

# THE IMPLEMENTATION OF ALTERNATIVE DISPUTE RESOLUTION MODEL FOR CONFLICT RESOLUTION TO IMPROVE PUBLIC SERVICE OF INDONESIAN POLICE: SOCIETY CONFLICT RESOLUTION BY THE IMPLEMENTATION OF ALTERNATIVE DISP

**Submission date:** 12-May-2020 02:13PM (UTC+0700)

**Submission ID:** 322385978

**File name:** baru\_The\_Implementation\_Of\_Alternative\_Dispute.pdf (476.34K)

**Word count:** 8429

**Character count:** 47956

# INTERNATIONAL JOURNAL OF RESEARCH IN COMMERCE, ECONOMICS & MANAGEMENT

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# CONTENTS

Sr. No.	TITLE & NAME OF THE AUTHOR (S)	Page No.
1.	PSYCHOLOGICAL CONTRACT: A REVIEW OF CONCEPT, FORMATION AND MUTUALITY DEBATE <i>DR. K G SANKARANARAYANAN &amp; PARESH R. LINGADKAR</i>	1
2.	A STUDY ON DEALERS, DISTRIBUTORS, AND ENGINEERS PERCEPTION TOWARDS PIPE INDUSTRY IN NORTH GUJARAT WITH SPECIAL REFERENCE OF ASTRAL POLY TECHNIK LTD. <i>KALPESH B. PRAJAPATI &amp; MAHESH K. PATEL</i>	4
3.	FOR COMING EFFECT OF IRAQ'S ACCESSION TO THE (WTO) IN THE MANAGING OF TAX & CUSTOMS REVENUES <i>HUSAM YASEEN MOHSIN &amp; KEZHONG ZHANG</i>	9
4.	UNDERSTANDING THROUGH LITERATURE REVIEW THE BEHAVIOURS ASSOCIATED WITH SAFE DRIVING ON THE ROADS <i>RICHARD VINCENT D'SOUZA &amp; K JANARDHANAM</i>	15
5.	THE IMPLEMENTATION OF ALTERNATIVE DISPUTE RESOLUTION MODEL FOR CONFLICT RESOLUTION TO IMPROVE PUBLIC SERVICE OF INDONESIAN POLICE: SOCIETY CONFLICT RESOLUTION BY THE IMPLEMENTATION OF ALTERNATIVE DISPUTE RESOLUTION CASE STUDY IN POLRESTA SURAKARTA/SURAKARTA POLICE <i>RUDI HARTONO, DR. SRI SUWITRI, NYOMAN SERIKAT P. JAYA &amp; HARDI WARSONO</i>	22
6.	WORK LIFE BALANCE OF ENTREPRENEURS: A GENDER ANALYSIS <i>DR. KASAMSETTY SAILATHA &amp; DR. M. SHIVALINGE GOWDA</i>	27
7.	DETERMINANTS OF SESAME TRADERS' WILLINGNESS TO SUSTAIN THEIR TRADING THROUGH ETHIOPIAN COMMODITY EXCHANGE (ECX) IN ETHIOPIA <i>ASMELEASH ADDIS CHEKOL, DR. TESFATSION SAHLU DESTA &amp; RAHWA GEBRE TESFAHUNEY</i>	32
8.	FORMATIVE EVALUATION OF NIGERIA'S CONTRIBUTORY PENSION SCHEME IN NATIONAL OPEN UNIVERSITY OF NIGERIA, LAGOS <i>DR. CLEMENT IKENNA OKEKE</i>	42
9.	FACTORS THAT AFFECT LOAN REPAYMENT PERFORMANCE OF SMALLHOLDER FARMER BORROWERS FROM MICROFINANCE INSTITUTIONS IN ETHIOPIA: A SURVEY STUDY OF AMHARA CREDIT AND SAVING INSTITUTION (ACSI)-FOGERA WEREDA, AMHARA <i>ASNAKE WORKU WUBIE, DR. TESFATSION SAHLU DESTA &amp; RAHWA GEBRE TESFAHUNEY</i>	50
10.	IMPACT OF EXPORT EARNING INSTABILITY ON ECONOMIC GROWTH <i>DR. FIROZ ALAM</i>	58
11.	QUANDARIES OF INDIAN WOMEN DUE TO MISCONCEPTION REGARDING EMPOWERMENT CONCEPT <i>AMISHA SHAH</i>	62
12.	MICRO-FINANCING: ITS IMPACT ON ECONOMIC DEVELOPMENT OF RURAL PEOPLE: A STUDY ON THE SHGS LINKED WITH REGIONAL RURAL BANKS IN LAKHIMPUR DISTRICT OF ASSAM <i>SRI. DIGANTA KUMAR DAS</i>	65
13.	A STUDY OF PERCEPTION OF INDIVIDUAL INVESTORS TOWARDS MUTUAL FUNDS-WITH REFERENCE TO GUJARAT STATE <i>DR. CHETNA CHAPADIA (MAKWANA)</i>	70
14.	ECONOMIC EMPOWERMENT OF WOMEN THROUGH KUDUMBASHREE WITH REFERENCE TO PUNNALA GRAM PANCHAYATH OF PUNALLOOR, KOLLAM DISTRICT, KERALA STATE <i>LIGI JOLLY</i>	75
15.	NEED OF ENVIRONMENT CONSERVATION FOR THE SUSTAINABLE LIVELIHOODS <i>GHANSHYAM KUMAR PANDEY &amp; SEEMA KUMARI</i>	79
	<b>REQUEST FOR FEEDBACK &amp; DISCLAIMER</b>	83

