Crime Settlement using Local Wisdom in the Andir District Police Bandung and the Sudanese Connection

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Abstract

Not all criminal cases that occur under national jurisdiction are brought to court for punishment of the perpetrators as a form of settlement. Crimes committed by children, stealing items of little value, and misdemeanors should be handled by sitting together with the perpetrators, victims, and the community and related law enforcement officials as long as possible to find a solution to the problem. When criminal acts occur, it is not uncommon for both the police and prosecutors to choose to invite the victims and perpetrators to settle the case through deliberation. The Criminal Investigation Unit at the Andir District Police in Bandung can act as a facilitator by bringing victims and perpetrators in to directly solve problems through deliberation and consensus outlined in a peace agreement and signed. Consequently, the perpetrators agree to carry out their obligations as stipulated in the peace deed as soon as possible, and the victims agree to immediately revoke their police reports. With the fulfillment of an agreement by the perpetrator and the victim, the national police investigator will issue a decree stating that the investigation process was dropped against the perpetrator. This paper seeks to analyze the application of the values of local wisdom for the indigenous peoples of Bandung in handling criminal acts by the Criminal Investigation Unit Andir District Police Bandung Investigators based on their own assessment.

To analyze and formulate self-assessment (discretion), the use of local wisdom approaches in handling criminal acts especially can be accommodated in the KUHAP and the Police Law. In this paper, a qualitative research method is used, with interviews and observations. There was fact-finding that Andir District Police Investigator Bandung in handling criminal cases which is a complaint offense can facilitate consensus deliberations between the perpetrators and victims and their families to achieve peace. If both parties have reconciled and the victim withdraws the police complaint, the investigation is stopped, and the case is complete. Local wisdom can be included in the Criminal Procedure Code as a form of settlement in criminal cases that is still in the pretrial stage by investigators. This is in line with the restorative justice approach to resolve disputes that have criminal elements. Settlements are carried out by the national police investigators. Presently, the Police Law regulates discretion of the Police Law. However, the use of discretion within the national police has not become a habit, considering that this regulation is still unclear in national criminal procedural law.

Keywords—criminal settlement, deliberation, local wisdom

1. Introduction

Conventional crime settlement in Indonesia is based on conflict so that every problem related to material disputes and losses due to a crime must be resolved through a court which is seen as the only means to seek and obtain justice (Atmasasmita, 2017). Criminal imposition in the form of entrapment in practice cannot create a comfortable, just, and beneficial climate for community members and crime suspects, defendants, or convicts. The number of residents at correctional institutions (Lapas) has exceeded the institutions’ limited capacity and has resulted in destabilization in prisons. Moreover, there has been an increase in criminal acts that are often called “crime high school prisons.” Even
recidivism is increasing, and the significant impact by unpredictable perpetrators has become a waste of money for law enforcement from both the institutional and the criminal standpoints (Atmasasmita, 2017). This is due to two main considerations, namely the lack of understanding of lawmakers, who are still guided by the occurrence of criminal events but have not considered the impact of the criminal event.

The other consideration is empirical, namely that criminal law enforcement uses the parameters of success. A successful formula for criminal law is input + process = output, I + P = output, and I + P + output = outcome or expected impact of success. The formula focuses on finding truth through prosecution and punishment. The new formula of the concept of criminal law (supposedly) focuses on truths that can improve the welfare of the community and is beneficial for the perpetrators of crime and their families and the victims (Atmasasmita, 2017).

Today, mediation can be considered an approach that serves the cause of justice in resolving disputes in both the civil and criminal fields. Indonesian society has a familial cultural value orientation that focuses on a deliberative approach in handling disputes (Mulyadi, 2012: 7-8). Using deliberation as a part of the criminal law enforcement process is the realization of the value of the 4th Pancasila Precept, which serves as a part of the philosophical basis of the Indonesian state. The Pancasila Precept consists of five interrelated principles seminal to the culture of the Indonesian people. It also calls for decision-making through deliberations to reach a consensus on important issues, with respect for dignity and integrity, to preserve unity and pursue social justice.

