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Peace Agreement in Criminal Cases at the Level of Investigation in the Resort Police of Cirebon Regency and Cirebon City of West Java, Indonesia: A Case Study of Particular Criminal Actions and the Benefits of Peace Agreement in the Investigation of Investigator's Version

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Abstract
In the event of criminal cases, violators and victims are those who mostly feel the consequences. In the meantime, the peace agreement process of a criminal case refers to the policy of the state, namely the Code of Criminal Law (KUHP) and the Code of Criminal Procedure (KUHAP), in which no chance for violators and victims to come to a peace agreement at each stage of the examination, including the investigation stage. The existence of both Laws does not provide justice for victims and violators. Peace agreement at the level of investigation is intended to avoid the possibility of greater losses when the case at the stage of prosecution by the General Prosecutor (JPU) and the examination by the Court by Judge. Departing from this reality, the peace agreement between victim and violator at the level of investigation, which subsequently becomes a criminal eraser reason, becomes important to be accommodated. To analyze this phenomenon, a research must be conducted in socio legal approach. This paper wanted to express in the investigation of what criminal cases that can be accomplished by peace agreement and how the perception of investigators about the benefits of peace agreement at the level of investigation. Based on the findings and analysis, it was revealed that the criminal cases resolved by peace agreement at the level of investigation were criminal cases with personal violators and victims and the losses were relatively small. The benefits of peace agreement in the investigation, by the investigator perception, were perceived to meet sense of justice better and more beneficial for all parties compared to using state law.
Keywords: Peace agreement of Criminal Cases, Investigations, and Benefits of Peace agreement at the Level of Investigation in Investigator's version.

A. Introduction

In some criminal cases, the judge's decision is seen monumental as the case of "Mbah Minah" in cocoa fruit theft or cassava theft in a private-owned plantation in Sumatra. In both theft cases, the judges still conducted an assessment of the cases by using deductive logic and syllogism as the main instrument of positivistic approach to determine the suitability of behavior in norms and the behavioral components happened. The aim is to determine the conclusion of the presence of error against defendants. However, the sanctions imposed are a criminal trial in order that the convicted is not sentenced (Nurhasan Ismail: 2012: 7).

During this week (10 to 18 March, 2015), the public has been discussing the case of a grandmother named Asyani (63 years old) who were charged with illegal logging of 38 teak planks from a production forest area in Jatibanteng, Situbondo, East Java. Based on the confession of Asyani, the woods were cut down by his late husband, Sumardi, around their own land in Secangan (Mamang M Haerudin: 2015: 4).

For less than five years, the woods were stored in her house, and she would make a cot (bed made of wood). Initially, in 2014, Asyani asked her son-in-law, Ruslan (23 years old) to rent a car to Abus Salam (23 years old) and then brought it to Sucipto (47 years old), a resident who work as a carpenter. (Mamang M Haerudin: 2015: 4).

Asyani has been detained since December 15, 2014, and she was charged under Article 12 in conjunction with Article 83 paragraph 1 of the Law on Forest Prevention and Eradication with the punishment of 5 years in prison, because she caused loss to Perhutani as much as IDR 4 millions. Not only Syani, the case involved several people, namely Ruslan, Abdus Salam and Sucipto (Mamang M Haerudin: 2015: 4).

The cases mentioned above, certainly, were not enough to represent and to say that they were all the cases in question. Beyond that, there are still many, but not raised and away from being observed. Many legal

disputes with the resolution were performed based on state legislations, but the disputes did not end, and even more intense. This was due to the use of legislations can only relieve the symptoms of the disputes, but still failed to extinguish the sources of the disputes. Likewise, the resolution of certain violations of criminal law gave rise to a wave of protest to their injustice because the use of state law has no deterrent effect and does not contribute to the extinction of the core source particular law violations such as stealing sandals, cocoa, "shoplifting" in the mall, theft of employer's sarong, and theft. (Nurhasan Ismail: 2012: 11).

The above facts indicate the failure of the use of positivistic approach in the implementation or enforcement of law which has been the mainstream reference so far. Law is only carried out through the mechanism of "robotic". Law enforcement is only placed as a tool to implement the existing formulation of legal norms and neglect conscience. In such a failure condition, the use of sociological approach should have been the main choice. In other words, the doctrine/ school of formalistic-legalistic should be reviewed in criminal justice processes.