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**THE IMPLEMENTATION OF ALTERNATIVE DISPUTE RESOLUTION MODEL FOR CONFLICT RESOLUTION TO IMPROVE PUBLIC SERVICE OF INDONESIAN POLICE: SOCIETY CONFLICT RESOLUTION BY THE IMPLEMENTATION OF ALTERNATIVE DISPUTE RESOLUTION CASE STUDY IN POLRESTA SURAKARTA/SURAKARTA POLICE**

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**ABSTRACT**

*The implementation of ADR for individual conflicts resolution in society is a breakthrough of POLRI (Indonesian Police) to improve public service. The writing is focused on the phenomenon in the implementation of ADR in Surakarta Police purposes to explain, to explore and to explain the aspects influencing the implementation of ADR policy for society conflict resolution in Surakarta Police. The implementation of ADR or Restorative Justice in Surakarta Police was still not running optimally, because ADR policy is still not detailed rules for the implementation. Moreover, the legal framework of the implementation has not been able to provide assurances for the outcome of resolution by ADR. Besides, investigator as a policy implementer was still passive and should wait for superior's order because of the less ability of investigator to understand the law and to communicate so it led into the less ability of investigator's discretion as policy implementer which raise a sense of afraid to report ADR results to the above unit. Furthermore, there was lack of budget for infrastructure and incentives for the investigator.*

**KEYWORDS**

Alternative Dispute Resolution, Public Service, Society.

**I. INTRODUCTION**

Maintaining order and safety of society is an absolute duty that must be carried by Indonesian Police on the side duty as protector and public servant as well as law enforcement (Momo Kelana: 2002 page 75). By those basic duties and regarding to Indonesian Police institution target, that is entirely devoted to the public, then the institution should be positioned as a public institution not a private institution.

The role of Indonesian Police as a public institution is not a new thing, because it is impossible that a police organization is a private institution engaged on the basis of individual ownership and oriented to the achievement of optimal profit for their owners (Andrianus Meliala: 2002: 29). Therefore, policy of Kapolri (Head of Indonesian Police) about public orientation is appropriate, in accordance with the position of Indonesian Police as a public institution. Policy is not made without a process. By regarding to society demand, society and bureaucrats support, and the external and internal environment of Indonesian Police organization (Leo Agustino: 2006: 20), the policy focusing on Indonesian Police as public servant in the field of security and order, and the perspective of Indonesian Police as public institution for a good governance in Indonesian Police institution has existed.

Indonesian Police as one of the state institutions that provides public services, also has carried out the first wave of Bureaucratic Reform ranging from 2004 to 2009, and the first year of the second wave of Bureaucratic Reform in 2010. During a wave of Indonesian Police Reform, the society has felt that the service of Indonesian Police for them especially in the law enforcement process against individual conflict has not been able to protect the poor. The current law acted as a sharp knife down but blunt up, which means that the law is applied firmly against the poor, but not for the rich and the officials.

