

THE ROLE OF THE POLICE IN SOCIAL CONFLICT MANAGEMENT BASED ON ALTERNATIVE DISPUTE RESOLUTION

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Abstract

This study aims to examine the role of the police in social conflict management based on alternative dispute resolution. The research method used is empirical juridical with a statutory approach. The results showed that the non-penal policy through Alternative Dispute Resolution (ADR) in the criminal justice system is an effort made by law enforcement officials to transfer a case from a formal process to an informal process. Alternative Dispute Resolution (ADR) is carried out to obtain a form of settlement that provides protection to the parties involved in the conflict. The authority to transfer a case from formal to informal proceedings is called the right of discretion. The implementation of Alternative Dispute Resolution (ADR) is based on the principle of "the postulate le salut du people est la supreme loi". This concept is a framework for thinking to find solutions in deciding actions in accordance with the conditions and developments of social conflict. The concept of Alternative Dispute Resolution (ADR) aims to create humane justice that brings the parties together to solve the problems that occur. Police procedures in handling social conflicts that occur in the community are through the concept of a conflict triangle. The Conflict Triangle is one useful and popular way to describe the complexity of conflict. The triangle consists of conflict situations, conflict attitudes, and conflict behaviors: 1) Conflict situations: misalignment of goals, needs, and interests of various parties. The sources of conflict situations include: social structure, social values, diversity, competition, change; 2) Attitude: concerns aspects of cognition (such as the construction of the "enemy") and emotions (such as hostility) experienced by the parties to the conflict. Sources of conflict include: aggressive instincts, personal tension, and group frustration; 3) Behavior: polarized and destructive actual activities, words, and behaviors of the conflicting parties.

Keywords: Police, Countermeasures, Conflict, Social, Alternative Dispute Resolution.

A. INTRODUCTION

This study focuses on the application of *non-penal policy* through *Alternative Dispute Resolution* (ADR) in social conflict management which is one of the effective steps to resolve social conflicts compared to the formal juridical approach carried out by the Indonesian National Police (Polri) within the framework of creating a conducive climate in the region as referred to in Presidential Instruction Number 2 of 2013 concerning Handling Security Disturbances in State and Law of the Republic of Indonesia No.7 of 2012 concerning Social Conflict Handling and Regulation of the Chief of the National Police of the Republic of Indonesia Number 8 of 2013 concerning Technical Handling of Social Conflicts with *entry points* for conflict handling are carried out through conflict prevention, conflict termination and post-conflict recovery with the consideration that the plurality of the Indonesian nation consisting of different ethnicities, religions, languages, cultures and customs can be a potential source of conflict that can destabilize internal security if not addressed early and integrated. (Lindawaty, 2016)

The phase of handling social conflicts based on Article 4 of Law Number 7 of 2012 concerning Social Conflict Handling and Article 5 of the Regulation of the Chief of the National Police of the Republic of Indonesia Number 8 of 2013 concerning Technical Handling of Social Conflicts relates to ADR that the scope of Conflict Handling includes:

- a) Conflict Prevention;
- b) Termination of Conflict; and
- c) Post-conflict Recovery as described below:

Conflict prevention phase. Conflict prevention is a series of activities carried out to prevent conflict through institutional capacity building by maintaining peaceful conditions in the community, developing a peaceful dispute resolution system, reducing potential conflicts, and building an Early Warning System (SPD). The development of a system of peaceful dispute resolution is carried out by: (Utami, Sumertha, 2019)

First, encourage customary institutions and/or social institutions to resolve disputes in the community through deliberation for consensus whose results are binding on the parties.

Second, prioritizing Restorative Justice in efforts to resolve disputes, especially against minor violations of the law or minor losses and/or perpetrators of children and the elderly, by:

- 1) Providing understanding to the community that not every legal problem is resolved through court hearings;
- 2) Encourage agreement between the disputing parties with an emphasis on the protection of victims;
- 3) Include third parties/mediators agreed by the disputing parties;
- 4) Remind and socialize the results of the agreement between the two parties as stated in a joint statement letter as a form of problem resolution; and
- 5) Remind and disseminate the results of the written agreement as a basis / material for consideration that the matter is not proceeded to court.

Third, settlement by law enforcement through the judicial process is the last step, if such steps as mentioned numbers 1 and 2 are not achieved.

Fourth, set an example to the community that members of the National Police should not be vigilante, arbitrary and commit acts of violence.

Law enforcement efforts through the criminal justice system against social conflicts are steps that are often taken by law enforcement officials who carry out functions in the field of investigation, especially against social conflicts that cause losses and victims, so that perpetrators will be processed until a judge's decision that convicts the perpetrator and imprisons the perpetrator. The legal process through the criminal justice system is essentially to seek material truth (*substantial truth*) in the form of fulfilling objective requirements in the form of one's behavior (*handeling*), consequences that are absolute requirements of delict, elements of unlawful nature formulated formally, elements that determine the nature of actions

(*voorwaarden die de strafbaarheid bepalen*), an unlawful element that incriminates the crime, and an additional element of a criminal act (*big komande voorwaarden van het strafbaarheid*). (Reese & Rosenberg, 1984)

On the other hand, the objectives of the criminal justice system according to Mardjono Reksodiputro are: *First*, to prevent people from becoming victims of crime. *Second*, solving cases of crimes that occur so that the community is satisfied that justice has been served and the guilty have been convicted so that the community feels satisfied. *Third*, try not to repeat the crime again. (Reksodiputro, 1994)

Problems that arise in the process of law enforcement against social conflicts that cause losses and victims are: *First*, the classification of legal norms that regulate it in the form of crimes or violations, in this case classified as crimes as regulated in the provisions of the Criminal Code must of course be processed with the criminal justice system. *Second*, the classification of the solutive rule of law approach so that social conflict management is not only oriented towards enforcement with a formal juridical approach (pursuing guilt and criminal accountability or error-oriented). The implications that arise certainly have not touched on the root of problem solving so that conflicts occur continuously and repeatedly. (Reksodiputro, 2021)

The subject matter of this social conflict prevention concept, which is caused by a conflict of interest hereinafter referred to as Conflict, is a violent feud and / or physical clash between two or more groups of people that last for a certain time and have a broad impact that results in insecurity and social disintegration so as to disrupt national stability hampering national development (Article 1 point 1 of Law No. 7 of 2012 concerning Social Conflict Handling).

