

## **The Concept of Restorative Justice in Settlement of Traffic Crimes**

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**Abstract.** *The settlement of traffic accident cases by the Police can be done outside the court so that they can be resolved quickly without the need to go through the trial process, this settlement is through the Restorative Justice approach. Restorative justice is an attempt to resolve criminal cases without trial and imprisonment. The purpose of this study is to examine how the concept of restorative justice is able to solve traffic crimes. In this study, the type of normative legal research is used, namely by examining the applicable laws and regulations. The sources of legal materials in this study are primary and secondary sources of legal materials with the data collection method used through library research (library method). The results of the research on the settlement of traffic accident cases by applying the concept of restorative justice are in the form of penal mediation, discretion, diversion and others. The concept of restorative justice as it is known today is still used especially in alternative solutions in juvenile criminal cases. Settlement using the concept of restorative justice is generally carried out through discretion and diversion methods outside the formal process through deliberation mechanisms. The main problem of implementing restorative justice actually lies in the following factors, namely the legal factors themselves, law enforcement factors, namely the parties who form or apply the law, the infrastructure factors supporting law enforcement, the community factors where the law applies or is applied.*

*Keywords: Crime; Justice; Restorative; Traffic.*

### **1. Introduction**

Traffic problems are a problem faced by developed countries as well as developing countries like Indonesia. However, in Indonesia, the problems that are often encountered nowadays are becoming more severe and bigger than in previous years, including accidents, congestion and air pollution as well as traffic violations.<sup>1</sup>

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<sup>1</sup>Arif Budiarto and Mahmudal, 2007, Traffic Engineering, UNS Press, Solo, p. 3

Violations that often occur are traffic accidents that cause injuries, damage to goods that cause losses to the worst cause loss of someone's life. The rise of cases of road traffic accidents that have occurred recently which have resulted in the death of victims has marked a black page in traffic law. The government's efforts through Act No. 22 of 2009 concerning Road Traffic and Transportation are the basis for implementing a national transportation system, in accordance with its objectives, namely the realization of safe, orderly and smooth road traffic and transportation services with other modes of transportation to boost the national economy and realization of law enforcement and legal certainty for the people of Indonesia.

The Indonesian National Police (Polri) is a state instrument that functions in maintaining public security and discipline, law enforcement, protection, protection, and service to citizens in the context of maintaining security in the country. Therefore, Polri is demanded to continue to grow to be more reliable and closer to the community. In other words, Polri is required to develop itself into a civilian police force. As a civilian police force, the role of Polri in state organizations has a dominant influence in administering the police in an equal and reliable manner which is a supporting requirement for the establishment of good governance.<sup>2</sup>

Settlement of traffic accident cases by the Police can be done outside the court so that they can be resolved quickly without the need to go through the trial process, this settlement is through the Restorative Justice approach. Restorative justice or restorative justice is justice that seeks to restore conditions to their original condition, benefit and win all parties, and is not confined to a rigid and procedural legal mechanism.<sup>3</sup>

This method implements a mediation system in resolving criminal cases outside the court. This has the aim of providing solutions for resolving criminal cases that are fast and economical, as well as upholding the value of justice and preventing negative views from the parties concerned, and also aims to provide understanding and to minimize the transmission of bad behavior to perpetrators of criminal acts. For example, in the Papuan customary criminal law system, the mechanism for solving problems through customary courts prioritizes

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<sup>2</sup>Sadjijono, 2008, Police law series, Police and Good Governance, Laksbang Mediatama, Surabaya, p. 22.

<sup>3</sup>Musakkir, Sociological Study of Law on the Application of the Principles of Restorative Justice in Settlement of Criminal Cases, Journal of Legal Studies Amanna Gappa, Faculty of Law, Hasanuddin University, Vol.19, Number 3 September 2011, p. 214

deliberation for consensus, the value of justice is reflected in the recovery of victims' losses.<sup>4</sup>

Based on this background, the author wants to examine how the concept of restorative justice is able to solve traffic crimes. In this journal research what will be discussed is how to resolve traffic crimes with a restorative justice approach and what are the obstacles in applying restorative justice to traffic crimes. The purpose of this study is to find out the settlement of traffic crimes outside the court through restorative justice.

