

Penal Mediation in the Settlement of Criminal of Household Violence by Husband Towards Wife from the Social Order Era of the Pandemic of COVID-19

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ABSTRACT

The COVID-19 pandemic that occurred in Indonesia resulted in applying of social distancing, as a result of this social problems that occurred in the community, there was violence against household (KDRT) in Indonesia, although it did not clearly mention that mediation was for the field of civil law, but if you look closely at the community, the mediation council referred to is mediation in the field of civil law. For this reason, this research will discuss whether mediation is used in criminal matters, especially in cases of domestic violence. The research methods used are: The approach method used in Normative Legal Research (juridical normative) by using the statutory approach, conceptual approach, historical approach, and comparative and empirical approaches (field data). The data analysis technique used in this research is descriptive qualitative method, namely describing and analyzing data that has been obtained from judges, perpetrators, lawyers, victims' families and subsequently translated into actual explanations. Based on the results of the research it can be argued that: When a domestic violence case occurs, mediation is carried out where the number of cases mediated is quite a lot, the mediator has difficulty finding a proper mediation room, so that hall rooms, judge rooms and rooms can be used for mediation with room conditions that are not standard for mediation process. Using penal mediation in cases of domestic violence is seeking a win-win solution as well as trying to be a solution to problems in the criminal justice system. The application of penal mediation is not used in handling domestic violence but uses the Criminal Procedure Code (KUHAP). However, in practice the authorities often offer peaceful efforts for cases that do not cause serious physical injury.

Keywords: *Penal Mediation, Domestic Violence*

1. INTRODUCTION

Recent developments indicate that acts of physical, psychological, sexual violence and household neglect often occur so that adequate legal instruments are needed to eradicate domestic violence. The situation of this domestic violence case increased during the COVID-19 Pandemic, this is due to the large number of layoffs (Termination of Employment Relations), so that the economy of the laid-off families no longer has income to

pay for a day's life. From this condition, it will trigger pressure and cause excessive emotions to the breadwinner which can lead to physical violence [1]-[5].

The Law of the Republic of Indonesia No. 23 of 2004 concerning the Elimination of Domestic Violence (hereinafter referred to as the PKDRT Law) can be said to have turned domestic violence which was originally a form of violence in the domestic sphere into violence in the public sphere [6].

So far, the community still considers cases of violence that occur in their family sphere as private matters that cannot be entered into by outsiders. In fact, some people, including women who are victims, think that these cases are not acts of violence, due to the strong patriarchal culture in the midst of society that always subordinates and gives a negative image to women as parties who deserve to be sacrificed and are seen as limited to footwear at daytime and bedding at night.

For example, prior to the Law on the Elimination of Domestic Violence, the existing legal provisions still included cases of violence against women such as cases of rape, trafficking of women, and cases of pornography as a matter of morality, not in the framework of protecting the integrity of the body of women who are often victims. The implication is that apart from creating a sense of injustice in the law, this condition also often places women who are victims as perpetrators of crimes or give them the opportunity to experience multiple violence.

These facts inspire feminists so that they feel the need to carry out institutional and legal reforms that are more pro-women through strategic and systematic steps. What they mean by institutional reform are efforts to change cultural patterns that degrade women, including through the educational curriculum, while closing opportunities to use religious traditions, norms and interpretations to avoid the obligation to eradicate them. Meanwhile, legal reform is directed at creating guarantees for protection, prevention and eradication of cases of violence through legalization of legal products with a gender perspective. In this regard, their first strategic effort was to urge the Government to form a national commission to monitor measures to prevent and eradicate violence against women. These efforts paid off with the issuance of Presidential Decree No. 181 of 1998 regarding the establishment of the National Commission on Violence against Women (Komnas Perempuan).