The requirement of victim and violator to meet the criminal law procedures and to use criminal law as the first and only alternative to resolve conflicts caused by a criminal act is in contrary to the function of criminal law because it requires violator and victim to comply with and be subject to criminal law procedures with all consequences and put violators and victims of crime as legal objects rather than legal subjects.

Repositioning victims of crime as legal subjects can be done by legalizing them to determine whether the offender is processed or not, and it should be on the agenda of legislators. Such expectations should be considered as something logical since victims are those who feel the direct effect due to criminal acts.

In practice, the presence of police, particularly who plays the role as an investigator, is more dominant as a law enforcer. Due to the role of inequality, the success of Police is sometimes measured by the quantity of transferring criminal cases to prosecutor. As a result, all incoming cases must be processed by using criminal law procedures. In other hand, the consideration basis is because the suspect is not guilty of a crime, and then the Order to Cease Investigation (SP3) is issued or uses discretion.

The parties who feel the effects and also associated with a criminal offense are victims and violators. Then, why violators and victims are not given the role in resolving criminal offenses, including the peace agreement by both and the peace agreement is recognized by the law as an excuse to erase punishment.

The Case of "Mbah Minah" in cocoa fruit theft or cassava theft in a plantation owned by a company in Sumatera and Asyani case in Situbondo, East Java, show the non-functioning of police duties as the first wicket of Criminal Justice System. Nevertheless, the case has not represented to say that in similar cases it was always resolved with the criminal law procedure and ended up with imprisonment after the trials in courts. Included in this context, it was the case in the jurisdiction of Cirebon Resort Police of Cirebon Regency and Cirebon City, West Java, Indonesia.

If we analyze, whether a criminal case is forwarded to the Court or not, in practice it depends on the size of case and the value of losses incurred and based on investigator's perception of the benefit value of a criminal case resolution using criminal law procedures and the resolution of criminal cases through peace agreement.

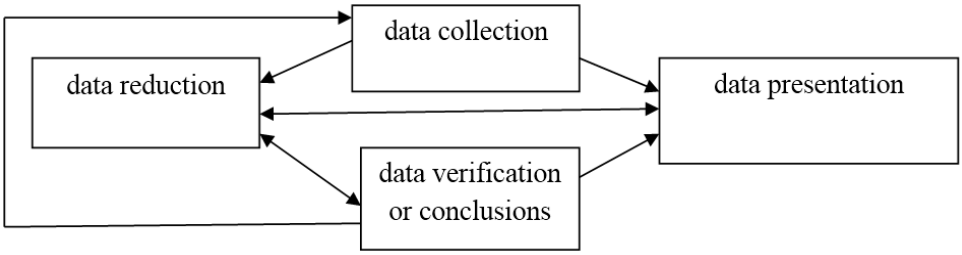
Departing from the above background, this paper revealed certain criminal cases were resolved through peace agreement in the level of investigation in Cirebon Regency and City Police as well as the benefits of peace agreement in the investigation in Investigator's version.

B. Data and Method

This study was focused on: a) the research subjects were certain criminal offenses resolved using peace agreement at the level of investigation, and b) the research issues were the peace agreement between violators and victims as criminal eraser reasons and the benefits of peace agreement at the level of investigation in investigator's version.

The research type was socio legal studies using qualitative research approach. The research location was in Cirebon Regency Police, Cirebon City Police, Dukupuntang District Police, Kedawung District Police, Utara Barat District Police, Losari District Police and Weru District Police. The consideration of the research location decision was that the jurisdictions of the police stations were located on the North Coast of Java which geographically close to beach and with relatively hard type and different from those who live far from the beach. In addition, the area of the Regency and District Police Stations is included in the border region between Central Java and West Java in which their existence is relatively close to Jakarta city as the capital of the Republic of Indonesia. With the proximity, the culture and lifestyle of Jakarta city will have an effect on the culture and life style of Cirebon community. The data source of the research consisted of primary and secondary data sources. The sources of primary data were obtained directly from the field through interviews with investigators in Cirebon Regency and City Police Stations and several District Police Stations in the areas of both police stations. The sources of primary data were in the form of legal materials, both secondary and tertiary legal materials, consisting of the regulations of the state policies on the tasks and functions of the Police, the regulations of

police institution on the settlement of criminal cases using peace agreement, the joint statement letter on peace agreement, books and library materials obtained through the library study. In analyzing the data, the researchers conducted repetitive and continuous activities engaged in four cycles of back and forth activities, namely: data collection, data reduction, data display (presentation) and data verification or drawing conclusion. The activities in the form of cycle were expected to produce representative and relevant data to the problems examined (Ronny Hanitijo Soemitro: 2001: no page). According to Matthew B. Miles - A.Michael Huberman, simply in a research with qualitative approach, the analysis includes data collection, data reduction, data presentation, and data verification or conclusions, as follows: (Endang Sutrisno: 2013: 36-37) .



