

***SETTLEMENT OF CRIMINAL CASES OF CHILD
MOLESTATION THROUGH ALTERNATIVE DISPUTE
RESOLUTION***

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ABSTRACT

Children are the most vulnerable subjects to become victims of crime, crimes that often occur among children, one of which is sexual violence such as fornication, lewd acts regulated in Chapter XIV book II concerning Crimes Against Decency, obscenity is regulated in Article 289 of the Criminal Code. The rise of obscenity cases that occur in Indonesia does not rule out the possibility that it also occurs in Lhokseumawe, according to data found at the Lhokseumawe Police Station that many cases of obscenity must be stopped due to lack of evidence so that the settlement of obscenity cases must be resolved by mediation based on Aceh Qanun Number 9 of 2008. The purpose of this study is to find out how the perspective of Islamic law on solving the crime of molestation against children using Aceh Qanun Number 9 of 2008. The research method uses an empirical juridical type using a qualitative and descriptive approach. The results of the research conducted are known that cases of child abuse are resolved through *Alternative Dispute Resolution* (ADR) by means of more efficient mediation, because this is in line with the principle of expediency in criminal law, and is supported by Aceh Qanun Number 9 of 2008 concerning the Development of Customary Life and Customs which is the process of solving something by family means with the aim of improving.

Keywords: *Obscenity, Alternative Dispute Resolutin, Mediation, Qanun No.9 Year 2008*

INTRODUCTION

Social life in society will not be separated from the so-called conflict or social conflict between two different parties or groups. The emergence of conflicts and conflicts that exist in society is not without cause, but there are several factors behind the emergence of these conflicts. The trigger for conflict

is usually caused by differences in goals or social changes resulting in crime. Usually victims of crime are only adults who concern property, but nowadays children have also become victims of crime.

Children are trusts and gifts given by God to be nurtured and maintained, in themselves attached dignity and dignity as a full human being, therefore children are very valuable assets for life not only for parents but also for a country because children are the next generation of young people who are the next generation of national struggle ideals.¹

Article 28B paragraph (2) of the 1945 Constitution states that: "Every child has the right to survival, growth and development and the right to protection from violence and discrimination". It can be concluded from the explanation of the article that the state clearly regulates what rights children must get in their lives. In essence, adults should help children to obtain their rights and legal protection, but in reality there are many incidents of crimes committed by adults against children around them.

Article 1 point 2 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, says that: "Child protection is all activities to guarantee and protect children and their rights in order to live, grow, develop and participate, optimally in accordance with human dignity and dignity, and get protection from violence and discrimination".

One of the crimes that often occur among children is the criminal act of sexual violence such as fornication, in criminal law in Indonesia adult sexual attraction to children is categorized as one form of crime that is threatened with criminal penalties.² Obscene acts are regulated in Chapter XIV book II concerning Crimes Against Decency, the crime of obscenity is regulated in Article 289 of the Criminal Code which reads: "Whoever by force or threat of violence compels a person to commit or allow to be done to himself obscene acts, shall be punished for committing acts that attack honor, with a maximum imprisonment of nine years".

Cases of sexual abuse are rife in the city of Lhokseumawe, Aceh Province. The Aceh police chief called on the perpetrators of abuse to be severely punished, if necessary, the media crew took part in publicizing in the mass media. This is evident in a press interview contained in an online news in iNewsAceh.id, Aceh Police Chief Irjen Pol Ahmad Haydar stated: "The rise of obscenity cases is a big concern for me, especially in handling obscenity cases that have recently been handled by the Lhokseumawe Regional Police".³ Data evidence obtained in the field recorded 35 cases of obscenity that occurred in Lhokseumawe throughout 2023, this number of cases increased when compared to the number of obscenity cases in 2022 which only recorded 28 cases.

In its provisions, obscenity is included in pure offense or ordinary offense, which means offense that can be processed directly by the state without the consent of the victim or the injured party. In other words, in the absence of a complaint or even if the victim has withdrawn his report, the state still has an obligation to continue the case process.⁴ But in reality, there is a handling of obscenity criminal

¹ Abu Huraerah, *Violence Against Children*, (Nuasa Bandung, 2006).

² Ismantoro Dwi Yuwono, *Application of Law in Cases of Sexual Violence Against Children*, Pustaka (Yustisia, 2015).

³ Nur Ichsan Yuniarto, "ACEH POLICE CHIEF ORDERS PERPETRATORS OF SEXUAL ABUSE IN LHOKSEUMAWE TO BE SEVERELY PUNISHED", <https://aceh.inews.id/berita/kapolda-aceh-perintahkan-pelaku-pencabulan-di-lhokseumawe-dihukum-severely>. Retrieved August 10, 2023.