This law is a public demand that is in accordance with the objectives of Pancasila and the 1945 Constitution to eliminate all forms of violence in Indonesia, especially violence in household. In addition, it is in accordance with the United Nations Convention which has been ratified by the Indonesian government through Law Number 7 of 1984 concerning the elimination of discrimination against women. In Indonesia, mediation is only known in civil matters, not in criminal matters. For civil matters, Indonesia already has a legal umbrella, namely the Regulation of the Supreme Court of the Republic of Indonesia Number 02 of 2003 concerning Mediation Procedures in Courts. Although it does not clearly state that mediation is for the field of civil law, if it is examined carefully, it is clear that the mediation meant is mediation in the field of civil law. For this reason, this research will discuss whether mediation can be used in criminal matters, especially in cases of domestic violence [7]-[10].

However, if you look at the results of the imposition of penalties with criminal settlement, the writer argues that this will only destroy the expected condition and ended in divorce, to keep the family in question intact again, the settlement of domestic violence can be carried out through

penal mediation and a special government institution is formed in charge of handling it under the right agency.

2. METHODOLOGY

The approach method used in Normative Legal Research (normative juridical) by using the statutory approach, conceptual approach, historical approach, and comparative and empirical approaches (field data) is what is meant by the normative legal research method is a legal research method carried out by examining library materials or mere secondary data [11]. This research was conducted to identify the concepts and principles as well as the principles of resolving household fractures and maintaining the harmonious conditions of the family as before.

The method of thinking used is the deductive thinking method (a way of thinking in drawing conclusions from something that is general that has been proven to be correct and the conclusion is aimed at something specific) [12]. In general, in normative legal research the paradigm is used is the Legal Positivism paradigm, then the research method is Juridical-Normative, and finally the approach is to use; statutory approach (statute approach), case approach, historical approach, comparative approach and conceptual approach, analytical analytical approach and philosophical approach [13].

2.1. Research specifications

In obtaining primary data, observations and interviews were conducted with officials related to penal mediation in the settlement of criminal acts of domestic violence committed by husbands against wives at the Lubuk Pakam District Court.

2.2. Sources and data collection techniques

Data Source. The author writes this research based on penal mediation in the settlement of criminal acts of domestic violence committed by husbands against wives at the Lubuk Pakam District Court.

Data collection technique. The data collection technique is carried out through data analysis which can be obtained in statutory regulations, textbooks, journals, research results, encyclopedias, bibliographies, cumulative indexes and others. Basically, data collection techniques with this approach are carried out on various literatures (libraries).

In addition to the research conducted as mentioned above, it is also carried out through: library research, namely library research, where in this study the author collects data from the literature and studies technical manuals and theories that can be used as research material and supporting material in other research.

Further field research (Field work Research), namely direct research into the field by: a. Observation, collecting data by making direct observations b. Interviews, observations through direct interviews c. Documentation,

data collection is carried out to obtain secondary data in the form of documents or archives, and scientific papers relevant to this research.

Analysis Technique. The data analysis technique used in this research is descriptive qualitative method, namely describing and analyzing the data that has been obtained from judges, perpetrators, lawyers, victims' families and then translated into actual explanations.

3. RESULT AND DISCUSSION

Penal mediation is the media as an alternative in solving domestic violence problems committed by husbands to wives.

3.1. Application of Penal Mediation in Several Places in Indonesia

As a learning material for the application of penal mediation in several places in Indonesia, an increase in the success of mediation between years in three religious courts has not shown the success of mediation, because if the cases that were successfully mediated in two years only reached 30.5%, 21.3%, and 20.0% for the Religious Courts of Bandung, Ciamis and Depok. This percentage figure does not indicate satisfactory success of the Mediation, if the objective of the mediation is to reduce the number of cases. The success of mediation in the three religious courts studied has not yet reached 50%. The maximum success rate is 30.5%.