Local wisdom is basic knowledge gained from living in balance with nature. It is related to culture in the community which is accumulated and passed on. This wisdom can be both abstract and concrete, but the important characteristics are it comes from experiences or truth gained from life. The wisdom from real experiences integrates the body, the spirit, and the environment. It emphasizes respect for elders and their life experiences. Moreover, it values moral more than material things. (Nakorntap.et.al, 1996 in Roikhwanphut, 2012). Manugeran, et. al (2017) emphasizes that, Local wisdom is a set of ideas or policies based on the values of virtues found in a community and often applied, believed to be the guidance of life, and handed down from time to time. Based on the definitions, that local wisdom can be understood as a human effort by using their mind to act toward something, object, or events that occur in a certain space. Harmony as local wisdom has the support of residents in the local environment in the form of adherence to the role of authorized officials (BPHN, 2011). Therefore, it is not surprising that the police have also tried to make alternative dispute resolution and diversionary approaches part of the juvenile court system, as part of a form of restorative justice, among others by trying to approach local wisdom in the local community.

Restorative justice has been practiced in many countries such as compensation for victims in France or providing penalties based on the interests of the people in New Zealand according to local wisdom. This restorative justice approach using a cultural approach was practiced in the city of Bandung, West Java to complete criminal cases in the Andir district. Efforts are made by the Andir District Police to give the investigators authority based on their own judgment considering that by law (KUHAP) this examination process should proceed to the level of prosecution. Policymaking through self-assessment is regulated in the provisions of Article 18 of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia (Police Law). Thus, an investigator can choose not to proceed with an investigation process because of circumstances in which the perpetrator and victim have reconciled and agreed not to continue with the legal process. In such a process, the Bandung Andir Criminal Investigation Unit investigator acts as a facilitator by meeting with victims and perpetrators to help them resolve their problems through deliberation and consensus which are later outlined and signed in the framework of a peace agreement (deed).

The main research questions of this study are as follows:

1. How can the Bandung indigenous peoples' local wisdom approach to handling criminal acts be accommodated by the Andir District Police Criminal Unit Bandung?

2. How can the use of local wisdom approaches in handling criminal acts be accommodated in the Criminal Procedure Code and the Police Law?

2. **Terms of Reference**

A. **The Settlement of Criminal Cases**

In general, the main tasks of police investigators can be divided into upholding the law and maintaining security and public order. The task of maintaining public security and order has a preventive meaning, by protecting society. While law enforcement contains repressive meaning as mandated in the applicable positive law. The settlement of criminal cases is part of the repressive efforts carried out by the police after the crime. In connection with the main duties and functions of the Indonesian National Police is to conduct investigations and investigations in accordance with the
Criminal Procedure Law and other laws and regulations. Criminal investigations are carried out if conclusions are drawn from the results of the investigation that the act committed is a crime.

In this study, the settlement of criminal cases was carried out through a mechanism outside of the court system that allows perpetrators and victims to find a way to overcome the damage arising from a criminal act. The perpetrators and victims meet and hold consensus-based deliberations, which are then written into a binding agreement stamped and signed by the involved parties and police officers. The perpetrator is obliged to carry out the agreement.

B. The Concept of Local Wisdom

Local wisdom is a value recognized and upheld by a community as a reference for carrying out the activities of daily living. It can also be interpreted as the philosophy of life and the source of knowledge and the planning of local communities to sustain their daily lives (Permana, 2010). Sundanese people's view of relationships between people is prioritizing cooperation for common interests, more respect for deliberation, and avoiding competition, and loving each other (Rosidi, 1984).

Sundanese society uses deliberation in disputes between members of the community and with their community groups. In the research, the investigators of the Criminal Investigation Unit Andir Bandung played an active role in resolving criminal cases using a cultural approach through consensus deliberations between the perpetrators and their families and victims and the local community to create peace and restoration of the original state before the alleged crime or the return of balance that was disturbed in a society.

3. Methodology

This study provides an overview of a situation or symptom in the community today, especially in the Andir District Police Bandung, West Java, where the police tends to choose the path of peace through deliberation rather than through the provision of law (reasoning) to the perpetrators in resolving criminal cases. As long as victims feel that their rights have been fulfilled and can be restored by receiving compensation from the perpetrator, the victim feels that the process is sufficient and chooses to stop the investigation process at the Police. Meanwhile, from the point of view, this research aims to provide solutions to overcome problems within the legal system. This is in line with the results of the research expected by researchers, namely to get a picture of a new thought, opinion, or idea about things that can be done so that the use of local wisdom approaches in handling criminal acts can be accommodated in the KUHAP and the Police Law.

