

## **Application of Restorative Justice in Resolving Minor Traffic Accident Cases Outside of Court**

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**Abstract.** *The aim of this research is to determine and analyze the application of restorative justice in resolving minor traffic accident cases outside of court. To find out and analyze the obstacles encountered in resolving minor traffic accident cases outside of court and their solutions. The method used by researchers is a normative juridical legal approach and the specifications in this research are descriptive. The source and type of data in this research is secondary data obtained from literature study. The data was analyzed qualitatively. Based on the results of the research, the application of restorative justice in resolving minor traffic accident cases outside of court means that what the police do to resolve traffic accident cases meets the requirements for the implementation of this restorative justice system. In other words, as long as the procedures carried out are in accordance with the law and the requirements for holding a mediation are met, the police have the authority to implement this restorative justice system. The obstacle: the victim's family does not want to forgive the victim. There is still a negative stigma from society, especially victims, towards law enforcement officers in implementing the concept of restorative justice, because quite a few victims have negative prejudice towards investigators/assistant investigators who want to resolve the criminal case that befell them through peaceful means with the perpetrator, many victims think that investigators defend and are paid by the perpetrator. The effort is that while the handling/investigation of the accident case is ongoing, if each party wishes to make a peace/settlement outside of court, then the investigator will help mediate with both parties. The Investigator/Assistant Investigator gives both parties freedom to carry out negotiations. The Investigator/Assistant Investigator will participate in mediation if both parties do not find an agreement and ask for assistance from the Investigator/Assistant Investigator in conducting mediation. This can anticipate negative assumptions that the peace/out-of-trial settlement is not the desire/desire of the Investigator/Assistant Investigator or the assumption that one particular party is defending or paying for it.*

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

## 1. Introduction

Indonesia is a developed and developing country, Indonesia is also a country that currently has many social problems due to population growth that is increasing every year. In community life, criminal acts often occur in the form of violations or crimes, both serious and minor. In essence, all of these crimes are a violation of legal norms.<sup>1</sup>

Problems or conflicts have quite a wide dimension and scope, it can occur in public or private areas, so it is closely related to the public interest. The public interest is certainly the interest of the state which is obliged to maintain stability in Indonesian society.<sup>2</sup> Entering the current era of globalization, the development of science and technology, especially in the field of transportation, is a very important need for human life in carrying out all its activities.

Realizing the importance of the role of transportation, especially land transportation, it is necessary to regulate how to ensure safe, orderly, smooth and efficient traffic in order to ensure the smooth running of various activities towards the welfare of the community. To realize this, Indonesia has issued regulations governing traffic on highways which are stated in Law of the Republic of Indonesia Number 22 of 2009 concerning Traffic and Road Transportation (LLAJ) which replaces the previous Law, namely Law of the Republic of Indonesia Number 14 of 1992 concerning Traffic and Road Transportation.<sup>3</sup>

In the general explanation of Law of the Republic of Indonesia Number 22 of 2009 concerning Traffic and Road Transportation (LLAJ), it is stated that in the Law, the regulation and application of criminal sanctions are regulated more firmly. For violations that are minor in nature, because the criminal sanctions of imprisonment or fines are relatively lighter. However, it is different with violations that are serious in nature and contain elements of intent, this will be subject to much heavier criminal sanctions of imprisonment. This is intended to have a deterrent effect on the perpetrators of the violations. In this case, the Indonesian National Police (Polri) which plays an important role as law enforcers, protectors, guardians, and services in maintaining public security and order, which is responsible for handling this problem must try to reconcile the parties who experienced the accident through penal mediation or also commonly referred to as criminal mediation

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<sup>1</sup>Wirjono Prodjodikoro, 2003, *Certain Criminal Acts in Indonesia*, Refika Aditama, Bandung, p. 1.

