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Classification Of Mediators In The Practice Of Penal Mediation With A Restorative Justice Approach After A Traffic Accident

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ABSTRACT

Traffic accidents are a disturbing problem for road users, can cause material and immaterial losses, and are one of the criminal cases that can be resolved through mediation. Penal mediation is a way of handling criminal case disputes involving victims and perpetrators, as well as third parties, namely mediators, without eliminating the principles of restorative justice. The research objective in this article is to examine how mediators are classified based on their role in post-accident criminal mediation mechanisms and examine the juridical basis for implementing criminal mediation in handling traffic disputes. This article uses a juridical-normative research method with a statutory and conceptual approach. The results of this study are, first, that the principle of restorative justice contained in penal mediation has been carried out by the police using the right of discretion contained in the Letter of the Chief of Police Number Pol: B/3022/XII/2009/SDEOPS dated 12/14/2009 concerning handling cases through alternative dispute resolution (ADR). Second, there is no explicit regulation governing penal mediation, but implicitly it has been regulated in Article 1, Number 7, of Law No. 11 of 2012 concerning Juvenile Justice, which is better known as diversion.

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PRELIMINARY

Technological sophistication after the Industrial Revolution 4.0 has resulted in an increase in the number of vehicles on the road. The development of this technology is like a double-edged sword; that is, there is a positive side and, of course, a negative side as well. One of the negative sides is a problem that worries road users, namely traffic violations, which result in accidents. The phobia of traffic accidents is caused by a lack of certainty, which has implications for material and non-material losses experienced by the victim. The negative impact of material traffic accidents can be in the form of medical costs, maintenance costs, and several losses related to quality of life. Meanwhile, non-material losses can be in

the form of permanent disability, damage to the movement system of body parts, death, and so on.

Accidents that have implications for material loss can be handled using penal mediation, namely mediation to resolve problems or cases by presenting the suspect and victim in a non-litigation panel known as ADR (alternative dispute resolution) to reach an agreement (win-win solution). However, the suspect must be able to take responsibility by providing compensation to the victim. This is considered to represent a sense of justice and the benefits gained from not having to take part in long-winded trials that take up a lot of time.[1]

In the practice of resolving problems or disputes using penal mediation, there must be a third party who is neutral and able to mediate between the parties in dispute, who are called mediators. In practice, everyone can be a mediator, but not everyone can be a capable mediator. The application of penal mediation must be in accordance with the principles contained in restorative justice. The purpose of the principle of restorative justice is that there is accountability from the suspect in a structured way, involving victims, parents, family, and colleagues, and they create partnerships to overcome crime.[2]

There are two regulations governing mediation, namely mediation carried out in court or dispute resolution through litigation and mediation carried out through a non-litigation process. The regulation governing mediation-litigation is Article 1 paragraph (1) of Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Mediation Procedures in Courts. Meanwhile, the regulations governing mediation carried out outside of court are Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.[3] From this regulation, a difference emerges in the mechanism for handling cases through mediation in the realm of criminal law and civil law, namely relating to the problem, who the parties involved are, and the party who is the mediator.[4] Even though these two regulations do not explicitly regulate the mechanism of penal mediation.

The problems stated above became the main reference for the background of this article's discussion, which then resulted in two problem formulations, namely: 1. How are mediators classified based on their role in the penal mediation mechanism after an accident that causes moderate injuries to the victim? 2. What is the juridical basis for the application of penal mediation in handling disputes?

This article is original research and can be said to be very new because, as far as the author is concerned, no studies or articles that are the same with the same topic of study have been found. Even so, there are several articles that intersect a little with this article. Therefore, it is important to present several previous studies to become a benchmark for the validity of this article. The research is:

Article compiled by Syauqi Mahendra, Adwin Tista, and Nahdhah with the title "Mediasi Penal Tindak Pidana Kecelakaan Lalu Lintas yang Menyebabkan Korban Jiwa Berdasarkan Keadilan Restoratif", published in 2022. This article discusses the position of penal mediation in resolving disputes after an accident that causes loss of life from a

