

Effectiveness of Handling Traffic Accident Cases Causing Death Based on Restorative Justice

(Study:LP/A/227/V/2023/Spkt.Satlantas/Polresbatang/Pol dajateng)

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Abstract. *This study aims to determine and analyze the handling of traffic accident cases that cause death at present, the weaknesses in handling traffic accident cases that cause death at present and the effectiveness of handling traffic accident cases that cause death based on restorative justice. The approach method uses sociological juridical, the research specification is analytical descriptive, the types of data used are primary data and secondary data. The data collection method is field study and literature study, while the data analysis method is qualitative analysis. The theories used are the theory of legal effectiveness and the theory of restorative justice. Based on the results of the study, it can be concluded that the handling of traffic accident cases that cause death currently in effect at the Batang Police is a settlement based on restorative justice and settlement through the investigation process (trial), where almost all cases are resolved through a restorative justice approach. The weaknesses of handling traffic accident cases that cause death based on restorative justice are the existence of limiting principles in the law, public ignorance about the existence of traffic accident cases based on restorative justice and the opportunity for bribery/corruption. Handling of traffic accident cases resulting in death based on restorative justice in the case LP/A/227/V/2023/SPKT.Satlantas/Polresbatang/Poldajateng can be said to be effective, where the case involved three motorized vehicles but both the perpetrator and the victim with support from the community can be resolved through a restorative approach.*

Keywords : *accident; justice; restorative; traffic.*

1. Introduction

The goal of road transportation is to realize safe, secure, fast, smooth, orderly and regular traffic and road transportation at a cost that is affordable to the community.¹The importance of the role of traffic and road transportation is reflected in the provisions of Article 3 of Law Number 22 of 2009 concerning Traffic and Road Transportation (LLAJ Law) which states that traffic and road transportation are organized with the aim of realizing safe, secure, orderly, smooth, and integrated traffic and road transportation services; realizing traffic ethics and national culture; and realizing law enforcement and legal certainty for the community.²

The transportation system greatly determines the effectiveness of a city. Along with the rapid development of globalization, many problems are found related to traffic law violations ranging from minor to serious.³The large number of cases of traffic violations on the highway results in traffic accidents.⁴

Traffic accidents that occur often result in fatalities.

In Central Java, based on data submitted by the Central Java Statistics Agency (BPS), the number of traffic accidents throughout 2023 reached 30,493 cases. Of the thousands of traffic accident cases, 4,390 victims died, 80 people suffered serious injuries, and 35,734 people suffered minor injuries.⁵At the Batang Police, up to October 2023, the number of traffic accidents was 408 incidents with 111 fatalities.

Traffic accidents resulting in death are included in criminal acts as regulated in Article 310 paragraph (4) and Article 311 paragraph (5) of Law Number 22 of 2009 concerning Traffic and Road Transportation.

Handling of traffic cases is the scope of criminal justice by law enforcement. The police conduct investigations and then prosecution and trial in court.⁶In the event of a traffic accident, police officers are required to handle the traffic accident, one of which is by conducting a case investigation as regulated in Article 227 of the LLAJ Law. Article 1 point 2 of the Criminal Procedure Code,

¹Ilham Syafriantoro Witness, The Efforts of the Kendal Police Traffic Unit in Reducing Traffic Violation Rates, Ratio Legis Journal, Volume 2 Number 1, March 2023, p. 441

² Indra Jaya Syafputra, Maryanto, and Jawade Hafidz, Implementation of Restorative Justice in Traffic Accident Settlement, Law Development Journal, Volume 3 Issue 2, June 2021, p. 399.

³Wirjono Prodjodikoro, 2003, Principles of Criminal Law in Indonesia, Refika Aditama, Bandung, p. 20

⁴Teguh Tri Prasetyo and Eko Soponyono, Juridical Analysis Of Prosecution Application Against Traffic Violators Through E-Ticketed System With CCTV Footage As Evidence, Jurnal Daulat Hukum, Vol. 2 No. 1, 2019.

⁵Imam Yuda Saputra, 5 Regions in Central Java with the Highest Accident Rates Dominated by Soloraya, <https://jateng.solopos.com>, accessed November 18, 2023.

⁶Muhammad Dani Hamzah, Law Enforcement in Traffic Accident Criminal Cases Causing Loss of Life, Jurnal Daulat Hukum, Volume 1 Number 1, March 2018, p. 45

namely a series of investigative actions in accordance with the methods regulated in this law to seek and collect evidence that with this evidence makes clear the criminal act that occurred and to find the suspect. However, based on the provisions of Article 109 paragraph (2) of the Criminal Procedure Code, investigators are given the authority to stop the investigation for several reasons,⁷ namely the settlement of traffic accident cases based on restorative justice.