C. FINDINGS AND ANALYSIS

1. Types of Criminal Offenses Resolved by Peace Agreement in Investigation Level

The implementation of Criminal Justice System includes investigation by investigators, investigation by investigators, prosecution by General Prosecutor, and Court examination by Judges. Investigation is a series of acts of investigators to find out the events suspected as criminal events. Authorized investigating officials are every member of the Indonesian National Police. If an investigation found a criminal case in a particular event, then it is continued with investigation, which is understood as a series of actions of investigator to clarify a criminal offense, finding evidence and finding the suspect. Investigators are the officials of Indonesian National Police (INP) and Civil Servant Investigator (PPNS) who meet certain conditions.

The main tasks of Indonesian National Police (INP) and investigators, in addition to conducting an investigation, are maintaining security and public order, enforcing the law, protecting, providing protection and security and providing services to the public (Article 13 of Law No. 2 of 2002 on Indonesian National Police).

In the context of the main tasks of the Police, it opens the possibility for investigators to conduct a model innovation of criminal case settlement considered to satisfy the senses of justice and the most beneficial for all parties compared to the use of criminal law procedures including peace agreement on investigation stage which is then to be the reasons for criminal eraser. Peace agreement in criminal cases at the stage of investigation is intended to minimize the possibility of greater losses on subsequent examination stages, i.e. prosecution stage and court examination stage.

In Cirebon City Police, the types of criminal offenses resolved by peace agreement at the level of investigation include: a). Domestic Violence (Article 5 and Article 44 of Law No. 23 of 2004); b). Fraud (Article 378 of the Criminal Code); c). Embezzlement (Article 372 of the Criminal Code); d). Light Persecution (Article 352 of the Criminal Code); and e). Persecution (.Article 351 of the Criminal Code).

In Cirebon Regency Police, the types of criminal offenses resolved by peace agreement at the level of investigation include: a). Domestic Violence (Article 5 and Article 44 of Law No. 23 of 2004); b). Fraud (Article 378 of the Criminal Code); c). Embezzlement (Article 372 of the Criminal Code); d). Light persecution (Article 352 of the Criminal Code); e). Forgery (Article 266 of the Criminal Code); f). Obscene Acts (Article 289 of the Criminal Code); g). Ordinary Theft (Article 362); h). Adultery (Article 284 of the Criminal Code); i). Insulting (Article 310 of the Criminal Code); and j). Persecution (.Pasal 351 of the Criminal Code).

Referring to the above description, it was found that in Cirebon Regency Police and Cirebon City Police, the crime of which resolved in peace agreement at the level of investigation, as a whole, constituted a violation of the Criminal Code. Only one which violated the law of out of Criminal Code, i.e. the violation of Law No. 23 of 2004 on the Elimination of Domestic Violence.

In Dukupuntang Police Station, the types of criminal offenses resolved by peace agreement at the level of investigation include: a). Fraud (Article 378 of the Criminal Code); b). Embezzlement (Article 372 of the Criminal Code); c). Beatings in public (Article 170 of the Criminal Code); d). Theft with violence (Article 365 of the Criminal Code); and e). Persecution (Article 351 of the Criminal Code)

In Kedawung Police Station, the types of criminal offenses resolved by peace agreement at the level of investigation include: a). Beatings in public (Article 170 of the Criminal Code); b). Ordinary theft (Article 362); and c). Persecution (Article 351 of the Criminal Code).

In Utara Barat Police Station, the types of criminal offenses resolved by peace agreement at the level of investigation include: a). Fraud (Article 378 of the Criminal Code); b). Embezzlement (Article 372 of the

Criminal Code); c). Ordinary theft (Article 362); and d). Persecution. (Article 351 of the Criminal Code).

In Weru Police Station, the types of criminal offenses resolved by peace agreement at the level of investigation include: a). Light Persecution (Article 352 of the Criminal Code); b). Ordinary theft (Article 362); and c). d). Vandalism (Article 406 of the Criminal Code).

In Losari Police Station, the types of criminal offenses resolved by peace agreement at the level of investigation include: a). Fraud (Article 378 of the Criminal Code); b). Embezzlement (Article 372 of the Criminal Code); c). Light Persecution d). Vandalism (Article 406 of the Criminal Code).