⁴Online Legal Team, *the Difference Between Common Delik and Complaint Delik and Examples*, <https://www.hukumonline.com>. Accessed August 5, 2023

cases that are stopped by Investigators at the Lhokseumawe City Resort Police (Polres Lhokseumawe).

The case experienced by the victim with the initials AL (17) must be stopped because there is no strong evidence as stipulated in Article 184 Paragraph (1) of the Criminal Procedure Code, this often happens because sexual abuse events are rarely carried out in open places or crowds so it is very difficult to reveal obscenity crimes that do not leave marks on the victim's body. Law enforcers in implementing the principle of legal certainty and the principle of justice should first consider the principle of expediency, as Jaremy Bentham argues in his book *Introduction to the morals and legislation* which states that law solely aims to realize what is beneficial for people. What is beneficial to one person may harm another, so according to utilitis theory the purpose of law is to guarantee as much happiness as possible in as many people as possible.⁵

Aceh as a province that highly upholds Islamic law prioritizes peace to build a harmonious and balanced community life system that is pleased by Allah Subhanahu Wa Ta'ala. So that in Aceh Qanun Number 9 of 2008 concerning the Development of Customary Life and Customs contains all levels of society to carry out the development and development of indigenous life in Aceh. Therefore, if there is a dispute or dispute that occurs, it is better to resolve it through *Alternative Dispute Resolution* by mediation.

Based on this background, the author feels interested in compiling a scientific paper with the title: Settlement of Criminal Cases of Child Abuse through *Alternative Dispute Resolution*.

RESEARCH METHODS

Research Methods is an approach to what as well as how will be applied in research.⁶ The research method used in this research is research with empirical juridical type, this research is often also called sociological legal research or field research, which points to primary data obtained directly from the community as the first source through field research activities. The location of this research is in the jurisdiction of the Lhokseumawe City Resort Police.

The data used in compiling this research was obtained through observation activities and interviews with respondents and informants as the main data source, as well as secondary data sources obtained by conducting literature studies from several readings in the form of laws and regulations, law books, scientific papers, journals, articles and other sources related to the problem of research objectives. Data analysis used in this research is qualitative analysis, namely data analysis techniques obtained from field research and literature will be analyzed in the form of descriptions so that in the end it can answer existing problems.

DISCUSSION

1. Definition of Obscenity

Moeljatno's sexual abuse is said to be "All acts that violate morality or heinous acts related to his sexual lust". The definition expressed by Moeljatno focuses more on acts committed by people based on their sexual lust, which directly or indirectly are acts that violate morality and can be punished.⁷

⁵ C.S.T.Kansil, *Introduction to Indonesian Law and Legal Procedure*, (Jakarta: Balai Pustaka, 1989).

⁶ Anonymous, *Academic Handbook*, ed. Unimal Faculty of Law (Lhokseumawe: Unimal Press, 2016).

⁷ I Gusti Ngurah Agung Sweca Brahmanta, et al., "JURIDICAL REVIEW OF THE CRIME OF CHILD MOLESTATION", *Journal of Legal Analogy* 3, No.3, (2021).

Another definition of fornication is an attempt to vent sexual appetite by a man against a woman and even against the same sex, which is very immoral and prohibited by applicable law.⁸ Obscenity is a sexual crime or despicable act that often occurs in society, the increase in cases of sexual abuse that occurs results in a sense of discomfort in society, especially this crime is often committed by those closest to the victim.

According to R. Soesilo, what is meant by lewd acts is all actions that violate decency (decency) or heinous acts, all of them in the environment of sexual lust, for example: kissing, groping pubic members, groping breasts, and so on. Sexual intercourse is also included in the definition of obscene acts, but in the Law it is mentioned separately.⁹

Obscene acts against children in the Criminal Code are regulated in articles 287, 288, 289, 290, and 291. While same-sex lewd acts regulated in articles 292 and 293 show that sexual harassment that falls into the category of lewd acts does not only take place between men and women but also against same-sex people. In addition to the Criminal Code, other regulations governing obscenity, article 76E of Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection, and Article 47 Jo Article 50 Qanun Aceh number 6 of 2014 concerning Jinayat Law.

2. *Understanding Alternative Dispute Resolution*

The settlement of criminal cases of obscenity can be done through two processes, the oldest settlement process through the litigation process in court then the development of the process of solving cases through non-litigation outside the court. The litigation process results in adversarial agreements that have not been able to embrace common interests, tend to create new problems, take a long time to resolve, require expensive costs, lack responsiveness, and result in hostility between conflict parties. Conversely, the settlement of cases through processes outside the court results in an agreement that is in nature, "win-win solution", guaranteed confidentiality of conflicts between the parties, avoided delays caused by procedural and administrative matters, resolved problems comprehensively in togetherness and while maintaining good relations between the parties, and in accordance with the principle of expediency in criminal law, namely creating. The only advantage of this non-litigation process is its confidential nature because the trial process and even the results of the decision are not published. Dispute resolution outside the court is generally called Alternative Dispute Resolution (ADR).

