



**Justice and Utility in the Settlement of “Klacht Delict” through Mediation:  
Concept and Impact in Aceh**

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**Abstract:** This article examines the process of settlement of criminal cases of whole complaints resolved in Aceh through mediation. The settlement of “klacht delict (*delik aduan*)” cases in Aceh is practiced in the customary law society by directing the Qanun Aceh. The main focus of this study is the process of its completion, the legal effectiveness of the concept of mediation, as well as consideration of aspects of the legal purpose of the mediation process. This study uses empirical juridical methods which are analyzed using a restorative justice approach and legal sociology. Data was collected by conducting in-depth interviews and document studies. The results of the research showed that the criminal complaints settled by mediation with the non-litigation pattern practiced by law enforcement and the community in Aceh have met the legal objectives, including the aspects of utility and justice. This model of settlement has met the requirements of usefulness and justice for perpetrators and victims and is considered complete, so the case has not proceeded to the stage of investigation and is not passed on to the prosecution. Nevertheless, the settlement through mediation is not satisfied from the point of view of legal certainty, as the general criminal gap must not be resolved by mediation. Sociologically, this legal rule has an impact on society regarding criminal complaints that are resolved through mediation through non-litigation and are never again demanded for a law enforcement process regarding the results of the mediation which has been stated in the peace deed. So mediation has an impact on the realization of peace and order in society.

**Keywords:** Justice, klacht delict, mediation, impact, restorative justice, Acehese society

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**Abstrak:** Artikel ini mengkaji proses penyelesaian kasus pidana delik aduan yang diselesaikan di Aceh melalui mediasi. Penyelesaian kasus delik aduan (*klacht delict*) di Aceh di praktekan dalam masyarakat hukum adat dengan berpedoman pada Qanun Aceh. Fokus utama kajian ini adalah bagaimana proses penyelesaiannya, daya kerja hukum konsep mediasi serta pertimbangan aspek tujuan hukum dalam proses mediasi. Kajian ini menggunakan metode yuridis empiris dianalisis dengan pendekatan restoratif justice dan sosiologi hukum. Data dikumpulkan dengan melakukan wawancara mendalam dan studi dokumen. Hasil penelitian menunjukkan bahwa perkara pidana aduan yang diselesaikan secara mediasi dengan pola non-litigasi yang dipraktikkan penegak hukum dan masyarakat di Aceh telah memenuhi tujuan hukum meliputi aspek kemanfaatan dan keadilan. Pola penyelesaian model ini telah memenuhi kemanfaatan dan keadilan bagi pelaku dan korban dan dianggap selesai, sehingga kasus tersebut tidak dilanjutkan ke tahap penyidikan dan tidak dilimpahkan ke pihak kejaksaan. Walaupun demikian, penyelesaian melalui mediasi tidak terpenuhi dari sisi aspek kepastian hukum, karena delik pidana umum semestinya tidak dapat diselesaikan dengan cara mediasi. Secara sosiologis, aturan hukum ini berdampak bagi masyarakat terhadap perkara pidana aduan yang diselesaikan dengan cara mediasi melalui non-litigasi telah diikuti dan tidak pernah ada lagi tuntutan proses penegakan hukum terhadap hasil mediasi yang telah dituangkan dalam akta perdamaian. Sehingga mediasi tersebut berdampak pada terwujudnya ketertiban dan keteraturan dalam masyarakat.

**Kata Kunci:** Keadilan, delik aduan, mediasi, dampak, restoratif justice, masyarakat Aceh

## Introduction

The concept of mediation is a means to resolve complaint offences that are aligned with legal objectives.<sup>1</sup> Based on the National Police Regulation of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Criminal Acts based on Restorative Justice, it is a strategic step in realizing the resolution of criminal acts by prioritizing restorative Justice. Restorative Justice is a new concept in criminal law enforcement that accommodates norms and values that apply in society. Another way of resolving criminal cases by mediation (*non-litigation*) outside the court is the customary settlement of criminal complaints. Traditional settlement of criminal complaints is a very effective alternative for the

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<sup>1</sup> Ellen G. Cohn, et.al., “Changes in the Most-Cited Scholars in 20 Criminology and Criminal Justice Journals Between 1990 and 2015 and Comparisons with the Asian Journal of Criminology,” *Asian Journal of Criminology* 16, no. 3 (2021). Ian D. Marder, “Mapping Restorative Justice and Restorative Practices in Criminal Justice in the Republic of Ireland,” *International Journal of Law, Crime and Justice* 70 (2022).

community, especially the people of Aceh.<sup>2</sup> According to criminal law science, settlement of disputes and disputes in connection with the case process can be distinguished based on the type of delict, namely complaint offense and ordinary offense. Common offenses do not require a complaint for prosecution, such as murder, theft, and embezzlement.<sup>3</sup> The complaint offense is a criminal offense that can only be prosecuted if there is a complaint from the interested or aggrieved.