Referring to the above description, it was found that in the Police Stations of Dukupuntang, Kedawung, Utara Barat, Weru, Losari, the crime cases solved in peace agreement at the level of investigation as a whole constitute a violation of Criminal Code.

IS Susanto mentions that the crimes contained in the Criminal Code as a crime of “lower level", "traditional" and "primitive", which the ways of its assessment are studied in classical criminology. According to IS Susanto, in the perspective of classical criminology, crime is defined as any act prohibited by criminal law and criminal is any person who commits crime. According to this school, crime is regarded as a free choice of individuals to choose the advantages and disadvantages in doing crimes. Traditionally, the response given by the society against crime is to increase the disadvantages to be paid and to lower the advantages of a crime, which is hoped that people will choose not to commit a crime. The tasks of criminology in this school are to make patterns and to test the system of penalties that can minimize the occurrence of crime. (I.S Susanto: 2011: 6-7).

Referring to the definition of crimes as understood by classical criminologists, anyone is considered evil not because he is evil, but a law stipulates that the person is evil since the action he commit is prohibited by law. Perhaps, certain action according to the community assessment is not evil but by law calls it evil, and vice versa. In this school, crime has become a matter of laws and not a human problem. As a result of such an approach, the sentence for criminals considered rational is to apply the legal sanctions contained in legislation. Referring to such understanding, it is very natural that the real task of criminology is to see crime as a human problem by testing the existing system of punishment (type of punishment), and then finding other punishments in accordance with humanity.

The crimes solved by peace agreement at the level of investigation as mentioned above are personal. It means, the crimes are occurred between personals, so the loss is personal and the loss value is relatively small. When violator and victim come to a peace, violator is willing to fulfill the rights of victim, and victim forgives violator by a deed of peace agreement, then arbitrate goal has been reached. When an arbitrate goal has been reached, the imposition of state law enforcement to citizens with all the formalities will be in vain.

Normatively, the Criminal Code (KUHP) does not legalize peace agreement out of criminal law procedure. Similarly, it is not regulated in Law No. 23 of 2004 on the Elimination of Domestic Violence.

As a logical consequence of the application of legalistic formalistic doctrine/ school, the determination, whether an action can be sentenced or not and the procedures that must be followed in proceedings, is legally defined by The Code of Criminal Procedure (KUHAP) and does not provide a place for victims and violators to independently determine their attitude toward the criminal offense occurred, including making peace agreement. The position of victim in The Code of Criminal Procedure (KUHAP) is only as a victim witness as part of the witness testimony as evidence.

The existence of the Criminal Procedure Code, which is the replacement of Herzein Inlandsch Reglement (HIR), does not put the protection to victim as it should. The Criminal Procedure Code (KUHAP) only ensures the protection of human rights (criminal) and guarantees the objectivity of judicial power (also for the benefit of violator), but victim remains in a weak position

In the Criminal Code, it does not provide a place for victims. Normatively, the existence of the Criminal Code is justifiable, but its existence sociologically causes problems. This is understandable since the existing Criminal Code in Indonesia is not rooted in Indonesian original values and norms.

The legal basis of peace agreement in criminal cases at the level of investigation is based on a peace agreement between violator and victim as evidenced by a statement of peace agreement. Broadly speaking, the contents of the letter of agreement between violator and victim are: (1) The identity of violator and victim; (2) The day, date and year of the making of peace agreement; (3) Violator and victim agree to forgive each other and agree to resolve the criminal case occurred and has been reported / sued to the police; (4) by a statement of peace agreement between violator and victim, the case is considered finished and there will be no lawsuit to each other; (5) A description stating that the statement of peace agreement is made with no coercion of any party; (6) A description which states that, if there is one party who does not implement the agreement, the offense is still processed legally; (7) Full names and signatures of violator and victim; and (8) full name and signature of witnesses. If a witness is the head of an institution, the stamp institution is required.

Based on the interviews with Omang Supaman, from the Criminal Investigation Bureau (Reskrim) of Cirebon City Police, after a peace agreement, complainant/ claimant must apply for the revocation of report/ lawsuit. For a crime of domestic violence, the application for revocation of a report/ lawsuit is signed by the

complainant and should be recognized by the chairman of the Neighborhood/ RT and Rukun Warga (RW).