For giving a response to the less practice of law in Indonesia and for a purpose of good governance, Indonesian National Police as a public institution that provides public service did the reform in handling society conflict especially for the resolution of criminal cases by issuing Head of Indonesian Police letter No.: B/3022/XII/2009/SDEOPS, dated December 14, 2009 about case resolution by Alternative Dispute Resolution (ADR). The letter is a form of problem solving in the implementation of Alternative Dispute Resolution (ADR) concept, a model of social problem solving by an alternative way in addition to legal process or non-litigation as an effort to seek a win - win solution. The implementation process of ADR gives priority to mediation process by a mediator with conflict management to realize a win-win solution. Beginning with a discussion on conflict management in ADR, the studies of ADR are included in Public Administration. Currently such resolution in the Indonesian National Police is often referred to resolution by ADR using restorative justice approach. The principle of restorative justice is justice that seeks to restore the state to its original state, to give benefit, and to win all parties, is not locked up in rigid and procedural mechanisms.



Globally, the implementation of restorative justice has also been recommended by the United Nations (UN) in 2000. In these recommendations, the UN invites all nations to adopt a restorative justice in criminal system.

ADR is one form of police discretion<sup>1</sup> to act in the public service carried out by police's assessment in the field in order to resolve conflict in society concerning misdemeanor; it can be seen in article 18 subsection 1 of Law No. 2 of 2002 about Indonesian Police.

Police continues to encourage society conflict resolution, especially for misdemeanor cases using ADR concepts, one of which is in the region of Surakarta Police, a locus of this study. Based on the data obtained from the Surakarta Police from 2010 to 2011, the Surakarta Police has used ADR concept for society conflict resolution or criminal case. In 2010 the numbers of reported criminal cases in Surakarta Police were 1847 cases where 1197 cases can be resolved in details 805 cases were resolved by ADR and 392 cases were transferred to the Public Prosecutor. In 2011 the numbers of reported criminal cases were 2063 cases where 1214 cases can be resolved in details 684 cases were resolved by ADR and 530 cases were transferred to the General Prosecutor. The data indicated that more criminal problems in Surakarta Police can be solved by ADR rather than the transferred cases to the General Prosecutor.

Problems that often arise in the implementation of ADR in Surakarta Police are demand compensation from the victims in the form of material or a sum of money to the suspect in a big amount, so it will cause difficulties in reaching an agreement so that the victims will demand the reported criminal cases for the denial agreement by the suspect. During 2010, there were 20 (twenty) cases and in 2011 there were 25 (twenty five) cases that have been resolved amicably, but reported again about the same case.

Society conflict resolution with the implementation of ADR in the region of Surakarta Police is still seen to be done by way of stealth and not reported transparently to the above unit because there is no similar SOP (Standard Operating Procedure) for society conflict resolution for misdemeanor by ADR in every district of Central Java Police.

Addressing the arise problems; it needs a policy to accommodate the shape of social conflict resolution in society outside the court. For strategy implementation, Polmas (Police of Society) in Surakarta Police should cooperate and empower society to participate actively in finding and identifying solution for social problems which interferes safety and order of society. The Surakarta Police didn't bring the small cases immediately for the investigation, but gave a higher priority to resolve the conflict by involving social institutions in society with principles of partnership (PPP) and problem solving.

Based on the background mentioned above, the problem statements in this research focused on searching for the answers to the following basic question: "How was the implementation of Alternative Dispute Resolution model for conflict resolution to improve public service of Indonesian Police (society conflict resolution with a criminal background by the implementation of ADR case study in Surakarta Police)"?

## II. RESEARCH METHODOLOGY

This study was conducted by a case study approach enriched with the help of qualitative techniques through survey method in some parts needed. In choosing the research methods there are three considerations, namely: (1) the type of research question, (2) the researcher control to the research, and (3) the focus (contemporary or historical phenomena) of research phenomenon.

The research methods are:

- 1) Analysis unit: Surakarta Police.
- 2) Informants: the officers of Surakarta Police, the investigators of Surakarta Police, the General Prosecutor of Surakarta Judiciary, Public Private Institution, and society figure involved in the Police and Society Communication Forum (FKPM/BKPM).
- 3) Data collection techniques: As a case study, the data was collected by uncovering the phenomena of argument hypothesis.
- 4) The methods of data collection were done by:
  - depth interview,
  - FGDs (Focus Group Discussion),
  - observation, and
  - review of secondary data

Because of the use of the triangulation technique, or Yin (1987) called it as a survey in case study, this research also enriched the data by filling out the questionnaire.