For criminal acts classified as complaint offenses, the legal process will be terminated if the victim and the suspect have "reconciled" or resolved "kinship" and the complaint has been withdrawn.<sup>4</sup> In the peace process, it must involve the perpetrators and victims accompanied by mediators from both parties, usually *Gampong Device figures*, namely *Tuha Peut*, *Keuchiek*, *Teungku Imuem*, or mediators from outside parties who are trusted to resolve the case familiarly.

But often, the criminal verdict handed down is not satisfactory for the parties, especially for the victim. A criminal conviction for perpetrators does not necessarily restore the victim's condition. According to Bagir Manan, Indonesian law enforcement can be said to be "*communist opinion doctorum*", which means that law enforcement is now considered to have failed in achieving the objectives required by the law.<sup>5</sup> This has led to demands for criminal law reform by finding alternative punishment through Restorative Justice.

The concept of restorative justice itself is motivated by abolitionists who consider the criminal justice system to contain structural problems or defects so that it realistically sees the need for a revolution in the basic structure of the system, which then this view becomes the basis for the formation of modern

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<sup>2</sup> Rusjdi Ali Muhammad and Dedy Sumardi, *Kearifan Tradisional Lokal: Penyerapan Syariat Islam Dalam Hukum Adat Aceh* (Banda Aceh: Dinas Syariat Islam Aceh, 2011). Ali Abubakar, et.al., "The Postponement of the Implementation of Inheritance Distribution in The Seunuddon Community, North Aceh In The Lens of 'Urf Theory and Legal Pluralism," *El-USrah: Jurnal Hukum Keluarga* 4, No. 2 (2023).

<sup>3</sup> Giuseppe Maglione, "Immature Offenders. A Critical History of the Representations of the Offender in Restorative Justice," *Contemporary Justice Review: Issues in Criminal, Social, and Restorative Justice* 21, no. 1 (2018).

<sup>4</sup> Thalia González, "Restorative Justice Diversion as a Structural Health Intervention in the Criminal Legal System," *Journal of Criminal Law and Criminology* 113, no. 3 (2023). Muhammad Yusuf Siregar and Zainal Abidin Pakpahan, "Diskresi Kepolisian Dalam Memberhentikan Perkara Pidana Karena Adanya Perdamaian Oleh Lembaga Kepolisian Resort Labuhanbatu Dilihat Dari Segi Hukum," *Jurnal Ilmiah Advokasi* 5, no. 2 (2017), p. 66–93.

<sup>5</sup> Daniel W. Van Ness et al., "Toward a Restorative System," in *Restoring Justice*, 2022.

theory.<sup>6</sup> Restorative Justice is an approach to solving criminal problems involving victims, perpetrators, and elements of society for the creation of Justice.<sup>7</sup>

In the conventional criminal justice process, restitution or compensation for victims is known, so a restorative justice approach is to be achieved not only salary but also restoration of relations between victims and perpetrators. A just law in restorative Justice is impartial, impartial, not arbitrary, and only sides with the truth by applicable laws and regulations and considers equal compensation rights and balance in every aspect of life. Perpetrators can be involved in restoration based on the constructive value of the perpetrator's remorse for his actions.

Deliberation settlement of cases outside the court has almost often been carried out, although some regions in parts of Indonesia still carry out this traditionally. As well as many instances occur in the form of defamation, domestic violence (domestic violence), pornography through electronic media, adultery, and others. Some cases have been resolved peacefully (mediation) involving both parties and witnessed by *keuchik* (village head), *tuha peut*, *tuha lapan*, *imam meunasah*, and community leaders.<sup>8</sup>

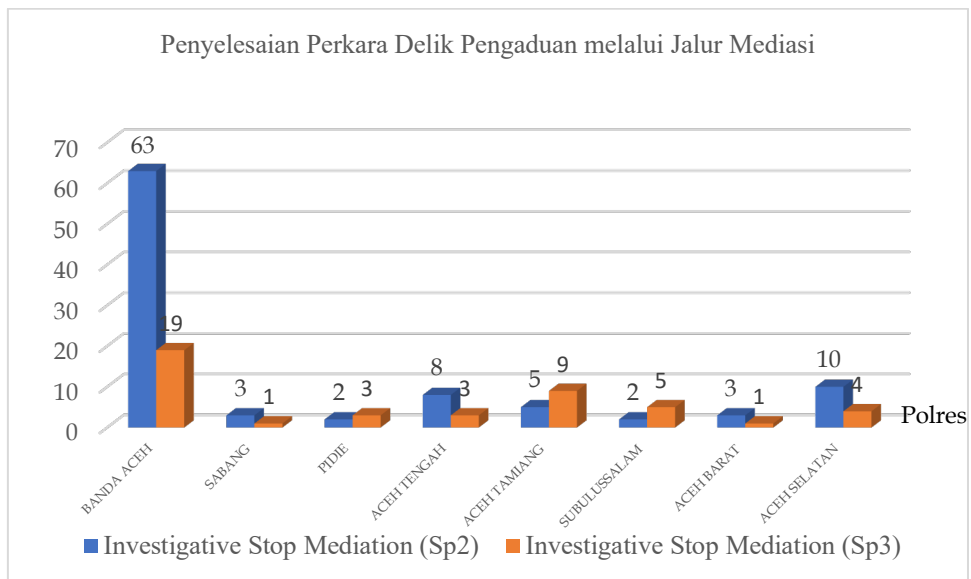
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<sup>6</sup>Masahiro Suzuki and Tamera Jenkins, “The Role of (Self-) Forgiveness in Restorative Justice: Linking Restorative Justice to Desistance,” *European Journal of Criminology* 19, no. 2 (2022). Romli Atmasasmita, *Sistem Peradilan Pidana Kontemporer* (Jakarta: Kencana Prenadamedia, 2010).

