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## RESTORATIVE JUSTICE AS AN EFFORT TO SETTLE TRAFFIC ACCIDENT CRIME CASES

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### Abstract

The traffic problems occurred of traffic accidents that result in human casualties and/or property loss. Law enforcement systems development and methods in Indonesia shows a tendency to follow the development of the general justice system, especially the development of the principle of restorative justice by burdening executant with their mistakes, apologize, returning damages and losses to victims as before or resembles condition. The formulation of the problem in this study is how the traffic accident crimes can be resolved through restorative justice, what is the investigator's consideration in resolving traffic accident cases through restorative justice. From the results of the study it can be concluded that the traffic accidents can be resolved through restorative justice according to Article 236 (2) of Law No. 22 of 2009, namely only minor traffic accidents, according to Article 63 of Law Police Regulation Number 15 of 2013, which is a minor traffic accident, and based on the letter of the National Police Number 8 of 2018, which is a crime that does not cause human casualties. The investigator's consideration in resolving traffic accident cases through restorative justice is the existence of a peace agreement by both parties involved in the traffic accident.

**Keywords** : Accident Cases, Restorative Justice, Traffic

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### INTRODUCTION

The development of automotive technology and the rapid growth of motor vehicle ownership must be balanced with the addition of road length and traffic discipline for motorized vehicle users which results in high traffic violations, accidents and congestion levels. The high number of traffic accidents on the highway shows that the number of victims of traffic accidents is still concerning and frightening, even though information and education have been disseminated to raids or enforcement operations by the police such as zebra operations and obedient operations.

The fact is that there are still many drivers who are not mentally prepared, especially public transport drivers who do not care about the safety of themselves and their passengers (Lubis & Hodriani, 2016). Some traffic accidents that occur can actually be avoided if road users can behave in a disciplined, polite and respectful manner. As stated in Article 106 paragraph (1) of Law Number 22 of 2009 that "everyone who drives a motorized vehicle on the road is obliged to drive his vehicle fairly and with full concentration".

In general, the causes of traffic accidents are caused by human factors, vehicles, weather, nature, road conditions and the environment (Putri, 2014). However, the main factor in the occurrence of traffic accidents is the carelessness of the drivers themselves who do not heed traffic rules, their own safety and the safety of others (Yani et al., 2021). Most car drivers are selfish and uncontrollable so that they turn into emotional. Thus, a chase occurs without considering common sense for the safety of oneself and others, or is called carelessness (Susminingsih & Kanafi, 2020).

"Car drivers' faults can often be concluded by using traffic rules. For example, he does not give a turn signal, or he drives a car not in the left lane, or at an intersection does not give

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priority to other vehicles coming from the left, or runs the car too fast beyond the speed limit specified in the road signs in question. Wirjono Prodjodikoro's statement stated above, that most traffic accidents are the result of human error (hukam error). The driver's fault is the lack of caution and negligence in driving the vehicle (Lestari, 2022).

The government has made efforts to overcome traffic order which on June 22, 2009 ratified Law of the Republic of Indonesia Number 22 of 2009 concerning Road Traffic and Transportation, with the consideration that Law Number 14 of 1992 concerning road traffic and transportation is no longer appropriate. Again with the current conditions, changes in the strategic environment, and the need for traffic and road transportation, so it needs to be replaced with a new law. In the Traffic and Road Transportation Law, among others, it regulates efforts to foster, prevent and enforce law in the field of road traffic and transportation. Related to law enforcement efforts which are one of the objectives of the enactment of the Highway Traffic and Transportation Law (Doly, 2016).

According to Satjipto Rahardjo that; "Law enforcement is a process to realize the wishes of the law, namely the thoughts of the legislature that are formulated in legal regulations into reality" (Akhmaddhian, 2016).

A similar opinion was expressed by Sidik Sunaryo, "that the effectiveness of the law is very dependent on the substance factor (laws and regulations), structural factors (law enforcement officials) and cultural factors (society). lawlessness".

With regard to the substance factor, Article 310 paragraph (4) of Law Number 22 of 2009 states that "everyone who drives a motorized vehicle due to negligence causes a traffic accident that results in the death of another person, shall be sentenced to a maximum imprisonment of 6 (six) years. ) years and/or a maximum fine of Rp. 12,000,000.00 (twelve million rupiah)".

