

Legal Analysis of the Use of Mediation in Handling Domestic Violence Crimes

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Abstract

Mediation as an alternative form of alternative dispute resolution is beginning to be considered in domestic violence (DV) cases, particularly to achieve more restorative justice. However, the application of mediation in DV cases remains controversial due to its potential to conflict with the principles of legality and legal certainty stipulated in the Criminal Procedure Code (KUHAP) and Law Number 23 of 2004 concerning the Elimination of Domestic Violence. The research method used is normative legal research, using statutory, conceptual, and case-based approaches, to examine the extent to which mediation can be implemented without neglecting the rights of victims. The analysis shows that while mediation can be a means of resolution oriented toward restoring family relationships and social rehabilitation, its implementation must be carried out carefully, taking into account the victim's position to avoid trauma. Mediation is only acceptable for mild forms of DV and based on a voluntary agreement between the parties, with supervision by law enforcement officials. Therefore, the application of mediation in handling DV needs to be supported by regulations and implementation guidelines that guarantee legal protection for victims and balanced justice between perpetrators and victims.

Keywords: Mediation, Handling, Criminal Acts and Domestic Violence

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Introduction

Domestic violence (DV) is a common form of crime in society. Domestic violence not only causes physical suffering but also has psychological, economic, and social impacts on victims, especially women and children. Law Number 23 of 2004 concerning the Elimination of Domestic Violence provides a legal basis for protecting victims and prosecuting perpetrators. However, in practice, resolving domestic violence cases still faces various obstacles, both legal and socio-cultural.

From a social science perspective, crime is defined as a social phenomenon arising from structural injustice or a manifestation of diverse human behavior, which is a reaction to the socio-economic class of an individual or group. Regardless of origin, people in economically disadvantaged situations and facing pressing needs, coupled with a lack of faith, tend to think short-sightedly. They might even justify any means necessary to meet their needs.[1]

In criminal law, criminalization is a component of criminal policy. Criminal policy is the state's efforts to combat crime, which is essentially an integral part of community protection efforts aimed at achieving social well-being.[2]

One emerging issue in handling domestic violence is the use of mediation as an alternative to out-of-court settlements. Mediation is seen as a tool that prioritizes a restorative approach over repressive ones, with the goal of restoring the relationship between the perpetrator and the victim. However, in domestic violence, the application of mediation has sparked debate due to concerns that it ignores the principle of victim protection and reduces the deterrent effect on perpetrators of violence.

Restorative justice is a resolution process carried out outside the criminal justice system, involving the victim, the perpetrator, the victim's family, the perpetrator, the community, and other parties with a stake in the crime to reach an agreement and resolution. Restorative justice is a fair resolution involving the perpetrator, the victim, their family, and other non-criminal parties, working together to resolve the crime and its consequences, prioritizing restoration rather than retribution.[3]

The reasons for parties to resolve their disputes through deliberation or non-litigation are as a means or alternative to reaching consensus or deliberation, which is considered effective and efficient and produces a win-win solution for all parties. Whereas litigation or court resolution involves both winners and losers, resulting in unsatisfactory decisions for the losing party.[4]

The reasons and necessity for implementing alternative dispute resolution include guilt and remorse on the part of the perpetrator, followed by an agreement to reach a settlement between the perpetrator and the victim. Based on this, reasons for expungement of criminal penalties can generally be divided into two types: justification, which relates to the act, and forgiveness, which relates to the individual or perpetrator's mental state.[5]

In the criminal law system, the principle of law enforcement is still dominated by a retributive approach oriented toward punishment. However, the development of the concept of restorative justice has encouraged a paradigm shift in the resolution of criminal offenses, including domestic violence cases, to focus more on recovery and justice for the victim. Restorative justice emphasizes the involvement of all parties in the resolution process, including perpetrators, victims, and the community, to reach a fair agreement and restore social balance.

Restorative justice has been incorporated into various legal instruments, such as National Police Chief Regulation Number 8 of 2021 concerning Handling Criminal Offenses Based on Restorative Justice and Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. These regulations demonstrate an awareness of integrating a restorative approach into the criminal legal system.