<sup>2</sup>Syahrizal Abbas, 2011, *Mediation in Sharia Law, Customary Law, and National Law*, Prenada Media Group, Jakarta, p. 21

<sup>3</sup> <https://www.bantuanhukum.or.id/web/implementasi-undang-undangnomor-22-tahun-2009-tentang-lalu-lintas-dan-angkutan-jalan-raya/>, accessed on December 25, 2023, at 20.30 WIB

The development of national and international strategic environment demands the implementation of traffic and road transportation in accordance with the development of science and technology, regional autonomy, and accountability of state administration. Therefore, in the implementation of traffic there are 4 (four) main factors that must be considered, namely traffic and road transportation safety is a state of freedom of every person, goods, and/or vehicle from the disturbance of unlawful acts, and/or fear in traffic; Traffic and road transportation safety is a state of freedom of every person from the risk of accidents during traffic caused by humans, vehicles, roads, and/or the environment; Traffic and road transportation order is a state of traffic that occurs regularly in accordance with the rights and obligations of every road user; Smooth traffic and road transportation is a state of traffic and use of transportation that is free from obstacles and congestion on the road.<sup>4</sup>

Traffic problems are problems faced by developed countries and also developing countries such as Indonesia. However, in Indonesia, the problems that are often encountered today are becoming worse and bigger than in previous years, including accidents, congestion and air pollution as well as traffic violations.<sup>5</sup>

Police performance has been running as it should according to the laws and regulations that govern it. Many police achievements have been recorded, documented and reported, but they have not been able to overcome the negative image that has developed. Often the police institution experiences image degradation caused by one or two things of its own people.<sup>6</sup>

The implementation of traffic discipline in Indonesia is still very low and lacking. Traffic violations are still quite numerous. This is of course very concerning. Most people obey traffic rules not because of awareness, but because they are afraid of being fined.<sup>7</sup>Efforts to eradicate criminal acts are carried out through the criminal justice system. The criminal justice system can be briefly interpreted as a system in society to overcome crime, so that it is within the limits of community tolerance.<sup>8</sup>

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<sup>4</sup>Nurhasan, 2017, Restorative Justice Policy in Handling Traffic Accident Cases in the Jurisdiction of the Wonosobo Police, *Khaira Ummah Law Journal* Vol.12,. Unissula, p. 1.

<sup>5</sup>Budiarto, Arif. et al. 2007, *Traffic Engineering*, UNS Press, Solo, p.3

<sup>6</sup>Riyanto, Umar Ma'ruf and Sri Kusriyah, 2020, Implementation Of Police Role In Countermeasures Of Traffic Criminal Acts Of Traffic Violations In Efforts To Establish Police Images As Community Guidelines, *Jurnal Sovereign Law* Volume 3 Issue 2, Unissula

<sup>7</sup>Ahmad Munawar, 2004, *Urban Traffic Management*, Beta Offset, Yogyakarta, p. 18.

<sup>8</sup> Rizky Adiyanzah Wicaksono and Sri Kusriyah, 2018, Implementation Of Restorative Justice Approach In Legal Protection Against Lightweight Crime By The Children, in *Journal of Sovereign Law* Volume 1 (4), Published Master of Law, Faculty of Law Unissula

The objectives that are expected to be achieved through this study are as follows: to find out and analyze the application of Restorative justice in resolving minor traffic accident cases outside the court. To find out and analyze the obstacles encountered in resolving minor traffic accident cases outside the court and their solutions.

## **2. Research methods**

The method used by the researcher is normative legal approach. The specifications in this study are descriptive. The sources and types of data in this study are secondary data obtained from literature studies. The data is analyzed qualitatively..

## **3. Results and Discussion**

### **3.1. Implementation of Restorative Justice in Resolving Minor Traffic Accident Cases Outside the Court.**

The effective implementation of Restorative Justice depends on two factors. First, from the community element, the success of restorative justice will be achieved if the community's mindset is not only focused on the deterrent effect of the perpetrator, but also on restoring the victim's losses. Second, from the side of Law Enforcement Officers (APH), cooperation between institutions is a determining factor in achieving the above goals. "In order to achieve this ideal condition, it takes a long time to change the mindset and requires active participation from all parties, both law enforcement officers, ministries/institutions, and the community. The mindset of punishment that is punitive needs to be pushed towards restorative so that the achievement of justice in law enforcement is felt by all interested parties. The implementation of Restorative Justice is the key to improving the criminal justice system in Indonesia. Currently, one of the obstacles to resolving criminal cases in Indonesia is the paradigm of APH and the community which is oriented towards giving punishment to the perpetrator or what is also known as punitive.