[1] A Akmal, "Mediasi Penal Sebagai Alternatif Penyelesaian Perkara Pada Tindak Pidana Kecelakaan Lalu Lintas Yang Mengalami Kerugian Material (Studi Di Polres ...," 2016. h. 5

[2] N R Soepadmo, "PENYIDIKAN KECELAKAAN LALU LINTAS MELALUI PENDEKATAN RESTORATIVE JUSTICE DI KEPOLISIAN RESORT TABANAN," *Jurnal Ilmiah Raad Kertha* 5, no. 1 (2022), https://doi.org/https://doi.org/10.47532/jirk.v5i1.418. h. 15

[3] S W Sari, "Mediasi Dalam Peraturan Mahkamah Agung Nomor 1 Tahun 2016," *Jurnal Ahkam: Jurnal Hukum Islam* 5, no. 1 (2017), https://doi.org/https://doi.org/10.21274/ahkam.2017.5.1.1-16. h. 5-6

[4] K Krismiyarsi, "REKONSTRUKSI KEBIJAKAN MEDIASI PENAL DALAM PENYELESAIAN PERKARA KECELAKAAN LALU LINTAS JALAN RAYA," *SPEKTRUM HUKUM* 17, no. 2 (2020), https://doi.org/http://dx.doi.org/10.35973/sh.v17i2.1939. h. 1

restorative justice perspective. This article uses normative research as a research method with a library approach or study of legal materials (primary, secondary, and tertiary). While the results of this study show: first, penal mediation does not yet have legal force normatively as a medium to be a middle way in handling accident cases; secondly, the legal basis used by the police in making discretionary decisions is Article 15 paragraph (2) letter K, Article 16 paragraph (1) letter L and paragraph (2), Article 18 paragraph (1) and (2) of Law No. 2 of 2002 concerning the Police and Chief of Police Letter Number Pol:B/322/XII/2009/SDEOPS dated December 14, 2009.

Furthermore, an article by Nurianto Rachmad Soepando entitled "Penyidikan Kecelakaan Lalu Lintas Melalui Pendekatan Restorative Justice Di Kepolisian Resort Tabanan". He chose a normative research method with a statutory approach. From this research, it can be concluded that there are two ways of resolving traffic accident cases based on restorative justice in the jurisdiction of the Tabanan Resort Police, namely: 1) through the Alternative Dispute Resolution (ADR) mechanism, namely alternative non-trial dispute resolution carried out cooperatively; 2) settlement using a diversion mechanism, which is a shift in resolving disputes or children's cases from within criminal justice to outside justice, as stated in Article 1 point 7 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System.

In this article, the author uses a juridical-normative research method with a statute approach and a conceptual approach. The data collection technique is to collect primary legal materials, namely laws or regulations related to the topic of discussion; secondary legal materials, including research related to the topic of discussion, journals, and internet sites; and tertiary legal materials, including several references that support primary legal materials and tertiary legal materials.

METHOD

In this article, the author uses a juridical-normative research method with a statute approach and a conceptual approach. The data collection technique is to collect primary legal materials, namely laws or regulations related to the topic of discussion; secondary legal materials, including research related to the topic of discussion, journals, and internet sites; and tertiary legal materials, including several references that support primary legal materials and tertiary legal materials.

RESULT AND DISCUSSION

The Position of Penal Mediation in Criminal Justice in Indonesia

Soerjono Soekanto argues that the substance of law enforcement is to integrate the values described in the signs, which are then manifested by actions, which are the final values, in order to realize them as a way and an endeavor and maintain their survival.[5] The handling of non-trial criminal disputes, such as penal mediation in the sense of handling them according to the principle of kinship and carried out based on applicable customs, is a common occurrence in various regions of Indonesia. The practice of handling criminal cases like this is beneficial on the one hand and detrimental on the other. This is because this kind of handling can lead to a sense of satisfaction and fairness, but it also creates doubts in terms of legality and legal certainty.