<sup>7</sup>Dedy Sumardi, et.al., “Restoratif Justice, Diversi Dan Peradilan Anak Pasca Putusan Mahkamah Konstitusi Nomor 110/PUU-X/2012,” *LEGITIMASI: Jurnal Hukum Pidana Dan Politik Hukum* 11, no. 2 (2022), p. 248–65. Nelvitia Purba et al., *Mediasi Penal Upaya Penyelesaian Perkara Di Luar Pengadilan* (Banten: AA RIZKY, 2022).

<sup>8</sup>Fajri M. Kasim and Abidin Nurdin, “Study of Sociological Law on Conflict Resolution Through Adat in Aceh Community According to Islamic Law,” *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 4, No. 2 (2020). Ridwan Nurdin, et.al., “The Role of Customary Leaders as Hakim in Resolving Divorce: A Case Study in Kuta Alam Subdistrict, Banda Aceh City,” *El-Ussrah: Jurnal Hukum Keluarga* 6, No. 2 (2023).

**Figure 1. Data on Complaint Delict Case Settlement through Mediation Pathway**



Source: Criminal Investigation Unit of Aceh Police 2019 to 2021

It can be explained that the settlement of mediation cases with the category of termination of investigation with SP2 criteria amounted to 63 cases at Banda Aceh Police Station, 3 cases at Sabang Police Station, 2 cases at Pidie Police Station, 8 cases at Central Aceh Police Station, 5 cases at Aceh Tamiang Police Station, 2 cases at Subulussalam Police Station, 3 cases at West Aceh Police Station, and 10 cases in South Aceh.

And based on Figure 1. it can also be explained that the settlement of mediation cases with the category of termination of investigation with SP3 criteria amounted to 9 cases at Banda Aceh Police Station, 1 case at Sabang Police Station, 3 cases at Pidie Police Station, 3 cases at Central Aceh Police Station, 9 cases at Aceh Tamiang Police Station, 5 cases at Subulussalam Police Station, 1 case at West Aceh Police Station, and 4 cases in South Aceh. This case was resolved through out-of-court mediation, conducted following customary law, and witnessed by the *keuchik* (village head), *tuha peut*, *tuha lapan*, *imum meunasah*, and community leaders without involving the investigating officer.

Based on the phenomenon of the settlement of criminal complaint cases above, the author is interested in conducting a scientific study on the existence of the concept of mediation in the settlement of criminal complaint cases and its relation to legal objectives. To produce formulations that can be used in the criminal law area in Indonesia following the nature of the implementation of criminal law and ideal legal objectives in national criminal law reform. Criminal matters are usually resolved using criminal justice mechanisms, but nowadays, people are more likely to use alternatives like non-litigation to resolve their cases.

The main focus of this study is how the settlement process works, the legal working power of the mediation concept and consideration of aspects of legal objectives in the mediation process. This study uses empirical juridical methods which are analyzed using a restorative justice approach and legal sociology.<sup>9</sup> Data was collected by conducting in-depth interviews and document studies. The informants interviewed were the police and community leaders involved in the mediation process.

### Settlement of Criminal Complaints Through Mediation in Aceh

The pattern of solving cases using formal channels (litigation) has a characteristic *win-lost*. While solving cases by non-formal means (non-litigation) with its characteristics in the form of *a win-win solution*.<sup>10</sup> Deliberation resolution of cases gets a positive response from the community because it can present beneficial values for both parties.<sup>11</sup> The pattern of settlement using a mediation approach has been practiced by the people of Aceh not only in the context of civil law but in empirical reality, showing the desire of the community to solve the problems they are facing using non-litigation methods. Non-litigation settlement is also called out-of-court settlement.<sup>12</sup> This fact occurs and is practiced by law enforcement in the jurisdiction of the National Police in Aceh, which is facilitated by the Police by involving the parties involved, namely perpetrators and victims, in criminal acts with criminal complaints.