In order to find a solution to the issue, the Ministry of National Development Planning/Bappenas has attempted to implement the principle of Restorative Justice in Indonesia through the preparation of a policy paper. As a follow-up to this activity, the Ministry of National Development Planning/Bappenas in collaboration with the Institute for Criminal Justice Reform (ICJR), the Institute for the Study and Advocacy of Judicial Independence (LeIP), the Indonesian Judicial Monitoring Society (MaPPI FH UI), and the Indonesian Judicial Research Society (IJRS), and supported by the Australia-Indonesia Partnership for Justice (AIPJ2), elements of society and related ministries/institutions are also invited to participate through focus group discussions. With various

efforts made by all elements of society, it is hoped that the supremacy of law based on justice can be achieved.<sup>9</sup>

In this context, it is necessary to pay attention to Satjipto Rahardjo's statement that now there is more and more literature that shows how small a corner is occupied by law in the midst of the vastness of the world of order, even talking about "order without law". This situation is possible because of the creativity of society itself in giving birth to or creating social rules. Rules that are created spontaneously like that have a much higher speed than the creation of law through legislation which can take years.<sup>10</sup>The expression shows that in the creation of order the existence of law is not everything, especially law in the sense of the formation of state power that is specifically for that (legislative body). Therefore, an important issue that needs to be considered is to dynamize the working of the Restorative justice concept in Indonesia in the context of criminal law that is not yet adequate or provides a sufficient regulatory basis, and its application in the process of investigation, prosecution, and court hearings.

This issue (problem) is interesting to discuss considering two things. First, when social dynamics demand legal changes, while the law has not responded to the social changes, then whether or not the general, even international, tendency can become a basis for legal practice, will involve theoretical debate on the possibility of supporting or rejecting it. Second, the criminal justice process, both at the investigation, prosecution, and trial levels, involves institutions and individuals with diverse interests, so that the possibility of influencing the implementation of the Restorative justice concept cannot be ignored.

Historically, Restorative justice was inspired by "community justice" which is still used in some non-Western cultures, especially indigenous populations. In its development, the concept of Restorative justice was influenced by thoughts about equality and community relations. Although the inspiration did not come from Indonesian culture, Restorative justice patterns are embedded in several indigenous traditions in Indonesia.

Settlement of traffic accident cases is a process that can be done through the judicial process or outside the judicial process. In its development, the settlement of traffic accident cases does not have to be resolved through the general judicial process which is a case resolution process that has existed since long ago, the development of traffic accident resolution methods has

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<sup>9</sup><https://www.bappenas.go.id/id/berita/bappenas-dukung-penerapan-keadilan-restoratif-dalam-sistem-peradilan-pidana-indonesia-bappenas-dukung-penerapan-keadilan-restoratif-dalam-sistem-Indonesian-criminal-judiciary>

<sup>10</sup>Satjipto Rahardjo, 2007, *Let the Law Flow, Critical Notes on the Struggle between Man and Law*, Kompas, Jakarta, p. 29

also helped law enforcers with the settlement of traffic accident cases outside the judicial process. Because of that, the existence of the Restorative Justice system as an alternative to resolving criminal cases is very possible to be used to resolve traffic accident cases to be resolved more quickly, even so the settlement of this case is determined by the awareness and knowledge of the community itself and also law enforcement officers.

The implementation of the Restorative Justice system as an alternative in resolving traffic accident cases, reduces the backlog of cases because the Restorative Justice system is very easy to apply to the general public. By looking at the procedures for how the Restorative Justice system can be applied in resolving problems according to the regulations and laws that have been implemented. The process of implementing the Restorative Justice system there is carried out in accordance with the Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, which explains that there are two requirements for the application of Restorative Justice, namely Material and Formal requirements.

Implementation of Restorative Justice in Resolving Minor Traffic Accident Cases Outside the Court that what the police do to resolve traffic accident cases has met the requirements for the implementation of this Restorative Justice system. In other words, as long as the procedures carried out are still in accordance with the law and also meet the requirements for holding a mediation title, the Police have the authority to implement this restorative justice system.