The Indonesian Criminal Law System in its development has undergone renewal, namely the regulation of criminal law in the perspective and achievement of justice to the improvement or restoration of conditions after the event and the criminal justice process known as restorative justice. This concept is different from retributive justice which emphasizes justice in retaliation.⁸

Restorative justice is an alternative in various parts of the world which is often used in handling cases of children who are in trouble with the law because it offers a comprehensive and effective solution. The concept of restorative justice aims to empower victims, perpetrators, families, and communities to correct an unlawful act by using awareness and realization as a basis for improving community life.⁹

Settlement of criminal cases based on restorative justice can be implemented in traffic accident cases where the victim dies. Traffic accidents are negligence, where initially there was no intention from the perpetrator to carry out the act, but due to negligence or lack of caution it eventually resulted in a traffic accident. According to the LLAJ Law, such acts can be punished with imprisonment. However, in practice, many traffic accident cases are resolved based on restorative justice.¹⁰ Likewise in Batang Police, in handling traffic accident cases, many are resolved based on restorative justice, namely by conducting mediation between the perpetrator and the victim. This can be seen from the number of cases of existing data from 408 traffic accident cases, 246 of which were resolved based on restorative justice.

In practice, the application of restorative justice in handling traffic accident cases where the victim died raises several problems, one of which is because the laws and regulations governing restorative justice only exist in the juvenile justice system, not traffic accident cases. Currently, the National Police's guidelines for handling traffic cases based on restorative justice are only based on the

⁷ 340.

⁸ Ridwan Mansyur, Restorative Justice as the Goal of Implementing Diversion in the Juvenile Criminal Justice System, <https://www.pn-bantul.go.id>, accessed 18 November 2023

⁹ Nikmah Rosidah, 2014, Legal Culture of Juvenile Judges in Indonesia, Pustaka Magister, Semarang, p. 103.

¹⁰ Arman Sahti, Application of the Restorative Justice Concept in Settling Traffic Accident Cases, Aktualita, Vol. 2 No. 2 (December) 2019, p.618.

Regulation of the Republic of Indonesia National Police (Perpol) Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice. In addition, sometimes the victim does not want to reconcile, so the case continues to the prosecution stage.

Based on the description above, the problem is formulated as follows: b. How are traffic accident cases resulting in death currently handled, what are the weaknesses in handling traffic accident cases resulting in death currently, and how effective is the handling of traffic accident cases resulting in death based on restorative justice.

2. Research methods

The research approach method is sociological juridical namely research based on normative legal science in the form of statutory regulations and examining how society reacts to the implementation of these regulations.¹¹ The research specification is analytical descriptive, namely describing the applicable laws and regulations in relation to legal theory and the implementation of these regulations in society.¹² The data types are primary data and secondary data. The data collection method is literature study and the data analysis method uses qualitative analysis.

3. Results and Discussion

3.1. Handling of Traffic Accident Cases Causing Death of People Currently

Based on the results of research at the Batang Police, it is known that the incidence of traffic accidents is relatively high, this can be seen from the incidents over the last 3 years which are presented in the following table:

Traffic Accident Table at Batang Police Station 2021 to 2023

No	Year	Amount Incident	Victim			Completion		
			MD	LB	LR	RJ	SP3	P21
1	2021	456	137	0	471	390	62	4
2	2022	510	154	1	539	451	54	5
3	2023	477	128	3	482	475	44	2

Source: Batang Police Traffic Unit, 2023

The table above also shows data that in handling traffic accident cases, many are resolved through restorative justice (Restorative Justice / RJ). The data above

¹¹Mukti Fajar ND and Yulianto Achmad, 2013, Dualism of Normative and Empirical Legal Research, Pustaka Pelajara, Yogyakarta, p. 47.

¹²Roni Hanitijo Soemitro, 1988, Legal Research Methods and Jurimetrics, Ghalia Indonesia, Jakarta, p.35.

provides an illustration that in handling traffic accident crimes, many are resolved through a restorative justice approach. Settlement of traffic accident cases through restorative justice usually only enters the investigation stage, while in the case of SP3, it is usually carried out because the perpetrator has died or has entered the investigation stage, then there is a peace agreement between the perpetrator and the victim not to continue the case to the court process.

