Juridical analysis of the police role in the resolution of the mild theft problem through the mediation of penal: A research study in the Sagulung Police

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Abstract

The process of criminal law enforcement in Indonesia is a sub-part of the criminal justice system that is run in the Indonesia mediation Penal is one alternative to solve the case in particular criminal acts, given the number of benefits of the Penal mediation that has been applied and run in several countries. Based on the legal basis of law number 2 of 2002, about the State Police of the Republic of Indonesia, Law No. 30 of 1999, on arbitration and Alternative dispute resolution and letter of the police number Pol: B/3022/XII/2009/SDEOPS dated 14 December 2009, about case handlers or cases through an Alternative Dispute Resolution or known as the mediation of system Penal and restorative justice approach in the completion of a case of mild theft, research has been performed as a form of dispute resolution efforts by promoting the precautionary principle aimed at providing a sense of justice to the parties, not only the victim but also the sense of justice to the perpetrator.

Keywords: *Police discretionary, Penal mediation, Theft.*

Introduction

The state of Indonesia is a legal country and not based on sheer power, all state powers must be governed by law (Ridwan, 2011). To protect the public from disruption, realizing the peaceful life, safety, and tranquility of all perpetrators of social norms violations. One means of preventing violations of social norms is criminal law, which is the rule of organizing a public order by prohibiting against the law and giving a mourn (suffering) to who violates the prohibition. In the literature of criminal law, according to the natural purely normative thinking, talks about the criminal will be unfolded at a point of the paradoxical opposition, namely the criminal on the one party to protect the interests of one, but on the other party raped the interests of another person by giving punishment of suffering to a person who is convicted (Priyatno, 2006).

A criminal is a state-given to a man who commits a breach of criminal law, is perceived as mourning, to be deterrent (Sudarto, 1998). The criminal is the reaction of the delic and the immaterial that is deliberately led by the state to the Delic maker (Saleh, 1993). Delic reaction indicates that a proceeding can react if it is violated, a punishment, or a criminal threat. Mourn is not a final destination in the aspire of society, but rather the closest goal.

The implementation of the law in everyday life has significance because the purpose of the law is to create justice, certainty, and provide benefits to the community. Justice can only be realized if the law is implemented. The law has to be implemented and obeyed by everyone and everyone should be treated equally in the law. If the law is not enforced, it will have no meaning in the life of society. Such a rule of law will be gone by itself (Sukadi, 2011).

Law enforcement in the criminal justice system aims to cope with crimes, and make people's lives safe, calm, and restrained and still within the confines of community transparency. Act No. 8 of 1981 on the Code of Criminal Procedure Law (KUHAP), regulate the ordinances or procedures of the Indonesian criminal justice system or the law of the event to enforce material criminal law. Criminal law enforcement begins with investigation and investigation in the police, prosecution by the prosecutor, and verdict punishment or sanction by the judge.

The application of the law or the use of rules as a crime prevention effort is not one of the objectives. It means the application of the law that ultimately the purpose of legal development is not achieved. To law enforcement, one of them determined a law enforcement factor that can understand the nature of criminal law enforcement. With high quality, they can take the effort that they think is best done, one of them when it allows the filtering action of things.

A legal purpose is not necessarily identical to the purpose of being formulated explicitly, what is stated in a rule is not necessarily the real reason for the creation of the rules (Soekanto, 1995). It is therefore indeed discretionary completeness of the arrangement by the law itself (Rahardjo, 1993). According to Roscoe Found, the purpose of the law should be examined in the framework of the needs and/or for social interests that include general security, personal life, and so forth (Faal, 2001). In this doctrinal view, the law is seen as an instrument to direct or accomplish a goal that according to Roscoe Pound is the entire social interest since from personal interest to the interests of society and the State (Faal, 2001).

In this approach, officers should always measure the legal norm and other factors that affect the effectiveness of how the law works in reality. So that if the law is not appropriate for social development, law enforcement should dare to opt-out. Because it reaches social or fairness objectives, it can be without going through a legal path. In the work of the Indonesian criminal justice system based on the KUHAP, it takes a long and long time even convoluted, so it needs a breakthrough, namely using the mediation of penal which is the renewal of criminal law, close relations with restorative justice. Mediation is generally used in civil cases, not for criminal cases, as has been mentioned above.