## **2. Research Methods**

The type of research in this study uses the type of normative legal research, namely by examining the applicable laws and regulations. The sources of legal materials in this study are primary and secondary sources of legal materials with the data collection method used through library research (library method) by examining document materials and Library and Data materials then analyzed qualitatively.

## **3. Results and Discussion**

The concept of a restorative justice approach is an approach that focuses more on conditions for the creation of justice and balance for the perpetrators of crime and the victims themselves. Procedures and criminal justice mechanisms that focus on sentencing are transformed into a process of dialogue and mediation to create an agreement on a more just and balanced settlement of criminal cases for victims and perpetrators.<sup>5</sup>

Restorative justice or restorative justice contains the meaning, namely a rapprochement and redemption of mistakes that the perpetrators of criminal acts (their families) want to do to the victims of these crimes (their families) (peace efforts) outside the court with the intent and purpose that legal problems that arise as a result the occurrence of these criminal acts can be resolved properly by achieving agreement and agreement between the parties.<sup>6</sup>

The Attorney General's Office through the Attorney General's Office of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution

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<sup>4</sup>Sukardi, The Existence of the Concept of Restorative Justice in the Criminal Law System in Indonesia, *Journal of Legal Pluralism*, Volume 6, Number 1 January 2016, p.41.

<sup>5</sup>Annis Nurwianti, Gunarto, Sri Endah Wahyuningsih, Implementation of Restorative/Restorative Justice in Completion of Traffic Accident Crimes Committed by Children at the Rembang Police Station, *Khaira Ummah Law Journal* Vol. 12. No. 4 2017. P.708

<sup>6</sup>Hanafi Arief, Ningrum Ambarsari, Application of Restorative Justice Principles in the Criminal Justice System in Indonesia, in the journal *Al'Adl*, Volume X Number 2, July 2018, p.174

Based on Restorative Justice and the Supreme Court through the Decree of the Director General of the General Judiciary Agency of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020 concerning Enactment Guidelines for Implementing Restorative Justice. The Criminal Code as the main material law and the Criminal Procedure Code as the formal legal main have not yet regulated the method of "consensus" which is the core value of the concept of restorative justice in resolving criminal cases. In the perspective of *ius constituendum*, legal policies/politics are needed to regulate the application of the concept of restorative justice in criminal law enforcement, both at the Investigation, Prosecution and Judicial levels.<sup>7</sup>

When people interpret justice as Conferencing and Mediation with restorative justice, then in fact it is something that is legitimate and legal according to Indonesian law. Furthermore, the government is responsible for preserving order and society is very much responsible for building peace. Article 4 paragraph (1) Law no. 48 of 2009 also stipulates that courts adjudicating according to law do not discriminate between people but the fact is that attention in criminal courts so far has only focused on perpetrators and people as victims of criminal acts. It would be a different matter if the parties in a criminal case (victim-community) were each given access through restorative justice media.<sup>8</sup>

Restorative Justice in the science of criminal law must aim to restore the situation to how it was before the crime occurred. When someone violates the law, things change. So that's where the role of law is to protect the rights of every victim of crime. In the conventional criminal justice process, restitution or compensation is known for victims, while restoration has a broader meaning. Restoration includes restoring the relationship between the victim and the perpetrator. Restoration of this relationship can be based on mutual agreement between the victim and the perpetrator. Victims can convey the losses they have suffered and the perpetrators are also given the opportunity to atone for them, through mechanisms of compensation, peace, social work, and other agreements.<sup>9</sup>

Settlement of traffic accident cases by applying the concept of restorative justice is in the form of penal mediation, discretion, diversion and others. The concept of restorative justice as it is known today is still used especially in alternative

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<sup>7</sup>I Made Tambir, Restorative Justice Approach in Settlement of Crimes at the Investigative Level, Journal of Udayana Law Masters, Volume 8, Number 4, 2019, p. 565.

<sup>8</sup>Strong Puji Prayitno, Restorative Justice for Justice in Indonesia (Juridical Perspective of Philosophy in Law Enforcement In Concreto), Journal of Legal Dynamics, Faculty of Law, Jenderal Sudirman University, Vol. 12. No. 3 September 2012, p. 419.

<sup>9</sup>Angkasa, 2008, Saryono Hanadi, and Muhammad Budi Setyadi. The Restorative Justice Model in the Juvenile Justice System (Study on the Mediation Practices of Offenders and Victims in the Juvenile Justice Process in the Jurisdiction of the Purwokerto Penitentiary), p. 8

solutions in juvenile criminal cases. Settlement using the concept of restorative justice is generally carried out through discretion and diversion methods outside the formal process through deliberation mechanisms.

