

# MEDIATION IN THE SETTLEMENT OF MINDFUL CRIMINAL ACTIONS WHAT TEENAGERS DO

Ni Made Liana Dewi<sup>1)</sup>

<sup>1)</sup> Faculty of Law, Dwijendra University  
e-mail: wahanadewi80@gmail.com

## ABSTRACT

*Dispute resolution by mediation is currently restricted to civil disputes only. This is due to the view that the dispute is not detrimental to society in general. In Indonesia, there are several disputes that can be resolved by mediation, namely disputes in banking, consumer, labor and court disputes. The existence of alternative dispute resolution is expected to emphasize the number of cases that are increasingly accumulating in the courts and can provide a sense of justice for the community. The occurrence of disputes between the parties, giving the option of each party to choose how to solve the problem. Each party may vote by court or outside the court. In general, dispute resolution through courts is based on initiatives from either party. While the settlement of disputes outside the court can only be pursued by the parties based on the agreement of the parties, in other words there is good faith from each side. Based on the above matters the authors choose the title of this thesis mediation in the settlement of minor crimes by adolescents. The type of research used in the writing of this thesis is normative juridical which solves the problem by using the legal approach contained in the Legislation and examining the problem of children who commit crimes. From the results of the discussion it was concluded that the mediation as the settlement of crime has been regulated in the Criminal Code Article 363 and Law Number 11 Year 2012 on the Criminal Justice System of the Child, Article 22, namely criminal and criminal act, namely prison, confinement, fine and supervision and action, To the parent or State and the legal consequences if the offense of persecution settled through mediation is a peaceful settlement essentially an agreement which the parties deemed to be good from all other ways. It is well-regarded to mean that although the road of agreement to resolve this dispute must be made with a willingness to sacrifice, then the exposure is judged to be at least reasonable and minimal financing, if compared with the settlement through litigation.*

**Keywords:** *Crime, Youth and Mediation*

## 1. PRELIMINARY

A teenager is part of the younger generation which is the next generation for the ideals of the nation's struggle. Adolescents are qualified human resources and are able to lead and maintain national unity and integrity within the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution, so that continuous coaching is needed for the survival of a teenager. Along with and in line with the National goals of the Indonesian Nation as outlined in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia, that: Then instead of that to form an Indonesian State Government that protects the entire Indonesian nation and all of Indonesia's bloodshed and to promote public welfare,

Society sometimes encounters deviations in the behavior of adolescents, even more than that there are teenagers who commit acts that violate the law regardless of social and economic status, besides that there are also teenagers who for one reason or another do not have the opportunity to get proper attention. Physically, mentally and socially due to this inadequate state of self, both intentionally and unintentionally, teenagers often take actions or behave that can be detrimental to

themselves and society. Irregularities or unlawful acts committed by various factors, namely the negative impact of the rapid urban development,