However, in the development of theoretical discourse and national legal renewal, there is a strong tendency to use penal mediation, as one form of alternative dispute resolution (Arief, 1998). The use of penal mediation as an alternative to criminal justice, especially mild criminal offense is not relatively new and not a necessity to be implemented, depending on the attitude of law enforcement officers. With the development of the times and needs of victims, the mediation of penal is a legal breakthrough that has benefits and advantages to the parties litigants.

For the handling of criminal cases, the mediation of the penal is almost equal to the discretion-owned criminal justice system institutions, such as police and prosecutors screening cases not to proceed through criminal justice proceedings. Nevertheless, there is a different essence with the system of discretion. Mediation of penal more prioritize the interests of perpetrators of criminal acts and the interests of victims so that the achieved a win-win solution that benefits perpetrators of criminal acts and victims. In the mediation penal victims are presented directly with perpetrators of criminal acts and can submit their demands so that the peace generated by the parties.

Law No. 2 of 2002 on Police is a juridical foundation governing the existence of the police in the Indonesian State system (Mulyadi, 2011). In maintaining the security and order of the community, requiring looseness and freedom of action, and police duties can not be arranged or restricted, or needed a discretionary to perform duties (Satjipto Rahardjo and Anton Tabah, 1997). If the word disagreements combined the word police into the police discretionary means a policy based on power to do something based on consideration and conviction (Mulyadi, 2011).

The action can be done in a very necessary or better view to do so even though the application of discretion is a violation of law policy by loading 3 (three) conditions, namely: for the public interest, is still within the boundary of the authority, and does not violate the general principle of good governance (Mulyadi, 2011). The

police disclaimer given by the authority to the police is expected to be legal purposes i.e. justice, benefits, and legal certainty.

Public protection against criminal law enforcement related crimes. The goal is to be one of the political facilities of the society known as social defense. The functionalization of criminal law as an effort to make criminal law can function, operate or work, and materialize concrete. The functionalization of criminal law in the same nature is the enforcement of criminal law (Arief, 1998). In law enforcement, not the responsibility of law enforcement alone, is the responsibility of the community in the face, to overcome various forms of religious and disturbing community (Soekanto, 1993).

Law enforcement is also an activity of a valued relationship that is outlined in the rules, a steady outlook, and the effect of it in attitudes and actions as a series of values of final stages to create the peace of life. The law is characterized by several interrelated factors, namely the law and its own rules (Syahrin, 2009). Law enforcement is one of the main tasks of the police as a noble profession, which refers to the principle of legality, legislation, and human rights. It must act professionally and hold the code of ethics, so as not to fall within the hated spectrum of society (Kunarto, 1996).

Police function is the enforcement of criminal law, as the equipment responsible country creates a sense of security in citizens. Police were the first law enforcement to deal with criminal cases, so the case of prosecution and examination in court was a police selection. This can be seen some things that are completed at the police level based on the authority of the discretion is to settle based on their judgment. Usually, criminal matters are done at the level of a family investigation. In selecting criminal cases, the police must do law enforcement and not because of something.

In addition to the need for supervision by superiors or other agencies and communities, so that acts of abuse and misappropriation of power can be avoided. In the completion of a mild theft criminal offense by the Batam Segulung sector police, legally and apply the provisions of the law, the settlement of the matter is also often done through a pathway outside the court or through Peace. People prefer to resolve cases through peace in the family between perpetrators with victims. Peace is considered a settlement that provides benefits for the parties. Usually, peace is done by giving compensation in the form of some money from the perpetrator to the victim or victims forgive the perpetrators by requesting damages for the deeds committed (Prayitno, 1991).

Peace in criminal law is the settlement of criminal cases outside the judicial event, by way of peace between the two parties, as well as in civil cases. The formal juridical institution of peace is not recognized in criminal law, it is considered wild and illegal because it has no basis in the positive criminal law (Musyahadah, 2005). The mediation of Penal is one of the alternative ways of completing Special criminal acts of theft. Through mediation, the process of handling the case is done transparently to reduce irregularities in the traditional criminal justice process. Given the many advantages of penal mediation, as practiced in some countries, it is necessary that the study of applying the mediation of penal in the Indonesian criminal justice process as part of the criminal justice system in Indonesia.