Settlement of criminal cases outside the courts in the form of customary settlement, family settlement or through mediation,<sup>11</sup> facilitated by investigators, is a common phenomenon in various regions in Indonesia. In practice, cases are resolved through deliberation mediated by investigators. After an agreement is reached, the victim submits a report withdrawal to the investigator, then the investigator issues a letter of termination of investigation (SP3) on the grounds of insufficient evidence, so that the case is not continued. This method of resolving criminal cases may be able to meet the demands of justice and benefit, but it can be problematic when viewed from the aspect of legality and legal certainty. This method of resolution also raises the question of whether it can be called penal mediation. In the context of resolving criminal cases, penal mediation is the resolution of criminal cases through deliberation with the assistance of a neutral mediator, attended by the victim and perpetrator along with parents and community

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<sup>11</sup>S. Dewi and Fatahillah A. Syukur, 2011, Penal Mediation: Implementation of Restorative Justice in Indonesian Children's Courts, Indie-Publishing, Depok, p.86.

representatives, with the aim of recovery for the victim, perpetrator, and community environment.

### **3.2. Obstacles Encountered in Resolving Minor Traffic Accident Cases Outside the Court and Their Solutions.**

The fatality rate of a traffic accident is measured from the consequences of the accident. The more victims who die from the accident, the higher the fatality rate of the traffic accident. This fatality rate is measured by certain coefficients. Similarly, in taking steps to reduce the number of accidents, the fatality rate of an accident must also be reduced, of course by paying attention to and prioritizing safety factors in driving by complying with applicable regulations.<sup>12</sup>

Efforts to resolve problems outside the court carried out by perpetrators of criminal acts (their families) and victims of criminal acts (their families) are expected to be the basis for consideration in the process of examining perpetrators of criminal acts in court in imposing criminal sanctions by the judge/panel of judges. Justice is a consideration in the criminal law enforcement system and is included in the new Criminal Code (KUHP), especially for criminal complaints (Klacht delict) so that it focuses on the conditions for creating justice and balance in legal treatment for perpetrators of criminal acts and victims of criminal acts can be achieved properly, without having to always use criminal sanctions (imprisonment) in the final resolution. Because the deterrent effect as the ultimate goal of punishment (imprisonment) for perpetrators of criminal acts is now no longer achieving its target as expected. There needs to be a breakthrough in the implementation of the criminal system in Indonesia, not only through imprisonment alone but also through the application of Restorative justice.<sup>13</sup>

The existence of out-of-court settlement through Restorative Justice or penal mediation is a new dimension studied from theoretical and practical aspects. Studied from the practical dimension, penal mediation will correlate with the achievements of the world of justice. Over time, where the number of cases with all forms and variations that enter the courts is increasing, so that the consequences become a burden for the courts 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 courts, namely legal certainty, benefit and justice. Do all types of criminal cases have to be submitted and resolved in court, or are there certain cases that can be

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<sup>12</sup>Dadik Purnomo, Jawade Hafidz, 2018, The Role of the Rembang Police Traffic Unit in Reducing the Number of Traffic Accidents, Jurnal Daulat Hukum Vol. 1. No. 1, Unissula

<sup>13</sup>Annis Nurwianti, Gunarto, Sri Endah Wahyuningsih, 2017, Implementation of Restorative Justice in the Settlement of Traffic Accident Crimes Committed by Children at the Rembang Police Department Khaira Ummah Law Journal Vol. 12. No. 4, Unissula

resolved through a penal mediation pattern? In the polarization and mechanism of penal mediation, as long as it is truly desired by the parties (suspects and victims), and to achieve broader interests, namely maintaining social harmony.

Another problematic area is where the victim or reporter wants the goods or losses suffered by the violator to be returned or reported to have occurred, making the victim or reporter consider the case closed. This is different from the process or stages in the investigation where the police do not remove compensation for the crime. Therefore, the application of Restorative Justice in the investigation process is very necessary in accelerating the resolution of problems / disputes and the most important thing is to achieve justice for the plaintiff / dispute.<sup>14</sup>

There are three basic principles that form restorative justice, namely:

1. Restitution for those who suffer loss due to crime;
2. The perpetrators have the opportunity to be involved in the recovery of the country; and
3. The courts act to maintain public order and society acts to maintain that peace is just.