The focus of this research is the process of ADR implementation and the dynamic factors affecting the analysis unit in Surakarta Police. The dynamic factors affecting the analysis unit could be some supporting and inhibiting factors in Surakarta Police through the variables affecting the public policy implementation. There is a term like Alternative Dispute Resolution (ADR) and Restorative Justice in this research. ADR is a form of resolution used in the handling of the case, while Restorative Justice is an approach used in ADR.

The techniques of data analysis in this research used the steps as proposed by Burhan Bungin (2003: 70), as follows:

1. Data Collection
2. Data Reduction
3. Data Display
4. Conclusion Drawing and Verification

Then, the analyzed data is described and interpreted in the form of words to describe the facts on the spot, to give a meaning, or to answer the research questions.

## III. RESULTS

### III.1. IMPLEMENTATION OF ALTERNATIVE DISPUTE RESOLUTION IN SURAKARTA POLICE

ADR is applied to a particular conflict or not all of conflicts with criminal background can be resolved by ADR. The particular conflicts are conflict of misdemeanor, criminal with children under age as suspect, not a narcotic criminal, criminal that did not result in serious injury. Conflict of criminal background with children under age is a priority conflict to be resolved by ADR, the next priority is criminal which did not result in harmful, serious injury or death. The focus is that in the resolution by ADR does not apply to a recidivist. ADR cannot be applied to cases with acts to threat country's security or harm the country's economy.

Based on the documents searching by the writer, it is known that during January to June 2013 there were 183 cases that have been resolved by ADR policy, which in the resolution, there were several types of conflicts with criminal background.

Based on the results, the investigators determine the formal requirements before implementing ADR. Through the research, the formal requirements were not stated in the SOP of ADR in Surakarta Police. Meanwhile, the classification of conflicts or matters was not in accordance with the SOP of ADR in Surakarta Police yet, which are carrying weapons, fiduciary, extortion, domestic violence, health law and abuse. Based on some of the findings of the study, the writer concluded that the classification of solved cases by ADR implementation was not in accordance with the SOP of ADR in Surakarta Police yet.

Problem resolution in society can't be separated from customs prevailing in the society especially the customs of Surakarta Palace. Problem resolution in Surakarta Palace became one of the triggers drivers for the implementation of ADR model in conflict resolution occurred in society of Surakarta.

Based on the research findings, it can be concluded that supervision and control of the implementation of ADR is conducted by superior investigator like Head of Operational Unit or Head of Sector Police to the staff or the investigator who handle the case, investigation, administrative investigation and other supporting administrative. The results of ADR have been recorded in the register book of resolution by Restorative Justice or ADR and have been filed by administration of Criminal Detective Unit in Surakarta Police. But some of the resolved cases by ADR were still not followed up with SP3.

<sup>1</sup> Article 18 Law No 2 of 2002 paragraph 1: For public interest, the officers of Indonesian National Police do his duty and authority according to his own assessment.

Basically there are two paradigms in the public service; the first is a public service paradigm with service manager oriented. This paradigm is more bureaucratic, directive, and only pays attention/priority to the interests of leader/its service organization. Public service should be managed by supportive paradigm which focuses more on the interests of people who use the service; managers must be able to serve and not to be served.

Based on the theoretical study of public servant, the bureaucracy reform in Indonesian Police as public service should follow the service paradigm which satisfying customers or public<sup>2</sup>.

The implementation of ADR in Surakarta Police to improve public service could be viewed from the principles of good governance in the following description.

#### 1. LEGAL CERTAINTY

ADR is applied in police institution due to Head of Indonesian Police letter Number: B/3022/XII/2009/SDEOPS dated December 14, 2009 about case resolution by ADR, and Head of Indonesian Police Regulation No. 7 of 2008 Article 14 letter f about the activities of Police of Society in social problems resolution outside the legal ways by agreement with ADR concept.

#### 2. TRANSPARENT

In the implementation of ADR, society has a right to obtain information about public interest. To ensure transparency in the implementation of ADR or Restorative Justice, Surakarta Police involves society figure including Public Private Institution. After the agreement between the two sides, the agreement results that have been made in mediation are known by both parties and other parties who are competent in the case.

#### 3. RESPONSIVENESS

The role of the investigator in a consultation or as a counselor reflects that the implementation of ADR has positive responsiveness level in providing directions and guidance to the community and responding to people's desire to solve the case or conflict they experienced as quickly as possible.

#### 4. FAIR

From some of the research findings, implementation of ADR has met a fair principle from the maximum role of mediator in order to realize a peace that benefits both sides which are in conflict and a distribution of service to people who have conflicts.