Literature Review

Fairness is one of the most widely studied philosophical topics. The theory of natural law prioritizes the search for justice since Socrates until Francois Geny maintains justice as the Crown of Law (Huijbers, 1995). Fairness is a matter of interest studied deeper because of many related things, good morality, state systems, and societal life. Although restorative justice discourse in the academic climate, intellectuals, and court practices is increasingly dominant seeking a breakthrough in enforcing the increasingly perceived justice of the community, the meaning and process of restorative justice conceptions in the practice are very diverse. Johnstone declares restorative justice is not a single coherent theory or perspective on crime and justice, but a loose unifying term which encompasses a range of distinct ideas, practices, and proposals (Johnstone, 2003).

The meaning of restorative justice differs from one country and community to another country and community. Some terms resemble restorative justice, e.g. procedural justice, participatory justice, real justice, relational justice, positive justice, and transformative justice. M. Kay Harris says, restorative justice and transformative justice are two names for the same thing and, properly understood, the terms should be considered interchangeable (Harris, 2006). The term most suitable for this conception and practice is not restorative justice but restorative approaches (Liebmann, 2007). In Indonesia, the restorative justice term refers to this restorative approach.

Justice is the condition of achieving the happiness of the citizens, as the foundation of justice needs to be taught the moral sense to every human being to be a good citizen (Kusnardi and Ibrahim, 1988). The rule of law is only present if it reflects justice for the Social Association of its citizens. The rule of law is also conveyed by A V Dicey, who was born in the auspices of the Anglo-Saxon legal system, suggesting the following elements of the rule of law (Kusnardi and Ibrahim, 1988): (a) The supremacy of the law; The absence of arbitrary power, in the sense that a person can only be punished for violating the law. (b) The same position in the face of equality before the law. The evidence applies both to ordinary people and to officials. (c) The collateral of human rights by law (in other countries by the Constitution) and the decisions of the courts.

The government system of the Republic of Indonesia is affirmed in article 1 paragraph (3) of the Constitution of the Republic of Indonesia year 1945 is the country of Indonesia is the country of law. This principle binds to state officials and all Indonesians to uphold the prevailing laws. Arbitrary action without heeding the law, anyone should not be done either. The applicable law should be made in such a way as to the sense of justice and the sense of Community law (Maschab, 1988). Legal experts and legal sociology give an approach to the effectiveness of a diverse law, depending on the angle of view.

The degree of effectiveness of a law is determined by the level of citizen's compliance with the law, including law enforcement. So known as an assumption, the high level of legal compliance is an indicator of the functioning of a legal system, the functioning of the law is a sign of laws have reached the goal, namely to defend and protect the society in the Association of Life (Soekanto, 1996). The legal effectiveness theory examines and analyzes, failures, and factors affecting the implementation of law enforcement (Salim and Nurbani, 2013). The legal effectiveness theory was proposed by Bronislaw Malinowski, Lawrance M. Friedman, Soerjono Soekanto, Clearance J. Dias, Howard, Mummers, Satjipto Rahardjo, and Tan Kamelo. There is three focus theory of legal effectiveness studies, (Salim and Nurbani, 2013) include (1) Success in implementing the law; (2) failure in the implementation; and (3) Influencing factors.

Factors influencing success include legal substance, legal structure, culture, and facilities. The legal norm is said to be successful or effective when obeyed and implemented by both public and law enforcement (Salim and Nurbani, 2013). Tan Kamello, introducing the legal development system Model in Indonesia, said that the Indonesian legal system must be built with a model that pays attention to the elements related to each other as follows: formation of public awareness; Preparing Draft of law; Creating legislation or substantive of law; Socialization of law; Preparing the structure of law; Providing legal facilities; Law Enforcement; To form a Culture of law; Control of law; Generating crystallization of law; giving birth to the value of the law.

Concerning the legal method, there is a pattern of social interaction as follows: (1) Traditional pattern of the integrated group: Social interaction occurs when citizens behave based on the same methods and values as taught by other citizens. This interaction appears (especially in the humble community) where the citizens behave according to the Customs of society. In this case, because the rules of law are already interesting in society, these methods facilitate the interaction of them; (2) Public pattern: Social interaction occurs when Community citizens behave based on the same understandings derived from direct communication. Regulations issued by the ruler, apply to all communities within the territory of the State; (3) Audience patterns: Social interactions occur when Community citizens behave on the basis of the same understandings taught by an individual source, referred to as "propagandist". The rules applicable in a particular social-political group; (4) Crowd pattern: Social interaction occurs when Community citizens behave based on similar feelings and the same physical state. Behaviors that occur (e.g. student fights) at a crowd and within a certain time.