Penal mediation definitively means handling criminal cases without going through criminal justice mechanisms but involving the parties involved in the case (the perpetrator and the victim) and a third party as a neutral party or mediator, which is carried out by

[5] Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum (Cet. Ke-10)*, *Jakarta: PT Raja GrafindoPersada* (Jakarta, 2011). h. 5

means of deliberation and consensus to reach an agreement (a win-win solution).[6] Barda Nawawi Arief explained several terms related to penal mediation, one of which is "victim offender mediation." The point is that mediation is a process for solving criminal problems by bringing together victims and perpetrators. Apart from that, he also added that the implementation of penal mediation in resolving criminal disputes started with a discourse or idea related to penal mediation, namely as a form of criminal law reform (penal reform). In addition, it is also a form of protection for victims, a medium for harmonization, an implementation of restorative justice discourse, minimizing forms of formality and the negative effects of the criminal justice system, and a medium for finding alternative solutions to punishment.[7]

The position of penal mediation as an instrument for resolving criminal cases can be placed in at least two places, namely as an option for resolving criminal cases that are included in formalistic criminal justice mechanisms and as part of criminal justice systems and procedures that do not really pay attention to rights. that the victim has, for example, the losses that befell him after a crime occurred.[8] Apart from that, penal mediation is also in accordance with the principles and/or principles of restorative justice because one of its aims is to obtain an attitude and sense of responsibility from the perpetrator for the losses received by the victim due to the criminal act he committed. Then, it is hoped that after the penal mediation is carried out, the victim will be able to carry out his activities as before.

In the context of criminal justice in Indonesia, penal mediation can be an answer to the response of the public and law enforcers who think that law enforcement mechanisms are no longer grounded and do not suit the current conditions of society.[9] That is, if the rules that apply cannot answer social conditions because of the speed of the dynamics of life and this is beyond the scope of the relevant regulations, then it is the law that must accommodate developments in order to achieve justice and benefit. This is related to the theory of responsive law by Nonet-Selznick, which states that the law must be a system that is relevant to development and places goals as the main point (the sovereignty of purpose), namely providing benefits after the enactment of the law and its consequences.[10] Furthermore, Nonet-Selznick stated that the law must be functional, pragmatic, rational, and useful.[11]

Therefore, there are at least three objective aspects that are the focus of implementing penal mediation, namely, justice, which focuses on the victim, must really focus on providing a sense of justice and benefit, and a rehabilitation period due to the loss or injury suffered. In addition, penal mediation with the principle of restorative justice also has a position as a forum for victims of criminal cases to convey their aspirations and requests for the fulfillment of their rights as victims. Apart from having a positive impact on victims, the principles of restorative justice contained in penal mediation also provide the same thing for perpetrators, because negotiations regarding punishment and compensation in lieu of punishment can be carried out. Note that the perpetrator is capable and can be responsible for what he did to the victim, positive treatment will also be applied to him.

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[6] Usman and A. Najemi, "Mediasi Penal Di Indonesia: Keadilan, Kemanfaatan, Dan Kepastian Hukumnya", *Undang Jurnal Hukum*, 1.1 (2018) <https://doi.org/10.22437/ujh.1.1.65-83>. h. 68

[7] K Natakharisma and I N Suantra, "Mediasi Dalam Penyelesaian Perkara Pidana Di Indonesia," *Kertha Wicara*, 2013.

[8] K Kristiyadi and V P Setyawan, "Keadilan Restoratif Dan Mediasi Penal Dalam Tindak Pidana Ringan," *Jurnal Kepastian Hukum …* 4, no. 1 (2022), https://doi.org/https://doi.org/10.32502/khdk.v4i1.4622. h. 21

[9] R D Nababan, "Urgensi Penerapan Mediasi Penal Dalam Sistem Peradilan Pidana Di Indonesia," *Supremasi Hukum: Jurnal Penelitian Hukum* 32, no. 1 (2023): 84, https://doi.org/https://doi.org/10.33369/jsh.32.1.74-87.

[10] B L Tanya, Y N Simanjuntak, and M Y Hage, *Teori Hukum Strategi Tertib Manusia Lintas Ruang Dan Generasi*, *Yogyakarta: Genta Publishing* (Yogyakarta: Genta Publishing, 2012).

[11] Nababan, "Urgensi Penerapan Mediasi Penal Dalam Sistem Peradilan Pidana Di Indonesia."