The presence of the statement of peace agreement between violators and victims, which is then the reason for criminal eraser, within it the sign is that in the practice of state law, the laws in the form of text can be ruled out because they cannot give justice. Satjipto Rahardjo said that, since law has been changed from the substance of justice and life in justice has turned into texts, schemes, and linguistic, then we are dealing with the substitute substance (surrogate), which is no longer the original goods. Here we are no longer talking about "real law", but "legal corpses" (Satjipto Rahardjo: 2010: 10).

When the concept of rule by law has transformed into text, there is a tunnel which is closed or at least getting narrower. The tunnel is rule by common sense (fairness, reasonableness, common sense). Rule by law felt in the text has a strong tendency to rule rigidly and regimentative. In such a rule, particularly the one which is excessive in nature, it cause major problems, especially in relation to the achievement of justice (Satjipto Rahardjo: 2010: 10).

Karolas Kopong Medan notes; although there has been a general framework of the state's judiciary designed uniformly to be applied nationally in Indonesia, in the practice of Lamaholot community in Flores East Nusa Tenggara, it can construct differently according to the background of the people's socio-culture. People in Lamaholot, in the practice of handling criminal cases, do not just rely on the state's judiciary, but also customary judiciary and mixed judiciary (Karolas Kopong Medan: 2006: 375).

The patterns of criminal case resolutions (including non-criminal ones) are oriented to the creation of harmonization as constructed by Lamaholot people. It is actually practiced also by other communities in a broader context, both nationally in Indonesia and in the universe. The similarity point is not seen from the detailed procedures practiced by a community as a whole, but it is only seen from the basic idea carried by reconciliatory justice, which is trying to build the harmonization of social life (Karolas Kopong Medan: 2006: 376).

Bernard L. Tanya has made a dissertation entitled "Local Culture Burden Faces the State Regulation" in Diponegoro University (2000) and the dissertation has been published as a book entitled "Law in Social Space". Through field studies using anthropological methods, Bernard discovered the fact that the national laws were not always compatible with the local laws in Sabu, East Nusa Tenggara. By the researcher, the fact was then formulated into the sentence that for people in Sabu, many national laws are burdens (Satjipto Rahardjo: 2010: 111).

According to investigators, the settlement of criminal offense using peace agreement at the level of investigation refers to: 1. Law No. 2 of 2002 on the Indonesian National Police; 2. Police Regulation No. Pol: B / 3022 / XII / 2009 / SDEPOPS dated 14 December 2009 on the Handling of Criminal Cases through Alternative Dispute Resolution (ADR); and 3. The Letter of the Criminal Investigation Bureau No. ST / 110 / V / 2011 dated May 10, 2011 concerning the handling of criminal cases through Alternative Dispute Resolution (ADR).

In Law No. 2 of 2002, for public interest, the Indonesian National Police officers in carrying out their duties and authorities can act according to their own considerations. According to the Article 18 of Law No. 2 of 2002, which refers to "act according to their own consideration" is an action that can be performed by the members of the Indonesian National Police who should consider, in their actions, the benefits and risks of their actions and truly for public interest. Such action can only be performed in a highly urgent situation by considering laws and regulations, and the Code of Professional Ethics of the Indonesian National Police (Article 18 of Law No. 2 of 2002).

Normatively, article 18 of Law No. 2 of 2002 and the Code of Professional Ethics of the Indonesian National Police can be understood as follows: 1. Police, due to their duties and authorities, can act according to their considerations; 2. Police action by their own consideration can only be done in highly urgent situation by considering laws and the Code of Professional Ethics of the Indonesian National Police.

Based on Law No. 2 In 2002, the major tasks of the Indonesian National Police are: a. maintaining security and public order; b. enforcing law; and c. providing protection, support and service to the community. To carry out the duties of the police in criminal law, the police have authorities to carry out other actions by responsible law. The other actions meant are the actions of investigation and enquiry performed when it meets the following requirements: a. do not conflict with the rule of law; b. in line with the legal obligations that require the action to be committed; c. must be appropriate, reasonable, and included within their scope of title; d. appropriate consideration based on the urgent circumstances; and respect for human rights (Article 16 of Law No. 2 of 2002).

Common sense would say that being a facilitator / mediator / arbitrator / in the implementation of peace agreement between violators and victims: a. does not conflict with a rule of law; b. in line with legal obligations; c. appropriate, reasonable and part of police duties; d, a worthy act; e. not contrary to human rights; f. a form in the maintenance of security and public order; g. enforce law; and h. provide protection, support and service to the community.