Research Method

This research is normative and empirical. It is normative by conducting an analysis of the problem and research through the basic legal approach and referring to the legal norm, while the empirical approach in this study is to see the behavior of the law as a pattern of community behavior and seen as a social force. Given that this research focuses on secondary data, data collection is pursued by conducting literature research and document studies. Besides the specification of this research is prescriptive and descriptive-analytical. Prescriptive offers the concept of problem-solving and not merely descriptive (just to describe something as it is) (Lubis, 1994) or the nature of prescriptive research is highlighting something (object) that is in mind or that should be. Therefore, according to the type of research used, the data collected will be analyzed qualitatively to achieve the clarity of the problem that will be discussed with qualitative analysis methods, because it does not use concepts measured or expressed by numbers or formulation of statistics. The analysis is done by referring to the thought frameworks in this article.

Discussion

Theft criminal is not a new thing because it is set in the criminal code, but since the emergence of PERMA number 02 The Year 2012 which is essentially the adjustment of the Limitations of the criminal act and the amount of fines in the criminal code is to raise the limitation of fine criminal action to Rp 2.5 million. A mild theft crime in article 364 the threat of punishment is imprisonment for a maximum of 3 months or a fine of at most Rp 250. Special criminal fines have been known for a long time, is the oldest criminal form, older than jail criminal. Perhaps as old as the criminal dies but new in this century can begin the golden penalty of fines (Hamzah, 1986). Therefore, then this fine succeeded in shifting the position of the criminal body from the first rank of the fine criminal as one of the principal criminals specified in article 10 of the criminal code as a criminal alternative or a single criminal in the book I and book II Penal code. PERMA number 02 the Year 2012 is the foundation for the court to prosecute the crimes of criminal acts of mild theft with a quick check-up event.

The case of mild theft should be in the category of mild criminal acts (Lichte Misdrijven) which should be more precisely charged with article 364 of the Criminal Code which is the threat of criminal for a maximum of 3 months imprisonment or a fine of at most Rp 250. If the matter is charged with stake 364 of the CRIMINAL code, based on the criminal CODE of the suspect/defendant is not subject to detention (article 21 KUHAP) and the examination event used must be a quick check event which is examined by the sole judge as stipulated in article 205-210 of the criminal CODE. The Indonesian legal system also opens up opportunities for resolving disputes outside the court path (non-litigation). Green mentions these two dispute resolution models by dispute method in the formal and informal form (Hamzah, 1986).

In the judiciary in Indonesia, the dispute resolution process adheres to simple, fast, and light costs. Facing such severe challenges, the Indonesian legal system has a rule of law that can be used to resolve disputes quickly both in the judicial environment and out of court. In the judicial environment, there is a peaceful path through mediation, where the judges are involved in reconciling the parties to the dispute. Mediation with the basis of deliberation to the peace agreement, get a separate arrangement in some legal products of the Dutch East Indies and Indonesian legal products are free until today. Setting alternative dispute resolution in the rule of law is important since Indonesia is the state of Law (Rechtstaat). In the state, law enforcement states and State apparatus must have a legal basis, due to state actions or state apparatus that no legal basis may be canceled or null and void. Mediation is a dispute resolution institution that may be performed by a judge (state apparatus) in a court or other party outside the court so that its existence requires a rule of law.

The provisions of the mediation in court were initially governed by the regulations of the Supreme Court No. 02, 2003 on the procedures for mediation in court. Then the Supreme Court perfects by issuing PERMA No. 01 the year 2008 On the mediation procedure in court. The Supreme Court regulation places mediation as part of the process of completing a lawsuit filed by the parties to the court. The judge does not directly resolve the dispute through a judicial process (litigation), must first be attempted mediation (nonlitigation). Peace is an agreement with both parties, by submitting or withholding an item, ending a matter that is dependent on or preventing the occurrence of a case (Subekti, 1987). In the peace treaty, the two parties waive a part of the claim to end a lawsuit or to prevent the onset of a case. Peace is done based on consciousness or voluntary both parties who hold peace, peace is in writing signed by both parties. Peace in criminal matters is a treaty between the two parties (perpetrators and victims), aimed at avoiding hostility and being used as a reason to relieve punishment for the perpetrator (defendant).