A. Handling and Completion of Criminal Cases

Article 1, paragraphs 1 - 2 of the Criminal Procedure Code define an investigation as a series of actions carried out by officials in the manner regulated by law to find and collect evidence which is presumed to shed light on a crime to help find the perpetrator of a criminal act. The implementation of an investigation must always begin with a complaint, as intended in Article 1 item 24 of the Criminal Procedure Code. On the basis of a complaint and in the interest of examining a complaint, investigators and auxiliary investigators have the authority to summon a suspect, who due to his actions or circumstances based on preliminary evidence is reasonably suspected of being a criminal offender and potential witnesses to the crime.

The law gives authority to the investigators to terminate investigations, namely investigators have the authority to act to stop investigations that have begun. This is confirmed by Article 109 paragraph (2) which authorizes investigators to stop ongoing investigations. The law provides a limited number of reasons that investigators can use as a basis for stopping investigations. Termination of the investigation can occur only where:

a. There is insufficient evidence.

b. The events that are alleged are not criminal acts.

c. Termination of a legal investigation is in accordance with Chapter VIII of the Criminal Code, as formulated in the provisions of Articles 76, 77, and 78: (i) nebis in idem, (ii) the suspect dies, and (iii) expiration.

This means that if there is sufficient evidence for the criminal case, the criminal case is a purely criminal act and there is no reason to close the case referred to on the basis of being closed by law, then the effort can be made to enforce the criminal law against the violators by submitting the case to a pretrial.

B. The Local Wisdom of the Sundanese Community in West Java

Customary law communities in Indonesia have been recognized as legal subjects in Indonesia since the first period of the 1945 Constitution. This can be seen from the information in the explanation section of the 1945 Constitution which
mentions the existence of a “legal community alliance,” which is a collection of indigenous law communities, which existed even long before the proclamation of the independence of the Republic of Indonesia. According to Article 18B of the 1945 Constitution, the State recognizes and respects the units of indigenous peoples and their traditional rights as long as they the units exist and as long as the traditional rights are in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which is regulated in law. Furthermore, according to Article 281 paragraph (3) of the 1945 Constitution, cultural identity and the rights of traditional communities are respected in accordance with the development of times and civilizations. In addition, Article 32 paragraph (1) of the 1945 Constitution affirms that the State also promotes Indonesia’s national culture in the midst of world civilization by ensuring the freedom of the people in maintaining and developing its cultural values. Furthermore, Article 32 paragraph (2) of the 1945 Constitution governs the rights of citizens in regions where, the State respects and maintains regional languages as national cultural wealth (Gamin & Lazira, 2017). Thus, based on the 1945 Constitution, each regional community in Indonesia can make its regional culture a daily guide to its life (Gamin & Lazira, 2017).

Within the Sundanese community, local wisdom is trusted and recognized as an important element that can strengthen social cohesion among Sundanese citizens. The philosophy of compassion, penance, and foster care are basic principles of belief for the Sundanese people. The Seren Taun tradition is a means of strengthening diverse communities with several activities that combine religious and cultural values in one public space.

Choose teaser means giving each other knowledge by reminding each other to build awareness of knowledge and supporting each other. In a society that animates the harmony of life, science will coexist with the ethical dimension so that science will no longer be a haughty instrument of oppression, but science will become graceful and liberate and elevate the society from backwardness. In addition to relating to knowledge, the philosophy also relates to the Godhead and humanity. Choosing compassion means sharing love and carrying out their obligations to a loving God's creatures. This spirit of compassion gives birth to just and harmonious actions.