According to the perspective of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Alternative Dispute Resolution is an out-of-court dispute resolution institution based on the agreement of the parties to the exclusion of dispute resolution by litigation in court. Alternative Dispute Resolution is an out-of-court dispute resolution that is carried out peacefully, lately discussions about alternative dispute resolution are increasingly discussed, even need to be developed to overcome congestion and accumulation of cases in court.

There are many alternatives in dispute resolution, including:¹⁰

⁸ Chazawi Adami, *Criminal Acts of Decency*, (Jakarta: Raja Grafindo Persada)

⁹R.Soesilo, *The Criminal Code (KUHP) and its commentaries are complete article by article*, (Bogor: Politeia, 2016).

¹⁰ Wahyu Hariadi, "ALTERNATIVE DISPUTE RESOLUTION (ADR) IN LAW IN INDONESIA", *Journal of Civic Education Undiksha* 8, No.3, (2020). <https://doi.org/10.23887/jpku.v8i3.28627>

1. Arbitration
Arbitration is an Agreement made based on the agreement of the parties to resolve disputes decided by a third party (arbitrator) appointed by the parties to the dispute and agree to abide by the award taken by the arbitrator.
2. Negotiation
Negotiation is a process of bargaining to reach an agreement with other parties through a process of interaction, dynamic communication with the aim of obtaining solutions or ways out of conflicts currently being faced by both parties.
3. Mediation
Mediation can also be interpreted as an effort to resolve disputes between the parties by mutual agreement through a neutral mediator, and does not make decisions or conclusions for the parties but supports facilitators to conduct dialogue between parties in an atmosphere of openness, honesty, and exchange opinions to obtain consensus
4. Conciliation
Conciliation is a continuation of mediation, if there is an event where the parties to the dispute are unable to formulate an agreement, a third party or often called a conciliator may propose a way out of the dispute.
5. Expert Assessment
Expert assessment is an attempt to resolve disputes by the parties by asking for expert opinions or assessments on the conflict that is occurring.
6. Fact finding
Fact-finding is a way of resolving disputes by the parties by enlisting the help of a third person who performs the function of investigating or finding facts that are expected to clarify the problem and be able to end the dispute.

Alternative Dispute Resolution that is often used in the community usually uses mediation. Mediation is basically a negotiation that involves a third party who has expertise in effective mediation procedures, so that it can help in conflict situations to coordinate its activities so that it can be more effective in the bargaining process.

3. *Settlement of Criminal Cases of Child Abuse through Alternative Dispute Resolution*

Indonesia is a state of law, this is clearly regulated in Article 1 paragraph (3) of the 1945 Constitution which reads; "The State of Indonesia is a state of law". Every criminal act committed by an Indonesian citizen will definitely get a punishment commensurate with the crime as the legal adagium reads; "*Culpa Poena Par Esto*". The punishment for perpetrators of the crime of obscenity is regulated in article 289 of the Criminal Code which reads: "Whoever by force or threat of violence forces a person to commit or allow to be done to him obscene acts, shall be punished for committing acts that attack honor, with a maximum imprisonment of nine years".¹¹

In its provisions, the crime of obscenity is included in pure offense or ordinary offense, which means that the state has the obligation to settle the case to court. However, in reality on the ground, it is very difficult to uncover cases of child molestation because child victims of crime are difficult to communicate properly, and these obscenity crimes are often carried out in places far from the crowd and there is no evidence that can be shown by victims or reporters to be a reference for investigators to uncover this crime case.

¹¹Republic of Indonesia, *Law Number 1 of 1946 concerning the Criminal Code*, LN of 1958 Number 127

Investigators also often receive reports of obscenity crimes, but after the report is processed there is no element of obscenity in it. So that the perpetrator cannot be forced to admit his guilt, this is what causes korbam and perpetrators are often directed to resolve cases through Alternative Dispute Resolution so that no victim or perpetrator feels disadvantaged.¹²

Aceh as a province that highly upholds Islamic law prioritizes peace to build a harmonious and balanced community life system that is pleased by Allah Subhanahu Wa Ta'ala. So that in Aceh Qanun Number 9 of 2008 concerning the Development of Customary Life and Customs contains all levels of society to carry out the development and development of indigenous life in Aceh, Aceh Qanun regulates procedures for how to resolve disputes by means of peace using Alternative Dispute Resolution. The implementation of guidance and development of traditional life and customs can be carried out through the family environment, educational paths, community environment, work environment, and social community organizations.