In practice, according to Sahuri Lasmadi, there is a principle that must exist in penal mediation, namely:

a) There must be a mediator who handles the conflict. The mediator is a skilled person and can confirm by emphasizing the path of dialogue. Thus, the mediator must be able to talk "from heart to heart", to eliminate feelings of hurt for both parties.
b) Prioritize mechanisms in the process. One of the important things in mediation is its existence at the mediation process stage, not the result of who wins or loses because, in this way, the parties being mediated are required to respect each other to reach an agreement based on the principle of a win-win solution.
c) Not too formal (informal). Penal mediation is informal, avoiding tense assemblies or forums so that the parties being mediated feel relaxed and appreciated.
d) The litigants are involved in the mediation process. When the mediation process takes place, the parties are required to have a sense of responsibility and tolerance, and later, if success in mediation is achieved, the parties will feel free with the decisions taken.[12]

What is important to achieving restorative justice in the application of penal mediation is the capability of the subjects who carry it out (law enforcement officials) as mediators. For example, the Attorney General with discretionary rights can conduct deponing, also known as the right, not to prosecute cases, or set aside cases under the pretext of public interest, which has power in the eyes of the law. Likewise, the discretionary rights possessed by police officers are to apply penal mediation if, in the criminal case being handled, there are material facts that can be used as a reference not to continue in the trial arena.[13]

The discretionary rights of the police (Polri) have been implemented for quite a long time. This is a law enforcement system that has been implemented and is being developed for handling criminal cases. Examples of applications that have been carried out are:

1. Handling criminal cases through the ADR (alternative dispute resolution) process or penal mediation.
2. Handling of criminal cases based on peace during the investigation period.
3. Implementation of the Polmas (Community Policing)[14] mechanism by Bhabinkamtibmas;
4. Handling cases with and/or through social institutions, such as Rembug Pekon in Lampung.
5. Settlement of customary and religious criminal cases.
6. And the handling of criminal cases, which are included in "prioritizing justice and expediency over legal certainty."[15]

Basically, the validation of the existence of penal mediation in criminal justice has been carried out, although in practice it is only partial. The concept of penal mediation has been implemented in handling child cases by applying a special mechanism known as

[12] S Lasmadi, "Mediasi Penal Dalam Sistem Peradilan Pidana Indonesia," *INOVATIF| Jurnal Ilmu Hukum* 4, no. 5 (2011). h. 6

[13] Kristiyadi and Setyawan, "Keadilan Restoratif Dan Mediasi Penal Dalam Tindak Pidana Ringan." h. 23

[14] Community policing, also known as Polmas, is an effort to engage the community through collaboration between police and community members so that they are able to detect and identify security and public order problems and find solutions. This understanding is contained in Article 1 Number 3 of the Republic of Indonesia State Police Regulation Number 1 of 2021 concerning Community Policing.

[15] Zulkarnaen Koto, "PROPEKRIF PENEGAKAN HUKUM BERDASARKAN PENDEKATAN KEADILAN RESTORATIF DENGAN INDIKATOR YANG DAPAT TERUKUR MANFAATNYA BAGI MASYARAKAT (Penerapan dan Pengembangannya di Lingkungan Polri)", dalam https://www.bphn.go.id/data/documents/paparan_rj,_bphn,_01-12-16,_rev..pdf diakses pada 2 April 2023

diversion. This diversion is regulated in Article 1, point 7, of Law No. 11 of 2012 concerning Juvenile Justice, which regulates the transfer of settlement of child cases from within criminal justice to outside criminal justice.[16] The spirit of implementing this diversion is actually almost the same as the spirit built in penal mediation; it's just that the difference lies in the legal subject; diversion only applies to children of perpetrators of criminal cases.

In addition, several regions in Indonesia have implemented penal mediation as a customary law for resolving disputes, and this has gained constitutional legitimacy. For example, the application of customary law in force in the Province of Nangroe Aceh Darussalam in Articles 13, 14, and 15 of Aceh Province Regional Regulation No. 7 of 2000 concerning the Implementation of Traditional Life, which in substance gives authority to resolve disputes or cases properly and peacefully through customary deliberations.