The Police in carrying out their duties and authorities by developing a Police strategy, as referred to Article 19 paragraph (1) and paragraph (2) of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia In carrying out their duties and authorities, officials of the National Police of the Republic of Indonesia always act based on legal norms and heed religious norms, decency, decency, and uphold human rights; and In carrying out the duties and authorities as referred to in paragraph (1), the National Police prioritizes preventive measures. (Shamsuddin, 2008)

With reference to the strategy for handling social conflicts by the Government, the existing regulatory framework includes 3 (three) strategies: *First*, the regulatory framework in conflict prevention efforts such as regulations on conflict-sensitive development policies and strategies and conflict prevention efforts. *Second*, a regulatory framework for handling conflicts in times of conflict which includes stopping violence and preventing human or property casualties. *Third*, regulations for post-conflict handling, namely provisions related to the purpose of dispute resolution/legal process as well as the power of recovery, reintegration and rehabilitation. (S. Rahardjo, 1988)

Social conflict management carried out by the National Police is assisted by the TNI, and the Government is combined as much as possible with the roles of the National Police with the *Community Policing* strategy by prioritizing *problem solving*, namely the role of community security and control, as well as the role of protection, protection, and community services (Irsan, 1998)

B. REVIEW OF SOCIAL CONFLICT HANDLING

In carrying out its role, the National Police must have professional expertise and skills, in line with the orders of Article 30 paragraph (4) of the 1945 Constitution and Article 5 paragraph (1) of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia as a state instrument that plays a role in maintaining public security and order, enforcing the law, and providing protection, protection, and services to the community in the context of maintaining internal security. While Article 30 paragraph (3) of the NRI Constitution of 1945 the Indonesian National Army, hereinafter abbreviated as TNI, consisting of the Army, Navy, and Air Force, is a state instrument tasked with defending, protecting, and maintaining the integrity and sovereignty of the State.(Kusumaatmadja & Sidharta, 2000)

In the normative order, legal protection has indeed been recognized in philosophical and constitutional foundations in Indonesia based on the *rule* of law in the form of justice which is not only oriented towards retributive justice in Pancasila and the 1945 Constitution, but in its implementation in the form of the rule of law still focuses on legal protection by constructing retributive justice so that it is in uncertainty that causes public reaction to the enforcement of rules law. It can be described that legal inequality also occurs in the existence of indigenous peoples in Indonesia, although the constitution recognizes customary law as a source of law, namely Article 18 of the 1945 Amendment Constitution, but in social reality, state law with its laws and regulations still dominates legal reality. The implementation of customary law in public policy has not reflected the absorption of customary law as a source of law. In fact, there are still frequent conflicts between legal institutions and customary law communities in the field of land and natural resources management (Setiono, 2004)

Based on Article 4 of Law Number 7 of 2012 concerning Social Conflict Handling and Article 5 of the Regulation of the Chief of the National Police of the Republic of Indonesia Number 8 of 2013 concerning Technical Handling of Social Conflicts relating to ADR that the scope of Conflict Handling includes:

- a) Conflict Prevention;
- b) Termination of Conflict; and
- c) Post-conflict Recovery as described below:

The phase of termination of the conflict. Conflict cessation is a series of activities to end violence, rescue victims, limit the expansion and escalation of conflict, and prevent the increase in the number of victims and property losses through negotiation actions (soft power) to measured decisive actions (hard power) with measures related to ADR by stopping physical violence through mediation of the parties by involving customary institutions and / or social institutions, by:

- 1) looking for influential figures, including grassroots figures from the parties to the conflict to be included in conflict resolution;
- 2) bring together leaders to determine and agree on the handling measures to be taken, especially the first steps to dampen the emotions of the parties or masses in conflict;

- 3) bring together representatives of conflict parties accompanied by influential figures to find agreed conflict resolution solutions by taking into account local wisdom as outlined in written form;
- 4) encourage influential figures and parties present at the meeting to convey the results of the agreement to their respective groups; and
- 5) monitor the implementation and progress of the agreement to ensure that the conflict is completely resolved or has the potential to reappear; b. in the event that mediation has not reached an agreement, it must be pursued through negotiations to obtain the desired result; c. in the event that negotiations are not successfully reached, the National Police appeals to the parties to the conflict to exercise restraint and not to commit acts or acts that violate the law.(Hadimulyo, 1997)

Post-conflict recovery phase. Post-conflict recovery is a series of activities to restore the situation and improve relations that are not harmonious in society due to conflict to its original state, through Reconciliation activities, namely: a. mediation of permanent peace negotiations, including:

- 1) Inviting parties who play a role in the conflict to reconcile and formulate points of peace agreement;
- 2) Involve influential figures received by the parties to the conflict in order to provide understanding and encourage the realization of peace;
- 3) Empowering social institutions and/or customary institutions and paying attention to local wisdom in the implementation of negotiations;
- 4) Make mutual agreements by involving conflict parties, community leaders, traditional leaders, religious leaders, youth leaders, local governments and other relevant agencies;
- 5) Monitor and supervise the implementation of the signed collective agreement;
- 6) Avoid as far as possible the peace process that requires the abolition of law enforcement processes for perpetrators of lawlessness that cause casualties; and
- 7) Prevent unlawful acts during peace negotiations, including persecution, destruction and arson.(Djunaedi, 2000)

The application of non-penal policies through Alternative Dispute Resolution (ADR) is inseparable from the role of law enforcement officials in the frame of the *criminal justice system* which establishes the National Police as a sub-system of the criminal justice system itself. The National Police in carrying out their duties in the field of criminal law enforcement basically stands between two interests, namely interests that are in line with social goals and fulfill the objectives of criminal law, namely the creation of legal certainty.