Qanun Aceh prioritizes conflict resolution by means of customary peace not without reason, this is based on the principle of legal expediency which aims to ensure the greatest happiness for a large number of people. Legal expediency is a principle that accompanies the principle of justice and the principle of legal certainty, in implementing these two principles, the law should first consider the principle of benefit both for the person concerned himself and for the benefit of the community.¹³

Based on Supreme Court Regulation Number 1 of 2016, Alternative Dispute Resolution by mediation is required for all civil disputes before being processed by the court. However, because of the many criminal cases that occur today, the case is now starting to be in the spotlight so that the settlement of cases using alternative dispute resolution through mediation for several conflicts agreed by the parties as long as it does not intersect with the appearance of serious injuries and loss of life is considered an efficient way, in criminal law alternative Dispute Resolution is known as Restorative Justice.

Contained in Article 1 letter 3 of National Police Regulation Number 8 of 2021, Restorative Justice is the resolution of criminal acts by involving perpetrators, victims, perpetrators' families, victims' families, community leaders, religious leaders, traditional leaders, or stakeholder figures to jointly seek fair solutions to problems by emphasizing restoration to their original state. The basic principle of Restorative Justice is the restoration of victims who suffer from crime by providing compensation to victims, peace, perpetrators doing social work and other agreements.¹⁴

The case experienced by AL was finally resolved through Alternative Dispute Resolution by means of mediation in the community that protects perpetrators and victims while studying in Aceh. Paguyuban is a family organization, founded by like-minded people (blood) to build unity among its members.¹⁵ Islam recognizes the welfare of individuals and the social welfare of societies that complement each other instead of competing and contradicting each other because humans are essentially creatures who need each other.

¹² Investigator, *Women and Children Protection Unit*, Lhokseumawe Regional Police, 2023.

¹³ Khurul Anam, Inna Qomariyah, *Principles of Islamic Law in Modern Law*, (Yogyakarta: UIN Sunan Kalijaga, 2020).

¹⁴ https://news.detik.com/?_gl=1*1f974*_ga*aFdWZVgyZm12NTI4SXRfS1h2Vlg5LUJiaUhNeTF5R205WHIjdk9MS0FtZEVxLWpQVjg5cEpXZzFqa0ppOHBjdA..

*_ga_CY42M5S751*MTY5NjY0NDM3OS4zLjAuMTY5NjY0NDM3OS42MC4wLjA. Retrieved September 7, 2023.

¹⁵ Big Indonesian Dictionary (KBBI) Fifth Edition. *Official offline application of the Language Development and Development Agency*. Ministry and Culture of the Republic of Indonesia.

Article 72 of the Child Protection Law contains the role of society in child protection that can be carried out by individuals, child protection institutions, social institutions, non-governmental organizations, educational institutions, religious institutions, business entities and mass media. This shows that the community as a family social organization also has the right to play a role in resolving disputes related to children.

Alternative Dispute Resolution by means of mediation in the community is a way to resolve conflicts without causing new conflicts, from the case experienced by the AL there are several reasons so that Lhokseumawe Police investigators direct this criminal abuse case to be resolved first by intermediary mediation, including:

1. There was no evidence that could be presented by the victim;
2. There are no marks left on the victim's body for reference for investigators to develop the case;
3. The perpetrator of the crime of obscenity does not admit his actions;
4. The victim still asks for justice and validates that he is a victim of crime;
5. Perpetrators must obtain legal certainty;
6. Investigators in the jurisdiction of the Lhokseumawe Regional Police are based on Aceh Qanun Number 9 of 2008.

Alternative Dispute Resolution finally brings this case to a peaceful dispute settlement without causing new problems, this is done so as not to cause hurt by either party which will eventually lead to retaliation. The settlement of cases of criminal acts of child molestation through Alternative Dispute Resolution is in accordance with Islamic teachings that prioritize peace and are in line with one of the concepts related to forgiveness *Al-Afwu* which means "repair". In Islam also known the term *Al-Shulhu* which means an effort to reconcile two parties who are in dispute, with the aim that the problem or dispute ends.

CONCLUSION

The settlement of criminal cases of child molestation through Alternative Dispute Resolution in the Lhokseumawe Police Jurisdiction is guided by Aceh Qanun Number 9 of 2008 concerning the Development of Customs and Customs that prioritize Islamic values, and is also guided by the principle of legal expediency to create peace and provide what is beneficial for the community. The number of crimes that occur in Indonesia results in a backlog of cases in Court that must be resolved for a long time and require a very large budget, this is one of the reasons for the need to find Alternative Dispute Resolution to resolve disputes that occur in a short time so as not to drag on in chaos and can save the cost of resolving the dispute. The application of Alternative Dispute Resolution to cases that do not result in serious injury and death is an efficient way to improve the situation as before so as not to cause resentment of the parties or retaliation that is hated in Islamic teachings.

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