In such a case, the implementation of the peace agreement between violator and victim at the level of

investigation should be placed over the law, because its existence is to provide law enforcement and justice for both violators and victims. It is the time for law enforcement officers (police) to be oriented to legal settlement and instead of thinking how to sentence on behalf of law.

In addition to Law No. 2 of 2002, a peace agreement to criminal offense at the level of investigation also refers to the principles of ADR as mentioned in the Police Regulation No. Pol: B / 3022 / XII / 2009 / SDEOPS / December 14, 2009 on the Case Handling Through Alternative Dispute Resolution (ADR), as follows: 1. Striving the handling of criminal cases that have little material loss, and the resolution can be directed through the concept of ADR; 2. The settlement of a criminal case by the use of ADR must be agreed upon by disputing parties, but when there is no agreement, it is resolved according to the procedures applied in professional and proportional way; 3. The settlement of criminal cases using ADR must be principled on consensus and should be known by local community involving RT and RW; 4. The settlement of criminal cases by the use of ADR should respect of social/ customary legal norms and meets the principle of justice; 5. Empowering the members of community policing (polmas) and functioning FKPM in their respective areas to be able to identify criminal cases with little material loss and allows for the resolution by the concept of ADR; 6. For the cases that have been resolved through the concept of ADR in order not to be handled by other counterproductive legal actions with the purposes of community policing.

The letter of the Criminal Investigation Bureau No. ST / 110 / V / 2011 dated May 10, 2011 concerning the handling of criminal cases through Alternative Dispute Resolution (ADR) also suggests the possibility of criminal offense resolution with peace agreement at the level of investigation.

Broadly speaking, by virtue of the letter of the Criminal Investigation Bureau sets up the basis for the consideration of criminal case settlement through Alternative Dispute Resolution (ADR), which includes: 1. For the realization of internal security which includes the maintenance of public order and safety, the guarantee of enforced and orderly law, the implementation of protection, support and services to society; 2. The judicial system does not fully accommodate and facilitate case resolultions proportionately, reduced the unfinished cases, recovery to more human rights and stigmatization, and has not accommodated local wisdom as the state asset; 3. There is a diversion of criminal case resolution from its formal form to another better resolution for disputing parties (violator and victim). The alternative peace agreement is based on the existing discretionary authority to the police as well as other actions which can be accountable by law; 4. The purposes of law, in addition to ensuring legal certainty and justice, are also to achieve the legal benefit for community. To realize these goals, the Police in their capacity as the investigator should prioritize the best benefit for those who are in a case (violator and victim).

Frederic Bastiat wrote that human instinct is to deprive. In this context, law made by man are played to protect property rights in order to avoid deprivation. The problem is that the one who makes law is human. Focusing on certain people, law becomes vulnerable to abuse. When the abuse is conducted collectively with the reasons of law, according to Frederic, a legal plunder occurs. (Frederic Bastiat: 2010: x). It is further confirmed that one of the rights requiring to be performed before analyzing a law is to release the assumption that law is definitely fair. Law is made by man or group of people, so it may be actually in contrary with justice. In his opinion, law should be viewed negatively (to prevent injustice) instead of positive (for organizing justice). (Frederic Bastiat: 2010: x)

With the above considerations, particular cases can be handled by Alternative Dispute Resolution (ADR). These cases include: a. The suspect in a criminal offense is still a child; b. the act does not result in serious injuries and loss of life of a person; c. the threat of sentence to a criminal offense is not more than 5 years; and d. the act is not a criminal offense of drugs.

To resolve a case by ADR, it must meet the following requirements: a. The alternative is an absolutely appropriate measure, highly needed and beneficial for the community to achieve the principle of balance; b. the action must be accountable, is not contrary to the law, in line with legal obligations and professional, proper and reasonable within the scope of the title based on adequate consideration and respect for human rights; c. There has been a peace agreement (reconciliation) of related parties; d. approval of victims and violators; e. The settlement decision of a criminal case through ADR must go through a case presentation and approved by the Chief of District Police for the level of District Police, the Director of Criminal Investigation of the Provincial Police for the level of the Provincial Police and the Directors for the level of the Criminal Investigation Bureau of the Indonesian National Police.

One of the purposes of law is expediency. Settling disputes by ADR is based on the reason of law. The resolution of criminal cases through ADR is defined as the termination of investigation and considered as crime clearance.