The peaceful resolution of cases practiced in Aceh, facilitated by the Police, is an essential breakthrough in the context of law enforcement in Indonesia. The action overrides the national law by considering various aspects of more excellent benefits to the community. The steps taken by the Police and the community have adopted the system in criminal Justice, namely the *ultimum remedium*.<sup>13</sup> Currently, the resolution of criminal cases has shifted from the orientation of law enforcement through the criminal justice system to alternative case resolution by prioritizing deliberation and consensus.

When a criminal case occurs in society, the parties are more likely to take the path of peace because it is considered more effective and efficient than the

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<sup>9</sup> Jonaedi Efendi and Prasetijo Rijadi, *Metode Penelitian Hukum: Normatif dan Empiris*, Jakarta: Kencana, 2016.

<sup>10</sup> Rusjdi Ali Muhammad, “Reconciliation for the Settlement of Criminal Cases: Reactualization of Local Wisdom in Indonesian Criminal Law,” *LEGITIMASI: Jurnal Hukum Pidana Dan Politik Hukum* 10, no. 2 (2021), p. 171.

<sup>11</sup> Budi Suhariyanto, “Kedudukan Perdamaian Sebagai Penghapus Pidanaan Guna Mewujudkan Keadilan Dalam Pembaruan Hukum Pidana,” *Jurnal RechtsVinding* 6, no. 1 (2017).

<sup>12</sup> Achmad Ali and Wiwie Heryani, *Menjelajahi Kajian Empiris Terhadap Hukum*, (Jakarta: Prenada Media, 2015).

<sup>13</sup> Rebecca Banwell-Moore, “Just an ‘Optional Extra’ in the ‘Victim Toolkit’?: The Culture, Mechanisms and Approaches of Criminal Justice Organisations Delivering Restorative Justice in England and Wales,” *International Review of Victimology* 29, no. 2 (2023).

pattern of resolving cases using national legal instruments oriented to the criminal justice system. The Indonesian version of the Criminal Code has now adopted peace in case of settlement, prioritizing recovery in the context of punishment. The philosophy adopted in the Indonesian Criminal Code is to make the life of the community more orderly and peaceful, as stipulated in Article 51 of the Criminal Code, which states that the purpose of punishment is:

- a. to prevent the commission of Criminal Offenses by upholding the rule of law for the protection and protection of the community
- b. to socialize the convicts by providing guidance and mentoring to become excellent and valuable people
- c. to resolve conflicts arising from Criminal Offenses, restore balance, and bring a sense of security and peace in society, and
- d. to foster a sense of remorse and relieve the guilt of the convict.

An example of a case that was successfully resolved amicably was an accident between residents of Gampong Keudah and Gampong Lampriet. The case was successfully reconciled by the village apparatus even though the case was included in the general offense case, which could not be resolved by non-litigation. However, the parties still agreed to declare peace and promised the losses suffered by one of the parties and would not sue again before the law.

The pattern of settlement of general Delik cases has also been resolved out of court by the Sabang community in the case of traffic accidents. The traffic accident in July 2022 was successfully reconciled based on the goodwill of both parties. The agreement agreed by the parties in the case was that the parties realized that the accident between them was not an element of intent but accidental, but the accident happened to the parties. The second agreement of the parties is that the medical expenses of the second party are given by the first party in the amount of IDR. 400,000, - and the final agreement is that the parties involved in the case do not use one of them before the law in the future.

Criminal offenses do not recognize the existence of peace to stop the process of prosecution and examination in court, even though it occurs within the family. General or common offenses do not rule out the possibility of reconciliation between the perpetrator and victim. However, such peace does not negate the criminal responsibility of the perpetrator.<sup>14</sup>

Peace in ordinary offenses is a form of out-of-court settlement known as Out Court Settlement (OCS), which is heavily influenced by community customary law or community habits considered the best settlement. Indonesian society is pluralistic and consists of various community characters built from the community's sociological behavior in forming community life habits that cannot

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<sup>14</sup> Sitti Mawar, “Perkembangan Sistem Hukum Peradilan Adat Aceh,” *LEGITIMASI: Jurnal Hukum Pidana Dan Politik Hukum* 10, no. 1 (2021).

release the original laws of the Indonesian nation, which are customary in dispute resolution solutions and problems in social life.