Data obtained at the Lubuk Pakam District Court, the largest number of cases submitted to the religious courts are divorce cases. Divorce cases submitted to the Religious Court by a husband and wife couple have been preceded by various background case settlement processes which are resolved directly by the parties or using other parties from the family circle or an appointed person. With a picture like this, divorce cases submitted to the religious court are basically divorced cases whose problems are so complicated that it can be said that the marriage between husband and wife has been split.

Divorce cases that mediate and experience failure vary widely in their causes and backgrounds. For cases of divorce caused by domestic violence, resolution through mediation often fails. Apart from domestic violence, because of divorce due to a lack of love, Other Ideal Men (PIL) and Other Ideal Women (WIL), mediation generally failed. For the divorce case caused by the latter, it cannot be generalized about the success and failure of the mediation. That is, for divorce cases caused by Other Ideal Men (PIL) and Other Ideal Women (WIL), sometimes the parties get along again but there are also parties who want to proceed to divorce.

3.2. Mediator aspect, mediation failure is seen from the mediator's point of view

It can be identified from the limited time that mediators have, weak mediator skills, lack of motivation and persistence in completing cases, and there are still few certified mediators. Regarding the failure of mediation in divorce cases, it was stated and acknowledged [14]-[15], that the comparison of the success of mediation in several countries with Indonesia, especially with the environment of the Religious Courts is very "unequal".

Wherever, the hearts of husband and wife that have broken apart, it will be very difficult to reconcile "Representative Mediation Room Needs to be Prepared in Court". The determination of the parties to divorce is very strong. The parties are closed to express their problems, prioritizing personal interests, the negotiation process to find common ground has been repeated outside the court with the conclusion of divorce and a sense of prestige. will have a negative impact on the effectiveness of the mediation and on the success of the mediation.

In the three religious courts that were found, there were adequate mediation rooms. However, in the religious courts where there are already available mediation rooms, when the mediation was taking place with quite a number of cases being mediated, the mediators had difficulty finding a proper mediation room, so that often found hall rooms, judge rooms and meeting rooms were used for mediation with room conditions not the standard for the mediation process. The results and failures of a case are more properly viewed as the experience of mediation in each court.

The characteristics of successful mediated divorce cases include cases that are submitted to court but the parties are not yet mature to discuss them, or motivation to go to court is intended to provide lessons to one of the parties, cases that are motivated by jealousy, livelihoods, one party becomes a drunk, not open financial problems and offended by one party over and over again.

3.3. The Relevancies between Penal Mediation and Protection of Human Rights

Moral and political philosophers agree that there is a right called human rights. However, there is no consensus on what human rights are, what are the reasons for justifying them, and what are the priorities among these rights. For example, some rights theorists argue that human rights are limited to civil and political rights, and do not include economic or welfare rights. Conversely, other theorists argue that the right to prosper as a human being is a human right, where the welfare includes economic or welfare considerations [16]-[17].

Economic and social rights have the same position as civil and political rights, both of which cannot be separated from one another. If one of these rights is not guaranteed, it will negate the other rights. Another important issue in terms of human rights is whether there needs to be a conflict between the values of freedom and equality, so that the rights based on each of these values are mutually exclusive. The right to equality in this case is seen as interfering with the right to freedom, where this last right appears as the right to oppose interference.

The conflict between freedom and equality was put forward by Charvet who said that the traditional concept of human rights was incoherent, because this concept raised contradictory requirements. On the one hand, this concept refers to freedom as the determination of individual goals by the individual himself and, on the other hand, points to equality as a moral condition to view the needs and goals of others even if the two are in conflict. In the mention of this conflict between freedom and equality, freedom is understood as an individual right, while equality is seen as a right or social demand. So, individual rights are seen as contrary to the rights or demands of society. The opinion that argues that freedom and equality do not contradict its argument based on the argument that, if individual freedom is understood as freedom for self-development which requires the availability of various conditions, then the right to be owned cannot be interpreted in such a way as a right which interferes with equal freedom.