Judging from the criminal threat of Article 310 paragraph (4) above, it is actually quite high and scary, but vehicle drivers rarely check the condition of their vehicles when they want to use them, because we often hear that traffic accidents are caused by malfunctioning brakes, broken tires (Yani et al., 2021). , etc. "Traffic accidents can occur due to several interacting factors, namely the driver (human) factor, road conditions, vehicles and the environment" . "Motorcycle accidents are influenced by various factors, including road conditions, vehicle conditions, human factors (cyclists), and the environment. In this case, the human factor has the biggest contribution to motorcycle accidents."

If all traffic accidents are resolved through the courts, it is certain that the handling of traffic accident cases will be a hassle for the judges, and as a result, traffic accident cases will pile up (Rifadilla, 2021). Settlement of cases out of court through restorative justice or penal mediation is a new dimension studied from the theoretical and practical aspects (Heriyanto, 2022). Judging from the practical dimension, penal mediation will correlate with the judicial aspect. Every day there is an increasing number of cases entering court with all its variations, which are the burden of the court in examining and deciding cases according to the principle of "simple, fast and low cost justice" without having to sacrifice the achievement of the objectives of the judiciary, namely legal certainty, benefit and justice.

The settlement of traffic accident cases that confronts the apparatus with the perpetrators of criminal acts often creates a sense of dissatisfaction on the part of the victims and perpetrators. Victims feel that their interests are not being cared for while limited criminal sanctions cause perpetrators to be treated not in accordance with the actions they have committed.

The existence of dissatisfaction with the implementation of criminal law enforcement carried out by law enforcement officers, criminal mediation becomes an alternative, where

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with mediation the parties involved reach an agreement that is closest to the interests of the parties.

Based on the description above, the settlement of criminal cases of traffic accidents at the investigation level can be carried out by peaceful settlement outside the court (restorative justice). Based on the views of the Police, Public Prosecutors, Advocates and Judges, the settlement of cases outside the court is recognized as occurring in the settlement of criminal cases. It is the police who mostly carry out the settlement of criminal acts out of court with a discretionary approach.

In general, in cases that are resolved peacefully, the victims receive compensation, but the perpetrators of the crime are not willing to admit their actions and offer an open apology to the victims of the crime.

Settlement by the police is carried out on cases for which an Investigation Commencement Order (SPDP) has not been made to the Public Prosecutor. The police facilitated out-of-court settlements due to requests made by the perpetrators of criminal acts. The facility provided is to provide time for the perpetrator and victim to negotiate, which is carried out at the police station or elsewhere. The results of the agreement are then stated in a written agreement and have been completed properly so that there will no longer be any demands for fulfillment of the contents of the agreement. The results of the agreement as outlined in the agreement will be the basis for the police to take discretion.

## **METHOD RESEARCH**

This research is included in the type of normative juridical research. Normative juridical research is a type of research that synchronizes the applicable legal provisions in law enforcement against other legal norms or regulations used as well as a conceptual approach based on the opinions of legal experts.[11] Based on this type of normative juridical research, the research approach in this paper uses a statutory approach and a conceptual approach.

The legislative approach uses laws and regulations related to criminal law rules regarding traffic accidents that result in death, while the conceptual approach uses the theories and concepts used in this paper that have relevance to the legal issues analyzed regarding the criminal liability of the perpetrators. the crime of traffic accidents resulting in death in terms of the provisions of criminal law.

Normative juridical research uses secondary data sources. Secondary data in this type of normative juridical research is data sourced from legal materials, consisting of primary legal materials, secondary legal materials, and tertiary legal materials.

Legal materials as secondary data used to analyze legal issues in this thesis are as follows.