Law in the context of public order requires that law is not only a means to achieve certainty but must pay attention to order in the midst of society. The implementation of law and order certainty in the midst of society carried out by the National Police allows conflicts to occur,

especially in controversial cases including banana theft cases in Cilacap Central Java, flip-flop theft cases in Central Sulawesi, cocoa / chocolate theft cases and many other problems, on the other hand on a large scale conflicts with economic backgrounds give birth to conflicts between mining and / or plantation companies with local communities, for example the cases of Mesuji Lampung and Palembang, the case of Sape / Bima West Nusa Tenggara, PT Freeport are conflicts between company employees and companies. Cases with socio-cultural backgrounds such as religious conflicts (Ahmadiyah and Cikesik cases), cultural clashes (Dayak with Bugis and Madurese or vice versa in Kalimantan), fights between Lampung residents and Balinese descendants, fights between residents in Sultra, wars between tribes in Papua, land disputes conflicts in North Sumatra and many more conflicts that occur, so that the National Police take steps not to implement a legal provision because its implementation will actually cause disorder in society (Marzuki, 2011) (Human Rights Support Facilities, 2009) (Galingging, 2017)

The action taken by the National Police is the application of non-penal policy principles through Alternative Dispute Resolution (ADR) with the aim of realizing consensus through deliberation to resolve conflicts that occur. Basically, deliberation for consensus is the values contained in Pancasila as the source of all sources of law in Indonesia. (Sugiarto, 2019)

The non-penal policy through Alternative Dispute Resolution (ADR) imposed in Indonesia is a manifestation of the transplantation of foreign legal systems into the Indonesian legal system. Based on the legal principle regarding legal transplantation that legal transplantation cannot be done by simply imitating, or taking a legal regulation from another legal system, but must pay attention to the conditions and culture of the community where the new law as a result of the transplant will be enforced including abstracting the values adopted by the community in customary law. (Kapindha, et al, 2014) (Anggoro, 2017)

It can be exemplified by the non-penal policy model through Alternative Dispute Resolution (ADR) in the legal system that has been institutionalized in Indonesian society, especially people in North Sumatra. Batak customary law communities know the terms Hula-hula, Dongan Tubu and Boru to solve legal problems that occur in the midst of Batak indigenous peoples driven by the Dalihan Natolu Institute. It can also be exemplified for Javanese indigenous peoples known as "rembug bareng" (musyawarah), in solving problems and deciding something that concerns the interests of many people, done by deliberation. Using this deliberation will be able to produce decisions or agreements that can satisfy most of the citizens of the community. (Zunnuraeni, 2013)

Thus it can reduce the emergence of conflicts in society. In other regions, for example, indigenous tribes in Papua, to resolve disputes that occur in the community, a stone burning ceremony is held. The tradition of burning stones is one of the important traditions in Papua in the form of cooking rituals together with residents of one village that aims to be grateful and friendly. There are several terms for stone burning ceremonies in Papua such as Gapiia (Paniai), Kit Oba Isogoa (Wamena), or Barapen (Jayawijaya) (Jailani, 2011)

Given the limitations that exist in criminal law, one of which is a new type of crime can only be overcome by criminal law if it has been made a criminal offense as a consequence of adhering to the principle of formal legality as formulated in Article 1 paragraph (1) of the

Criminal Code derived from WVS. Therefore, crime prevention must also be carried out using other means outside the criminal law (*non-penal policy*). These policies are such as policies in the context of efforts to improve the standard of living and welfare of the community, policies in the fields of health, public education and so on (Hasan, 2019)

Non-penal efforts occupy a key and strategic position in the overall criminal political effort. The key and strategic position in tackling crime was also affirmed in various UN Congresses on "The *Prevention of Crime and the Treatment of Offenders*" as follows:

1. Crime prevention and criminal justice should not be treated as isolated problems and dealt with *by simplistic and fragmentary* methods, but should be seen as more complex problems and addressed with broad and comprehensive policies of action;
2. Crime prevention should be based on eliminating the causes of the conditions that cause the crime, the elimination of such causes and conditions should be *the basic crime prevention strategy*;
3. The main causes of crime in many countries are social inequality, social discrimination, low standard of living, unemployment and illiteracy among large sections of the population;
4. Crime prevention and criminal justice should be considered in relation to economic development, political systems, socio-cultural values and new world/international changes.

Law enforcement carried out by the National Police is an action to hold perpetrators accountable. The concept of criminal responsibility for perpetrators of crimes must certainly begin with criminalization which states that the perpetrator's actions are a criminal act and is the basis for conducting investigations in the context of law enforcement, the basic norms of criminal law enforcement adopted in the conception of Indonesian criminal law are based on the Criminal Procedure Code which requires an act cannot be punished except based on statutory provisions. (Ha, 2001)

The formulation contains elements including: *First*, criminal law must be sourced from law, this principle is called the principle of legality (*lege*), because the authority in carrying out judicial duties related to statutory provisions will avoid arbitrariness or arbitrary personal judgment. *Second*, the principle that criminal provisions in law should not apply retroactively (non-retroactive principle). Crime mitigation is still carried out integrally using criminal sanctions. (Adji, 1998)

The actions taken by the National Police in the application of non-penal policy principles through Alternative Dispute Resolution (ADR) are basically also aimed at working the law on a very complex socio-cultural matrix as a form of the main task of the National Police in addition to law enforcement is servants, protectors and protectors of the community with an orientation approach to the realization of community security and internal security. (Personal, 2020)