In addition, children who do not receive love, care, guidance and coaching in the development of attitudes, behavior, adjustment, and supervision from parents, guardians and an unhealthy environment can be detrimental to a child's personal development. The problem now is what if the actions committed by these teenagers cause harm to the interests of others. In such cases the state has the authority to impose a sentence or action. The authority to impose a sentence is left to the judge. To uphold law and justice, the role of the judiciary is very important, according to article 1 point 8 of the Criminal Procedure Code that "Judges are state court officials who are authorized by law to try" . In the Juvenile Justice Act it is emphasized that for children under the age of 18 who commit a crime, the judge can choose one of several alternatives contained in article 23 paragraph 2 and article 24 paragraph 1 of Law Number 11 of 2012 concerning the justice system Juvenile crimes which include: Crime in Article 23 paragraph 2, namely: imprisonment, confinement, fines and supervision. The actions in Article 24 paragraph 1 namely: Returning to parents, guardians or foster parents, handing over to the state to attend education and job training and handing over to the Ministry of Social Affairs or Social Organizations engaged in education, coaching and job training. then the judge can choose one of several alternatives contained in article 23 paragraph 2 and article 24 paragraph 1 of Law Number 11 of 2012 concerning the juvenile justice system which includes: Crime in article 23 paragraph 2 namely: imprisonment, imprisonment, fines and punishment of supervision. The actions in Article 24 paragraph 1 namely: Returning to parents, guardians or foster parents, handing over to the state to attend education and job training and handing over to the Ministry of Social Affairs or Social Organizations engaged in education, coaching and job training. then the judge can choose one of several alternatives contained in article 23 paragraph 2 and article 24 paragraph 1 of Law Number 11 of 2012 concerning the juvenile justice system which includes: Crime in article 23 paragraph 2 namely: imprisonment, imprisonment, fines and punishment of supervision. The actions in Article 24 paragraph 1 namely: Returning to parents, guardians or foster parents, handing over to the state to attend education and job training and handing over to the Ministry of Social Affairs or Social Organizations engaged in education, coaching and job training. fines and punishment of supervision. The actions in Article 24 paragraph 1 namely: Returning to parents, guardians or foster parents, handing over to the state to attend education and job training and handing over to the Ministry of Social Affairs or Social Organizations engaged in education, coaching and job training. fines and punishment of supervision. The actions in Article 24 paragraph 1 namely: Returning to parents, guardians or foster parents, handing over to the state to attend education and job training and handing over to the Ministry of Social Affairs or Social Organizations engaged in education, coaching and job training.

For judges who handle criminal cases where the perpetrators are teenagers, the judge can find out the psychological characteristics of a teenager, because it is the duty of juvenile judges to examine and investigate as deeply as possible why a child is abandoned .(Erna Sofwan Syukrie, 1996: 5) Therefore the judge in making a decision against the child perpetrator of a crime besides being based on the judge's conviction and valid evidence, also requires non-judicial considerations such as sociology, psychology and so on.

According to Oemar Sena Adji that a judge deciding a criminal case must pay attention to the serious nature of the offense committed by the circumstances accompanying the act that was brought before him. (Oemar Sena Adji, 1984: 8) The judge in deciding a child's case is given the freedom to choose several alternatives that have been regulated in the article 23 paragraph 2 and article 24 paragraph 1 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and in deciding a crime here the judge is free to assess and determine the

things or circumstances that are considered most appropriate to impose a crime against a child while the judge's mistake in making decisions can be fatal for the development of the child itself.

Along with the times, currently the parties tend to use alternative dispute resolution (APS), this is due to the long time period for resolving disputes in court so that it is seen as impractical and requires a lot of money. Alternative dispute resolution is an option for the parties who wish to resolve their disputes without going through a court or arbitration. The choice fully depends on the wishes of each party to the dispute.

Dispute resolution through mediation is currently limited to civil disputes only. This is due to the view that the dispute is not detrimental to society in general. In Indonesia, there are several disputes that can be resolved by mediation, namely disputes in the fields of banking, consumer, labor, and court disputes. The existence of alternative dispute resolution is expected to be able to emphasize the increasing number of cases that are piling up in court and can provide a sense of justice for the community. (Jimmy Joses Sembiring, 2011: 26) The occurrence of a dispute between the parties gives a choice to each party to choose the method that will be used to solve the problem. Each party can choose through the court or outside the court.

## **2. RESEARCH METODOLOGY**

The type of research used in writing this thesis is normative juridical, namely solving problems using a legal approach contained in laws and regulations and examining the problem of children who commit crimes. This research used statutory approach (Statue approach), conceptual approach (Conceptual approach), analytical approach (analytical approach), and case approach (case approach). The statutory approach (Statue approach) was chosen because what will be examined are various laws related to the settlement of criminal acts through mediation. The concept approach (Conceptual approach) will be used to analyze the concepts of settlement of crimes through mediation. The analytical approach is carried out by analyzing the meaning of law,

This writing uses legal material sources: Primary legal materials, which include legal rules such as. Article 1 paragraph 1 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states that: "A child is a person who in a delinquent child case has reached the age of 8 (eight) years but has not yet reached the age of 18 (eighteen) years and is not yet married. Secondary legal materials, namely in the form of books, magazines, research results that are related to the settlement of minor crimes committed by adolescents through mediation. To collect library data, it is carried out by systematically recording according to the topic or subject matter in this proposal, then for collecting report data with the help of interview guidelines with people who know very well about the problems written in this thesis.