Provisions or regulations that explicitly regulate the existence of penal mediation have not been issued. However, the implicit provisions can be seen from the discretionary rights that investigators must make other decisions according to the situation and circumstances they are facing. This discretionary right is stated in Article 7 paragraph 1 Letter J of the Criminal Procedure Code, which explains "carrying out other responsible actions according to law. Even though they already have a legal basis to take other actions, the application of penal mediation by investigators must still be based on the will of both parties in a case.

Then, there are other provisions that are used as the legal basis for investigators to carry out penal mediation, namely in Article 18 paragraph (1) letter l of Law No. 2 of 2002 concerning the Indonesian National Police, which contains, "In the public interest, officials of the Indonesian National Police in carrying out their duties and authority can act according to their own judgment. It needs to be emphasized that this authority is not absolute because there are limitations that the police as investigators must pay attention to, namely in Article 18 paragraph (2) of Law No. 2 of 2002 concerning the State Police, which contains, "Implementation of the provisions as intended in paragraph (1) can only be carried out in very necessary circumstances by paying attention to statutory regulations as well as the Code of Professional Ethics for the State Police of the Republic of Indonesia.[17]

In addition, the Letter of the Chief of Police Number Pol: B/3022/XII/2009/SDEOPS dated December 14, 2009, concerning the handling of cases through alternative dispute resolution (ADR), indicates the implementation of penal mediation. The provisions are as follows:

1) The handling of criminal cases that result in minor losses can be resolved through the ADR mechanism.
2) The application of ADR in the handling of criminal cases must be based on an agreement between the two parties in the case, but if the agreement is not reached, then the handling is in accordance with the mechanisms or procedures that apply in a fair manner.
3) The handling of disputes through the ADR mechanism must be based on deliberation for consensus and must encourage the participation of the surrounding community by involving the RW/RT either directly or indirectly.
4) Handling criminal case disputes through ADR must pay attention to social and/or customary rules by upholding the principles of justice.

[16] Andrean W. Finaka, "Diversi dalam Sistem Peradilan Pidana Anak", dalam https://indonesiabaik.id/motion_grafis/diversi-dalam-sistem-peradilan-pidana-anak diakses pada 1 April 2023

[17] A Perdana, "DISKRESI PEJA BAT PENYIDIK KEPOLISIAN DALAM MELAKUKAN PENAHANAN," *PALAR (Pakuan Law Review)* 07, no. 01 (2021), https://doi.org/https://doi.org/10.33751/palar.v7i1.3103.

5) Empowering members of Polmas and consolidating the role of FKPM in each region to track criminal problems that have the potential to cause minor losses and have the possibility of being resolved using ADR mechanisms.
6) Strive for cases that have been successfully handled through the ADR mechanism so that they are not interfered with by other legal actions that are contrary to the aims of Polmas.

The Police Letter cannot be said to be a law but is only limited to a policy that is normalized as a guide for the police when handling criminal cases and is still included in the scope of discussion referred to in the policy regulation. Thus, these policy regulations indirectly become a reference for the implementation of penal mediation in handling criminal cases.

In the next period, new regulations were issued as a response to the existence of penal mediation. For example, National Police Chief Regulation No. 8 of 2021 concerning the handling of crimes based on restorative justice; Prosecutor's Regulation No. 15 of 2020 concerning termination of prosecution based on restorative justice; and Decree of the Director General of Public Agencies Number 1691/DJU/SK/PS.00/12/2020 issued on December 22, 2020, concerning Guidelines for the Implementation of Restorative Justice in the General Court Environment.[18] Even though there are these three new regulations, the existence of penal mediation is still not included in the law because the regulations outlined are not included in the legal hierarchy of legislation in Indonesia.

