

## Mediation Legal Protection in Handling Minor Crimes

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### Abstract

The position of the judiciary as the last place to seek justice has a very important role for the way of solving a case or problem through mediation peace. The first appearance of a mediation process was in 1970 in California where another name is usually Alternative Dispute Resolution (ADR) which was only practiced thoroughly in 1979. The purpose of writing is so that readers will understand the existence of mediation law with protection by means of criminal acts light through mediation, research methods that use the, journal writing with normative legal research methods. Approach to normative juridical means an approach using literature, doctrine, and document studies that have been made by the opinion of experts. In handling criminal acts, mediation can be an effective and useful alternative in cases of minor crimes.

**Keywords:** Mediation, Misdemeanor Crime, Handling



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### INTRODUCTION

The mediator or another name for the judge who has obtained a certificate as a mediator must carry out his duties such as assisting deliberations with the aim of resolving a dispute and resolving it without coercion. The mediator certificate is proof of a person completing training and obtaining accreditation. The Parties referred to as someone who is disputing to legal channels or the Court to obtain an agreement and settlement of their dispute is hereby the Supreme Court Regulation of the Republic of Indonesia No. 1 of 2016 concerning Mediation Procedures in Courts. Mediators can mediate in the process of resolving a problem through a negotiation mechanism or procedure called Mediation.

The position of the judiciary as the last place to seek justice has a very important role for the way of solving a case or problem through mediation peace. The first appearance of a mediation process was in 1970 in California where usually another name is Alternative Dispute Resolution (ADR) which was only practiced thoroughly in 1979. The word mediation has the Latin name *mediare*, which is located in the middle which indicates a third party as an intermediary. (Muazzul, 2023). Christopher W. Moore means that mediation is a problem that can be assisted by a third party and can also be accepted by both parties in a fair and impartial manner, speeding up the parties participating in the dispute so that they quickly reach a joint decision (Valerie, 2023). Mediation is generally known as an alternative form of solving dispute problems and with the development of mediation it can also be carried out in criminal cases. Mediation is a process related to resolving a legal issue in Indonesia, especially in the field of criminal law. With the development and provision, mediation is now able to be motivated by the social reality in which the court is one of the problem solving institutions according to the wishes and expectations of the community. In the world of mediation, there is also penal mediation, which is mediation used by law enforcement officials in carrying out their duties,

such as judges, public prosecutors, or the police, where this mediation can be used for special categories of crimes.

The meaning of a dispute as in (KBBI) is something like a difference of opinion or it could be a fight. Disputes can occur. Don't be surprised if they often occur among individuals, even from one country to another, as well as between communities and institutions. The purpose of the dispute can occur in an open or closed situation, can become a criminal or civil case, can occur nationally or internationally. A dispute is a situation in which one party feels aggrieved by the other party. Disputes occur because of important or insignificant differences in the same object or problem. In a dispute there is who and why they are involved. The subject is defined as a person who becomes an actor in individual or social or institutional disputes.

The mediation process in principle can be resolved with mediation, but in practice a criminal act problem can be resolved by means of law enforcement in resolving a problem. The large number of cases of misdemeanors in Indonesia often become the subject of public discussion, because the normal legal process often does not produce results that are fair or in accordance with the expectations of the community, because the losses suffered are not proportional. In dealing with minor crimes, there are several provisions regarding mediation as an alternative means of settlement related to disputes. The process of resolving disputes through litigation is often called non-litigation, consensual and non-adjudication courts. Mediation may act as a dispute resolution process in criminal cases. In this paper, two problems will be discussed, namely how the legal protection of mediation in the handling of minor crimes and how to handle minor crimes through mediation.

The meaning of a crime according to the Criminal Code (KUHP) by the government as its formation uu with another name with strafbaar-feit, the uu's formers do not only give clear intentions regarding the strafbaarfeit, so that strafbaarfeit is often used by criminal law experts or tp (criminal offences) , acts or events in the criminal. In Article 205 paragraph 1 of the Criminal Procedure Code for minor crimes (Tipiring), namely matters that can be subject to punishment/sanctions in the form of imprisonment for a maximum of three months with a fine of up to Rp. 7,500.00 (seven thousand five hundred rupiah), minor humiliation, Traffic violation cases) (Article 205 paragraph (1) of the Criminal Procedure Code), for cases that are punishable by imprisonment for a maximum of 3 (three) months or a fine of more than Rp. 18 of 1983. The role of mediation by law enforcement officials such as the Police in minor crimes in order to achieve the goals of Restorative Justice.

## **RESEARCH METHODS**

The research method using content in journal writing is a normative legal research method (doctrinal - normative juridical). Approach to normative juridical means an approach using literature, doctrine, and document studies that have been made by the opinion of experts. The nature of descriptive research is research that is filled with clear and detailed sentences. Mediation in court in handling minor crimes. In order to obtain objective results and obtain proof of their truth, the materials in this study are primary legal materials and secondary legal materials. Primary legal material is legal material that is authoritative, meaning that it has authority, for example legislation, jurisprudence, and international treaties, while secondary legal material is a document or legal material that provides an explanation of primary legal material such as books, articles resulting from study. Normative legal research, the existence of research on fundamental legal principles can be guided.

