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Penal mediation as an alternative of transferred criminal settlement done by children

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Abstract. The type of research in this writing is Normative legal research, namely legal research that focuses on the study or study of legislation in coherent legal system and to sharpen problem analysis. The Legislative Body, in this case the House of Representatives, should immediately revise the Law on the Juvenile Criminal Justice System by including the Article on juvenile criminal cases, the settlement is through the Penal Mediation mechanism and immediately promulgated in the form of a Law. In order to have a binding legal force and become a guideline for law enforcement officers in the General Court environment.

Keywords. penal, settlement, children

Introduction

This research begins with four main problems, namely philosophical problems, theoretical problems, juridical problems and sociological problems. The emergence of philosophical problems in the need for the application of Penal Mediation in the settlement of criminal acts in general courts committed by children who have already made peace efforts or there is a will from the two parties in a case to settle them is peacefully so that the settlement of these crimes can provide a sense of justice, especially in the interests of protection law for children who are dealing with the law, because the settlement of criminal acts through the Penal Mediation mechanism (Ranjan, 2020) is the settlement of cases based on restorative justice, namely the settlement of criminal cases carried out by deliberation to reach a consensus while still upholding legal and social norms in order to provide the highest justice based on the values of Pancasila and norms in the 1945 Constitution of the Republic of Indonesia, by creating a balanced and proportional restoration of good relations between the perpetrator of the crime, the victim and the community in order to avoid the negative stigma of the perpetrator of a criminal act, the settlement of cases is fast, simple and low cost. ("ASAS PERADILAN SEDERHANA CEPAT DAN BIAYA RINGAN DALAM PENYELESAIAN PERKARA PIDANA MENURUT KUHAP," 2016) The theoretical problematic perspective of the application of Penal Mediation is a thought of legal reform considering that the current application of criminal law is felt that volunteers are no longer keeping up with the times. In terms of the Judicial Problems of Penal Mediation, until now there has been a vacuum of legal norms and Penal Mediation isn't known in the Criminal Justice System in Indonesia (Manurung, 2020), but on the other hand the practice of Penal Mediation (Budiartha, 2019) has been

entrenched in the community of our ancestors since time immemorial, even today. In some areas, through their customary law, they still use mediation patterns such as the stone-burning culture in Irian Jaya, the awik-awik culture in Bali and so on. Even in 2008, the Indonesian Police Institution made a legal breakthrough and put forward every case as far as possible to be resolved first through the *Alternative Dispute Resolution* mechanism. Based on the background, the research question is the Urgency of Penal Mediation in solving traffic crimes committed by children. (Gumilang et al., 2019)

Research Methods

The type of research in this writing is Normative legal research, namely legal research that focuses on the study or study of legislation in coherent legal system and to sharpen problem analysis. (Michael, 2019)

Research Results and Discussion

The findings made, namely that there are also findings that are very important to reveal, it turns out that police agencies, prosecutors, and judiciary have the same enthusiasm in resolving cases of juvenile crime through the Penal Mediation mechanism, including in the Regulation of the Chief of the Indonesian National Police. Number 7 of 2008 concerning the authority of the police in resolving problems through peaceful efforts and Letter of the Chief of Police Number Pol: B / 3022/XII/2009/SEDOPS dated December 14, 2009 concerning handling of cases through the *Alternative Dispute Resolution* mechanism, Regulation of the Head of the National Police of the Republic of Indonesia Number: 6 2019 concerning criminal investigation in Article 1 letter (10) (11) (12) regulates restorative justice; Telegram of the Head of the Police Criminal Investigation Agency of the Republic of Indonesia Number TR/1124/XI/2006 concerning Guidelines for the Implementation of Diversion for the Police which is a directive to serve as a guide in the implementation of diversion for the police apparatus, which states that the principle of diversion is contained in the convention on children's rights, namely a transfer of the form of settlement from the settlement which is a formal criminal process in the scope of kinship, Regulation of the Attorney General's Office of the Republic of Indonesia Number: 15 of 2020 concerning Cessation of Prosecution Based on Restorative Justice, and Issuance of Decree of the Director General of the Supreme Court of the Republic of Indonesia Number: 1691/DJU/SK/PS.00/12/2020 Concerning the Enforcement of the Guidelines for the Application of Restorative Justice, Settlement of criminal acts based on restorative justice, has been implemented at the Yogyakarta District Court, upon the decision of the District Court Judge. Yogyakarta Number: 317/Pid.B/2008/PN. YK dated December 3, 2008 against the criminal act punishable under Article 378 of the Criminal Code. This decision proves to all of us that it's time for restorative justice in Indonesia to be applied to every general judicial institution.