This is as stated by Mr. Adi Gede Sumirat as Head of Gakkum Satlantas Polres Batang, who stated that when officers come to the scene and find a deceased victim and it is suspected that the deceased victim at the time of the accident is suspected to be the alleged perpetrator, then an examination of the witnesses must still be carried out first and then a case conference must be held to determine whether the accident case will be continued or not, if the results of the case conference are because the alleged perpetrator died, the case must be stopped (SP3).¹³

Handling of traffic accidents resulting in death at the Kendal Police is resolved through restorative justice. This is as stated in the regulation: LP/A/227/V/2023/SPKT.SATLANTAS/POLRESBATANG/POLDAJATENG. resolved through a restorative justice approach at the investigation stage. This is in line with the provisions of Article 2 letter b of the Republic of Indonesia National Police Regulation (Perpol) Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice which states that handling of criminal acts based on restorative justice is carried out during investigation activities.

In this case, the requirements for settlement through a restorative justice approach have also been met, namely the material and formal requirements as regulated in Article 5 and Article 6 of Perpol Number 8 of 2021.

Handling of traffic accidents by resolving them through restorative justice has also fulfilled the special requirements in Article 10 of Police Regulation Number 8 of 2021, namely:

- a. traffic accidents caused by driving a motor vehicle in a dangerous manner and under dangerous conditions resulting in material losses and/or minor injuries; or
- b. traffic accidents on the road due to negligence resulting in human casualties and/or property losses.

In the above case, the accident occurred due to the driver's negligence, resulting in human casualties and property. Although in this case the victim died. Given the provisions in Article 10 letter b of Perpol Number 8 of 2021 does not stipulate that the victim has minor injuries, in the event of a victim's death, it can still be resolved through restorative justice. However, if we refer to Article 10

¹³Results of the interview with Bripka Adi Gede Sumirat as the Head of the Traffic Law Enforcement Unit of the Batang Police, in Batang on January 28, 2024.

paragraph (1) of Perpol Number 8 of 2021, then the settlement through a restorative justice approach in accident cases requires human victims with minor injuries. So it can be said that the settlement through a restorative justice approach is a deviation from the provisions of Article 10 of Perpol Number 8 of 2021.

Based on the results of research at the Batang Police, the handling of traffic accidents with fatalities is not all resolved through a restorative justice approach. This is as stated by Mr. Adi Gede Sumirat who stated that in handling traffic accidents, a resolution based on restorative justice is not always attempted. This depends on the parties involved in the accident, if during mediation there is a meeting point then it is resolved through restorative justice, but if there is no meeting point then the investigation process is continued until P21 or processed until the court.¹⁴In this condition, the investigator will proceed to the next action by completing the case files and referring the case to the public prosecutor.¹⁵

The resolution of cases through the restorative justice approach and through the trial at the Batang Police is in accordance with applicable laws and regulations. In the case of being resolved through restorative justice, investigators must first consider the reasons permitted in Perpol Number 8 of 2021 and the fulfillment of the requirements for resolution through restorative justice as stipulated in Perpol Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice. Handling of traffic accidents resulting in death is also carried out in accordance with Perkap Number 15 of 2013 concerning Procedures for Handling Traffic Accidents. Likewise, for traffic accident cases that are continued to the prosecution stage, the investigation process for the case is also in accordance with the provisions of the Criminal Procedure Code.

The handling of traffic accident cases resulting in death at the Batang Police in terms of the theory of justice is in accordance with the theory of restorative justice according to Tonny Marshall, namely as a process involving all parties who have an interest in a particular violation problem to come together to resolve collectively and together how to respond to and resolve the consequences of the violation and its implications for the future. The resolution of traffic cases through restorative justice that occurred at the Batang Police is an effort that involves all parties, both the perpetrators, the victims and the community (in this case represented by the village or sub-district apparatus or the local RT/RW) in making a peace agreement.

The peace process between the two parties can reflect the justice that should be carried out in a peace process based on a restorative justice approach which is

¹⁴Results of the interview with Bripka Adi Gede Sumirat as the Head of the Traffic Law Enforcement Unit of the Batang Police, in Batang on January 28, 2024.

¹⁵Results of the interview with c Adi Gede Sumirat as BaNit Gakkum Satlantas Polres Batang, in Batang on January 28, 2024

generally a settlement of criminal cases involving the perpetrator, victim, the perpetrator/victim's family and other related parties to jointly seek a just settlement by emphasizing restoration to the original state and not retaliation.