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Technically operationally, Law Number 39 of 1999 concerning Human Rights (Human Rights Law) was re-established, then followed up with Law Number 26 of 2000 concerning Human Rights Courts (UUPHAM). Several provisions or laws relating to Human rights are guidelines for law enforcement officers or law enforcers in carrying out their duties, so as not to commit human rights violations, as well as guidelines for the National Commission on Human Rights (Komnas HAM), an institution that has been established.

The president, who was later known by the acronym Keppres No. 50/1993, was expected to promote and

protect human rights. The existence of national instruments and institutions (national law) on human rights does not mean that it can be said that the protection of human rights in Indonesia is guaranteed. Article 35 UUPHAM states that every victim of gross human rights violations and/or their heirs can receive compensation, restitution and rehabilitation. However, the reality is that in cases of gross human rights violations, in this case past human rights violations (gross human rights violations that occurred before the establishment of the UUPHAM), no victims or their heirs have received compensation, restitution and rehabilitation. Efforts to respect, prevent and protect against human rights must be through legal instruments. Indonesia as a rule of law has made various legal instruments for the protection and enforcement of human rights.

This guarantee can be seen in the 1945 Constitution resulting from the fourth amendment, as well as in the provisions of other laws and regulations, either indirectly mentioning human rights or laws specifically regulating human rights, such as the human rights law and the law on human rights court which has also been touched on. In the introduction, not only through national legal instruments, but in international law there have also been many provisions regarding the respect and protection of human rights through international declarations, covenants or treaties.

Indeed, human rights cannot be understood only in the national context, but also internationally. Because human rights are a universal problem that is not limited by the boundaries of the territory of the state, so that if there is no effective national guarantee for the completion of cases of human rights violations, then international legal instruments can be used to solve them. In handling criminal cases, at first glance, penal mediation is almost the same as what we know about the discretion that our criminal justice system has, such as the police and the prosecutor's office, to filter incoming cases so that certain cases do not go through the criminal justice process.

However, there is a different essence to the discretionary system. Penal mediation prioritizes the interests of the perpetrators of the crime and at the same time the interests of victims, in order to achieve win-win solution that benefits both the perpetrator and the victim. In penal mediation, the victim is brought directly to the perpetrator of the criminal act and can put forward his demands so that peace between the parties is produced. Penal mediation is carried out in a transparent manner so as to reduce the dirty games that often occur in traditional criminal justice processes.

Given many advantages that exist in penal mediation, as it has been practiced in several countries, efforts are needed in the form of studies to apply penal mediation in the Indonesian criminal justice process as part of the criminal justice system in Indonesia. The criminal justice system is a system consisting of sub-systems such as the police, prosecutors, courts and prisons, including legal advisors. In the operation of the Indonesian criminal justice system, it is based on Law Number 8 of 1981 concerning the

Criminal Procedure Code (KUHAP), as formal law to implement material criminal law.

3.4. Penal mediation is one form of implementation Restorative Justice

In the criminal justice process, the operation of the criminal justice system is interdependency between one sub-system and another. Penal mediation is one form of restorative justice implementation, which is a concept that views crime more broadly. This concept considers that a crime or criminal act is not just a matter for the perpetrator of a criminal act with the state representing the victim, and leaves the settlement process only to the perpetrator and the state (public prosecutor). Domestic Violence (KDRT) is a type of violence that has specific characteristics, namely that it is carried out in the house, the perpetrator and the victim are members of the family and are often not considered a form of violence.

The Law on the Elimination of Domestic Violence provides a strong legal basis that makes domestic violence, which was originally a household matter, becomes a state affair. However, the lengthy judicial process, shame, un-representation of victims, and an inefficient system of sanctions mean that many cases of domestic violence are not reported, even if they are complained, many are withdrawn. In addition, there are many cases of domestic violence that are not resolved through district courts but religious courts that do not use the PKDRT Law. For this reason, the idea emerged of using penal mediation which seeks a win-win solution and seeks to be a solution to problems in the criminal justice system. Based on the above background, problems arise, namely how to handle domestic violence with current penal mediation and how to formulate policies for handling domestic violence with penal mediation in the future. From the results of the research it is found that currently penal mediation is not used in the handling of domestic violence because the handling is using the Criminal Procedure Code (KUHAP). However, in practice the authorities often offer peaceful efforts for cases that do not cause serious physical injury.