Based on the results of interviews with the Head of the Criminal Investigation Unit of Sabang Police Station, Rahmad, Head of the Criminal Investigation Unit of Banda Aceh Police Station, Muhammad Ryan Citra Yudha, shows that the factors that influence investigators to facilitate the implementation of mediation and restorative Justice in resolving criminal cases are as follows:

### 1. Realizing Benefits for Perpetrators and Victims

According to the Head of the Criminal Investigation Unit of Banda Aceh City Police, the factor that encourages investigators to mediate criminal cases is to provide the best interests of victims and perpetrators. The victim gets a recovery for the losses incurred because the perpetrator is held accountable for the losses suffered by the victim. Investigators encourage perpetrators to take responsibility for their actions with a persuasive approach and use a family approach so that the perpetrators are genuinely responsible.<sup>15</sup>

In addition to the benefits obtained by the victim, with mediation, the perpetrator is not brought into the criminal realm, leading to prison punishment. The investigators are only facilitators to provide constructive views, with the primary objective being for the parties to reconcile. The parties do not fully have to follow the opinions expressed by the investigator during the mediation procession. There are some advantages of mediated settlement.<sup>16</sup>

*First*, to maintain dignity, this is because, for the Acehnese, it is taboo if others know their problems. Conflicts of interest between one person and another become a disgrace when known by the surrounding community.<sup>17</sup> The Acehnese principle is "*pantang pideueng meulinteung sarong, pantang rincong meulinteung mata, pantang ureueng geuteuoh kawom, pantong hukom geuba bak meja*". This more or less means that Acehnese people are very reluctant to bring their problems to formal Justice because it is to maintain their dignity.

*Secondly*, it strengthens family and brotherhood relationships. Usually, people in conflict are angry and hostile to each other, which ends in the breakup of friendship and brotherhood. In addition, investigators in the Police intervene with the parties through mediation to avoid a formal settlement process that ends with the perpetrator's punishment. *Third*, eliminating grudges and forgiving each

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<sup>15</sup> Interview with Muhammad Ryan Citra Yudha, Head of the Criminal Investigation Unit of Banda Aceh Police Station, Banda Aceh, 2023.

<sup>16</sup> Muslim Zainuddin, et.al., *Peumat Jaroe Proses Mediasi Menuju Harmoni Dalam Masyarakat Aceh*, Banda Aceh: Lhee Sagoe Press, 2017. Aufa Miranti, et.al., "Dispute Resolution Model for Granting Hareuta Peunulang through the Customary Court in Pidie Regency, Aceh Province," *Al-Ahkam* 32, No. 1 (2022).

<sup>17</sup> Juhari Juhari and Zulfadli Zulfadli, "Interaction Between Religious People Post Social Conflict In Aceh Singkil District," *Jurnal Ilmiah Islam Furura* 19, No. (2019).



other means that the mediation settlement can stop grievances, and the parties forgive each other for the case they are facing. The meeting between the parties by sitting in this mediation forum is an opportunity to forgive each other and take responsibility for the case being undertaken.

*Fourth*, realizing Justice, the Justice obtained from the mediation settlement process is substantive Justice. This means that through the mediation process, victims receive attention from the parties involved in the settlement process. An expression appears among the Acehnese community, "*luka ta sipat, darah ta sukat*," meaning that wounds are measured, and blood will be calculated. The implied meaning of this metaphor is that the Acehnese will take into account the losses suffered by the victim, and the perpetrator will be held accountable.

According to the Head of the Criminal Investigation Unit of Banda Aceh City, usually, the one who holds the perpetrator responsible is the victim himself, and it depends on the ability of the victim himself. Police investigators do not force the victim to fulfill a certain amount that must be paid to the victim. This pattern differs significantly from the litigation settlement pattern, whose primary orientation is legal certainty.<sup>18</sup>

Thus it can be understood that this pattern of non-litigation case settlement is following the objectives of the law as expressed by Gustav Redbruch, who, in principle, says there are three main objectives of the law, namely: legal certainty (*rechtmatigheid*), legal Justice (*gerechtigheid*) and legal expediency (*zwechmatigheid* or *doelmatigheid* or utility).<sup>19</sup>

The police initiative that prioritizes practicality values follows the utilitarianism theory developed by Jeremy Bentham. The main principle developed by Jeremi is that the law should make people happy as much as possible. He said that "the aim of the law is the greatest happiness of the greatest number", which means that the law aims to provide the highest happiness to as many people as possible.<sup>20</sup>

The shift from positivistic to a model of law enforcement based on practicality and Justice practiced in Aceh is a significant contribution that should be replicated in various regions in Indonesia. Such public awareness that returns to mediated settlements historically can be a form of returning to the settlement model before the formation of the Indonesian state. Initially, in resolving criminal

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<sup>18</sup> Interview with Muhammad Ryan Citra Yudha, Head of the Criminal Investigation Unit of Banda Aceh Police Station, Banda Aceh, 2023.

<sup>19</sup> Jamal Abdullah, "Kepastian Hukum Terhadap Pelaku Tindak Pidana Delik Biasa Yang Diselesaikan Dengan Mediasi (Studi Kasus Kecelakaan Lalu Lintas Yang Menyebabkan Kematian)," *JOM Fakultas Hukum 1* (2016).

