



CRIMINAL LAW PERSPECTIVE IN RESOLVING THE CASE THROUGH MEDIATION BY THE VILLAGE HEAD (Study in Catur Swako Village Bumi Agung District, East Lampung Regency)

Candra Wijaya¹, Emilia Susanti²

¹Faculty of Law, Universitas Lampung. Email: candraw1283@gmail.com

²Faculty of Law, Universitas Lampung. Email: emiliasusanti@gmail.com

Abstract: Referring to the regulations currently in force in Indonesia, where in essence criminal law is not capable of resolving problems at the level of court institutions, however, in certain cases, it is possible to resolve a criminal case outside the court. Although usually the resolution of criminal cases outside of court occurs in civil cases, in practice there are also cases where criminal cases are resolved outside of court with the existence of a discretion by Law Enforcement Officials with a deliberation mechanism and accompanied by a mediator between those in conflict. In this case, resolving a case outside of court is often called mediation, which is carried out using a third person as a mediator to help resolve a criminal case. Where in this research there was an act that violated a criminal act, namely vehicle theft, which was resolved using and referring to the perspective of criminal law carried out by the Village Head as a mediator between the two parties involved in the case. In this research the author uses a method of approaching research that is normative juridical and empirical. By determining the informant, namely the Village Head in Seda Catur Swako, Kec. Great Earth. Regency. East Lampung. Equipped with field data and literature studies to support assistance in this research.

Keywords: *Criminal Law Perspective, Mediation, Theft*

I. INTRODUCTION

Evil acts have many explanations put forward by experts and practitioners. In this case, the criminal law perspective explains that a criminal act is an action of a legal subject that violates the law or rules established, whether written or unwritten. 1 In this case, a criminal act also refers to a legal view that is based on criminological and sociological factors. The different types of meaning related to evil acts are based on reality related to the method of observing evil acts. This has implications for the consequences of the process by which evil acts are realized.

In this case, part of the evil acts that are often carried out and have progressed very rapidly in today's society, namely theft.¹ Where theft is an evil act which is often carried out by legal subjects by seizing other people's property in order to take it over or transfer it for actions that are not valid in the eyes of the law. Theft is also regulated in the regulations of the Criminal Code in article 362 in book 2 in chapter XXII.²

The increasing number of cases of theft has resulted in a feeling of anxiety and restlessness among people who want peace and tranquility in social life. Where in this case theft is an act that is against the law and contrary to the regulations in force in society. Evil acts in the form of theft related to motorized vehicles have been very common recently due to the significant increase in the number of motorized vehicles. The evil act of motor vehicle theft causes great anxiety and loss that is felt by the people who are the victims.

In this case, a sub-district in Kec. Bumi Agung, namely Catur Swako village, was not spared from the evil act of motor vehicle theft, even in the period from 2012 to 2017, based on the words of the village head at that time, Catur Swako village received around 74 cases of motor vehicle theft. At that time, the perpetrators of this evil act of theft did not pay attention and continued to steal vehicles in residents' residential areas, and sometimes seized four-wheeled vehicles that had the opportunity or opportunity to carry out the evil act of theft.

Theft can be committed because there are several things that take advantage of the carelessness of the vehicle owner by making it easy to defend or secure their motorized vehicle, making it easier and giving the perpetrators of criminal acts of theft the opportunity to steal their vehicle. The perpetrators of this evil act of theft have a negative impact on society and then punishment needs to be carried out by them. The authorities are handling this case, so that they can minimize and eradicate the problems that occur, namely motor vehicle theft.

In this case, the perpetrators of the crime of theft are a minor offense which is often carried out by them because there is a burden and is recommended for a need, the main thing is to fulfill the necessities of life in the economic sector which must be met by them.³ In this case, the person carrying the burden of responsibility is the village head or head of the village or known as the Lurah for the area he owns. In this case, the Village Head who is used as the leader in his region is often used as a mediator and has a major contribution in creating a peaceful and peaceful condition for his residents.

¹ Indah Sri Utari. 2012, *Aliran dan Teori dalam Kriminologi*, Semarang; Thafa Media, p.1

² Tri Andrisman, 2011, *Delik Tertentu Dalam KUHP*, Bandar Lampung, Universitas Lampung, p.157

³ Andi Wahyu Damayanti, 2008, *Penyelesaian Sengketa Hukum Pidana*, Yogyakarta; UAJY, p.45

With this, the village head also becomes the person responsible if an incident occurs in his area of an evil act, namely the theft of a motor vehicle, in which case, if the perpetrator is found and found, then in this case the village head is the first person who has the authority to resolve a problem in his area.