After the data obtained is collected, then the data is processed and analyzed. Data processing and analysis techniques are carried out qualitatively. According to Soerjono Soekanto who stated that "Qualitative data processing and analysis techniques are research procedures that produce descriptive data, namely what is stated by respondents in writing or verbally, and real behavior.(Soerjono Soekanto, 1986: 32)Then the presentation is carried out in a descriptive analysis, namely the way data analysis is carried out by systematically compiling so that a general conclusion is obtained.

## **3. RESULTS AND DISCUSSION**

Considering that the mediator largely determines the effectiveness of the dispute resolution process, he/she must properly meet certain qualifications and experience in communication and negotiation in order to be able to direct the

parties to the dispute. If he is experienced and used to dealing with court, that is very helpful. However, any experience other than his own experience as a mediator is less relevant. Substantial knowledge of the issues in dispute is not absolutely necessary, what is more important is the ability to analyze and the expertise to create a personal approach. Government Regulation Number 54 of 2000 stipulates the criteria for becoming a mediator for service providers providing environmental dispute resolution services outside the court, namely:

- a. Capable of taking legal action.
- b. Minimum age is 30 (thirty) years.
- c. Have experience and physically control the environmental field for at least 5 (five) years.
- d. There is no kinship from the community (after being announced within one month).
- e. Have the skills to conduct negotiations or mediation.

The word mediation comes from the English word mediation, which means dispute resolution involving a third party as a mediator or dispute resolution mediation, the person who mediates is called a mediator or a person who mediates. There are several limitations to mediation put forward by experts, including: Gary Goodpaster, Gary Goodpaster argues that: Mediation is a process of negotiation of problem solving in which broad, impartial and neutral parties work with disputing parties to help them with disputing parties. disputing parties to help them obtain satisfactory agreements. In contrast to judges or arbitrators, mediators do not have the authority to decide disputes between the parties. However, in this case the parties authorize the mediator to help them resolve the issues between them. The assumption is that third parties will be able to change the terms and social dynamics of conflict relations by influencing the personal beliefs and behavior of the parties, by providing knowledge or information or by using a more effective negotiation process, and thereby helping participants to resolve issues that arise. in dispute. (Gary Goodpaster, 2003: 201) and thereby helping the participants to resolve the disputed issues. (Gary Goodpaster, 2003: 201) and thereby helping the participants to resolve the disputed issues. (Gary Goodpaster, 2003: 201)

The same thing was also stated by Christopher W. Moore as follows: Mediation is an intervention in a dispute or negotiation by a third party that can be accepted by the disputing parties, is not part of both parties and is neutral. These third parties do not have the authority to make decisions. He is tasked with assisting the warring parties so that they voluntarily reach an agreement that is accepted by each party in a dispute. (Christopher W Moore, 2005: 18)

The Big Indonesian Language Dictionary, the Big Indonesian Dictionary provides a limitation that: Mediation is the process of third participation in resolving a dispute as an advisor. Intermediary mediator (liaison, intermediary) for the disputing parties. (Dictionary Compilation Team of the Center for Language Development and Development, 2008: 569) Legal Dictionary: Dictionary of law Complete Edition Meanwhile, in the legal dictionary: Dictionary of law Complete Edition, mediation is defined as: "Mediation is a process of peacefully resolving disputes involve the assistance of a third party to provide a solution that is acceptable to the parties to the dispute, the participation of a third party in resolving disputes between two parties. (M. Marwan and Jimmy P, 2009: 426)

The Law on Arbitration and Alternative Dispute Resolution (UUAAPS) With respect to the definition of mediation, the provisions in Article 6 paragraph (3) of the UUAAPS state as follows: "In the event that a dispute or difference of opinion as referred to in paragraph (2) cannot be resolved; then based on the written agreement of the parties, disputes or differences of opinion are resolved through the assistance of one or more expert advisers or through a mediator.