Mediator in Penal Mediation

Rules that explicitly regulate mediators in penal mediation have not yet been promulgated. This is a bias in not regulating the penal mediation mechanism in legislation, but only as an alternative step in handling criminal disputes. Nevertheless, the policy or discretion by the National Police, which resulted in the National Police Chief's Letter Pol Number: B/3022/XII/2009/SDEOPS dated 12/14/2009 concerning Handling Cases Through Alternative Dispute Resolution (ADR), is felt to have represented the essence of the existence of penal mediation. In addition, the substantive existence of mediation is also regulated in Article 1, Number 7 of Law No. 11 of 2012 concerning Juvenile Justice, which is better known as diversion, as well as several of the new regulations that have been mentioned above.

Even though there are rules that implicitly regulate mediation, rules that explicitly regulate penal mediation have not yet been issued. Therefore, the bias of not promulgating regulations regarding penal mediation also has an impact on which parties have the right to be mediators in penal mediation. So, the regulations regarding parties entitled to become mediators have been included in the Supreme Court Regulation of the Republic of Indonesia No. 1 of 2016 concerning Mediation Procedures in Court, namely in Article 1 No. 2, which reads, "Mediator is a Judge or other party holding a Mediator Certificate."

Based on PERMA No. 1 of 2016, there is still a problem regarding what happens if there are parties or personnel who handle cases but do not have a mediator certificate in the realm of mediation. It needs to be underlined that, definitively, a mediator means a third party and/or a neutral party who mediates in handling cases with the aim of obtaining a sense of justice from both parties in dispute. And it also needs to be underlined that the important identities of the mediator are:

1. Must be neutral and not lean towards one party.
2. Aims to be a mediator by helping both parties.
3. Do not impose one way of resolving disputes.

[18] Nababan, "Urgensi Penerapan Mediasi Penal Dalam Sistem Peradilan Pidana Di Indonesia."

Thus, it can be concluded that the main task of the mediator is only to help the parties involved in a lawsuit without having to impose their will in determining the mechanism for resolving the ongoing problem.

It was explained above that the requirements for the legality of mediators must be those (judges) who have a mediator certificate, but in general, everyone has the right to become a third-party mediation agent in resolving problems that occur in the community, even though in reality many of them have the capacity and capability under the standard of a certified mediator. There are at least several things that serve as a basis for mediators to have adequate capacity and capability, namely:

1. Must have skills related to the dispute being faced and the context of the problems that occur in the field. Explorative action in identifying problems is very important and should be carried out by mediators who are useful for understanding and tracing information related to these problems.
2. Have persuasive and communicative abilities. This becomes urgent regarding the way moderators influence the parties in a dispute with the arguments and ideas they make. Of course, this must be supported by good communication so that both parties accept the arguments and ideas.
3. Can control emotions and anger. During the negotiation process, the disputing parties often want their wishes to be accepted. This desire sometimes results in uncooperative attitudes from both parties. The mediator must be able to control this attitude before continuing to mediate between those in dispute.
4. Have skills in processing and describing problems. Generally, the parties to a dispute have an attitude of "wanting to win for themselves" so that they can gain more benefits in the future. The mediator's job is to help the parties cooperate to achieve justice.
5. Can provide a way out for the disputing parties. Even though they are in dispute, the parties want the problem to be resolved quickly. Therefore, they open the opportunity to arrive at the final stage and come up with a fair decision. The mediator must be able to accommodate the aspirations of both parties before deciding to settle the dispute.[19]

Thus, this indicates that penal mediation is a dispute resolution practice that has flexibility, both in terms of mechanisms and the parties involved. In principle, the aim and philosophy of applying dispute resolution with access to penal mediation are not going off the rails, the emphasis of which is to reach an agreement based on the principle of a win-win solution so that proportional balance in society can be created.[20]

Post-Accident Penal Mediation

Traffic accidents are one of the criminal cases that can be resolved through penal mediation. It is felt that mediation in the realm of handling criminal disputes is very necessary. There are at least four things that can be obtained if this mediation process is practiced in handling criminal case disputes: 1) it can be an alternative so that cases do not pile up in court; 2) implementation of fast, cheap, and simple case dispute handling; 3) is a door to asking for maximum justice for the parties to the dispute; 4) optimizing the role and

[19] Admin, 5 Kemampuan Penting yang harus dimiliki oleh Mediator, dalam https://pkpajakarta.com/5-kemampuan-penting-yang-harus-dimiliki-oleh-mediator/ diakses pada 3 April 2023.