3.2. Weaknesses in Handling Traffic Accident Cases That Cause Deaths Today

Handling of traffic accident cases that cause death at Batang Police is currently mostly resolved through a restorative justice approach and only a few cases are resolved through the courts. However, in its implementation there are still several weaknesses, namely:

1. The existence of limiting principles in the application of restorative justice according to statutory regulations

Based on the provisions of Article 229 paragraph (4) of the LLAJ Law, it is stated that accidents that result in the death of people are categorized as serious traffic accidents. Furthermore, in Article 230 LLAJ Law Traffic accident cases as referred to in Article 229 paragraph (2), paragraph (3), and paragraph (4) are processed through criminal justice procedures in accordance with the provisions of laws and regulations. Thus, based on the provisions of Article 230 of the LLAJ Law, in the event of a traffic accident resulting in the death of a person, the resolution cannot be in accordance with the KUAP, namely processed through the courts, in other words, it cannot be resolved through restorative justice.

2. Lack of public awareness

Traffic accidents are not only felt by the victims and their families, but also have an impact on the community in the surrounding environment. The community is forced to witness traffic accidents that may also cause feelings of discomfort or trauma. On the other hand, the community will be involved in the process of handling traffic accidents as witnesses who see or hear about traffic accidents. However, most people are reluctant to become witnesses in the traffic accident investigation process if the process is continued through the courts. The community is lazy and feels bothered if they have to undergo examination as witnesses by coming to the police station or court hearings to provide information related to the accident that occurred.¹⁶

3. There is an opportunity for criminal acts of bribery/corruption to occur

In some cases, the initiation of resolving criminal cases based on restorative justice comes from the perpetrator. In this case, there is an opportunity for the occurrence of criminal acts of bribery, where the perpetrator gives a sum of money so that the investigator arranges for a settlement through restorative justice. In addition, in the event that a peace agreement has been reached by the parties involved and the case is resolved through a restorative approach, the

¹⁶Results of the interview with Bripka Adi Gede Sumirat as Head of the Traffic Law Enforcement Unit of the Batang Police, in Batang on January 28, 2024

perpetrator will still be asked for a sum of money on the grounds that it is the cost of withdrawing the case files, money for organizing a case title that should not be collected from the community. Practices like this have become common knowledge, but there is no action due to lack of supervision. Not only law enforcement officers, but the involvement of third parties who are members of the general public, usually village officials or village/sub-district heads who act as "facilitators" of peace who also take part and take advantage of loopholes in handling cases with restorative justice by accepting money from the perpetrators of criminal acts.

3.3. Effectiveness of Handling Traffic Accident Cases Causing Death Based on Restorative Justice

Based on the results of research at the Batang Police, the handling of traffic accident cases that caused death were almost all resolved through a restorative justice approach. Although in practice, handling traffic accident cases that caused death based on justice also has weaknesses.

The application of restorative justice in traffic accident cases will better achieve the welfare and desires of each party compared to the perpetrator of the crime being punished by using imprisonment.¹⁷As is known, traffic accidents are often caused by negligence, not intentional. Restorative justice-based case resolution emphasizes the needs of victims, perpetrators, and also involves community participation. Perpetrators are encouraged to take responsibility for their actions by apologizing, providing death benefits if the victim dies, financing medical treatment or repairs to motor vehicles.¹⁸

Handling of traffic accident cases that cause death based on restorative justice is able to realize justice, considering that an accident is a disaster without any element of intent and because what is desired by each party has been fulfilled without any element of coercion from anyone and from any party. Therefore, the Batang Police Traffic Unit opens its doors wide to the parties involved in the accident by providing an understanding that an accident is a disaster without any element of intent and encouraging the parties involved in the accident so that the case can be resolved through RJ without leaving the rights and obligations of each party.¹⁹

¹⁷R. Rahaditya et al., Analysis of the Pros and Cons of Restorative Justice in the Implementation of the Justice System in Indonesia, *Jurnal Kewarganegaraan*, Vol. 7 No. 2, December 2023, p. 2164

¹⁸Indra Jaya Syafputra, *Op.Cit.*, p.403

¹⁹Results of the interview with Bripka Adi Gede Sumirat as the Head of the Traffic Law Enforcement Unit of the Batang Police, in Batang on January 28, 2024.

4. Conclusion

The handling of traffic accident cases that cause death that currently applies at the Batang Police is a settlement based on restorative justice and settlement through the investigation process (trial), where almost all cases are resolved through a restorative justice approach. The weaknesses are the existence of limiting principles in the law, public ignorance about the existence of traffic accident cases based on restorative justice and the opportunity for bribery/corruption. The handling of traffic accident cases in the case LP/A/227/V/2023/SPKT.Satlantas/Polresbatang/Poldajateng can be said to be effective, where the case involved three motorized vehicles but both the perpetrator and the victim with support from the community can be resolved through a restorative approach.

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