

## Implementation of Restorative Justice in the Settlement of Traffic Accident Crimes Based on Justice

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**Abstract.** *This study aims to determine and analyze the implementation of restorative justice in resolving traffic accidents based on justice at the Hulu Sungai Tengah District Attorney's Office and its obstacles and solutions. This study uses a sociological legal approach method, the research specification is descriptive analytical. The data used are primary data and secondary data while the data collection method is carried out through field studies and literature studies. The data analysis method is qualitative. The theories used are the theory of justice and progressive legal theory. Based on the results of the study, it can be concluded that the implementation of restorative justice in resolving traffic accidents based on justice at the Hulu Sungai Tengah District Attorney's Office is in line with Perja Number 15 of 2020 and in line with the theory of justice and progressive legal theory. Obstacles in the implementation of restorative justice are the lack of public understanding in using the Indonesian language, the long distance between the prosecutor's office and the location of the incident, the need for proper transportation to get to the RJ location, limited time for resolving cases based on restorative justice, legal and regulatory obstacles. In this case, the public prosecutor has succeeded in overcoming these obstacles so that the resolution of cases based on restorative justice can be carried out while still prioritizing justice.*

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

### 1. Introduction

Road traffic and transportation have a strategic role in supporting national development and integration in advancing public welfare as mandated by the

1945 Constitution of the Republic of Indonesia.<sup>1</sup>The implementation of road traffic and transportation aims to realize safe, secure, orderly, smooth, and integrated road traffic and transportation services; the realization of traffic ethics and national culture; and the realization of law enforcement and legal certainty for the community.<sup>2</sup>

According to Soerjono Soekanto, traffic conditions in a country will reflect the state of the country, which can be seen from the traffic whether it runs safely, comfortably, and orderly or otherwise. The morals and behavior of road users can interpret the conditions or legal behavior of a country.<sup>3</sup>Therefore, traffic and road transportation need to be regulated sustainably while still paying attention to public interests and community capabilities.<sup>4</sup>

The very rapid development of traffic and road transportation, apart from having positive impacts, also has negative impacts, one of which is the public's ignorance about how to drive safely, which has the potential to cause traffic accidents.<sup>5</sup>In Indonesia, the rate of traffic accidents is still high. Based on data collected during the period 2020-2023, the number of accidents in Indonesia continues to increase, where in 2020 it reached 100,028 cases, in 2021 the number of accidents was 103,645 cases, and in 2023, accidents that occurred on the road had reached 155,000 cases.<sup>6</sup>

There are several causal factors that cause traffic accidents, One of the causes is the still low level of traffic discipline among drivers,<sup>7</sup> so that drivers have a number of responsibilities in the event of a traffic accident as regulated in Article 235 paragraph (1) of the LLAJ Law, which states that drivers, owners, and/or Public Transportation Companies are required to provide assistance to the heirs of traffic accident victims without dropping criminal charges for medical and

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<sup>1</sup>Ilham Syafriantoro Sakti. "The Efforts of the Kendal Police Traffic Unit in Reducing Traffic Violation Rates". *Ratio Legis Journal*, Vol 2 No 1 (2023). p. 404, url :<https://jurnal.unissula.ac.id/index.php/rlj/article/view/30370> accessed on January 4, 2025.

<sup>2</sup>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.33, url :<https://jurnal.unissula.ac.id/index.php/ldj/article/view/16084> accessed on January 4, 2025.

<sup>3</sup>Soerjono, Soekanto. (1990). *Police and Traffic Analysis According to Legal Sociology*. Bandung: Mandar Maju, p. 1.

<sup>4</sup>Preliyanto Puji Utomo. (2020). "Implementation of Law Number 22 of 2009 as an Effort to Overcome Traffic Accidents in the Jurisdiction of the Blera Police. Thesis, Semarang: Unissula, <http://repository.unissula.ac.id>, accessed on January 5, 2025.

<sup>5</sup>Hari Condro Wibowo. (2019). "The Process of Investigating Minors in Traffic Accidents at the Kebumen Police Resort". Thesis. Semarang: Unissula, <http://repository.unissula.ac.id>, accessed on January 5, 2025.