[20] U Usman and A Najemi, "Mediasi Penal Di Indonesia," *Undang: Jurnal Hukum* 1, no. 1 (2018), https://doi.org/https://doi.org/10.22437/ujh.1.1.65-83.

function of the judiciary in handling disputes in addition to its duty of imposing punishment.[21]

In the context of handling accident dispute cases, things that need attention are matters relating to the traffic accident criminal case, which are listed in Article 93 of Government Regulation No. 43 of 1993 concerning Road Infrastructure and Traffic, namely:

1. A traffic accident is an incident on the road that is unexpected and unintentional and involves vehicles or other road users, resulting in human casualties or loss of property.
2. Victims of traffic accidents can be:
   a. dead victims.
   b. seriously injured victims.
   c. light injury victim.
3. Dead victims are victims who are confirmed to have died because of a traffic accident within a maximum period of 30 (thirty) days after the accident.
4. Seriously injured victims are victims whose injuries suffer permanent disability or must be treated for a period of more than 30 (thirty) days after the accident occurred.
5. Lightly injured victims are victims who are not included in the definition of dead victims or seriously injured victims.[22]

In addition to focusing on the articles described above, what mediators must also not understand is the criteria for traffic accident victims regulated by PT. Jasa Marga, namely:

a. Death is a condition where the sufferer has physical signs of death. Dead victims are accident victims who died at the scene or died during the journey to the hospital.
b. Serious injuries are conditions where the victim has injuries that can be life-threatening and require immediate further assistance or treatment at a hospital.
   a) Injuries that cause the patient's condition to decrease, usually injuries. to the head or trunk
   b) Burns covering an area of 25% with fresh wounds.
   c) Complicated limb fractures accompanied by pain and severe bleeding.
   d) Great bleeding of approximately 500 cc.
   e) Collisions or injuries that affect the patient's body and cause damage to internal organs, for example, the chest, stomach, intestines, bladder, kidneys, liver, spine, and head.
c. Minor injuries are conditions where the victim has non-life-threatening injuries and/or does not require further assistance or treatment at a hospital, consisting of:
   a) A small wound in a small area with little bleeding, and the patient is conscious.
   b) Burns with an area of less than 15%.
   c) Mild sprains of the limbs without complications; the above patients are all conscious, not unconscious or vomiting.

Apart from that, the regulations governing accident victims or victims are Article 229 number 1 letters a, b, and c, Law of the Republic of Indonesia no. 22 of 2009 concerning Road Traffic and Transportation (UU LLAJ), which contains:

1. Traffic accidents are classified into:

[21] I A Anggraini, Y Kurniaty, and ..., "MEDIASI DALAM PENYELESAIAN KASUS KECELAKAAN LALU LINTAS DAN PENGARUHNYA TERHADAP PUTUSAN HAKIM," *Prosiding University …* (repository.urecol.org, 2020). h. 3

[22] Peraturan Pemerintah (PP) No.43 Tahun 1993 Tentang Prasarana Dan Lalu Lintas Jalan, dalam https://peraturan.bpk.go.id/Home/Details/57551/pp-no-43-tahun-1993 diakses pada 3 April 2023.

a. Minor traffic accidents.
b. Moderate traffic accidents.
c. Heavy traffic accidents.

In determining the category of victims based on the hierarchy listed in Article 229 No. 22 of the 2009 LLAJ Law, it is necessary to clarify so that there are no mistakes in its application. The victim hierarchy is:

1) A minor traffic accident is an accident that results in damage to vehicles and/or goods.
2) Moderate traffic accidents are accidents resulting in minor injuries and damage to vehicles and/or goods. The meaning of these minor injuries is that they are injuries or pain experienced by the victim and do not require intensive care. These injuries are not included in the classification of injuries resulting from serious accidents.
3) Serious traffic accidents, resulting in the victim's death or serious injury. The meaning of serious injuries is:
   a. Illness that does not indicate recovery and has the potential to cause death.
   b. Have a disability in one of the five senses.
   c. Experiencing memory impairment for a duration of more than four weeks.
   d. Defects indicate paralysis.
   e. Miscarriage and the fetus cannot be saved.
   f. Injuries requiring treatment for more than thirty days.