C. DISCUSSION

1. The Role of the Police in Social Conflict Management

Handling social conflicts as stipulated in Law No. 7 of 2012 is less effective considering that social conflicts are developing dynamically, so social science constructivism is needed. Constructivism is a paradigm that is almost the antithesis of the notion that puts observation and objectivity in discovering reality or science. This paradigm views social science as a systematic analysis of *socially meaningful action* through direct and detailed observation of the perpetrators concerned. (Friedman, 2015)

Constructivism studies the various realities constructed by individuals and the implications of those constructs for their lives with others in constructivism, each individual has a unique experience. Thus, research with strategies like these suggests that every way that individuals perceive the world is valid. (Setiawan, 1995)

Along with the changes and development of an increasingly complex society, the resolution of social conflicts that exist in society needs to be increased in effectiveness. Resolution of social conflicts with the application of (Suteki, 2013) *non-penal policy* through *alternative dispute resolution* that is being initiated is considered to have a more positive impact and can prevent without using criminal law and change public views on crime and punishment through mass media. The establishment of norms in Law Number 7 of 2012 concerning Social Conflict Management is interpreted as a basis for seeing an effective enforceability of legal norms.

Handling social conflicts with the application of non-penal policies is interpreted as anticipatory steps carried out by the National Police by prioritizing proactive policing which leads to *community-oriented* policing and *problem-oriented* policing so that the implementation of duties can be effective and efficient. This paradigm is used to see the views of each individual based on reality and experiences that he lives himself in order to resolve existing social conflicts. Research uses a constructivist paradigm because this research wants to get the development of understanding that helps the process of interpretation of an event. (Raharjo & Space, 2011)

The Indonesian National Police (POLRI) is a state instrument that plays a role in maintaining public security and order, law enforcement, protection, protection, and service to the community in the context of maintaining internal security. Therefore, the National Police is required to continue to develop to be more professional and closer to the community. In other words, the National Police is required to develop itself into a civilian police. As a civilian police, the position of the National Police in the state organization has a dominant influence in the implementation of the police proportionally and professionally which is a condition for supporting the realization of *good governance*. (Karyadi, 1970) The Police in carrying out their duties and authorities by developing a Police strategy, as referred to Article 19 paragraph (1) and paragraph (2) of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia In carrying out their duties and authorities, officials of the National Police of the Republic of Indonesia always act based on legal norms and heed religious norms, decency, decency, and uphold human rights; and In carrying out the duties and authorities as referred to in paragraph (1), the National Police prioritizes preventive measures. (Stoic, 1996)

With reference to the strategy for handling social conflicts by the Government, the existing regulatory framework includes 3 (three) strategies: *First*, the regulatory framework in conflict prevention efforts such as regulations on conflict-sensitive development policies and strategies and conflict prevention efforts. *Second*, a regulatory framework for handling conflicts in times of conflict which includes stopping violence and preventing human or property casualties. *Third*, regulations for post-conflict handling, namely provisions related to the purpose of dispute resolution/legal process as well as the power of recovery, reintegration and rehabilitation. (Sadjijono, 2008a) Because the handling of social conflicts is very strong with the dimension of collectivity, the role of law enforcement and human rights carried out by the POLRI is assisted by the TNI, and the Government as much as possible combined with the roles of the POLRI with the Perpol strategy of *Community Policing*, by prioritizing *problem solving*, namely the role of community security and control, as well as the role of protection, protection, and community services. (Suyono, 2013)

In carrying out its role, the National Police must have professional expertise and skills, in line with the orders of Article 30 paragraph (4) of the 1945 Constitution and Article 5 paragraph (1) of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia is a state instrument that plays a role in maintaining public security and order, enforcing the law, and providing protection, protection, and services to the community in the context of maintaining internal security. While Article 30 paragraph (3) of the NRI Constitution of 1945 the Indonesian National Army, hereinafter abbreviated as TNI, consisting of the Army, Navy, and Air Force, is a state instrument tasked with defending, protecting, and maintaining the integrity and sovereignty of the State.

Social conflict management needs to be formulated through substance components by reducing values and norms in society by gaining legitimacy in state law as a form that the law is the end result of an agreement or a conflict in society. To cite Chambliss, the problem of law formation will always present itself as a power struggle in which the state is a weapon in the hands of the ruling layer. Thus, the purpose of law in the form of justice is only a resultant of the contestation of values that exist in society, not an endeavor that falls from the sky. In addition, social conflict management is functionalized through structural components with a non-penal policy approach in the form of *Alternative Dispute Resolutian (ADR)* with *the expected output* is restoration or improvement of conditions in line with components of public attitudes and values that are not only building regulations but building ideas, culture and ideals. (S. Rahardjo, 2012)

The ADR approach as a non-penal policy basically distributes the components that place state law the dominant legal force by interweaving semiotics of ideological, socio-cultural concepts and power structures. The placement of state law is inseparable from the historical development of the state. This concept was born from the development of the doctrine of rule of law that power must be based on law, meaning that the *rule of law* oriented to legal certainty brought by state law is legal certainty in an illusory sense. It ignores the chaos and complexity of values in social reality. Legal certainty in the perspective of state law is only aligned with the certainty of laws and regulations. (Apeloorn, 2009)

ADR seeks resolutions to solve problems so that mutual agreement becomes the goal of working the law on a very complex socio-cultural matrix, while law enforcement is the *ultimate remedium*.