Demands the harmony of relations between sub-systems administratively. In the Criminal Procedure Code, there is actually a demand that there is a harmonious relationship between the sub-systems in the Indonesian criminal justice system which is regulated in the Criminal Procedure Code, for example regarding the issuance of a Notification Letter for the Commencement of Investigation (SPDP) which is then complemented by a decision. Constitutional Court, Number 130/ PUU-XIII/2015, January 11, 2017. There is a pre-prosecution institution, extending detention to the implementation of a decision, which is also known as an observer supervisory judge body.

Convict the perpetrator of a crime in accordance with the philosophy of punishment adopted. The final point in criminal justice is the form of a verdict in the form of punishment.

Therefore, the sub-system (investigation, prosecution and trial) is directed to prove a crime and convict the perpetrator (person or corporation). In punishing the perpetrator of a criminal act, it must be directed at the objectives of the punishment itself and the influence of the views of justice that are developing in criminal law. In practice, it's almost certain that every time there is a question, why has person A been sentenced to so many years? The answer that appears is that it's in accordance with his actions. The concept of punishment which is based on action refers more to thinking in absolute theory of the purpose of punishment. Absolute thinking is still inherent because it's very well aware that in Indonesian Criminal Law there is no purpose of the punishment itself, so that the guidelines for the punishment are also unclear. The development of modern criminal law no longer thinks in the context of absolute theory, but has developed again, as has also been conveyed by Indonesian criminal law experts who tried to come up with the idea of a joint theory.

Upholding and advancing *the rule of law* and respect for the law, by guaranteeing *due process* and fair treatment for suspects, defendants, convicted persons, prosecuting and acquitting innocent people. Law enforcement in Indonesia (Kasiyati, 2020) must be based on predetermined rules, all provisions governing criminal case handling processes must be implemented, irregularities in the handling of criminal cases are not justified. The process of wrongful arrest or case manipulation shouldn't occur in law enforcement in Indonesia. Law enforcers must also receive supervision, both horizontally and vertically. Law enforcement in Indonesia must truly respect the rights of those involved in criminal cases, not only the rights of suspects, but reporters and witnesses. Intimidation and coercion efforts are no longer appropriate. (Cercel, 2019) Especially for the suspect, there is no demand for confession from the suspect, leaving the suspect with an alibi, but what is needed is at least 2 pieces of evidence and the judge's conviction, as currently regulated in Article 183 of the Criminal Procedure Code. If 2 (two) pieces of evidence are sufficient other than the statement of the suspect, then it's sufficient to become a basis for submitting a case to the court for trial. Law enforcers must be professional, responsible and open. If the basis isn't sufficient and there isn't enough evidence, then it's not necessary to force someone to become a suspect, defendant and even be convicted. The Criminal Procedure Code has authorized investigators and prosecutors to stop investigations or prosecutions, on the grounds: insufficient evidence, the case isn't a criminal case or for the sake of law. (Butt & Lindsey, 2020)

Maintain law and order. (Fortin, 2012) The aim of law in general is to maintain the law itself and to maintain order. Keeping the law means that people must obey and obey the law. Public legal awareness is built because in life there are legal rules that bind society. The community isn't afraid of law enforcers but because they are aware that the law regulates social life.

The urgency of Penal Mediation in resolving traffic crimes committed by children, for which there have been peace efforts or there is a will from both parties in the case to settle it peacefully so that the settlement of criminal acts can provide a sense of justice and legal protection to the parties and the community, proportionally and in balance while still upholding legal and social norms as well as the principles of local wisdom based on the values of Pancasila and the 1945 Constitution of the Republic of Indonesia. (Arifin & Masrukin, 2019) The concept of Penal Mediation in the settlement of traffic crimes committed by children in the past will come based on the values of Pancasila as the nation's view of life in reforming the legal system in the Juvenile Criminal Court by taking into account the balance of the interests of the community, the interests of victims and the interests of the perpetrators of criminal acts, which can be carried out at the investigation stage, the prosecution stage and the stage before trial, against traffic criminal acts committed by children.

Conclusion

The Legislative Body, in this case the House of Representatives, should immediately revise the Law on the Juvenile Criminal Justice System by including the Article on juvenile criminal cases, the settlement is through the Penal Mediation mechanism and immediately promulgated in the form of a Law. In order to have a binding legal force and become a guideline for law enforcement officers in the General Court environment. The Judiciary Body, in this case the Supreme Court, should immediately issue a Supreme Court Regulation related to cases of children who are in conflict with the law, especially those who commit traffic crimes using the Penal Mediation approach, so that it can be used as a legal basis or umbrella for law enforcers in the General Court environment Indonesia.

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