For future policy formulations that must be considered are the general principles of penal mediation, penal mediation stages, models that can be used, modiators, types of violence that can be mediated and the duration of mediation. Violence that occurs in a society actually originates from a certain ideology that legitimizes oppression on the one hand, either individually or in groups against other parties due to the perceived inequality that exists in society. The position of the wife which is positioned as subordinated to the husband demands that a wife must always submit to her husband. Likewise, a child who is never considered a partner by his parents, so that under any circumstances the child must follow the wishes of his parents. This ideology emerged a long time ago and is ingrained in society. Problems arise when there are other ideological and cultural transformations that are difficult to accept. Information

that everyone has the same rights cannot easily be accepted by society. This can lead to ideological clashes that sometimes result in violence. A wife arguing with her husband, a child arguing with her parents is considered unusual.

This irregularity is then often resolved by force. Likewise, with domestic violence (hereinafter referred to as KDRT). The occurrence of domestic violence stems from the unequal power relations between men (husbands) and women (wives). This condition often results in husbands' acts of violence against their wives as part of their use of authority as the head of the family. This justification of authority can be born supported by state laws or social perceptions in the form of myths about the superiority of a man that is believed by certain societies. By using this line of thought, violence that occurs within the scope of household (domestic violence) is a type of gender-based violence. This means that violence is born due to differences in gender roles that are socially constructed in which one party becomes subordinate to the other.

3.5. The Concept of Gender and Domestic Violence

The concept of gender is a trait inherent in both men and women that is socially and culturally constructed. Domestic violence in practice is difficult to reveal for several reasons. First, domestic violence occurs within the sphere of domestic life which is understood as a matter of privacy, in where others should not interfere (intervene). Second, in general the victim (wife/child) is a party that is structurally weak and has a special economic dependence on the perpetrator (husband). In this position, victims generally always take a silent attitude or even cover up the violence, because by opening cases of domestic violence to the public means exposing the family's shame. Third, lack of legal knowledge and awareness of the legal rights they have. Fourth, there is a social stigma that violence perpetrated by husbands is understood by Mediation as one of the ways that can be taken in efforts to resolve this domestic violence. With mediation, the parties will sit together to solve the problem.

Victims will be protected and involved in every stage of decision making. So that the losses and injuries they experienced can be healed or healed with consequences that must be fulfilled by the perpetrator. What is decided in mediation is really the need of both parties. The secret nature of mediation is very appropriate to be carried out in cases of domestic violence, because domestic violence occurs in a personal sphere that is unknown to other people. This secrecy is necessary so that families who experience domestic violence are not ashamed psychologically and sociologically.

4. CONCLUSION

Based on the results of research found in three religious courts, there are already adequate mediation rooms.

However, even in religious courts where there are already available mediation rooms, when the mediation took place with quite a number of cases being mediated, the mediator had difficulty finding a proper mediation room, so that often found hall rooms, judge rooms and meeting rooms were used for mediation with room conditions non-standard for the mediation process. the outcome and failure of a case is more accurately seen as the mediation experience in each court.

During the COVID-19 Pandemic, if a domestic violence case occurs in the settlement process using Penal Mediation by seeking a win-win solution and trying to be a solution to problems in the criminal justice system. From the results of the research, it can be seen that currently penal mediation is not used in handling domestic violence but uses the Criminal Procedure Code (KUHP). However, in practice the apparatus often offers peaceful efforts for cases that do not cause serious physical injury.

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