The out-of-court settlement sought by Police Investigators in a restorative justice manner is an act of the Police Investigator's discretion, in which the settlement is sought in a fair manner by involving the perpetrators, victims, families of the respective parties and other parties involved in a crime jointly seeking a solution against the crime of traffic accidents and their implications by emphasizing recovery back to its original state as it was before the traffic accident<sup>10</sup>

Discretion in the Indonesian legal system is contained in Article 7 paragraph (1) point 1 of Act No. 8 of 1981 concerning the Criminal Procedure Code, which states that investigators because of their obligations have the authority to take other actions according to the law who are responsible. This is then emphasized in Article 18 paragraphs (1) and (2) of Act No. 2 of 2002 concerning the Indonesian National Police, that the National Police can take action according to its own judgment in carrying out its duties and authorities in very necessary circumstances with due observance of statutory regulations. -Regional Police Regulations and Code of Ethics.

Traffic crime is a crime that is classified as having distinctive characteristics. A traffic accident is a criminal act which does not have an element of intent but negligence and carelessness on the part of the perpetrator, which according to the laws and regulations of a traffic crime is an ordinary delict. For ordinary offenses, the criminal justice system can carry out the process of investigation, prosecution and trial without having to depend on the victim because it is the obligation of the system to process these criminal acts, in contrast to complaint offenses where the criminal justice system, in this case the investigative process, can only be carried out if There are complaints from victims. The restorative justice approach should also be used by judges as a basis for consideration in making a decision.<sup>11</sup>

In the case of traffic accidents, the resolution with a restorative justice approach does not always go smoothly. There are obstacles in efforts to apply the concept of restorative justice. The main problem of implementing restorative justice actually lies in the following factors, namely the legal factor itself, law enforcement factors, namely the parties who form or apply the law, the

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<sup>10</sup>Hadi Nur, Alpi Sahari, Law Enforcement Efforts by the National Police in Handling Crimes Based on Restorative Justice Related to Traffic Crimes, *Journal of Doktrin Review*, Vol.01, No.01 (2022), p. 7

<sup>11</sup>Arman Sahti, Application of the Restorative Justice Concept in Settlement of Traffic Accident Cases, *ACTUALITA*, Vol.2 No.2 (December) 2019, p. 634-635

infrastructure factor supporting law enforcement, the community factor where the law applies or is applied, and cultural factors. which is still a local community policy and is still valid today.<sup>12</sup>

Restorative justice as one of the efforts to seek peaceful conflict resolution outside the court is still difficult to implement. In Indonesia there are many customary laws that can become restorative justice, but their existence is not recognized by the state or not codified in national law. Customary law can resolve conflicts that arise in society and provide satisfaction to the conflicting parties. The emergence of the idea of restorative justice as a criticism of the implementation of the criminal justice system with imprisonment which is considered ineffective in resolving social conflicts. This is because the parties involved in the conflict are not involved in resolving the conflict. Victims are still victims, perpetrators who are imprisoned also raise new problems for families and so on.<sup>13</sup>

#### **4. Conclusion**

The obstacles faced by investigators in implementing restorative justice were that the perpetrators were not cooperative with the victims after the accident, the victims did not want to forgive the perpetrators and there was a third party who made the situation worse and there was still a lack of understanding about diversion in society. The result to be achieved with restorative justice is to encourage children to be responsible for their actions, provide opportunities for children to compensate for mistakes made by doing good with victims. The efforts of the Traffic Unit officers to avoid conflicts/complaints from the victim's side were neutral, the perpetrators were directed to make friendly visits and convey condolences to the victims, hold deliberations and ask for assistance from the Correctional Center.

#### **5. References**

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- [3]Act No. 8 of 1981 concerning the Criminal Procedure Code
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<sup>12</sup>Makarao, 2013. Application of Restorative Justice in Settlement of Crimes Committed by Children. Professor of Law at As-syafi'iyah Islamic University, Jakarta. Matter. 47 - 48

<sup>13</sup>Setyo Utomo, Criminal Justice System Based on Restorative Justice, *Mimbar Justitia*, Faculty of Law, Suryakencana University, Cianjur, Vol. V No. 01, 2014, p. 86.

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