C. Use of Local Wisdom Approaches in Handling Criminal Cases

In addition, most of the regional communities in Indonesia also adhere to a philosophy of life, which emphasizes problem-solving deliberation in family matters. The priority of problem-solving in a familial manner is also a guideline for traditional institutions in Indonesia. For some indigenous peoples in Indonesia, the settlement of criminal cases is not always done through the criminal justice system. Usually, first, there are attempts to resolve problems through meetings and judicial mediation using the traditional laws of Bali, West Sumatra, Aceh, and Lampung (Hadikusuma, 1979). For the Balinese indigenous peoples, cultural conflicts such as the theft of sacred objects and heirlooms, the termination of a love relationship after finding out that the woman is pregnant (logika sanggraha), incest (gamia gemanja), drati karma (zinha) and the offense of insult (wakparawaya) are usually resolved through village meetings, led by a village chief, and formal legal proceedings were not pursued. It is only when the offense is not resolved through village meetings that it is resolved through a judicial process.

In Nanggroe Aceh Darussalam, penal mediation has been set forth in Regional Regulation No.7 of 2000 concerning the Implementation of Indigenous Life, which among other things regulates the peaceful settlement of disputes through customary deliberation, and the peaceful settlement is binding on the parties (Arief, 2008). A case in point in the practice of criminal justice in Indonesia is the case of Ellya Dado (Case of Elda). In that case, the existence of peace was used as a consideration to state that a criminal act that was proven to be no longer a crime or a violation, and, therefore, released the accused from all lawsuits. This condition is contained in the North Jakarta District Court Decision, No. 4 / PID / 78 / UT / WANITA, June 17, 1978, with the Chief Judge of the Siregar Bismar Congregation (Arief, 2008). However, various dispute resolutions outside court in criminal cases (reasoning mediation) have not been accommodated in positive criminal law in Indonesia.

4. Analysis of the Use of Local Wisdom Approaches in the Andir District Police Station

Based on the Andir Bandung Police recapitulation (2018), the police report (LP) in the period 2016 to 2017, the Andir Police Precinct Unit in Bandung has received 132 LPs in 2016 and 84 in 2017. When viewed from the two years which are the object of the study, there was a decrease in the number of police reports received by the Andir District Police. The decline in the number of the police reports is seen as an indication that the pattern of handling criminal cases carried out by the Andir Police Station in Bandung has resulted in improvement of security in the jurisdiction of the Andir District Police. Based on these data, the researchers then conducted observations and further interviews with Andir Police officers, community leaders in the Andir region, especially regarding the handling and settlement of criminal cases at Andir District Police. Crimes such as fraud and persecution, theft, beatings, and unpleasant acts were settled through consensus deliberations between perpetrators and victims. Among others were: (1) In cases of fraud, often it cannot be found against the law by using deception, because the case begins with an agreement (agreement) that is violated by one of the parties, so that the matter is actually a violation of the agreement (default); (2) In cases of theft or embezzlement, it often begins with a debt or credit agreement which is then not paid so that the other party feels authorized to take collateral directly; (3) In the case of a traffic accident, the victim has received compensation for damage to his vehicle;
In the Indonesian Criminal Code system, the position of the victim is more of a witness. After the court stated that the perpetrators were found guilty and imposed criminal sanctions on the perpetrators, the victims could claim their rights in the form of returning losses caused by the perpetrators' actions (Pinangkaan, 2017). Thus, the current criminal law system has not been able to provide maximum protection to victims of crime. Whereas in some cases, victims are more in need of peace accompanied by compensation than the imposition of criminal sanctions on the perpetrators. These cases are needed, among others, in the handling and resolution of criminal complaints, such as humiliation, fraud or theft involving family members, unpleasant acts, or other criminal acts whose elements are highly subjective and multiple interpretations are possible, as well as criminal acts that leads to light or little loss of value so that if a judicial process is carried out, it will cost a lot more time and lead to more loss (Pinangkaan, 2017).

The practice of settling criminal cases outside the court by police investigators, especially in Andir Bandung Police Station in the West Java Regional Police (West Java Regional Police) was carried out through reasoning mediation. Polri investigators (acting as mediators) facilitate meetings between victims and perpetrators directly to resolve their problems through peace efforts pursued by deliberation and consensus and it is agreed that there will be no later criminal or civil proceedings as outlined and signed in the peace agreement. The perpetrators must carry out their obligations as stipulated in the peace deed, as soon as possible, and the victims will also revoke their police reports. When the agreement between the perpetrator and the victim is fulfilled, the national police investigator issues a decree stating that the investigation of the perpetrator (suspect) was stopped by law (SP3) given that insufficient evidence was obtained.