This is in line with the classification of legal criminal purposes. The purpose of crime according to absolute theory was born in the classical school in criminal law. According to this theory, retaliation is the legitimacy of punishment. The state has the right to impose penalties because criminals have committed assault and rape on protected legal rights and interests. If the absolute theory states that the purpose of crime is in retaliation, then relative theory seeks the basis of punishment is the enforcement of public order and the criminal purpose is to prevent crime. (Soedjono, 2001)

The purpose of criminal law according to the classical school is based on 3 (three) pillars, namely: *First*, the principle of legality which states that there is no crime without a law, no criminal act without a law and no prosecution without a law. *Second*, the principle of guilt which contains that people can only be convicted for criminal acts committed intentionally or wrongly. *Third*, the secular principle of retaliation which states that concrete penalties are not imposed with the intention of achieving a beneficial result, but are commensurate with the severity of the act committed. Unlike the classical school in pidana law which aims to protect individuals from arbitrariness, the modern school in criminal law aims to protect society from crime. (Rahardjo, 2004)

The non-penal policy through *Alternative Dispute Resolutian* (ADR) in the criminal justice system is an effort made by law enforcement officials to transfer a case from a formal process to an informal process. *Alternative Dispute Resolutian* (ADR) is carried out to obtain a form of settlement that provides protection to the parties involved in the conflict. The authority to transfer a case from formal to informal proceedings is called the right of discretion. The implementation of ADR is based on the principle of "*the postulate le salut du people est la supreme loi*". This concept is a frame of mind to find a way out in deciding actions in accordance with the conditions and developments of social conflict (Salim, 2012).

The concept of *Alternative Dispute Resolutian* (ADR) aims to create humane justice that brings parties together to solve problems that occur "*conceptually the restorative paradigm begins with the nations that crime is an act against people and a violation of relationship as well as a breaking of the law. Restorative has become a frame work for thinking about ways of humanizing justice, of bringing victims and offender together in ways to provide oppurtunity for victims to receive explanation and reparation and for offender to be accountabel to the victim and the community, and for involving community members meaningfully in helping repair the wrong done to their neighborhoods.*

2. Police Procedures in Handling Social Conflicts

POLRI stands for Indonesian National Police. The police is one of the government institutions that plays an important role in the State, especially for the State based on law. The word police comes from the Greek *Politea*. The word was originally used to refer to "persons who became citizens of the city of Athens", later the meaning evolved into "city" and was used to refer to "all the businesses of the city". At that time cities were independent States, also called police,

so *politea* or *polis* was interpreted as the business and activities of the State, also including security activities. In England the term "Police" is used, which means the maintenance of public order and the protection of persons and their property from circumstances which are expected to constitute a danger or public nuisance and unlawful acts.(Police, 1999)

The Indonesian National Police (POLRI) is a state instrument that plays a role in maintaining public security and order, law enforcement, protection, protection, and service to the community in the context of maintaining internal security. Therefore, the National Police is required to continue to develop to be more professional and closer to the community. In other words, the National Police is required to develop itself into a civilian police. Proportional and professional policing which is a condition for supporting the realization of *good governance*.(Djamin, 1995)

The Police in carrying out their duties and authorities by developing a Police strategy, as referred to Article 19 paragraph (1) and paragraph (2) of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia In carrying out their duties and authorities, officials of the National Police of the Republic of Indonesia always act based on legal norms and heed religious norms, decency, decency, and uphold human rights; and In carrying out the duties and authorities as referred to in paragraph (1), the National Police prioritizes preventive measures.

Article 3 of Law No. 2/2002 on the Indonesian National Police states:

"The National Police of the Republic of Indonesia is a state instrument that plays a role in maintaining public security and order, enforcing the law and providing protection, protection, and services to the community in the context of maintaining domestic security"

Article 5 also states:

"The National Police as carrying out police functions in carrying out their duties is assisted by special police, civil servant investigators and other forms of self-government security"

The spirit carried by article 3 and article 5 of Law No. 2/2002 is basically what framed the emergence of the concept and program of "community policing" which is basically a new paradigm of policing along with the change in the paradigm of democracy in this country. Community-oriented police.

The concept of *community* policing, developed by Robert J. Trojanowicz, implies a very broad sense that could mean, a philosophy or set of values that guide the task of policing, a strategy, or a program or tactic. The characteristic characteristics that this concept contains, among others, the process of identification, analysis and problem solving; responsibility of each unit permanently assigned to a territory; delimitation of territories that do not necessarily refer to the political system; and decentralization and delegation of authority. *Community policing* is not just a program, but also reflects an operational philosophy that permeates every aspect of the organization. The fundamental idea behind this concept is community involvement in police problem-solving efforts from the planning stage to the assessment of the results.(Sadjijono, 2008b)

Community policing is understood to mean that police should see themselves as *community advocates* as well as public partners in the problems they face. With such a philosophy, the character and employability expected of police officers are as generalist individuals rather than specialists in the environment of decentralized police organizations. What the statement implies, is basically about improving public and police relations, and building social trust in the police as an institution.

It also concerns how to improve public consultation and cooperation with communities in identifying priority security issues. Another issue covered here, how to increase the legitimacy and accountability of the police in carrying their responsibilities before the public. The paradigmatic shift of policing will involve many consequences that require a long process, even theoretically going through an anomalous process. A paradigm is a consciousness arising from an anomaly, a deviation from the normal state established by the old paradigm as stated by Thomas S. Kuhn (1970) in his book *The Structure of Scientific Revolutions*.

In an effort to separate the state (political society) and civil society, Gramsci began with three conceptualization boundaries in discussing hegemony, namely economics, state (political society) and civil *society*. All of this points to the identification of the links between social formations that form the basic outline of the conceptualization of hegemony. Economy as the first boundary is used to mean the most dominant mode of production in society. The mode of production includes product techniques and social relations of production that are fostered by the emergence of social class differences and the meaning of ownership of production. The second boundary is the state, which means the place where violent practices arise (police and other coercive apparatus), and the occurrence of the state bureaucracy. (Marbun, 2012)

In this context, Gramsci identified the state bureaucracy as a civil service, welfare and educational institution. And the third limitation, civil society, refers to other organizations outside the state in a social formation outside the part of the material and economic production system supported and implemented by people or components outside the first and second boundaries. Examples of major components of civil society are religious institutions. All three boundaries must have a clear demarcation, although Gramsci said, at the level of analysis and e, it often happens that some parts of organizations and institutions may be within a boundary, two or even appear within all three boundaries.