Normatively, Law Number 23 of 2004 does not explicitly regulate mediation mechanisms in handling domestic violence. However, in practice, law enforcement officials, such as the

police, sometimes facilitate mediation between perpetrators and victims, especially in relatively minor cases. This phenomenon raises legal questions regarding the validity and limitations of the use of mediation in domestic violence cases, given that this crime is classified as a complaint offense that can be withdrawn if the victim withdraws the report.[6]

One example is the domestic violence case that occurred at the Cidahu Police Station, Sukabumi Police Department, in May 2025. The parties involved were the victim, a woman, and her husband. In resolving the case, mediation was carried out by the Bhabinkamtibmas of the Cidahu Police, Sukabumi Police, by facilitating mediation in Jayabakti Village and the case was successfully resolved and reconciled amicably.[7]

A case that occurred at the Cidahu Police Station, Sukabumi Police Station, in 2025, serves as an example of the application of mediation in a domestic violence case. In this case, the settlement process was attended by village officials and involved relevant parties under the direction of the Bhabinkamtibmas (Community Service Officer) of the Cidahu Police Station, Sukabumi Police Station. The parties agreed to resolve the problem through deliberation and amicable settlement. As a form of agreement, the parties signed a statement witnessed by the police and village officials, guaranteeing that similar incidents would not occur again in the future.

This case demonstrates that mediation in handling domestic violence can provide social benefits, particularly in maintaining domestic harmony and avoiding lengthy legal proceedings. However, this practice also has the potential to lead to injustice if carried out without supervision or without consideration for the victim's psychological well-being. Victims may feel forced to accept mediation due to social pressure or economic dependence on the perpetrator. Therefore, a legal mechanism is crucial to ensure that mediation is carried out voluntarily.

The use of mediation in domestic violence cases requires careful consideration, as it concerns legal certainty and victim protection. The Criminal Procedure Code (KUHP), as a criminal procedural law, does not explicitly regulate the mechanism for resolving cases through mediation. Therefore, the use of mediation in crimes such as domestic violence must adhere to the principles of legality and justice to avoid creating legal dualism with applicable legal provisions.

Therefore, the use of mediation in handling domestic violence crimes is an important topic of discussion, as mediation can be implemented without compromising the essence of legal protection for victims.

Research Methodology

The type of research used in this study is normative legal research, namely research that focuses on the study of positive legal norms, legal principles and legal doctrines related to the use of mediation in handling domestic violence (KDRT) crimes. Normative legal research is conducted by examining written legal materials, both in the form of laws and regulations as well as cases and court decisions. The approaches used include the statute approach, the conceptual approach, and the case approach. The statutory approach is used to examine various legal provisions governing domestic violence in Law Number 23 of 2004 concerning the Elimination of Domestic Violence and the Criminal Procedure Code (KUHP). Meanwhile, the conceptual approach is used to understand the concept of mediation in the criminal law system, while the case approach is used to examine the practice of implementing mediation in handling domestic violence cases.[8]

The data analysis in this study was conducted qualitatively, namely by reviewing, interpreting, and connecting legal materials that had been collected through literature studies. The analysis was conducted descriptively-analytical, by explaining the applicable legal provisions and analyzing their suitability to the principles of restorative justice and the

protection of victims' rights. Primary legal materials, such as laws and court decisions, served as the main basis in assessing the legality of the application of mediation in domestic violence cases. Meanwhile, secondary legal materials, such as literature, scientific articles, and the opinions of legal experts, were used to strengthen the arguments and legal interpretations.[9] The results of this analysis are expected to provide a deeper understanding of the position of mediation in the criminal law system and the limitations of its application in domestic violence cases so that it remains in line with the principles of justice and legal certainty.

Results

4.1 Legal Analysis of the Use of Mediation in Handling Domestic Violence

Barda Namawi Arief explained that, in implementing criminal policy, the government strives to establish policies as anticipatory measures against criminal acts, namely by using and implementing penal instruments. According to Barda Namawi Arief, the policy of determining criminal penalties in legislation is the most strategic stage in the overall policy process for operationalizing criminal sanctions. It is at this stage that the policy guidelines for the criminal and sentencing system are formulated, which also serves as the legal basis for the subsequent stages, namely the application of penalties by the courts and the implementation of penalties by law enforcement officials.[10]

Handling domestic violence requires a balance between legal interests (criminal settlement and legal certainty) and the recovery interests of victims and their families. National data shows that domestic violence still constitutes a significant portion of reports of gender-based violence, so any alternative resolution, such as mediation, needs to be assessed not only in terms of social effectiveness but also in terms of protecting victims' rights.[11]

Normatively, the legal space for mediation in criminal cases remains limited: Supreme Court Regulation No. 1 of 2016 regulates mediation in civil courts/civil procedures, but does not provide guidelines for criminal cases, specifically domestic violence. Therefore, mediation practices within the police or prosecutor's office often rely on internal policies and field practices, rather than on the certainty of national regulations.