If the perpetrator of the theft is found in the village head's area, the village head is able to mediate for the community if a crime of theft occurs by taking a peaceful path outside the justice system.

In this case, there are several efforts to minimize the occurrence of evil acts, especially theft, namely through legal mechanisms and also extra-legal mechanisms. In the case that occurred in Swako Village. District Bumi Agung, in this case the Village Head, is trying to resolve a criminal case using mediation efforts regarding the case that occurred. Mediation is a side effort to resolve a case that occurs outside of court in the community.⁴

Referring to the regulations in force in Indonesia, the Criminal Law Perspective essentially means that a criminal case cannot be resolved outside of court, although sometimes in its implementation there is still a resolution related to disputes in criminal cases in the community. Resolving cases outside of complaints utilizes a third party to assist in resolving a criminal case by bringing together all disputing parties by finding a way out of the existing problem and not taking it further into the realm.

Judging from the main regulations in force, in fact in Indonesia there is a regulation, namely the Supreme Court Regulation relating to Mediation, namely Number 1 of 2008. Where Criminal Justice essentially aims to maintain and improve human dignity, so as to be able to improve the actions committed. The word Mediation is based on its origin, namely Mediation, which is a resolution of a case involving a third party who is used as a mediator or resolving a case using a mediating method where this third person is called the term Mediator.⁵

Referring to the opinion above, it can be concluded that mediation is a method of resolving or resolving a case outside of court using a meeting and agreement involving a third person who must act as a mediator and not be biased towards one of the parties, so that its existence can be accepted by the parties. This third party or mediator does not have the authority or right to give a decision to the case, but is only useful as a supporter and helps find a way out for the disputing parties.

⁴ Undang-Undang Nomor 30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa

⁵ M. E. Fernando Manullang, 2007, *Menggapai Hukum Berkeadilan, Tinjauan Hukum Kodrat dan antinomi Nilai* Jakarta: Buku Kompas. p. 131

II. DISCUSSION

a. Criminal Law Views on Settlement of Cases Through Mediation by the Village Head

Enforcement of criminal law is carried out in a procedure called the Criminal Justice System which is carried out by those who are given authority by the state to act as law enforcers such as the Courts, Prosecutors, Police and Correctional Institutions. Even though in Indonesia there are many law enforcement agencies, Indonesia is still very sad about its poor assessment and history in the law enforcement sector. In essence, all criminal matters need to be followed up and resolved within the realm of justice. Because that is the authority of the judiciary.

Mediation is an intervention from an external party of those in dispute who has the ability to negotiate a problem, and has the authority to help find a resolution or solution to the existing problem and is limited by the absence of authority to decide on a case, and just help all parties to resolve the problem.⁶

This opinion is in accordance with the explanation contained in Article 1 paragraph 7 of PerMA No. 1 of 2008 relating to Mediation Procedures in Court, the explanation of which is that Mediation is a method of negotiation to obtain an agreement from the parties assisted by someone third or mediator. Where Mediators are those who are not biased and are neutral to ensure that there is no inequality in the mediation process which is conducted.

The explanation related to Penal Mediation is the resolution of a criminal case outside of the procedures for the purpose of not proceeding to the level of prosecution that occurs when an agreement is reached. Events that occur at the village level are the responsibility of the village apparatus led by the Village Head. Where they have the authority to regulate and discipline the residents of their village in order to lead a peaceful life in society.

The village head has a very crucial task where the village head is required to make peace with his citizens if a problem occurs in order to determine the way out and solution to the problems that exist in his area. Where in the organizational regulations of the judiciary, which in a nutshell, states that the judge will always be assured of the sovereignty of the village community to carry out examinations of a case or case that is their right, in order to provide a decision in the administrative sector without the imposition of a criminal sanction.⁷

⁶ Cristoper, Moore. W.2003. *The Mediation Process: Practical Strategies for Resolving Conflict*. San Fransisco. p. 15

⁷ Mahadi, 1991, *Uraian Singkat Tentang Hukum Adat*, Bandung, Sajak RR. p.36

In accordance with what has been said, the village head is a legal subject in the state administration system who has authority and responsibility in his area for the purposes given by law, therefore, for the continuity of state duties, the village head has a significant role and influence over his authority.