#### 5. EFFECTIVE AND EFFICIENT

From the research findings about the implementation process of ADR, if a case failed, a mediator who is held by investigator should play a role for mediation. Based on the results of interview with some Head of Police Criminal Unit, the investigator who played a role as a mediator would be interfered by other cases so that it would lead to disrupt other community service. So the role of investigator who also has a duty as mediator will make less efficient of ADR implementation.

#### 6. RESPONSIBILITY

In the implementation of ADR, the investigator as implementer has a duty to account for the implementation of ADR policy. As a form of responsibility to work in providing service to public, the investigator gives Developments Notice of Investigation after the agreement and the mediation, but for the instruction of investigation dismissal cannot be carried out all by investigators because many resolved cases by ADR has not implemented SP3. So the implementation of ADR is not maximized yet from a view of responsibility principle.

#### 7. ACCOUNTABILITY

Accountability in the implementation of ADR can be seen from the job and legal responsibilities. Job responsibilities relates with the resolution by ADR to satisfy people who are served well by police. We can see it from the research findings explaining that people and some public private institutions supported by the implementation of ADR policy in conflict resolution with a criminal background. In the terms of legal liability, the resolution by ADR still leaves a gap to prosecute the case again in the future. This is because of the solved cases by a reconciliation agreement has been followed up by investigation dismissal or SP3.

#### 8. NOT ABUSING AUTHORITY

In the implementation of ADR in Surakarta Police during January to July 2013 there was no abuse of authority committed by investigator, which is proved by the absence of disciplinary action undertaken by the Provost of Surakarta Police to investigator.

Based on the above description in a view of the principles of good governance, the implementation of ADR is approaching the criteria of good governance. The implementation of ADR had been running transparently characterized by engaging social institutions and society figures for case resolution process, and effectively since the resolution should not drag on the court, fair and responsive. However, there are some things that should be enhanced, first, the settled cases should be followed up in order to have the force of law so as to have the rule of law, and the second, the use of the investigator who serves as a mediator would interfere another case considering the very limited number of investigators.

### III.2 THE ASPECTS AFFECTING THE IMPLEMENTATION OF ADR IN SURAKARTA POLICE FOR CONFLICT RESOLUTION

Many experts are of the opinion that the success or failure of policy implementation is influenced by several factors. This research uses four implementation theories, as follows Edwards III theory, theory of Van Metter and Van Horn, Grindle theory, theory of Mazmanian and Sabastier. From these theories, the writer took several variables for discussing the aspects affecting the implementation of ADR in Surakarta Police. The variables are the content of policy, communication, resources, disposition, bureaucratic structure and policy environment.

Based on some of these aspects, the study found some of the following:

#### 1. THE CONTENT OF POLICY

Implementation of ADR was impressed not been able to accommodate the interest of community due to the lack of understanding of investigator as a policy implementer about the content of policy, and the classification of criminal cases includes the resolved category by ADR is quite inconvenient for investigator to define it. Head of Indonesian Police Letter of ADR has not quite served as technical guidance in case resolution by ADR. Surakarta society which is mostly the society of entrepreneurs expect that every conflict they experienced can be resolved quickly without taking so long so they could do a living easily, this is a trigger for the implementation of ADR.

Grindle (1980) reveals that the contents of policy include the following: (1) How interest of the target groups in the content of public policy was, (2) Types of benefit received by the target groups, (3) How the changes desired by the policy were. In a program aimed at changing attitudes of the target group's behavior is relatively more difficult to implement. (4) The correctness of the location of program. (5) Whether a program has mentioned its implementer in detail. (6) Whether a program supported by adequate resources.

So the implementation of ADR is expected in line with public's expectation and remains guided by article 13 of Law No. 2 of 2002 which mandates that the law enforcement must always be synergies with efforts to protect, to nurture and to serve public.

#### 2. COMMUNICATION

In the implementation of ADR, the communication between Head of Surakarta Police and investigator was in a good condition, the transformation of information from superior to subordinate ran smoothly, vice versa. Head of Surakarta Police also provided guidance to the investigator frequently associated with investigation problems. However, Head of Surakarta Police seldom gave rewards to subordinates.

The relationship among investigators in everyday life is very harmonious and already established well. It will encourage the successful implementation of ADR in Surakarta Police. The communication model between investigators and the people who are in conflict has been done directly by phone or letter. Thus, communication in the ranks of Indonesian Police has run well in line with the reform process of the police bureaucracy.