2. Investigator's Perspective on the Benefit of Peace in Criminal Cases at Investigation Level

Viewed of the notions which are linguistically and philosophical conceptions in nature, there is a very close bond between law and justice. Legal experts should master the issues of justice and this problem must be solved by thinking philosophically. From their experience on juridical issues and sharpness, legal experts are also expected

to know everything clearly in relation to justice. Legal experts are found to have less concern, and even there is a tendency to reluctantly involve themselves with philosophy in determining the contents of the sense of justice (Ruslan Saleh: 2006: 9).

Referring to the above opinion, there is a mandate that would be submitted to legal experts (law enforcers: the author), that justice should be the main umbrella for law enforcers to portray themselves as law enforcers. Honestly, it must be admitted that, when speaking of fair law enforcers, the orientation only focuses on judge's decision. In fact, the entire law enforcers have the same mission to enforce justice.

In the practice in the field, at the stage of investigation by the police investigator, the striving for justice is no longer a discourse, but it has been practiced in concrete terms in the form of the resolution of criminal cases by means of peace agreement. This way, by violators and victims, is considered as the most fair.

Voltaire, a French philosopher, once said: "I was ruined but twice, once when I won a lawsuit and once when I lost (Ahmad Ali: 2004: 19). "As a litigant, I should a law suit beyond almost anything else instead of sickness and death". The court attempts to find the truth, but to find the truth by solving problems is not the same thing. In other hand, when someone has a problem, he needs a fair, fast, and low cost settlement. All of them are not found in the court. The Chinese say: A lawsuit breeds ten years of hated (Ahmad Ali: 2004: 19).

A peace agreement between violators and victims can be equated with the form of criminal case settlement out of court/ out-of-court system, identical to mediation/ penal mediation. Kenneth, Cloke and August Strachan, "Medium and Preaid Legal Plant" provide comparison to conflict resolution as follows: (Ahmad Ali: 2004: 34).

NO	PROCESS	MEDIATION	ARBRITRATION	LITIGATION
1.	Decision Maker	The Parties	Arbitrator	Judge
2.	Controller	The Parties	Frequently by Lawyers	Lawyer
3.	Procedure	Informal	Quite formal	Formal
4.	Cost	Inexpensive	Medium	Expensive
5.	Rule of Evidence	Nothing	Informal	Formal
6.	Publicity	Private	Frequently Private	Public
7.	Relation of Parties	Cooperative	Antagonist	Antagonist
8.	Focus	Future	Past	Past
9.	Negotiation	Compromised	Bargaining	Bargaining
10.	Communication	Possible to Improve	No possibility to improve	No possibility to improve
11.	Results	Win-Win	Win-Lose	Win-Lose
12.	Acceptance of Parties	Generally accept	Generally not accept/ cassation	Generally not accept/ cassation
13.	Emotional Level	Free from stress	Continuous stress	Continuous stress

According to Wahyu Kurniawan, the member of the Criminal Investigation Unit of Weru Police Station, the basic consideration of criminal case resolution by peace agreement is for the better interests of litigants, in order to create a conducive situation of social order in society.

According to the Head of the Criminal Investigation Unit of Utara Barat Police Station, the basic considerations in the peace agreement of criminal cases are; (1) The case does not disturb the public; (2) For the case of theft, the loss is relatively small; (3) The crime by complaint is subsequently withdrawn by the complainant.

According to Adi Sulistiyono quoting the opinion of Satipto Rahardjo, some considerations of the litigants to the court, (Adi Sulistiyono: 2006: 18-19), are: a. Trust; in that place they will get justice as desired; b. Belief; that the courts are the institutions which express the values of honesty, uncorrupted mentality and other major values; c. That the time and costs they spend are not in vain; d. That the court is a place for people to actually obtain legal protection.

Adi Sulistiyono argues that these expectations are not realized. Public trust was not responded. In reality, the courts have not been able to meet the expectations of society, because their decisions did not resolve the problems, and even lead to problems. (Adi Sulistiyono: 2006: 18-19).

Harry Bredemeir in his *Law as an Integrative Mechanism*, as quoted by Anthon Freddy Susanto, said: "law is for most people something which is as far as possible to be avoided". Market for justice generated by law is not encouraging. According to Anthon Freddy Susanto, Harry Bredemeir's argument is related to the explanation of the legal system in society. Harry Bredemeir's intention, according to Anthon, is "The longer the people's trust in law is in decline, that anything done by the court and the possibility of the court to serve as a fact input medium, as well as the consideration of justice that can provide justice, it is difficult to convince the parties to a dispute and also public that all their interests has really been considered. (Anthon Freddy Susanto: 2005: 139).