From some of the definitions of mediation above, it can be concluded that mediation is a way of resolving disputes outside the court through negotiations

involving third parties who are neutral (non-intervention) and impartial to the parties to the dispute and whose presence is accepted by the parties. disputing parties. The third party is called a mediator or intermediary whose job is only to assist the disputing parties in solving problems and does not have the authority to make decisions. In other words, the mediator here only acts as a mere facilitator. With mediation, it is hoped that a meeting point will be reached for resolving problems or disputes faced by the disputing parties, which will then be outlined as a joint opportunity.

As for the termination of cases, both through court and arbitration, are formal, forced, looking back, characterized by contradictions and based on rights. That is, if the parties litigate a dispute, the procedure for deciding the case is regulated in strict provisions and a third party's conclusion regarding past events and the legal rights and obligations of each party will determine the outcome. In contrast, mediation is informal, voluntary, forward-looking, cooperative and interest-based. A mediator assists willing parties in crafting an agreement that looks forward, meets their needs, and meets their own standards of fairness. Like judges and arbitrators, mediators must be impartial and neutral. but they do not interfere to decide and determine a substantive output, and the parties themselves decide whether they will agree or not. (Gary Goodpaster, 2006: 12-13)

Because of this, mediation is often seen as an extension of negotiation. This is because the disputing parties are unable to resolve their disputes on their own, so they use the services of a neutral third party to help them reach an agreement. Unlike adjudikasi, where a third party applies law to existing facts to achieve a result, in mediation a third party will assist ethical parties by applying values to facts to reach an end, those values may include law, sense of justice, religious beliefs, ethics, morals, and others. (Gatot Soemartono, 2006: 122)

The description above shows that dispute resolution through ADR has advantages or advantages over the settlement process through adjudication. Dispute resolution through ADR is far more efficient and effective compared to dispute resolution through adjudication institutions, where the settlement is faster, costs less, and most importantly produces an agreement that is acceptable to the parties. The parties can arrange for themselves the method and length of time for settling the dispute in question.

Non-litigation skills are basically the settlement of legal disputes legally outside the court through peace. The handle of dispute resolution is law, but the construction of the settlement is adjusted to the wishes of the parties, so that the parties are satisfied with such a settlement. So, the end of the solution is peace, even though to achieve this varies as wide and as far as all the ways, models, procedures that adorn the law as the main handle of settlement, which is as wide as the scope of application of Non-Litigation Skills (KNL) as described below. Settlement by peace is basically an agreement that the parties consider good from all other means. Being considered good means that even though the way of agreement to resolve this dispute must be carried out with a willingness to sacrifice each other, then the sacrifice is considered the most reasonable and minimal in financing, when compared to the settlement through litigation. As for what can be recorded as the legal basis of non-litigation skills are as follows;

The legal basis for non-litigation skills (KNL) dispute resolution: (a) Article 1338 of the Civil Code reads: all agreements made legally apply as law to those who make them. (b) Article 1266 of the Civil Code reads: null and void conditions are deemed to have always been included in reciprocal agreements, if one party does not fulfill its obligations. (c) Article 1851 to Article 1864 of the Civil Code concerning Peace. (d) Articles 13 and 14 of the HIR, settlement of minor disputes in the Village by the Village Head. (e) Article 130 HIR and article 154 Rbg regarding peace efforts, before the dispute is examined before the court. (f) Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. (g) Legal Purposes.

#### 4. CONCLUSION

From the results of the discussion and analysis that the authors have described above, the following conclusions can be drawn:

1. Mediation as a settlement of criminal acts has been regulated in Article 363 of the Criminal Code and the Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Article 22 namely crime and action, crime namely imprisonment, confinement, fines and supervision and action that is returned to parents or the state.
2. The legal consequences if the crime of persecution is resolved through mediation are: Settlement by peace is basically an agreement that the parties consider good from all other means. Being considered good means that even though the way of agreement to resolve this dispute must be carried out with a willingness to make mutual sacrifices, this sacrifice is considered the most reasonable and has minimal financing, when compared to settlement through litigation, the legal consequences are in accordance with a mediation decision.

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