The content of policy must be submitted by policy makers to policy implementers. The communication ran well in Surakarta Police, it is in line with Edwards III (1980) which expresses policy as a process of policy informing from policy-makers to policy implementers.

<sup>2</sup> David Osborne and Ted Gaebler's opinion about *Reinventing Government* on their work entitled *Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector*, published in 1992



**3. RESOURCES**

Edward III (1980: 11) argues that the clear and consistency of provisions or rules, and the accurate delivery of provisions or rules, the implementation of policy will not be effective if the policy implementers who are responsible for implementing the policy are lack of the resources to do the job effectively.

The quality of public service is determined by quantity and quality of the personnel who are in duty, so the quality of investigator should also be noticed on investigation process and case investigation. The quality of investigators is based on their work experience or level of formal education.

Based on the data obtained from the research it can be concluded that the number of investigators of Criminal Detective in Surakarta Police are sufficient to carry out the activities, but there are still many investigators who do not have a minimum qualification of Bachelor Degree, education and training about mediators, and so on. Many investigators are studying based on their personal experience for the activities.

The authority of investigator to take discretionary authority related to the implementation of the ADR was very small because every action in the investigation should be responsible for law and for people who have conflicts or cases, and every action should be approved by superior investigator, as a form of control.

Infrastructure and budgets supporting the implementation of ADR were not sufficient, the budget only focused more on the investigated cases to a court, meanwhile, activities of resolution by ADR didn't use the investigation budget so that it can offer opportunities for the implementer to expect a helping hand from victim or suspect to release the resolution in some amount budget. The ability of investigators to implement the ADR program was not maximized because they are affected or constrained some facilities such as infrastructure and budgetary policy for the implementers.

**4. IMPLEMENTER DISPOSITION**

Van Horn and Van Matter (1974) say that a high disposition affects on the rate of successful implementation of the policy. Disposition is defined as inclination, desire or agreement of the implementers to implement the policy. To make it successful effectively and efficiently, the implementers does not only know what to do and have ability to carry out that policy, but also have willingness to implement the policy.

In the implementation of ADR, investigators have a commit to carry out ADR in accordance with the SOP of ADR in Surakarta Police, and always give priority for cases resolution about children and domestic concerns because the sociological view on these matters are considered higher priority than another case. But this commitment is not followed by an attempt to provide legal certainty of the resolved case by ADR.

The knowledge of investigator to the content of bureaucracy reform of Indonesian Police is quite good because it has been socialized properly through instruction, web site, police training and education.

When society needs action from bureaucracy apparatus, while the action has not been regulated in the existing procedures or contrary to a rule which he believes is not relevant then the bureaucracy apparatus must take discretion and accountable to the public. It is important for police with his integrity and personality as state officer to have courage to take initiative and to implement resolution by ADR although it may have a risk, but for the sake of justice and conscience consideration, the investigator apparatus should have attitude and responsibility.

Doubts and fears of investigator often exist in resolving case by ADR. The investigator considers that there is no direct command from his superior and no clear procedure about this. Therefore, the quality factor of the apparatus was quite good including ability, experience and skills in making decisions and risks, healthy, and clear conscience. Because of that, the investigator should have an authority to conduct case resolution by peace agreement or by ADR. According to the investigators in Surakarta Police, case resolution by peace agreement needed a courage and communication skills, good negotiation, so that the investigator could really be a good mediator, because it has a high risk.

The commitment and honesty of the investigators in solving case by case determines the success of peace agreement. The commitment regards to the seriousness of investigators to act and behave as good mediator who want to resolve the case for fairness of both the complainant and the victim. Honesty is not only an aspect of unusual action like remuneration, but it is an internal honesty of investigators who act on the right track, don't side both the complainant and victim, and there is no conflict of interest.

**5. STRUCTURE OF BUREAUCRACY**

Reform of the bureaucracy is very urgent to do. One of them is the institutional structuring of bureaucracy. According to Edwards III (1980) the implementation of policy can be no effective yet because of deficiencies in bureaucratic structure.

Long bureaucratic structure often becomes a source of problems in order to create a quality, effective, and efficient bureaucratic. Furthermore, the consequences of long bureaucratic structure can implicate the distortion of information. The simplification of bureaucratic work processes is needed. It affects a need for a road map of bureaucratic structure revamping. Road map is intended to be able to explain the possible reduction of power so as to realize good governance.