## **RESEARCH RESULTS AND DISCUSSION**

### **Mediation Legal Protection in Handling Minor Crimes**

Moeljatno found in his book the principles of criminal law, which defines a criminal act as a right that should not be exercised because it exists in the rule of law and its prohibitions. Criminal acts can also be regarded as activities that are prohibited in a rule, or also by violating these rules, sanctions or punishments must be imposed on anyone who commits a violation. A minor crime is an act or behavior related to the law that will look bad, in short it is interpreted as a minor crime because it only carries a fine (Romli, 2018). Mediation in the handling of criminal acts is regulated by Indonesian regulations, namely the procedural law in progress, with article 130 HIR or article 154 RBg, Article 153B (the book of criminal procedural law), article 154 KUHAP, Article 165 KUHAP, and article 170A KUHAP. In Indonesia, mediation for minor crimes is regulated in Article 14(2) of Law no. 8 of the Criminal Procedure Code of 1981 (KUHAP), namely, "If the defendant and the public prosecutor agree, a misdemeanor or an offense punishable by imprisonment for a maximum of one year can be tried in a mediation hearing. Further provisions regarding mediation hearings are regulated in statutory regulations -invitation." This article provides for the possibility of settling minor crimes through mediation if the defendant (perpetrator) and the public prosecutor (prosecutor) agree. The mediation session is directed at reaching an agreement between the defendant and the public prosecutor regarding the sanctions or actions to be taken. This mediation session aims to resolve cases in a faster and more efficient way, and avoid formal trials in court. However, it is important to note that the implementation and details of the mediation process in minor crimes may vary by jurisdiction and depend on the laws and regulations in force in each country. Therefore, it is more accurate to refer to the exact rules and regulations in force in the jurisdiction where the misdemeanor case is located for more information on mediation in that context. Legal protection in mediation in the handling of criminal acts can be different because of legal jurisdiction with rules that still apply in the country. However, in general, legal protection in criminal mediation may include the following aspects:

1. Confidentiality is contained in the first principle of mediation. Mediation of crimes is generally carried out in secret to protect the privacy and interests of the parties involved, including perpetrators and victims. Information disclosed during mediation is considered confidential and cannot be easily proven in court in subsequent proceedings, unless there is consent from all parties involved.
2. Freedom and Equality: Mediation of criminal acts is carried out in an impartial atmosphere, where the mediator acts neutrally and does not side with anyone. The parties involved in mediation have the freedom to express their own views and actively participate in finding mutually beneficial solutions. Legal protection guarantees equal treatment of all parties involved in mediation, without discrimination or unfair treatment.
3. Voluntary consent: Mediation of criminal acts is based on the principle of voluntary consent. Neither party is forced to accept a mediation agreement if they do not agree. The parties have the right to reject the proposed agreement and choose to continue with the formal legal process, if deemed necessary. Legal protection ensures that the parties involved have the freedom and autonomy to make their own decisions.
4. Involvement of Attorneys: In criminal mediation, the parties involved have the right to be represented by their lawyers or legal counsel. Lawyers can provide legal advice to their clients during the mediation process, protect their rights, and assist in reaching a fair and balanced agreement.
5. Implementation and Oversight: If a mediation agreement is reached in a misdemeanor crime, legal protection ensures that the agreement has a sound legal basis and is enforceable. Courts or competent authorities usually have a role in verifying and overseeing the implementation of mediation agreements, as well as ensuring that the rights of all parties are protected.

It is important to note that legal protections in criminal mediation can vary in each jurisdiction and depend on the law regarding the rules that definitely apply. With that in mind, it is important to refer to applicable laws and regulations. An example of a case related to the research in this article is a case of theft of small items at a retail store where a perpetrator stole several small items, such as cosmetics and accessories, at a retail store. The perpetrator was caught by the store's security officers and the items were successfully returned. With this case is considered as a misdemeanor crime. The examples of cases that we have used are handled by mediation because it is only a minor crime, the mediation process they have carried out is as follows:

1. Case identification: The police or the prosecutor identified this case of theft as a misdemeanor that could be resolved through mediation.
2. Agreement of the Parties: The perpetrator and the victim, in this case the shop owner, agreed to try to resolve the problem through mediation as an alternative to dispute resolution.
3. Selection of Mediator: A mediator who has experience in mediation of minor crimes is selected to facilitate the mediation process. The mediator must be neutral and able to understand the dynamics of the conflict in this theft case.
4. Mediation Session: The parties, i.e. principal, shop owner, and mediator, meet in a mediation session. The mediator facilitates discussion between the parties to reach a common understanding regarding the incident of theft, identify the interests and needs of each party, and find an adequate solution.
5. Reaching an Agreement: After several mediation sessions, the parties reach an agreement. In the agreement, the perpetrator admits to the theft he committed, apologizes in writing to the shop owner, and agrees to replace the value of the stolen goods. The shop owner, on the other hand, agreed not to pursue legal proceedings through the courts.
6. Approval and Implementation of the Agreement: The agreement is stated in writing and documented with the agreement of both parties. The perpetrator gave compensation to the shop owner in the form of goods or money in accordance with the value of the stolen goods. This agreement will be considered as a legal settlement of the theft case.