<sup>20</sup> Hamzarief and Santaria, *Konsep Dasar Sosiologi Hukum* (Malang: Setara Press, 2019).

cases, victims were also involved in the settlement process. Still, after the state was formed, the state represented the power to take over victims' rights.<sup>21</sup>

### **The Success of Mediation in Handling Criminal Complaints in Aceh**

Based on the results of interviews with the Head of the Criminal Investigation Unit of Banda Aceh Police and the Head of the Criminal Investigation Unit of Sabang City, who are also mediation organizers at the police level in the jurisdiction of Banda Aceh City, some things become external factors for investigators to mediate the perpetrators and victims of criminal acts, namely as follows.

#### **1. An initiative of the Parties and Cooperative Settlement in Mediation**

Both parties' cooperative attitude states that they are willing to be facilitated mediation by the Police. The Police welcomed this positive attitude as the central holder at the police level to re-harmonize the relationship between the two parties in conflict. The same condition was also expressed by the Head of the Criminal Investigation Unit of Sabang City Police, who, in principle, said that the desire to reconcile the parties originating from personal initiatives helped the investigator to bring the parties together and would accelerate the case settlement process faster.<sup>22</sup>

According to Suteki, Pancasila can be the basis for formulating national criminal law, especially concerning God, Humanity, and community values. According to him, many existing studies show that criminal law-oriented to the aspect of punishment by using the criminal justice system pattern has not positively impacted victims.<sup>23</sup> The prosecutor represents the legal interests of the victim as a state institution authorized to prosecute the perpetrator who has caused harm to the victim by demanding that the judge impose an appropriate penalty for his actions.<sup>24</sup>

According to the traditional leader of Sabang City, people generally prefer to settle their cases through mediation. According to him, cases that can be resolved through mediation in Aceh are not only civil cases but also criminal cases that cause injury or suffering to others can be resolved through mediation.<sup>25</sup> A Banda Aceh traditional leader conveyed the same thing. He added that with a family settlement, the results would usually be accepted by both parties because

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<sup>21</sup> Trisno Raharjo, “Mediasi Sebagai Bentuk Penyelesaian Perkara Pidana,” *Jurnal Media Hukum* 17, no. 2 (2010).

<sup>22</sup> Interview with Rahmad, the Head of the Criminal Investigation Unit of Sabang Police Station, Sabang, 2023.

<sup>23</sup> Suteki, *Hukum Dan Masyarakat* (Yogyakarta: Thafa Media, 2021).

<sup>24</sup> Bambang Waluyo, *Viktimologi Perlindungan Korban Dan Saksi* (Jakarta: Sinar Grafika, 2011).

<sup>25</sup> Interview with HRJ, Public Figure in Banda Aceh, 2023.

the mediator who facilitates it has the wisdom to ask first about the loss experienced by the victim and the ability that the perpetrator can give to the victim due to his actions.<sup>26</sup>

Based on this information, it can be understood that the people of Aceh instinctively prefer mediation as an alternative to case settlement because, through mediation, there are advantages for the litigants. These advantages include less time and energy spent and Justice for victims. This value of Justice is the main starting point for the people of Aceh to prefer the process of resolving cases through deliberation.

One of the families of victims of criminal complaints that the Sabang City Police have mediated feels very satisfied with the services provided by the Sabang Police. Especially being able to resolve by way of mediation against his family members who befall the complaint offense case reported to the Police. He added that a settlement process that can bring together the victim's family and the perpetrator's family and provide mutual input and opinions so that the case that occurred can be ended without hostility but with peace.

## 2. Public Trust in the Police Institution

Public trust in police institutions in resolving cases through mediation is an essential motivation for investigators to optimize handling a case submitted to them. According to the Head of the Criminal Investigation Unit of Banda Aceh Police, the community already feels confident in the police institution, so it becomes easy to mediate.<sup>27</sup> The same thing was also expressed by the Head of the Criminal Investigation Unit of Sabang City, who stated that public trust is an essential supplement for investigators so that it will be carried out professionally, structurally, and systematically in implementing mediation.<sup>28</sup>

## 3. Community Contributions to Promote the Mediation Process

The community has contributed to the mediated resolution of complaints in Aceh. The district also encourages law enforcement to use non-formal channels for cases that fall into the complaint offense cases, such as domestic violence, defamation, and theft. Based on the support and encouragement provided by the community, *keuchik* and *tuha peut gampong*, become separate motivations for investigators to bring the parties together and resolve by using penal mediation.

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<sup>26</sup> Interview with MSY, Public Figure in Sabang, 2023.

<sup>27</sup> Interview with Muhammad Ryan Citra Yudha, Head of the Criminal Investigation Unit of Banda Aceh Police Station, Banda Aceh, 2023.

<sup>28</sup> Interview with Rahmad, the Head of the Criminal Investigation Unit of Sabang Police Station, Sabang, 2023.