The three basic principles are known that Restorative justice will provide feedback for the perpetrator, victim and the people involved in it. In restorative justice also allows imprisonment if the sanction is the victim's demand and it is true that by carrying out the sanction the perpetrator is considered accountable for their actions.<sup>15</sup>

The ultimate goal of the restorative justice concept is to eliminate stigma and return criminals to normal human beings, criminals can realize their mistakes, so they do not repeat their actions, do not cause feelings of revenge because the perpetrator has been forgiven by the victim, victims quickly receive compensation, empower the community in overcoming crime and, reintegration of criminals into society.<sup>16</sup>

The obstacles: there are victims' families who do not want to forgive the victims. There is still a negative stigma from the community, especially victims towards law enforcement officers in the application of the concept of restorative justice, because not a few victims have negative prejudices against

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<sup>14</sup>Ragil Tri Wibowo and Akhmad Khisni, 2018, Restorative justice in Application for Crime Investigation on Property, Jurnal Daulat Hukum Volume 1 No. 2, [10.30659/jdh.1.2.565 - 570](#), Unissula

<sup>15</sup>Yudi Hendaro and Umar Ma'ruf, 2018, Diversion In Children Criminal Justice System Through Restorative Justice, Jurnal Daulat Hukum Volume 1 Issue 2, Unissula

<sup>16</sup>Ibnu Suka, Gunarto, Umar Ma'ruf, 2018, The Role and Responsibilities of the Police as Law Enforcers in Implementing Restorative Justice for Justice and the Benefit of Society, Khaira Ummah Law Journal Vol. 13. No. 1, Unissula



investigators/assistant investigators who want to resolve criminal cases that befell them through peaceful means with the perpetrators, many victims assume that investigators defend and are paid by the perpetrators.

The effort is when the handling/investigation of the accident case is ongoing, if each party wishes to make a Peace/Settlement outside the trial, then the investigator will help mediate both parties. The Investigator/Assistant Investigator gives both parties the freedom to negotiate. The Investigator/Assistant Investigator will participate in mediation if both parties do not find an agreement and ask for the assistance of the Investigator/Assistant Investigator to mediate. This can anticipate negative assumptions that the peace/out-of-trial settlement is not the desire/will of the Investigator/Assistant Investigator or the assumption of defending or being paid by a particular party.

In the case of Minor Traffic Accidents involving Drivers on both sides, the Investigator/Assistant Investigator in handling Minor Traffic Accidents that result in material losses with small damage values, is carried out quickly and simply but does not violate existing laws and regulations, and is still processed according to the rules. If the result of the accident results in the victim experiencing Minor Injuries (abrasions or bruises), the Investigator/Assistant Investigator must wait for the results of the Doctor's statement/Visum Results from the Doctor stating that the victim has completely recovered and there are no other disturbances/impacts/effects.

#### **4. Conclusion**

Based on the description in the discussion chapter, the following conclusion can be drawn: Implementation of Restorative Justice in Resolving Minor Traffic Accident Cases Outside the Court that what the police have done to resolve traffic accident cases has met the requirements for the implementation of this Restorative Justice system. In other words, as long as the procedures carried out are still in accordance with the law and also meet the requirements for holding a Mediation title, the police have the authority to implement this restorative justice system. The obstacles: there are victims' families who do not want to forgive the victims. There is still a negative stigma from the community, especially victims towards law enforcement officers in the application of the concept of restorative justice, because not a few victims have negative prejudices against investigators/assistant investigators who want to resolve criminal cases that befell them through peaceful means with the perpetrators, many victims assume that investigators defend and are paid by the perpetrators. The effort is when the handling/investigation of the accident case is underway, if each party wishes to make Peace/Settlement outside the trial, the investigator will help mediate both parties. Investigators/Assistant Investigators give both parties the freedom to negotiate. Investigators/Assistant Investigators will participate in mediation if

both parties do not reach an agreement and ask for assistance from Investigators/Assistant Investigators to mediate. This can anticipate negative assumptions that a peaceful/out-of-court settlement is not the desire/will of the Investigator/Assistant Investigator or the assumption of defending or being paid by a particular party.

From the research conclusions, the following suggestions are proposed: it is hoped that police leaders will instruct members in the field when they find and receive reports of minor accidents, the police will act as mediators in resolving the case through deliberation without going through the court process.

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