The numerous domestic violence cases in the police and prosecutor's office indicate that mediation is often applied to relatively minor domestic violence cases, such as assault without serious injury, for reasons of family reconciliation and efficiency of resolution. However, this tendency risks the normalization of violence if oversight mechanisms and the victim's voluntary consent are not ensured.

As in the data contained in the Women and Children's Services Unit of the Criminal Investigation Unit of the North Barito Police Resort based on data from the North Barito Police Officer Mr. Heru Hidayat regarding Domestic Violence Cases in the last 3 (three) years as many as 57 with details in 2021 there were 22 cases, while in 2022 there were 19 cases, while in 2020 there were 16 cases. Meanwhile, Handling of Domestic Violence Cases Through mediation outside the court that occurred in the last 3 years there were 22 couples. In 2021 there were 8 couples, in 2022 there were 7 couples, then in 2023 there were 7 family couples. According to the confession of the family couples, namely the Sukirman and Nurhidayah families, the Anton and Misnah families and the Rinto and Haryati families, in the end the parties decided to accept each other back, as well as an agreement with the husband not to commit criminal acts of domestic violence and an agreement between the parties involved in the dispute, through the principle of deliberation and consensus, as well as respecting social/customary legal norms and based on justice for the parties.[12]

In addition, a domestic violence case occurred at the Cidahu Police Station, Sukabumi Police Station, in 2025. The victims, a woman and her husband, were mediated by the Bhabinkamtibmas (Community Police Officer) of the Cidahu Police Station, Sukabumi Police, acting as a mediation facilitator in Jayabakti Village. The case was successfully resolved and resolved amicably.

From a restorative justice perspective, mediation can provide a space for victims to voice their impact, demand reparations, and secure meaningful reconciliation. However, restorative justice is only fair when the victim's position is not socially, economically, or psychologically oppressed; without this, mediation risks becoming a one-sided compromise tool that undermines the victim's rights.[13]

From these domestic violence cases, mediation is a form of restorative justice, a restorative approach. The mediation approach reflects a commitment to prioritizing persuasive and family-oriented approaches in resolving domestic violence. This approach demonstrates an effort to maintain social harmony by prioritizing dialogue and mutual understanding between parties. However, mediation must remain within applicable legal frameworks and can only be implemented if all parties involved voluntarily consent or agree. Therefore, mediation is seen as an alternative form of restorative dispute resolution, as long as it does not neglect the principles of legality and justice for all parties involved.

Restorative justice is an alternative approach to resolving cases of assault, with legal regulations, including Police Regulation Number 8 of 2021 and Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, encouraging resolution based on victim recovery, perpetrator accountability, and the restoration of social relationships.

The use of mediation in domestic violence cases can be seen as prioritizing a humanitarian and social approach, but it must remain in line with the principles of legality and victim protection. If mediation is conducted without legal assistance, the goal of restorative justice will shift to a form of freedom for the perpetrator. Therefore, law enforcement officials must ensure that every mediation is based on a peace agreement or statement from the victim and is accompanied by post-mediation monitoring to ensure the victim's safety and well-being.

Therefore, mediation in domestic violence cases demonstrates the need to harmonize the restorative approach with the strictness of criminal law. Mediation can be applied in cases of minor violence and in situations where the victim truly desires peace, provided the process is transparent, supervised, and guarantees the victim's rights.

Through mediation, it is hoped that the community will become more aware of the importance of resolving problems peacefully and maintaining harmony in their respective communities.

Conclusion

The use of mediation in handling domestic violence (DV) cases presents a dilemma. On the one hand, mediation can be a means to prioritize the principles of restorative justice with the aim of improving relations between parties, redressing the victim's losses, and maintaining family unity. However, on the other hand, the application of mediation in DV cases can pose a risk of injustice if it is carried out without considering the vulnerable position of the victim and the principle of legal certainty as stipulated in the Criminal Procedure Code and Law Number 23 of 2004 concerning the Elimination of Domestic Violence. Therefore, the implementation of mediation must be limited to only minor acts of violence, be voluntary, and be supervised by law enforcement officers to avoid neglecting the rights of victims.

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