In this discussion, the village of Catur Swako in Kec. Bumi Agung District. East Lampung, this village is an example and sample in this research, where in Catur Swako village the environment and life of the people preserve the local wisdom of the region. As for where they prioritize resolving and resolving a criminal problem using the mediation method.

The crime of motorbike theft is a problem that is often experienced by residents of Catur Swako Village, where this gives rise to various desires for resolution of existing cases. With this, the pekon apparatus has been very active in involving the community in activities that seek to increase pekon security, by holding regular discussions to raise the level of sensitivity to security and carrying out safeguards in efforts to minimize criminal acts in synergy with the police.

In Catur Swako Village, where criminal acts are rampant, namely motor vehicle theft, this has resulted in the emergence of unrest among local residents who In fact, people really lose when their motorized vehicles become victims of theft. This is in line with the function of having a village head who is a protector and is also able to act as a mediator or third party in providing solutions to resolve existing problems.

Regarding the authority and obligations of pekon officials in the process of supporting the village head during the process of resolving a dispute or a case that is based entirely on the village head as determined by the village head, the village apparatus always helps as long as this does not conflict with applicable regulations.⁸ Based on the opinion of Wahyu Juta Eka Rusmala, the implementation of the mediation process carried out by the police is essentially an effort to carry out or create justice that is based on restorative, where this is carried out by the police not only for criminal cases that are classified as light crimes, but also ordinary criminal acts.⁹

b. Aspects that influence the village head's barriers to the mediation process

In this country, criminal matters cannot be resolved outside of court procedures, but in certain cases implementation is possible. The ongoing enforcement of criminal law in Indonesia, even without a formal legal basis, is related to criminal matters which are often resolved outside of court procedures by using or exploiting ties with law enforcement officials, with a peace system, using the help of other people to resolve them.

⁸ Budi Aspani, 2018, *Peranan Kepala Desa Dalam Penyelesaian Perselisihan Hukum Antar Warga Desa*. Jurnal Universitas Palembang. Volumen 16, p. 1

⁹ Interview Results with Wahyu Juta Eka Rusmala as Bhabinkamtibmas Polsek Bumi Agung, 2 November 2023

As a result of the increase in the implementation of mediation which is used as an alternative way to resolve problems in the criminal field by using a method of compensating for losses from the perpetrator to the victim. So in this case there are slight differences regarding criminal law and civil law and this does not have any implications.

In terms of resolving criminal matters using the deliberation method applied by village officials and leaders, this is often known as the mediation method. Where criminal law mediation is a manifestation of the resolution by other means of criminal cases which tends to be an effort shown by a third party or mediator who is used as a mediator to carry out their duties to provide assistance in resolving existing problems.

Referring to the opinion of academic Gunawan Jatmiko, he said that as a whole, the population or society in Indonesia has a vengeful nature. This is the basis and main factor because it is difficult to provide direction to those who are having problems to discuss and deliberate in order to achieve or realize true peace.¹⁰

According to the opinion of the academic above, the author analyzes that Indonesian society has a tendency towards a vengeful character. This is believed to be related to an obstacle to the realization of a system for resolving cases outside of court which begins with the mediation method in Indonesia. In relation to factors related to increasing law enforcement, a legal expert has expressed his thoughts, namely Soerjono Soekanto, in his view, there are several factors that have an influence on the law enforcement process, which has direct or indirect implications, it goes back to his own legal views so that capable of being implemented by society.

When talking about aspects that influence process delays mediation by the Village Head, which is a mediation method within the community. Which consists of several aspects, namely legal aspects, community aspects and supporting aspects as well as the mediator's lack of knowledge in resolving cases in society, with an explanation that the author will try to explain with the following description:

a. Legal Aspects

Regarding the legal aspect, research has been carried out using observation and analysis methods related to a problem that exists in Catur Swako village relating to the resolution of criminal acts, especially motor vehicle theft, using the case resolution method, namely mediation carried out by village officials, which in this case is carried out by the Village Head. Swako Chess. Overall it consists of decisive parts, but in some aspects there is only one aspect which is said to be an obstacle in resolving the case using this mediation method.