Furthermore, something that must not be forgotten before carrying out penal mediation for accident victims is knowing the cause of the accident. One of the most urgent is the driver factor. There are several benchmarks that can be used as benchmarks for drivers who are the main mastermind behind an accident, including:

1. Drivers who pay little attention to traffic conditions in this case, the driver does not really understand the road conditions and the potential dangers he faces. For example, road conditions and vehicle conditions from the opposite direction.
2. Careless drivers. Drivers who lack focus when driving while doing other work for example, smoking, playing with cellphones, chatting so that it interferes with driving concentration, and so on.
3. The driver is sleepy.
4. Drunk driver. In this case, the driver loses his mind due to the side effects of consuming intoxicating food or drinks, such as alcohol and other narcotic drugs.
5. The driver does not maintain distance from other vehicles. In this condition, the driver does not maintain a safe distance from the vehicle in front of him, which has the potential to trigger an accident. Such as the driver being in the blind spot area[23] of another vehicle, other drivers stopping suddenly, and so on.

Apart from that, something that also needs to be paid attention to and which is no less important before implementing penal mediation in handling cases is that mediators should pay attention to the condition of the party who was the victim of the accident, whether the injuries they suffered are in the light, moderate, or severe category. By taking this into account, prospective mediators can determine in what way and how the mediation mechanism will be carried out. If the resulting wound is a minor or moderate injury, then the benchmark is the agreement of both parties involving both families.[24]

[23] Driving blind spots, also known as "vehicle blind spots", are those parts of our surroundings that we cannot see while driving. This is due to several reasons, such as the limited reach of the mirror or the payload it carries. In https://id.wikipedia.org/wiki/Titik_buta accessed on 12 July 2023.

[24] Akmal, "Mediasi Penal Sebagai Alternatif Penyelesaian Perkara Pada Tindak Pidana Kecelakaan Lalu Lintas Yang Mengalami Kerugian Material (Studi Di Polres ...."

The methods used in handling cases through penal mediation are the occurrence of an agreement between the two parties by submitting the losses suffered as compensation due to the accident experienced; stating the agreement with a letter of mutual agreement; in order to complete the data and case files, the mediator continues to investigate the witnesses; and finally, withdrawing the report.

CLOSING

Penal mediation definitively means handling criminal cases without going through criminal justice mechanisms but involving the parties involved in the case (the perpetrator and the victim) and a third party as a neutral party or mediator, which is carried out by means of deliberation and consensus to reach an agreement (a win-win solution). In implementing penal media, the principle of restorative justice must be considered. To be able to achieve this justice, the mediator who handles it must have the capability and capacity, both regarding the law, situation, and conditions, as well as the context of the case dispute. The regulations that implicitly regulate penal mediation are Law no. 11 of 2012 concerning Juvenile Justice and Letter from the Chief of Police Pol Number: B/3022/XII/2009/SDEOPS dated 14/12/2009 concerning Handling Cases Through Alternative Dispute Resolution (ADR), Regulation of the Chief of Police No. 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice; Prosecutor's Regulation No. 15 of 2020 concerning Termination of Prosecution based on Restorative Justice; and Decree of the Director General of Public Agencies Number 1691/DJU/SK/PS.00/12/2020 which was issued on 22 December 2020 concerning Guidelines for Implementing Restorative Justice in the General Court Environment.

Parties entitled to become mediators according to PERMA No. 1 of 2016 are a judge or other party who has a Mediator Certificate. Even though it also legalizes uncertified judges to become mediators, In practice, before carrying out mediation against the disputing parties, the potential mediator must know matters relating to the victim, which has been regulated in Article 93 of Government Regulation No. 43 of 1993 concerning Road Infrastructure and Traffic, the criteria for traffic accident victims regulated by PT. Jasa Marga, and Article 229 of Law of the Republic of Indonesia No. 22 of 2009 concerning Road Traffic and Transportation (UU LLAJ).

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