency.
- 6) Consult and give decisions can be done by compensating, returning the stolen goods, or giving a written agreement and so on.
- 7) The settlement of the case is done by returning the stolen goods and making an agreement which states that:
- 8) The first party (the perpetrator) and the second party (the victim) then signed on the stamp and witnessed by the village officials, Bhabinkamtibmas and witnesses who were present.
- 9) After the settlement of the criminal case of theft through penal mediation has been completed, the parties and the mediator report to the leadership of the

police institution that the settlement of criminal cases that have been resolved through penal mediation has been completed.

- 10) The coordination relationship between Bhabinkamtibmas and village officials in the settlement of criminal cases of theft through penal mediation is as follows: The relationship between village officials (government) and Bhayangkara Community Security and Order (Bhabinkamtibmas) in Maga Tiga can be said to be good and in accordance with procedures and regulations prevailing and many parties have used the coordination between the village apparatus (government) and the Bhayangkara Development of Security and Public Order (Bhabinkamtibmas) in Maga Tiga.

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