According to Anthon, the huge accumulation of cases with the delayed number of settlements, poor services, lack of alternative dispute resolution, the distortion of communication until the 'squalid' and 'rundown' court are the reflection of the court inability to empower themselves. The widespread skepticism about the quality of trials resulted by the courts is the final accumulation. Justice becomes (more) expensive and they want to "buy" it (to the court), and surely only those who are able to provide money as the price of it (Anthon Freddy Susanto: 2005: 139).

According to Omang Supaman, the members of the Criminal Bureau of Cirebon City Police, the settlement of a criminal offense by peace agreement as part of the Alternative Dispute Resolution (ADR) is the right step and very necessary to achieve the best solution. The benefits for the Police is that the case will finish soon/ Crime Clier (CC). The benefit to violator and victim is to improve the social and familial relationships to be more harmonious. In the implementation of the settlement of criminal cases by peace agreement, it can be initiated from violator and victim as well as external (third party). Of violator and victim for example, just before the specified time, the agreement was denied that creates new problems.

According to the Chief of Losari District Police, for the police, the benefit of criminal case resolution is that the situation does not develop into communal conflicts that disturb the public and reducing the cost of the investigation and case filing. For victims and violators, it is useful to come back to their life in the community by helping with each other. For violators, it offers the opportunity to do good and not to do things that harm others and violate the law. For victims, it can recover the losses suffered by victims.

According to Reynaldi Nurwan, from the Criminal Investigation Department of Kedawung District Police, the need for a resolution is set by law, and it depends on the case. The settlement of a criminal case by means of peace agreement/ reconciliation for the Police has the benefit to strengthen the relationship between the police and the public in order to remain well established and the creation of a secure and conducive internal security situation. The benefit for violators and victims and others is to establish good relationship, no grudges, creating an atmosphere of harmony life in society.

According to Adi Sulistiyono (Adi Sulistiyono: 2006: 15), the dispute resolution out of court which he referred to as a paradigm of non-litigation or PnLg has at least 8 (eight) benefits to be obtained, i.e.: 1. To reduce congestion and accumulation of cases (court congestion) in judiciary. 2. To increase community involvement (decentralization of law) or empowerment of the parties to a dispute in the dispute resolution process; 3. To facilitate access to justice in community; 4. To provide opportunity for a dispute resolution which results in a decision that can be accepted by all parties (win-win solution); 5. The case settlement can be more quickly and inexpensive; 6. The characteristic is closed / confidential; 7. higher level of possibility to implement an agreement so that the relationship the parties to a dispute in the future is possibly well-maintained; and 8. To reduce the spread of "foul play" in judiciary.

Although the context mentioned above is a civil context, but it is possible to addressed in the resolution of criminal cases. There are at least three (3) reasons that underlie it (the use of non-litigation paradigm or PnLg (Adi Sulistiyono: 2006: 11). First, in Indonesia, ADR terminology has been officially translated as ''alternatif penyelesaian sengketa'' which means the institution of dispute or differences of opinion resolution, that is a settlement out of court by means of consultation, negotiation, mediation, conciliation or expert judgment. Meanwhile, the concept of PnLg is not stalled in the realm of mere institutions, but to the values of guidance, which is the belief of communities to resolve disputes. Second, in Indonesia, ADR is often simply assumed to resolve civil disputes, whereas PnLg concept does not only resolve civil disputes but also the disputes included in criminal jurisdiction.

D. CONCLUSION

The criminal act solved with peace agreement at the level of investigation is entirely a violation of the Criminal Code (KUHP) and only one that is a violation of Law No. 23 of 2004 on the Elimination of Domestic Violence. The two laws do not allow any peace agreement. Peace agreement in criminal acts at the level of investigation is based on an agreement between violator and victim as evidenced by a letter of statement of peace agreement between the two. The presence of the letter of statement for peace agreement between violators and victims which subsequently becomes the reason of criminal eraser indicates that an agreement is a source of law which in practice can override the written law made by the state. Peace agreement at the level of investigation is only to offenses with individual victim and violator and in relatively small loss. In the investigator's perspective, peace agreement in criminal acts at the level of investigation refers to the policy of the police and not based on laws. To ensure certainty and to avoid investigator's hesitation, the policy of peace agreement in a criminal act at the level of investigation should be regulated by law. According to investigators, peace agreement in criminal acts at the level of investigation is considered to be more beneficial and fairer, compared to the settlement using the criminal law procedure.

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