5. Use of Local Wisdom (Cultural) Approaches in Handling Criminal Cases That Are in Line with KUHAP and the Police Law

The out of court settlement in criminal cases by Police in the Indonesian criminal law system is carried out through reasoning mediation based on the principle of restorative justice. The Indonesian National Police / Police do not act as mediators in the mediation process. There can be no doubt that the implementation of the correct mediation concepts will be able to provide great benefits to all parties and be more in line with national culture and fair law enforcement. The investigator in this case also believes that the peace that occurs between the perpetrators, victims, and the family is the fairest form of justice for the parties and creates great benefits for the surrounding community considering the situation has recovered so that the security situation becomes conducive. However, peace efforts between the parties must be responsible and respect human rights, especially victims of crime, who seek to be restored to their condition before the crime.

The protection of the rights of a suspect deserves respect in the Indonesian criminal justice system. There should be protection of the suspect's human rights when a suspect is arrested, detained, and tried. In addition to protecting the rights of suspects, the Criminal Procedure Code also mandates that law enforcement is based on applicable laws. The Criminal Procedure Code prioritizes free and responsible judicial authority and power. With the enactment of the Criminal Procedure Code in__, there has been a change in thinking on the position of suspects and defendants. This view also aims to give attention to the interests of victims of criminal acts and victims of abuses of power by law enforcement officers (Anwar and Adang, 2009).

According to Alkostar, Article 9 the UN Convention on Restorative Justice has been applied in countries such as the UK, Austria, Finland, Germany, the US, Canada, Australia, South Africa, Gambia, Jamaica, and Colombia. The basic principles of restorative justice through mediation determine preconditions for restorative justice, such as (1) the victim of crime must agree, (2) violence must be stopped, (3) the perpetrator must take responsibility, (4) only the perpetrators of crimes must be blamed, not the victims, and (5) the mediation process can only take place with the consent of the victim. From these prerequisites, it can be seen that the dignity of victims must be considered a priority. Criminal mediation necessarily involves a spiritual process to restore the victims’ confidence. Restorative justice is an effort to achieve a win-win solution.

Zulfa (2009) stated that restorative justice is a concept for the development of a criminal justice system that takes care of victims. The current criminal justice system in Indonesia prioritizes the punishment of criminal offenders, which generally takes a considerable amount of time and money, ignoring the circumstances of the victim.

Social contracts in service and supervision can also be seen in the new paradigm of Community Policing carried out by the national police as described in the Kapolri Regulation Number 7 of 2008. When policing the community, Polri members are required to carry out partnerships in solving both social problems and legal issues with the community. The
national police must be able to balance the role of law enforcement and punishment with the national mandate to protect and serve the community based on the people’s needs and a sense of justice.

6. Conclusion

1. The Bandung indigenous peoples' local wisdom approach is applied to the handling of criminal acts by the Andir Criminal Investigation Unit through consensus deliberations that uphold the value of karuhun based on the philosophy of compassion, penance, and fostering care. In handling criminal cases Andir Police investigators facilitate consensus-based deliberations between the perpetrators and the victims and their families to achieve a peaceful resolution. If both parties have reconciled and the victim withdraws the police report, the investigation is stopped, and the case is declared complete.

2. In the pre-adjudication stage of an investigation, local wisdom in line with the Criminal Procedure Code can provide optimal benefit from a settlement of criminal cases, namely a sense of justice and legal certainty for the parties by a restorative justice approach. Local wisdom is a form of regulation whose existence and validity are recognized by the local community. However, the use of local wisdom approaches within the national police department is not yet firmly used in procedural law.

7. Future

It is recommended to include the settlement of criminal cases through the approach of local wisdom into the draft of the Criminal Procedure Code as a long-term solution and that the Chief of Police, or Kabareskrim, formulate a decree regulating the application of local wisdom to criminal investigations. It is also suggested that the leadership of the national police department train investigators in facilitating peaceful settlements between perpetrators and victims through mediation and consensus.

Acknowledgment

References