From the examples above, Mediation allows perpetrators and victims to actively participate in solving problems peacefully and calmly without any further problems, taking into account the interests of each party. Mediation also helps avoid incurring higher costs if the criminal act is escalated in court.

### **Handling of Minor Crimes through Mediation**

Of course in Indonesia there are various types of criminal acts and how to deal with them in essence, therefore criminal acts are a violation of the norms contained by legal experts, and in the research we are currently conducting we are looking for how to handle minor crimes through mediation. and this process involves several steps and processes that are generally followed. The following are general steps in handling minor crimes through mediation:

1. Selection of a Mediator, the term for a person related to a violation of the law agrees to use mediation as a settlement method. They then select a neutral and competent mediator to facilitate the mediation process.
2. Introduction: The mediator introduces himself to the parties involved and explains the role and purpose of mediation. The mediator also explains the basic rules and principles of mediation that will be followed.
3. Explanation Session: The parties involved are given the opportunity to explain their version of events that occurred and the issues at issue. They could just talk about the needs with interests regarding the settlement that has been made.

4. Identification of Issues and Desires: The Mediator helps those related to interpret the existence of big news that needs and must be resolved and seeks the wishes or solutions desired by each party. This helps focus attention on the core issues that need to be addressed.
5. Negotiation and Finding Solutions: Mediators help parties to communicate openly and listen to each other. They seek a solution that satisfies all parties involved. Negotiations are carried out with the aim of reaching an agreement that is acceptable to all parties.
6. Agreement: If the parties reach an agreement, the agreement will be explained in detail by the mediator. The parties are asked to agree and sign the agreement. Mediation agreements are usually binding and can form the basis for resolving disputes.
7. Implementation and Completion: Once an agreement is reached, the parties are responsible for carrying out the actions agreed in the mediation agreement. This includes paying compensation, implementing restorative measures, or other agreed steps to resolve disputes.

Even though the crime that has been committed is a minor criminal act, if there is a dispute which means a situation where there are parties who feel disadvantaged by other parties, then mediation can be an alternative dispute resolution or APS so that no party is harmed (Fikri, 2013 ). This is because in the APS process there are 2 types, namely public adjudication and private adjudication. The adjudication process has the same goal; resolve conflicts between parties by becoming a mediating party between disputes, in the research that we use the public adjudication process uses a mediation process because the mediator is a third party that is voluntary, different from third parties in private adjudication processes that are involuntary ( not deliberate).

This penal mediation should have been introduced for the first time with the meaning of positive law in Indonesia since the old law enforcement letter no Pol: B/3022/XII/2009/SDEOPS dated December 14 2009, concerning Case Handling Through Alternative Dispute Resolution (ADR) although it is partially related, the settlement of criminal problems by creating peace is a form of ADR, it must be agreed with several related parties, if there is no agreement, it must be resolved according to legal procedures that apply professionally. Namely, the form of settlement of cases in the application of community policing means the application of the concept of alternative dispute resolution (ADR), is a pattern of social settlement of cases which, through fast roads other than legal / non-litigation processes, include peace efforts. Settlement of a criminal case in the criminal justice system will of course be carried out first by investigating and investigating the crime, both because of reports/complaints submitted by the public and criminal events that were found directly by officers (Rafiq 2023).

## **CONCLUSION**

In handling criminal acts, mediation can be an effective and useful alternative in cases of minor crimes. Mediation provides an opportunity for offenders and victims to actively participate in finding an adequate solution, reduces the costs and emotional strain associated with conventional litigation, and promotes a restorative approach that takes into account the interests of all parties involved. Based on the results of the research that we have done, these are our impressions and suggestions in the formulation of the problems that we have discussed, namely: Raising Awareness and Education: The government and related institutions need to increase awareness of mediation as an alternative to dispute resolution in minor crimes. Good education about the benefits, process and limitations of mediation will help parties to understand the options available and make more informed decisions. Mediator Training and Certification: Mediators involved in handling criminal offenses need to undergo adequate



training and obtain certification in criminal mediation. They must have a good understanding of criminal law, mediation processes, and the psychological aspects of conflict in the context of criminal acts. By applying a good mediation approach in handling minor crimes, it is expected to create a system that is more responsive, efficient, and brings benefits to all parties involved in the process.

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