The aspect is that there is no material legal reference for the form of authority of the village head himself when a case is resolved using the mediation settlement method in cases of criminal acts of theft, and furthermore there are no formal rules that serve as a reference in the procedures for implementation.

¹⁰ Interview Result with Gunawan Jatmiko, Academic of Law Faculty Unila, 25 October 2023

in the process mediation applied to the Catur Swako village community.

b. Community Aspects

In this case, the community also influences the enforcement process of existing laws. Where enforcement of the laws that society wants begins with society itself, and has the aim of creating peace in social life. Based on Bagir Manan's opinion, good law in its realization or implementation is determined by the realities of life, both in the economic, social and political and cultural sectors. Even though under certain conditions, it is believed that the law can be actively implemented through reform efforts, its implementation is still influenced by the ways of society itself.¹¹

Based on the author's observations, related to the implementation of resolving a criminal case in village communities, where most people see the appeal of penal mediation which is carried out with the help of village officials, where mediation is divided into three aspects where mediation becomes a forum for admitting guilt with honesty, includes all parties involved in order to achieve a common desire, and is used to provide insight into the resolution of a criminal case by village people who respect the value of empowerment and procedures for resolving cases continuously.

c. Supporting Aspects

In this aspect, support is a means and infrastructure to support the success of achieving good mediation, but in this supporting aspect it can become an aspect that hinders the process of resolving criminal cases using the mediation method if the supporting aspects are not sufficient. Where these supporting aspects consist of an understanding of the concept of mediation, skills, skills, equipment and also finances that support the continuity of resolving criminal cases using the mediation system.

In this case the author believes that the main thing in the supporting aspect is a support for the realization of the goals of the mediation itself, the higher the level of support, the higher the level of success of the mediation itself, and vice versa, if there is a lack of support in the mediation process, the higher it will be. There is also little hope created from mediation itself.

d. The aspect of the mediator's lack of knowledge in resolving a criminal case

In this case the village head holds important power, because the village head is someone who has power over his area and also community where the village head is a person who is respected and respected, with this the village head needs

¹¹ Manan Bagir, 2005, *Penegakan Hukum yang Berkeadilan, dalam majalah hukum varian peradilan tahun ke XX* No. 241 November. p.10

to provide socialization regarding the final results of resolving cases using the mediation system. However, sometimes village heads do not have sufficient knowledge and tend not to understand the concept and purpose of mediation itself. This has implications for the operation and sustainability of the mediation system which is expected to be a solution to a problem with the family system.

With this, the author can say, even though the village head has authority so he is respected and appreciated, he has minimal knowledge and ability regarding the mediation system, so this becomes an obstacle to the desire to realize peace and tranquility in social life.

Referring to some of the aspects described above, there are some aspects that focus on references or in the sense of aspects of life in the environment lived by the community. There are several problems in the crime of motor vehicle theft where prevention and eradication have not been carried out perfectly. Then, there are several determining aspects related to the obstruction of the law enforcement process in order to eradicate the problem of motor vehicle theft (curanmor). Therefore, this case should be used as the main point for the village head in determining an evaluation of his performance and carrying out effective synergy with the parties involved.

The final result is expected to create a condition where people are able to socialize and live calmly and peacefully, with a sense of security without any feelings of fear and anxiety in carrying out their daily activities. The essence of law enforcement itself is based on an activity relating to qualities contained in correlated rules in order to create an action that is good and of noble value to maintain peace in life

III. CONCLUSION

Views on criminal law regarding mediation efforts carried out and implemented by the village head in resolving a criminal case in a case of motor vehicle theft where the village head's efforts are echoed as a mediator by mediating and leading the deliberations between the perpetrator and the victim so that a agreement between the two, and it needs to be underlined that the mediator is not allowed to be biased or take sides towards one of the parties, where The main attitude of the mediator is neutrality and only helps to find a middle point of the existing problem, so that it can be solved and resolved in a family manner.

In the continuation of the method of resolving a criminal case using mediation procedures or methods, there are several aspects that can hinder the realization of the hopes and objectives of mediation itself, namely:

1. Legal Aspects
2. Community Aspects
3. Supporting Aspects and
4. Aspects of the lack of skill and ability of the village to become a mediator in an

effort to resolve existing problems and create peace within the region and its community.

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