The statement is interesting to analyze in the context of law enforcement in a country that adheres to the principle of the rule of law (resistant).<sup>29</sup> The conception of the rule of law requires that every action taken by the government be based on state law or what is often known as (the supreme of law).<sup>30</sup> The law must be made and placed in the highest position above all. Any form of action in the context of government administration is required for the government to apply existing laws.

The change in the policy paradigm that has led to progressive law enforcement, with its primary orientation on the aspect of happiness for the community, is proof that the rule of law that the state has made is not the only instrument capable of realizing order in society. The social order built by the community based on local wisdom that has been implemented and maintained until now is far more capable of creating a more just and wholesome community life and avoiding punishment.

Satjipto Rahardjo states that law is not the only way to create order because order can be realized by enforcing local values and wisdom that grows and is maintained by the community.<sup>31</sup> The steps taken by the Police are also one of the corrective methods of the current criminal law, which is very rigid and injures legal values in society. The law is not what has been formed by lawmakers in the context of the state, but the law that exists in society is one of the most effective laws in resolving criminal cases.<sup>32</sup>

Such a law enforcement paradigm is a corrective step to the orientation of law enforcement, which only enforces the law for perpetrators without paying attention to Justice for victims and, at the same time, changing the mindset where law enforcement is not the same as law enforcement. Law enforcement is not always identical to law enforcement because law enforcement can involve moral, Justice, and cultural aspects of society.<sup>33</sup>

The issuance of law enforcement in the Police on the community's support tends to prioritize state law as a form of progressive law enforcement (law enforcement) based on expediency and Justice. Law enforcement that prioritizes the potential of legal and cultural values in society is far more helpful than legal instruments that only prioritize legal certainty. This is one of the new

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<sup>29</sup> Achmad Rubaie, “Putusan Ultra Petita Mahkamah Konstitusi : Perspektif Filosofis, Teoritis, Dan Yuridis,” n.d., 364.

<sup>30</sup> Achmad Rubaie, Putusan Ultra Petita Mahkamah Konstitusi.

<sup>31</sup> Satjipto Rahardjo, *Biarkan Hukum Mengalir: Catatan Kritis Tentang Pergulatan Manusia Dan Hukum*, 2007.

<sup>32</sup> Lawrence M. Friedman, *American Law An Introduction* (New York: W.W. Norton & Company, 1997).

<sup>33</sup> Swati Kaushal, “Punishment for Crimes: An Instrument of Social Change,” *Proceedings of International Young Scholars Workshop 9* (2020).

findings in this study where utilizing traditional and cultural values of mediation is the primary key to realizing expediency and Justice in handling cases.

Based on the facts above, internal and external factors that can then be utilized for evaluation material benefit leaders and members to take corrective actions to improve performance through feedback from the surrounding community. The legal implications of out-of-court settlement of criminal cases (mediation) are expected to reduce the dirty games that often occur in the traditional criminal justice process. Given the many advantages of mediation practiced in several countries, a study is needed to apply penal mediation in the Indonesian criminal justice process as part of the criminal justice system.<sup>34</sup>

In the view of Restorative Justice, penal mediation can be seen as a process toward a just system in society. So that in the future, the results of the criminal justice system process will not only lead to disciplinary (retaliation) against the perpetrators but also prioritize the return of losses to victims, both material and immaterial losses.

The practice of out-of-court case settlement implies no formal legal basis, so it is common for a case to be informally resolved through customary law mechanisms. In developing theoretical discourse and criminal law reform in various countries, there is a strong tendency to use criminal mediation as an alternative to problem-solving in criminal law.

This is regulated in the Letter of the Indonesian National Police No. Police: B/3022/XII/2009/SDEOPS dated December 14, 2009,<sup>35</sup> concerning Case Handling through Alternative Dispute Resolution (ADR) and Regulation of the Chief of the Indonesian National Police Number 7 of 2008 concerning Basic Guidelines for the Strategy and Implementation of Community Policing in the Implementation of Police Duties. Furthermore, all these regulations were refined by issuing Police Regulation Number 8 of 2021 concerning Criminal Offenses Based on Restorative Justice.

### **Legal Workability of Out-of-Court Settlement of Duan Criminal Cases: Impact on Acehese Society**

Until now, there has been no legal regulation governing mediation as an alternative to criminal case resolution, with only a few provisions on restorative Justice with certain limitations. In Aceh, a specific rule regarding cases must be resolved through customary Justice, which is also done through mediation. Based on Aceh Qanun No. 9/2008 on the Development of Customary Life, 18 cases can be resolved through regular Justice as stated in Article 13 of the Qanun.<sup>36</sup>

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<sup>34</sup> Mahrus Ali, “Sistem Peradilan Pidana Progresif; Alternatif Dalam Penegakan Hukum Pidana,” *JURNAL HUKUM* 14, no. 2 (2007), p. 210–29.