The command lines that exist in the organizational structure plays an important role, because up to now Indonesian Police still adheres to superior and subordinates, the firm of command lines can be a negative effect in the implementation of ADR if the superior does not order the case resolution by ADR, and it can be a positive affect if the superior has a firm command for the case resolution by ADR. The division of authority in the implementation of ADR depends on the existing command line, the investigator as implementer who plays a role as a mediator between the complainant and the victim, and the superior or supervisor plays a role as decision makers. The relationship between the units of investigation in Surakarta Police runs harmoniously viewed from several activities of case resolution and case transfer between the units. The harmonious relationship cannot be separated from the role of Head of Criminal Unit as superior investigator to direct his subordinates to obey the established policy.

The SOP of ADR in Surakarta Police has already existed but has no detailed and clear explanation so it may raise doubts to investigators as the implementer. The lack of clarity seems on the mechanism of dismissal investigation to cases resolution by ADR.

**6. Social Environment and Society Support**

The implementation of ADR usually involves complainant, victims, investigators, society figures such as RT and RW (administrative units), lawyer and expert team. The support or the attitude of community groups who are in conflict, socio-economic development and community support of Surakarta affect the successful implementation of ADR policy in Surakarta Police.

The people who are in conflict require the conflict resolution as soon as possible with low cost and remain to keep fair. The role of society figure is also needed by the investigator as a mediator to assist the resolution by ADR and to witness the mediation as the investigator feels frightened if one party who feel harmed will report the investigator to the Profession and Safeguard Field on a charge of his unprofessional duties.

Socio-economic and technological conditions of Surakarta community play a role to the success of ADR implementation because most people want a quick case resolution with a low cost. Surakarta community and some of Public Private Institutions support the ADR program implemented in Surakarta Police. The role of community in ADR or Restorative Justice is great as a society has a role in sociological deterrent effect in daily life to the perpetrators. That's why the community's opinion around the criminal scene and the residence of the suspect is necessary to be involved in the ADR process.

**III.3 COMMUNITY CONFLICT RESOLUTION MODEL WITH MISDEMEANOR BACKGROUND BY ADR**

The implementation of social conflict resolution associated with criminal background by ADR requires a model of standard resolution concept consisting of conceptualizing, planning, organizing, controlling and evaluating. The implementation of ADR requires a unit or team that acts as a mediator whose task is to carry out mediation, consultation, and to facilitate the negotiation process in achieving a win - win solution quadrant in conflict resolution.

In the proposed of ADR models, there are some differences in the case resolution models applied in Surakarta Police on the previous. The difference seemed on the case that is considered completed and discontinued with SP3 due to insufficient evidence underlying the agreement, revocation of police reports and revocation of witness statements in BAP (Criminal Official Report), and due to insufficient evidence of such article 109 of KUHP (Criminal Code).

The communication models required in a negotiation dialogue to achieve peace agreement and the consensus with Radial Venn dialogue model approach which emphasizes the role of mediator is not only as a facilitator who prepares, provides and carries out dialogue, but also has ability to embrace all the involved parties, as well as plays an active role as central force in pushing information to resolve cases involving himself up to interact with the relevant parties. Other communication model is a model of Circle without Direction dialogue which indicates that the mediator plays a role as a facilitator and a mediator in cases resolution plays an active role as a source of information for the parties or actors related with the matters.

The advantage of this model is to provide more opportunities for society to participate in resolving conflicts in society. Conflict resolution is carried out effectively and efficiently, and is not through the long process to the court. The resolution by the proposed ADR models has a clear legal basis, that is, the case is discontinued due to insufficient evidence with SP3 accordance with Article 109 of Criminal Code.

#### IV. CONCLUSION

The resolution by ADR or Restorative Justice should be immediately established by law as a case resolution with a permanent legal force. Such changes should be as applicable to the Juvenile Justice Act which applies Diversion in children who commit criminal acts. In the implementation, a special unit should be formed to handle case resolution by ADR so that the case resolution will be more focused on a win - win solution as both parties expected. The investigator will not be disturbed in handling other cases in priority.

To implement the concepts of public service in the implementation of ADR, it needs a clear firm, and comprehensive legal framework, and SOP of ADR with its implementation instructions in Police. So the concepts of model dialogue and social conflict resolution model with a criminal background by ADR proposed in this research can be used as a draft of SOP of ADR implementation in Surakarta Police or other police units.

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