Community-based policing is not just a paradigm in the context of law enforcement and regulations, but more than that, a paradigm of people-centered approach. Following the opinion of Hesta Groenewald and Gordon Peake (2004), the basic principles of *community-based policing* are: 1) *Policing by consent, not coercion*. 2) *The police as part of the community, not apart from it*. 3) *The police and community working together to find out what communities needs are*. 4) *The police, public and other agencies working together in partnership*. 5) *Tailoring the business of policing to meet community needs* (Saragih & Kusnardi, 2005) .

In line with the mandate of Law No. 2/2002, in anticipating and resolving various conflicts in local communities, the police ranks are required to be able to position themselves as neutral zone institutions that function as "*safety valve institutions*" in reducing and resolving horizontal conflicts within the community.

Police procedures in handling social conflicts that occur in the community are through the concept of a conflict triangle. The Conflict Triangle is one useful and popular way to describe the complexity of conflict. The triangle consists of conflict situations, conflict attitudes, and conflict behaviors: 1) Conflict situations: misalignment of goals, needs, and interests of various parties. The sources of conflict situations include: social structure, social values, diversity, competition, change; 2) Attitude: concerns aspects of cognition (such as the construction of the "enemy") and emotions (such as hostility) experienced by the parties to the conflict. Sources of conflict include: aggressive instincts, personal tension, and group frustration; 3) Behavior: polarized and destructive actual activities, words, and behaviors of the conflicting parties.

Furthermore, the role of the police force in the conflict triangle can be described as follows:

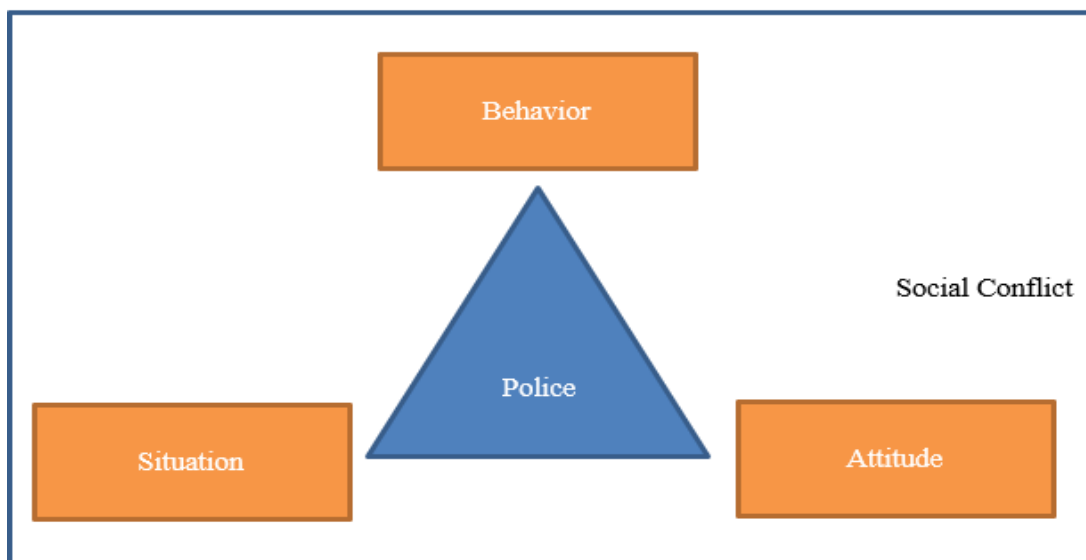


Figure 1: The Role of Police in the Conflict Triangle

Based on the concept of the conflict triangle, the procedures or steps of the police in handling social conflicts in the community are as follows:

a) Understanding Conflict Situations, Attitudes, and Behaviors

The first step in handling social conflicts carried out by Keploisian is Understanding Conflict Situations, Attitudes, and Behaviors Conflict situations as follows: (Rakhmat, 2005)

Understand the things that cause conflict such as misalignment of goals, needs, and interests of various parties. The sources of conflict situations include: social structure, social values, scarcity, competition, change.

Studying the Attitudes of the Parties to the Conflict: concerns aspects of cognition (such as the construction of the "enemy") and emotions (such as hostility) experienced by the parties to the conflict. Sources of conflict include: aggressive instincts, personal tension, group frustration;

Monitor and Investigate the Behavior of Parties to the Conflict: the actual activities, words, and behaviors that are polarized and destructive of the conflicting parties.

The occurrence of social conflict must be triggered by a cause. The triggers for social conflict also vary depending on life in a region and the life of certain communities. Basically, the occurrence of social conflicts is caused by differences in views, differences in perception, differences in interests, lack of communication, competition or competition, differences in status and culture, egoism, discrimination, and hatred.

Social conflict can also be caused by acts of crime such as murder, torture, rape, and other crimes. The causes of social conflict in one region with another region are not necessarily the same, in general social conflicts are caused by certain elements such as:

- 1) The existence of tension expressed in people's lives.
- 2) There are goals or objectives or fulfillment of different, different or conflicting needs
- 3) Little possibility for the fulfillment of needs to be felt.
- 4) The possibility of one party hindering the other party from achieving a goal.
- 5) The existence of interdependence.