<sup>35</sup> Surat Edaran Kepolisian Negara Republik Indonesia No. Polisi: B/3022/XII/2009/SDEOPS, December 14, 2009.

<sup>36</sup> Qanun Aceh Nomor 9 tahun 2008 tentang Pembinaan Kehidupan Adat dan Istiadat.

The people of Aceh have practiced many of these cases from the past until now. According to one of the MAA members, 18 customary cases are generally resolved in *meunasah* or *balee* in each *gampong*. The standard trial process is open to the public except for immoral matters that the public cannot attend. Religious leaders in Banda Aceh City said implementing customary courts in Aceh is generally carried out at night. The trial process carried out by the ordinary court functionaries was attended by the head of the panel, which was chaired by the *keuchik*, *tuha peut* and *imeum gampong* as well as a clerk who was in charge of recording the trial process and matters that arose during the customary court trial.

Practices in the community often use mediation as an alternative to resolving criminal cases that occur in the community, and many have succeeded in reaching a peace agreement. The question that arises is how the result of the peace agreement from a juridical perspective is whether it gets recognition from the law or has no legal consequences. In addition, the question is whether the peace result can remove the right to prosecution for the parties involved in the peace or whether the trial can still be carried out despite the peace agreement. In this section, the researcher will comprehensively elaborate on the perspective of legal science about the legal force of the peace result for both parties.

The criminal law provisions applicable in Indonesia are based on the Criminal Code inherited from the Dutch East Indies Government, which is then applied to Indonesian society until now. The philosophy of these provisions, which tends to be procedural and formalistic, ignores the philosophical values of Indonesian culture, including Aceh, which emphasizes the aspects of deliberation and consensus in resolving cases.<sup>37</sup>

Law enforcement, by prioritizing mediation in resolving criminal cases is a progressive effort that recognizes the cultural values in Indonesia and prioritizes consultation to reach an agreement. Acts of recognition without a clear and firm legal basis in national legal instruments have harmful consequences for law enforcers, even though what has been practiced is following the wishes of a society that wants to humanize humans.<sup>38</sup>

Law has a goal to achieve, which is to create an orderly society, creating order, balance, and Justice. Mochtar Kusumaatmadja said that human interests are expected to be protected by achieving ranking in the community. According to Satjipto Rahardjo, the presence of law is to integrate and coordinate interests that can clash with one another.<sup>39</sup>

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<sup>37</sup>Al Yasa' Abubakar, *Penerapan Syari'at Islam Di Aceh: Upaya Penyusunan Fiqih Dalam Negara Bangsa*, (Banda Aceh: Dinas Syariat Islam Aceh, 2013).

<sup>38</sup> David Anderson Hooker and Mara Schiff, “Introduction to Special Issue of Contemporary Justice Review on Reimagining Restorative Justice,” *Contemporary Justice Review: Issues in Criminal, Social, and Restorative Justice* 22, no. 3 (2019).

<sup>39</sup> Satjipto Rahardjo, *Ilmu Hukum*, Bandung: Citra Aditya Bakti, 2000.

The function of law in national development, according to Mochtar Kusumaatmadja, is described "as a means of community renewal" or means of action." Briefly put forward the following points of thought. *First*, that the law is a means of community renewal is based on the assumption that the existence of order or order in development or renewal efforts is something that is desired or even considered (absolutely) necessary; second, that the law in the sense of rules or legal regulations can indeed function as a tool (regulator) or means of development in the sense of channeling the direction of human activities in the order desired by growth or renewal.<sup>40</sup>

Second, this function is expected to be carried out by law in addition to its traditional role of ensuring certainty and order. In addition, this mediation will also have an impact on the emergence of a sense of brotherhood and social order in society.

## Conclusion

Complaint criminal cases resolved by mediation with non-litigation patterns practiced by law enforcement and the community in Aceh have fulfilled legal objectives. Two aspects of lawful purposes are fulfilled, namely, expediency and Justice. Legal certainty is not fulfilled because mediation cannot resolve criminal offenses. Legal objectives can provide values of practicality and Justice for the parties involved in a case. The solution is taken by asking for opinions from the perpetrator and the victim by not favoring one of the parties. The perpetrator is held accountable for his actions, and the victim gets compensation for the actions of the perpetrator who has harmed him. The mediation settlement pattern has fulfilled the benefits and Justice for the perpetrator and victim. With mediation, the case is not continued to the level of further investigation and is not submitted to the prosecutor's office because it is considered finished. The legal implications in the community towards criminal complaints that are resolved through out-of-court mediation have been followed, and there have never been any demands for law enforcement processes against the mediation results outlined in a peace deed. The results of mediation become a guideline for the parties and a reference for investigators to no longer investigate cases that have been successfully reconciled.

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