1. Primary Legal Material, is a binding legal material, sourced from:
    - a. Primary legal material, namely the set of laws and regulations relating to "Traffic Accident Crime Settlement Through Restorative Justice". These laws and regulations include; Criminal Code; Law Number 8 of 1981 concerning the Criminal Procedure Code; Law Number 22 of 2009 concerning Road Traffic and Transportation; and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.
    - b. Secondary legal materials, namely the results of scientific works of scholars and research results, literature by legal experts concerning criminal law in general, as well as literature related to "Settlement of Traffic Accident Crime Cases through Restorative Justice".
    - c. The tertiary legal materials studied are related to encyclopedias, and various legal dictionaries that are relevant to this research.
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- d. Secondary Legal Materials, are legal materials that provide explanations related to primary legal materials, sourced from books, scientific journals, legal expert opinions related to the legal issues studied in this thesis regarding the criminal liability of traffic accident perpetrators. resulting in death through the study of judges' decisions.
- e. Tertiary Legal Materials, are legal materials that provide additional explanations or support that support existing data on primary and secondary legal materials. The tertiary legal materials used are legal dictionaries and internet searches.

## RESULT AND DISCUSSION

### A. Crimes that can be resolved through Restorative Justice based on the Laws and Regulations

The saturation that occurs in the context of the theory and practice of the criminal justice system that has failed to provide a sense of justice has prompted experts to look for other alternatives, where the balance of interests between victims and perpetrators of criminal acts is given greater attention. Victims are directly involved in determining forms of settlement that are in accordance with their basic needs. This concept is called restorative justice. Restorative justice views that crime is not merely a violation of the state, but places a crime as a symptom that is part of social action. The focus of the solution is not directed at punishing the perpetrators of the crime, but on the restoration of social relations and social justice which have been damaged by crime. In simple terms, restorative justice is an alternative in the criminal justice system by prioritizing an integral approach between the perpetrator and the victim and the community as a unit to find solutions and return to the pattern of good relations in society.

Regarding the investigation, there is no single provision that explicitly regulates the restorative justice approach in resolving criminal acts at the investigation level. The Criminal Procedure Code as the parent of formal criminal law and the Criminal Code as the parent material criminal law, as well as Law Number 2 of 2002 concerning the State Police of the Republic of Indonesia and Regulation of the Chief of the Police of the Republic of Indonesia Number 14 of 2012 concerning Management of Investigations, and is currently being updated with the Regulation of the Chief of the Police of the Republic of Indonesia. Indonesia Number 6 of 2019 concerning Investigation Management and Regulation of the Head of the Criminal Investigation Agency Number 3 of 2014 concerning Investigation SOPs only regulates his subordinates.

However, the police actually have a legal position to resolve cases legally. This is as the police have the discretion to determine their own actions in accordance with their assessment. The National Police is aware of the dissatisfaction of some people with the criminal justice process and wants certain legal violations to be resolved by involving the victim, the perpetrator, the victim's family and the perpetrator's family as well as involving local community leaders by taking into account and considering the sense of community justice.

The police, as the spearhead of criminal law enforcement, will determine a truly fair judicial process. Therefore, the urgency for the National Police to implement restorative justice in investigating cases so that justice can be felt earlier for the sake of public trust, so that it is easier to realize security and order in society.

The National Police have implemented internal policies in order to achieve justice for the community early. These policies are in the form of the issuance of several letters, telegrams, telegram letters and the regulations of the National Police Chief as a legal umbrella for the issuance of the restorative justice process, namely: 1) Kapolri Letter No. Pol.: B/3022/XII/2009/Sde Ops, dated 4 December 2009 regarding Case Handling through

Alternative Dispute Resolution/ADR; 2) Telegram letter from the Criminal Investigation Unit of the National Police to the Director of Criminal Investigation, the Director of Special Crimes and the Director of Drug and Drug Control of all Regional Police Number: ST/110/V/2011, dated May 18, 2011 regarding Alternative Settlement of Cases Out of Court; 3) Secret Telegram Letter from the Criminal Investigation Unit of the Police to the Director of Criminal Investigation, the Director of Special Crimes and the Director of Drug and Drug Control of all Polda Number: STR/583/VIII/2012, dated August 18, 2012 concerning the Implementation of Restorative Justice; 4) Regulation of the National Police Chief Number 15 of 2013 concerning Procedures for Handling Traffic Accidents; and 5) Regulation of the National Police Chief Number 3 of 2015 concerning Community Policing.