In Law Number 7 of 2012 concerning the handling of social conflicts, especially in Article 5 explains that social conflicts are caused or originate from:

- 1) Problems related to politics, economics, and socio-culture;
- 2) Religious and/or inter-religious, inter-ethnic, and interethnic clashes;
- 3) Disputes over village, district/city, and/or provincial boundaries;
- 4) Natural resource disputes between communities and/or between communities and business actors; or
- 5) Unequal distribution of natural resources within society.

After understanding the things that cause the conflict, the attitude of the parties to the conflict, as well as the behavior of the parties to the conflict. So the next stage is to make a report on the conflict situation, which is then continued by communicating with the parties to the conflict.

b) Communication with Parties to the Conflict

Some of the factors that cause conflict include the following: (Littlejohn & Foss, 2009)

1. Different cultural backgrounds thus form different personalities. People who come from different cultures often have difficulties when it comes to interacting with people from other cultures.
2. The differences of each individual. In a relationship, everyone has attitudes and feelings that sometimes rub against others. Misaligned thoughts can lead to conflict.
3. Differences in interests between groups or individuals. Each individual or group has its own interests. When people do things for different purposes, they can have disagreements.

4. Rapid and sudden changes in values in society. If there is a sudden change in values in society, those who still hold old views can have problems with those who are more modern.

When conflicts have occurred between individuals or groups, a number of ways must be done to resolve them. One way that can be taken is to build good communication. Here are some steps that can be done: (Hasbiansyah, 2008)

1. Awareness from both sides that the conflict must be resolved. When only one party wants to resolve the conflict, communication usually becomes unidirectional and ineffective. Communicate existing issues so that conflicts can be resolved immediately.
2. Make sure both parties focus on the problem, not attack personally. When talking about conflict, don't bring up personal issues that have nothing to do. This can slow down conflict resolution because our interlocutors can be provoked by emotions.
3. All parties must accept a mutually agreed solution. When the conflict has been discussed, do not run away from the agreed solution. If there is only one party that does not follow the agreement, then a new conflict will reappear.
4. Communicate as before without any change after the conflict occurs. Don't hold grudges against others when the conflict is over. Make conflict a way to get to know the other person better and strengthen relationships in the future.

Police duties may be disrupted as communication with other parties is hampered. For example, police engaged in arguments with members of the public while escorting anti-corruption demonstrations. People forced their way into the capitol, but police blocked them. In fact, there are often mutual pushing actions between the two parties so that the situation is chaotic. How police and the public communicate will determine how well both sides resolve issues. The more effective the communication, the better the problem can be solved, the closer and warmer the police's relationship with the other party. (Rakhmat, 2007)

Effective communication depends on communication skills in various occasions. Two important skills that can create effective communication, namely:

- a. Expressing
- b. Listening.

Expressing helps a person express something he thinks and feels. Communication failed because the police and the other party did not clearly disclose what was of concern. One of the obstacles is prejudice against others so that it can distort the message to be conveyed.

To smooth communication, one needs to understand and master six principles:

- (1) Clarity,
- (2) Immediacy,
- (3) Non-Judgment,
- (4) Consistency,
- (5) Openness, and
- (6) Conformity.

Effective communication requires effective listening skills, not pretend listening. Silence when others speak does not mean listening. A person can also pretend to listen in order to be liked, perceived as kind, and other motivations. This attitude causes the listener not to hear what is the interests and needs of the speaker, thus hindering the communication process. Effective listening aims to create trust and close and warm relations between parties. (Kriyantono, 2006)

c) Taking Action in Social Conflict Management

The duties and authorities of the Police related to social conflict management are regulated in Article 13 of Law Number 2 of 2002 which states that the main duties of the National Police of the Republic of Indonesia are:

- a) Maintain public security and order,
- b) Enforce the law, and
- c) Provide protection, protection and service to the community.

In relation to the duty of the police in maintaining public security and order and enforcing the law, the police as law enforcement officers play an important role in preventing and overcoming social conflicts.

In carrying out the main duties as intended in Article 14 of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia, the Police are tasked with:

- a. Carry out regulations, guard, escort, and patrol community and government activities as needed.
- b. Organizing all activities in ensuring safety, order, and smooth traffic on the road.
- c. Fostering the community to increase community participation, public legal awareness and citizen compliance with laws and regulations.
- d. Participate in the development of national laws.
- e. Maintain public order and ensure public safety.
- f. Coordinate, supervise, and provide technical guidance to special police, civil servant investigators, and other forms of self-government security.

- g. Conduct investigations and investigations into all criminal acts in accordance with the criminal procedure law and other laws and regulations.
- h. Organizing police identification, police medicine, forensic laboratories, and police psychology for the benefit of police duties.
- i. Protect the safety of life, property, society, and the environment from disturbances of order or disasters including providing assistance and assistance by upholding human rights.
- j. Serve the interests of community members temporarily before being handled by agencies and one authorized party.
- k. Provide services to the community in accordance with interests within the scope of police duties.
- l. Perform other duties in accordance with interests within the scope of police duties.

In order to carry out the duties as referred to in Articles 13 and 14 the National Police of the Republic of Indonesia has the authority:

- a. Receive reports and/or complaints.
- b. Help resolve disputes among community members that may disturb public order.
- c. Prevent and overcome societal ills.
- d. Monitor flows that can cause division or threaten the unity and unity of the nation.
- e. Issue police regulations within the scope of police administrative authority.
- f. Carry out special checks as part of police action in order to prevent.
- g. Perform the first action on the scene.
- h. Taking finger syndicates and other identities and photographing a person.
- i. Seeking information and evidence.
- j. Organizing a national criminal information center.
- k. Issue permits and / or certificates needed in the context of community service.
- l. Provide security assistance in the trial and implementation of court decisions, other agency activities, and community activities.
- m. Receive and store found items for a while.