Peace is a bilateral agreement because peace is a covenant, so it certainly has the subject as the executor of the Covenant. It is understandable because the peace treaty in criminal matters is not binding on investigators, prosecutors, and judges. Because the Criminal Code are not set about the peace treaty. Only in the practice of the parties often do peace outside the hearing. The police in carrying out duties must always be legally guided and impose sanctions on the customer, police officers are also allowed to commit the release of a person violator from the legal process, following the discretion of the dissolution contained in article 18 paragraph (1) and (2) Act No. 2 of 2002 on the National Police of the Republic of Indonesia, namely the public interest of police officials in carrying out its duties and authorities may act according to its judgment. Implementation can only be done in a very necessary situation concerning legislation and a professional code of ethics.

The implementation of disagreements at the time of investigation of course has its patterns and forms that are influenced by the cause, social condition, economy, local culture, situation, and condition of the perpetrators or victims. The application of the police's discretionary authority in resolving criminal cases is implicitly governed in the letter of the KAPOLRI Nopol B/3022/XII/2009/Sdeops on 14 December 2009 concerning the handling of the case through the Alternative Dispute Resolution. The birth of KAPOLRI letter Nopol B/3022/XII/2009/Sdeops on December 14, 2009, about handling the case through Alternative Dispute

Resolution, the police have had a legal basis for the settlement of criminal cases by doing non-penal efforts through the mediation of penal as a manifestation of the concept of restorative justice. Police are required to have the ability to sort out the case, which mediation can do and which should be resolved by penal attempts or continued to court. The policy establishes the mediation of the penal as a settlement alternative, which is a part of the necessary criminal justice process so that the mediation of the penal can be a means of settlement of legitimate criminal matters and the outcome of the deal is binding on the parties, law enforcement officers, and the community so that criminal acts resolved through the mediation of penal waives the authority to sue.

Although Indonesia does not recognize the existence of mediation in the criminal justice system, in the practice of criminal matters is resolved through mediation, which is the mediation of penal with the following legal basis: (1) Letter of Kapolri No Pol: B/3022/XII/200S/SDEOPS dated 14 December 2009 concerning case handling through alternative Dispute Resolution (ADR); (2) National Police Chief regulation of the Republic of Indonesia number 7 the year 2008 about the basic guidelines of strategy and implementation of the community; (3) Regulation of the Supreme Court No. 2 of 2012 on the adjustment of minor criminal limit and penalty amount in the criminal CODE. The value of the restorative justice approach distinguishes restorative justice from the court system or conventional criminal justice. Zehr (1995) made the differences summarized in the following table.

Table 1. The difference between retributive justice and restorative justice

Retributive justice	Restorative justice
Crime defined as a violation of the state	Crime defined as a violation of one person by another
Focus on establishing blame, on guilt, on past (did he/she do it?)	Focus on problem-solving, on liabilities and obligations, on the future (what should be done?)
Adversarial relationships and process normative	Dialogue and negotiations normative
The imposition of pain to punish and deter/prevent	Restitutions as a means of restoring both parties; reconciliations/ restorations as a goal
Justice defined by intent and by process: right rules	Justice defined as right relationships: judge by the outcome
Interpersonal, conflictual nature of crime obscured, repressed: conflict seen as individual vs. the state	Crime recognized as interpersonal conflict: the value of conflict recognized
One social injury replaced by another	Focus on the repair of social injury
Community on the sideline represented abstractly by state	Community as a facilitator in the restorative process
Encouragement of competitive, individualistic values	Encouragement of mutuality
Action directed from state to offender: Victim ignored and Offender passive	Victim's and offender's role recognized in both problem and solution: Victim rights/needs recognized and Offender encouraged to take responsibility
Offender accountability defined as taking the punishment	Offender accountability defined as the understanding impact of action and helping decide how to make things right
Offense defined in purely legal terms, devoid of moral, social, economic, political dimensions	Offense understood in whole context-moral, social, economic, political
Debt owed to state and society in the abstract	Debt/liability to victim recognized
The response focused on the offender's past behavior	The response focused on the harmful consequences of the offender's behavior
The stigma of crime unremovable	The stigma of crime removable through restorative action
No encouragement for repentance and forgiveness	Possibilities for repentance and forgiveness
Dependence upon proxy professional	Direct involvement by participants