In further, since the National Police Chief was appointed by Police General Tito Karnavian, the National Police Chief has a program known as the PROMOTER Program, which consists of 11 (eleven) Action Optimization Programs which are actualized into 61 (sixty one) Priority Programs. In one of the Action Optimization Programs (Program IX on More Professional and Just Law Enforcement), there is one of the Priority Programs for Resolving Minor Cases Through a Restorative Justice Approach. Following up on the Priority Program, the National Police Chief issued two Circular Letters (SE), namely: 1) Chief of Police Circular No. SE/7/VII/2018, dated 27 July 2018 concerning Termination of Investigation; and 2) Circular Letter of the Chief of Police No. SE/8/VII/2018, dated 27 July 2018 concerning the Application of Restorative Justice in the Settlement of Criminal Cases.

In the Letter of the Chief of Police No. Pol.: B/3022/XII/2009/Sde Ops which was then followed up with the Telegram Letter of the Criminal Investigation Unit Number: ST/110/V/2011, it is stipulated that one form of pattern for solving social problems is through alternative channels, between others through efforts to resolve cases out of court by applying the concept of Alternative Dispute Resolution (ADR), which is applied with the following principles: 1) Prioritizing deliberation and consensus; 2) Appreciate local wisdom/culture/customs, as well as local social institutions; 3) Involving existing social institutions in the community such as community leaders, religious leaders, traditional leaders, village heads, RW heads, RT heads, and others; 4) Prioritizing the implementation of Community Policing strategies; 5) The decision in the settlement of the case is left to the litigants (perpetrators and victims) with social/customary sanctions; 6) The perpetrators of criminal acts are responsible for repairing and compensating for the losses caused by their actions/mistakes; 7) In the settlement there is no interest from other parties such as the Police, community leaders, and so on; and 8) Pay attention to the principle of *ultimum remidium*.

Settlement of cases by applying the Alternative Dispute Resolution is carried out with the following conditions: 1) The criminal act that is resolved is a minor crime or a criminal offense which is an absolute/relative complaint offense; 2) There is a desire from the litigants (perpetrators and victims) to make peace and the consequences of these problems do not have a broad/negative impact on people's lives; 3) Reconciliatory activities must be carried out by bringing together the litigants and involving social institutions such as local community leaders; 4) In resolving cases, it is necessary to pay attention to factors of intention, age, socio-economic conditions, the level of losses incurred, family/kinship relationships and not being a repeated act (recidivism); 5) If the act begins with an agreement/agreement (leading to civil law); 6) The victim party must withdraw the report/complaint; 7) If the parties to the litigation are dissatisfied after being carried out outside the court mechanism, a settlement will be carried out according to the applicable legal procedures; and 8) If there is a repetition of the crime committed, the legal process must be carried out according to the applicable regulations/laws.

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When the implementation of the Alternative Dispute Resolution (ADR) was successful, the National Police took steps to resolve the case by requiring the complainant and the reported party to make a peace statement and requiring the complainant to withdraw the report he had made. The National Police then makes an Additional Investigation Report (BAP) to all parties to withdraw all their statements and thus, the Police can conduct a confrontational examination of all parties involved in the case. Subsequently, the handling of the case has been discontinued.

The Alternative Dispute Resolution (ADR) is only known in the settlement of civil cases (Diah, 2016). This Secret Telegram Letter regarding the application of restorative justice is based on the discretionary authority attached to the Police. Referring to the procedural law regarding the termination of the investigation, the application of restorative justice is still causing debate within the National Police, especially regarding the reasons for the termination of the case. Some are of the opinion that the reason for the termination of the case is for the sake of law and some are of the opinion that the termination of the case is due to insufficient evidence because the complainant, victim and witnesses have withdrawn their reports and/or have withdrawn all their statements, so that the case becomes insufficient evidence. Furthermore, to confirm the legal position of settlement of cases outside the court in cases of traffic accidents, the National Police Chief issued Regulation of the National Police Chief Number 15 of 2013 concerning Procedures for Handling Traffic Accidents. This Perkap provides space for the police to resolve cases of minor traffic accidents. This space is as stated in Article 63, namely if the parties involved in a traffic accident will settle their case outside the court session, then there is an obligation to compensate for losses in the peace agreement as outlined in the peace statement. If there is peace, the case must be registered and resolved with a brief program and the statement of peace is kept as an archive. The settlement of cases like this can be done before a Police Report is made (Susandra, 2022).