Departing from the description above, it is clear that the main duties of the police include maintaining public security and order, law enforcement, as well as protection, protection and service to the community. In this case, the duty of the police to maintain public order and security is contained in the notions of preventing (*prefentive*) and eradicating (*repressive*)(Soedjono, 2005)

Negotiation is considered an ideal way of resolving problems because it avoids unnecessary costs, such as death and property damage, and puts forward strategic calculations. In addition, negotiations can be used to deal with various types of issues ranging from the family level to the international level involving countries. The main advantages of this negotiation are not shared by other approaches, such as solving problems through war and law. However, one of the obstacles to negotiation that until now has not been overcome is how difficult it is to bring the warring parties to the negotiating table. (Presetyo, 2014)

There are two types of negotiations in handling social conflicts in society, namely:

1. Distributive negotiation refers to something that is negotiated in limited quantities. Each of those who negotiate with this type strives to achieve one-sided interests and tends to sacrifice the interests of the other party (win-lose solution). Price negotiation between sellers and buyers is one example. The seller offers the goods at the highest possible price whereas the buyer wants the opposite. In such a situation, negotiations are a dead price for both (fixed pie). Distributive negotiation usually involves interactions that will not be repeated in the future so that long-term relationships with negotiating opponents become unimportant. Bargaining is a pattern of communication that dominates the distributive negotiation process.
2. Integrative negotiation means negotiations that combine several parts into a unified whole. Different from distributive negotiation, the integrative type embodies the interests of all parties involved in the negotiation (win-win solution). In addition, the integrative type prioritizes the importance of cooperation so as to create trust and good relations between the negotiating parties. Collaboration and problem solving are communication patterns that dominate the integrative negotiation process.

Some things that need to be considered in being a negotiator or mediator as a mediator of conflicts include;

- a. Negotiators need to take into account the costs incurred to come up with an agreement under BATNA. Cost estimation requires calculating short and long-term gains and losses.
- b. Feasibility: The negotiator needs to assess and decide which options he considers realistic.
- c. The impact of the many options available, negotiators need to determine which option can have a positive influence on their condition at that time.
- d. The negotiator must be aware of the consequences of each choice made.

POLRI as the front line in maintaining public security and order, its duties in the midst of the community objects include people in certain areas inhabited by the community, so the potential that exists in the community must be utilized so that it can be utilized in order to achieve the main tasks of the POLRI. For this reason, this potential must be sought to be able to participate in efforts to create conditions for the Unitary State of the Republic of Indonesia that is safe and orderly and can jointly realize the life of the community of *kerta raharja* order.

The non-penal policy through *Alternative Dispute Resolution* (ADR) in the criminal justice system is an effort made by law enforcement officials to transfer a case from a formal process to an informal process. *Alternative Dispute Resolution* (ADR) is carried out to obtain a form of settlement that provides protection to the parties involved in the conflict. The authority to transfer a case from formal to informal proceedings is called the right of discretion. The implementation of *Alternative Dispute Resolution* (ADR) is based on the principle of "*the postulate le salut du peuple est la supreme loi*". This concept is a framework for thinking to find solutions in deciding actions in accordance with the conditions and developments of social conflict. The concept of *Alternative Dispute Resolution* (ADR) aims to create humane justice that brings the parties together to solve problems that occur

The entrance to the implementation of ADR as mediation is through discretion as the authority of the National Police. The legal basis for discretion for officers of the National Police of the Republic of Indonesia (Polri) in carrying out their duties can be seen in Law Number 02 of 2002 concerning the National Police of the Republic of Indonesia in Article 15 paragraph (2) letter k, it is stated that the National Police of the Republic of Indonesia in accordance with other laws and regulations is authorized to carry out other authorities that fall within the scope of police duties. The problem is that so far Penal mediation has been carried out without a clear measure. How much is the size of the compensation, the competence of investigators in handling penal mediation issues, to the legality or validity of the implementation of penal mediation.

The policy of overcoming social conflicts through *non-penal* channels is more of a preventive measure for the occurrence of a crime. Therefore, the main objective is to deal with the conducive factors that cause crime to occur that center on social problems or conditions that can directly or indirectly cause or foster crime. Thus, judging from the crime reduction policy, these *non-penal* businesses have a strategic position and play a key role that must be intensified and effective.

Social conflict management needs to be formulated through substance components by reducing values and norms in society by gaining legitimacy in state law as a form that the law is the end result of an agreement or a conflict in society. To cite Chambliss, the problem of law formation will always present itself as a power struggle in which the state is a weapon in the hands of the ruling layer.

Thus, the purpose of law in the form of justice is only a resultant of the contestation of values that exist in society, not an endeavor that falls from the sky. In addition, social conflict management is functionalized through structural components with a non-penal policy approach in the form of *Alternative Dispute Resolution* (ADR) with *the expected output* is restoration or improvement of conditions in line with components of public attitudes and values that are not only building regulations but building ideas, culture and ideals. The ADR approach as a non-penal policy basically distributes the components that place state law the dominant legal force by interweaving semiotics of ideological, socio-cultural concepts and power structures.

Legal certainty in the perspective of state law is only aligned with the certainty of laws and regulations. ADR seeks resolutions to solve problems so that mutual agreement becomes a goal with the work of law on complex socio-cultural.

D. CONCLUSION

The non-penal policy through *Alternative Dispute Resolutian* (ADR) in the criminal justice system is an effort made by law enforcement officials to transfer a case from a formal process to an informal process. *Alternative Dispute Resolutian* (ADR) is carried out to obtain a form of settlement that provides protection to the parties involved in the conflict. The authority to transfer a case from formal to informal proceedings is called the right of discretion.

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The National Police of the Republic of Indonesia is a state instrument that plays a role in maintaining public security and order, enforcing the law and providing protection, protection, and services to the community in the context of maintaining domestic security. The National Police as carrying out police functions in carrying out their duties is assisted by special police, civil servant investigators and other forms of self-initiative security

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