The table above shows the different sides of the procedure and results. In terms of process, the retributive justice emphasizes the exclusive (closed) element, the sole interest (punishing perpetrators), the use of violence (police, imprisonment), and retaliation (enduring consequences). Different from restorative justice that emphasizes inclusion (open to all parties), the balance of interests (victims, perpetrators, communities), demands willingness

and voluntary, and map-oriented problem-solving. From the results and objectives you want to accomplish, both approaches show different tendencies. The results that restorative justice wants to accomplish are the unity in meeting, development, reintegration, and truth thoroughly. This differs from the tendency that is to be achieved in the retributive justice which is separations, mistakes, and crimes (harm), Exile (ostracism), and legal truth. Restorative justice aims to achieve a balance between different poles namely the therapeutic and retributive models, between the victim's right and the right of the perpetrator, between the need to rehabilitate the perpetrator and the obligation to protect the public. But these results can only be achieved if the facilitator or mediator plays an impartial, proficient and skilled, both parties accept responsibility, the ruling achieved is a realistic and rational choice, no pressure and coercion, the recognition that all parties involved equally important, all parties actively involved, the constructive communication and dialogue process, mutual trust, and the solution has taken is a joint agreement and not based on the coercion of certain parties.

The mediation of penal is one of the forms of restorative justice, a concept that sees crimes more broadly. This concept is not merely a matter of perpetrators with the country representing the victim and leaving the settlement process only to the perpetrators and the state (prosecutor). Restorative justice demands the criminal justice process to provide the fulfillment of victims ' interests as the party harmed by the perpetrators. For that, it required a paradigm shift placing penal mediation as part of the criminal justice system. In restorative justice, the existence and position of the victim are recognized and involved in the process that will give results in the form of recovery or repair of losses suffered by the perpetrator deeds, conducted through the mediation of penal.

In article 18 paragraph (1) of Law No. 2 of 2002 concerning the National Police of the Republic of Indonesia, affirmed to the public interest of police officers of the Republic of Indonesia in carrying out its duties and authorities may act according to its judgment. Consideration in the public interest is among alternatives to various considerations that are assured by police officers. If further understood, this investigation function could be a filter or filter tool for events that occurred whether or not the investigation could be performed. The filter function in the criminal justice system puts the police position as a gatekeeper process. The disagreements of the police are not simple, because there is a conflict of interest between the law and the interests of the community.

To distinguish police action is preventive and repressive with the discretion, it is above as a general division of duties in the police organization. Thus can the meaning of preventive and repressive police in the sense of organs and the sense of police action. Based on the police duty of preventive and repressive conceptually above or the task of maintaining order and law enforcement, the subsequent question of how the police's duties in relation to the police's discretion, whether any, in the field of duty what the police disapproval can be given by the police officers, therefore, although the purpose and intent of police discretionary are very abstract, should be accounted for from various aspects of the law, moral and ethics of police. Police duty is not merely law enforcement but also peace maintenance (peace, tranquility). According to Soekanto (1996), law enforcement is a process of adjusting values, rules of reality behavior patterns. If the police duty is not merely law enforcement but also create tranquility, then the main task of law enforcement is to achieve justice, the depiction of the above course as expected in the police's objectives.

But when the police and the public are not well-established, it means that police consider the opposing community and the community considers the enemy police. Police will not hesitate to act on the law despite the small problem, and the public will always be suspicious when the police give a discretionary action. During this time the role of law enforcement in the process of criminal law enforcement (integrated criminal justice system) is: first, preventing the crimes from committing by enforcing the legal norm for the sake of community participation; Secondly, socialize convicted by conducting coaching so that it becomes a good and useful person; Third, resolving conflicts posed by criminal acts, restoring balance and bringing peace to the community; Fourth, liberating guilt on the convicted and forgiving convicted. Restorative justice became a very popular discourse amid the saturation of the people who saw formal law dominated the flow of positivity thinking and could not optimally accommodate the sense of justice of the community because it emphasizes the legal certainty (Rechtssicherheit). Restorative justice present offers a concept of nonformalistic solutions that merely prioritize a formal legalistic side, but can be done employing mediation between the perpetrators and victims, reparations (perpetrators rectify all things damaged), victims ' conferences (involving the families of both parties and community leaders), and victim awareness work The purpose of pipetting is directed at the improvement of social relations of the parties. It can simply be described as follows:

Table 2. Comparison of the Criminal justice system and Restorative Justice

	Criminal justice system	Restorative Justice
Goal	Reducing and controlling crime	Seeking settlement of a criminal offense

		occurring
Benchmark success	Number of Cases processed and criminal decided.	The parties' agreement can be reached
The end goal	Integrate the perpetrators back into society to become good citizens	Recovery of social relations between stakeholders.
Form of Settlement	Retaliation, compulsion, suffering for the perpetrator.	Forgiveness, Volunteering, Improvement for all.