In the settlement of Minor Traffic Accident Cases in accordance with Article 63 of the Regulation of the National Police Chief Number 15 of 2013 concerning Procedures for Handling Traffic Accidents, namely: 1) The obligation to compensate for losses occurs in a peace agreement between the parties involved in a traffic accident, in order to settle the case, it can be resolved outside a court hearing. ; 2) A peace agreement between the parties involved in a traffic accident is stated in a statement of peace agreement; 3) Settlement of cases outside the court session as referred to in paragraph (2) can be carried out as long as a police report has not been made; 4) In the case of a minor traffic accident, if the elements of a criminal act are met and there is no peace agreement between the parties involved in the traffic accident, the settlement of the case shall be resolved by a brief procedure; 5) Settlement of cases outside the court session as referred to in paragraph (2) must be registered and a statement of peace agreement filed (Prayitno, 2012).

In Perkap No. 8 of 2018 concerning the Application of Restorative Justice in the Settlement of Criminal Cases, it is stated that the guidelines for handling case settlement with a restorative justice approach are as follows: 1) material requirements are met, namely: does not cause public unrest and there is no community rejection, does not impact conflict social media, there is a statement from all parties involved not to object, and relinquish the right to demand it before the law, the limiting principle, to the perpetrator: the perpetrator's act of error is relatively light, namely an error (schuld) or mensrea in the form of intentional (dolus or opzet) especially intentional as the intent or purpose (opzet als oogmerk) and the perpetrators are open recidivist, on criminal acts in the process of: investigation and investigation before the SPDP is sent to the public prosecutor; and 2) the formal requirements are met, namely: a letter of request for reconciliation from both parties (the reporter and the

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reporter), a statement of reconciliation (deed dading) and the settlement of disputes between the litigants (the reporting party and/or the reporting family, the reported party and/or the reported family), and representatives of community leaders) are known to the investigators, minutes of additional examination of the litigants after completion of the case through restorative justice, recommendations for special case titles that approve the settlement of restorative justice, perpetrators do not object to responsibility, compensation loss, or done voluntarily, and all criminal acts can be carried out by restorative justice against general crimes that do not cause human victims (Dyan, 2012).

In SE (Sircular Letter) Chief of Police No. 8 of 2018 above, it is clearly stated that a criminal act can be resolved through restorative justice if it does not cause human casualties, this is in accordance with Article 236 paragraph (2) of Law No. 22 of 2009 concerning Traffic and Transportation (Usman & Najemi, 2018). That road for minor traffic accidents can be resolved through restorative justice. The contents of the article are the obligation to compensate for the losses as referred to in paragraph (1) in the Traffic Accident as referred to in Article 229 paragraph (2) can be carried out out of court if there is a peace agreement between the parties involved (Morrison, 2001). Conceptually, restorative justice must There are strict restrictions to prevent deviations from the concept of restorative justice which have the potential to cause abuse of power, because between restorative justice and abuse of power by the police, there are similarities, namely they both carry out police duties outside the law, which is the difference between the two, namely motive or purpose. Restorative justice aims for the public interest or the public interest, while the deviation of power by the police is oriented to the personal interests of the police officers themselves.

## CONCLUSION

Based on the description in the discussion above, the form of traffic accidents can be resolved through restorative justice according to Article 236 (2) of Law No. 22 of 2009 which is only minor traffic accidents, according to Article 63 of the National Police Chief Regulation No. 15 of 2009 2013 is a minor traffic accident, and based on the SE Chief of the National Police No. 8 of 2018 is a crime that does not result in human casualties. In general, the considerations of Unitlaka investigators in resolving traffic accidents and road transportation outside the court carried out by Unitlaka only refer to the habits carried out in Unitlaka and the basis for settlement outside the court is a letter of peace agreement by both parties involved in traffic accidents.

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