Source: Yunan Hilmy (Paper Rakernis "function of drug Reserse in Polda Kalsel ", Banjarmasin, 11 April 2012).

Thus, the police need not only play a repressive role. In reality, the percentage of police work that is repressive is smaller compared to the preventive, and even much smaller than the preemptive work. The combination of the police's role is that it suggests that the workings of policing are not like firefighters who work after the incident, but must always precede the emergence of events by promoting preventive and preemptive action rather than repressive (Ali, 1998). In the area of Sagulung Polsek Many cases of theft, based on the results of interviews with writers with investigators in Sagulung police, namely Iptu Rifi Hamdani Sitohang, revealed that throughout the year 2019 occurred several cases of mild theft, and most can be solved by the mediation of penal. For the completion of the minor theft issue that occurred at the Sagulung police of Batam, the police can be held and implemented by the mediation of penal or alternative dispute resolution by taking the restorative justice pathway (not through the court line), so that there is no buildup of cases that will be heard in the realm of the court. By doing the mediation of the penal in solving the problem of mild theft in the police Sagulung can be some other benefits, namely: (1) Can provide legal justice to the community without going through a court path. (2) It can reduce the arrears in the Sagulung police of Batam city. (3) The achievement of a restorative Justice or justice to both parties with a good cause of perpetrators or victims. (4) The relationship between suspects and victims could be better and more harmonious in daily life.

Before implementing penal mediation, police investigator Sagulung first took various considerations, namely: (a) in the implementation of the police, Sagulung saw its substantial from article 364 of criminal CODE which is about the act of mild theft. (b) Judging by the report/the complainant that the loss suffered by the victim is less than nominal Rp 2.5 million, following the rules of the Supreme Court No. 2 the year 2012 on the adjustment of minor criminal limitation and fines amount in the Penal Code (c) referring/umbrella law of Pancasila, Law No. 2 of 2002 on the State Police of the Republic of Indonesia, article 1 Number 1 Law number 30 the year 1999 on arbitration and Alternative dispute resolution and letter of police number Pol: B/3022/XII/2009/SDEOPS dated 14 December 2009 concerning case handler or cause through Alternative Dispute Resolution or known as mediation of Penal.

The mediation procedure is performed as follows: (1) Receiving reports/complaints poured into Model A police report and Model B. (2) Go to the crime scene and the crime scene (taking the evidence necessary for the investigation). (3) Examining victims, witnesses, and suspects (reporters, witnesses, and reported) after all three things are done usually the reported party/suspect pleading to the reporter/victim to complete/resolved the matter employing amicable/settled in a family or through the mediation of penal. (4) The existence of an offer from investigators (police) to the party of the reporter/victim or the reported party/suspect because it is seen from the nominal rate of loss which is still under Rp 2.5 million. (5) The investigation party as the facilitator in the case between the victim and the suspect by involving and inviting the witnesses and the local community figures. (6) Make a letter that contains the matter is resolved by the way of the family/peace that is signed by each of the parties and the witnesses who attend the completion of the matter on the stamp of Rp 6,000. (7) The reporter/victim withdrew the report, as well as the revocation of information in front of the investigator written on the paper which the description reads a reported revocation report which has been signed on the stamp of Rp 6,000, complete with the letter of writing and the date, month and year written. (8) Investigators perform a degree of the case after it was made a report of a degree in case of termination of the investigation. (9) Investigators to make a letter of termination of the investigation of the article and then subpoenas to the reporting party and reported.

If it is consistent with the understanding of the above pipetting systems, the handling of criminal matters involves at least three components i.e. material/substantive criminal law, formyl criminal Law, and criminal implementation law. The involvement of the three components is systemic because each law enforcement apparatus has a role in it. The settlement of criminal matters does not necessarily override other criminal legal components. Based on the above pipetting system, the resolution of the minor theft lawsuit requires the perpetrator to obtain imprisonment and/or fines and be processed through a court trial. Settlement efforts with the path of peace carried out between the victims and perpetrators outside the proceedings as an attempt to implement restorative justice will certainly clash with the existing pipetting system, this is what makes the law

enforcement officials find a position to be dilematized in implementing restorative justice against criminal matters.

Restorative justice as an alternative paradigm in resolving the case is indeed progressive which will certainly clash with the existing legal system, the form of peace between the perpetrators and victims will not be meaningful, because the law does not formulate as a complaint proceeding, but a normal proceeding which means law enforcement officers can act by the law to punish the perpetrator. For that in practice although restorative justice is aimed at both the parties but the criminal system in Indonesia has not listed the concept of restorative justice in the form of criminal dispute, then it is normatively juridical will always bring out the difference of view among jurists in looking at restorative justice as a case resolution effort, especially against the case of mild theft.

As outlined earlier that the pipetting system has not put restorative justice as a form of formyl case settlement, so this is where the role of law enforcement officials in acting in the name of the law of completing a criminal offense that occurred, by punishing the perpetrator by the applicable law. But law enforcement officers can also apply and interpret the restorative justice by the interpretation of each based on the limitations of its authority, such as the police can use its disagreements by eliminating the order of termination of Investigation, prosecutors through the Deponeringnya, and courts through its verdict. Many Parties assume that the peace effort between perpetrators and victims by acknowledging faults, indemnification, and overseeing the victim's family is a form of criminal liability by the perpetrator, but with no peace disregard for criminal prosecution. Peace with the obligation of indemnification can be made outside the court in case of a peace agreement between the parties involved, but any form of indemnification given by the perpetrator to the victim will not cease the enforcement process itself so that the handling of Kasusnyapun will continue, and the peace agreement between the perpetrator and the victim will only waive the claim for, because the judge may decide the change of losses based on the peace agreement between the parties involved. This is what poses a clash of legal certainty for the parties, especially for the perpetrators of the concern that will forward the case to the conference table will continue to overshadow, whereas there has been the agreement of the Parties to peace and compensation given. Before the umbrella of Formyl law, the application of restorative justice will not have the value of legal certainty, if there is a legal certainty will be very dependent to the law enforcement officers by its authority, this is what causes the ambiguity of the application of Restorative justice itself because of the paradigm of the law enforcement officers who can interpret the concept of restorative justice.

Conclusions and Suggestions

Conclusion

After the authors describe in detail and fundamentals of the results of the writing of this thesis, the authors can draw conclusions, among others: (1) That the restorative justice approach in the settlement of cases of petty theft through the mediation of penalties refers to the Pancasila legal umbrella, Law Number 2 of 2002 concerning National Police of the Republic of Indonesia, Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution and National Police Chief Letter Number Pol: B / 3022 / XII / 2009 / SDEOPS regarding Handling Cases or Cases through Alternative Dispute Resolution or known as Penal Mediation. (2) That the role of the police in settling cases of petty theft through the mediation of penalties in the legal territory of the Sagulung Police of Batam City has carried out a mediation of penalties as an alternative to dispute resolution by prioritizing restorative justice, aimed at providing a sense of justice to the parties, not only victims, also a sense of justice to the perpetrator. Penal mediation involves perpetrators, victims, and the community in making peace efforts. (3) That the role of the police in the resolution of cases of petty theft through the mediation of penalties is the applicable penal system, the interests of perpetrators and victims of the value of legal certainty, and in practice due to the lack of public understanding of mediating penalties, there is not a synchronization between the complainant and the perpetrators to make peace, especially the issue of compensation. loss, then there is also the desire of the reporter to give a deterrent effect to the perpetrators, the existence of a third party provokes the reporter to not make peace and the perpetrators have repeatedly committed petty theft.

Suggestion

The suggestions that can be taken are as follows: (1) Penal mediation is a solution to settle petty theft cases, it is necessary to affirm the qualification of mediation in a standardized form of law in a more concrete formulation such as the law. (2) Due to obstacles faced by Sagulung Police, implementing penal mediation in the resolution of light theft cases both from community factors and Investigator factors, the authors suggest that further enhance the socialization program to the community in the form of education such as legal counseling related to the problem of mediating penal, also increasing skills and resources human resources Investigators with mediation training so that they are proficient and have mediation certification. (4) Indonesia does not have

restorative justice legislation except the juvenile justice system, almost all criminal acts end up in prison. the importance of restorative justice legislation is that it provides benefits; legislation removes or reduces the systematic obstacles to the implementation of restorative justice; legislation provides legal inducement of the application of restorative justice; legislation guides the implementation, structure, and supervision of restorative programs; and legislation guarantees the protection of the rights of perpetrators and victims.

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