<sup>6</sup>Azmalatul Rizkiyah, Traffic Accident Rates Continue to Increase, Students Dominate Age Group, <https://goodstats.id>, accessed January 5, 2025.

<sup>7</sup>Maisa Ariani, Sigit Priyanto, Siti Malkhamah, Analysis of the Level of Possible Factors Causing Traffic Accidents in Elementary School Children in Yogyakarta City, Proceedings of the National Postgraduate Seminar, Department of Civil Engineering FT-UI, Depok, July 4, 2019, p. 64.

funeral costs. Thus, even though the perpetrator has provided compensation to the victim, he will still be prosecuted considering the phrase "not dropping criminal charges", so that the legal process must be continued.<sup>8</sup>

In its development, The criminal justice system is shifting towards efforts to achieve justice by trying to improve the situation after the event and the criminal justice process known as restorative justice, which is different from retributive justice which emphasizes justice in retaliation.<sup>9</sup> This concept was initially normatively only regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) in resolving criminal cases with child perpetrators, which was subsequently also applied to adult perpetrators.<sup>10</sup> The concept of restorative justice views criminal acts not as crimes against the state or the public, but rather as crimes against the victim, so that in resolving them the emphasis is on the victim's recovery, not on punishing the perpetrator.<sup>11</sup> Likewise, the criminal act of traffic accidents, which is an unintentional negligence, so that the resolution is more focused on a restorative justice approach.

Research related to the resolution of criminal acts based on restorative justice at the prosecutor's office level was once conducted by Setya Budi Kurnianto who researched the implementation of restorative justice in criminal acts of assault, which in its implementation has not been effective and still has several weaknesses because it has not been regulated in law and is prone to corrupt practices.<sup>12</sup> Another study was conducted by Agus Effendi who examined the effectiveness of handling traffic accidents that cause death based on restorative justice at the police level. The results of the study showed that the application of restorative justice in traffic accident cases would achieve more welfare and the desires of each party compared to perpetrators of criminal acts being punished

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<sup>8</sup>Asep Nugra, Abdul Haris Semendawai, Siti Nur Intihani, Legal Analysis of the Implementation of Restorative Justice in Serious Traffic Accidents Causing the Death of Others According to Law Number 22 of 2009 in the Perspective of Justice, *Veritas*, Volume 8 Number 2, 2002, p. 30

<sup>9</sup>Ridwan Mansyur, Restorative Justice as the Goal of Implementing Diversion in the Juvenile Criminal Justice System, <https://www.pn-bantul.go.id>, accessed on August 5, 2024.

<sup>10</sup>Fachrizal Afandi, Restorative Justice, Some of Its Problems, <https://www.youtube.com/watch?v=zbIfiiGdLDA>, accessed on August 5, 2024.

<sup>11</sup>Arman Sahti, Application of the Restorative Justice Concept in Settling Traffic Accident Cases, *Aktualita*, Volume 2 Number 2, December 2019, p. 618

<sup>12</sup>Setya Budi Kurnianto, "Implementation of Restorative Justice in Justice-Based Criminal Law Enforcement of Persecution (Case Study Number: PDM-44/Pekal/Eoh.2/09/2022)", *Ratio Legis Journal*, Volume 3, No 1, March 2024, p.860, url :<https://jurnal.unissula.ac.id/index.php/rlj/article/view/36646/11784> accessed on January 25, 2025.

using imprisonment,<sup>13</sup> considering that traffic accidents are often caused by negligence rather than intent.<sup>14</sup>

This study aims to determine and analyzing the implementation of restorative justice in resolving traffic accidents based on justice at the Hulu Sungai Tengah District Attorney's Office along with obstacles and solutions.

## 2. Research methods

This study uses a sociological juridical approach method, the research specification is descriptive analytical. The data used are primary data and secondary data while the data collection method is carried out through field studies and literature studies. The data analysis method is qualitative.

## 3. Results and Discussion

### 3.1. Implementation of Restorative Justice in the Settlement of Traffic Accident Crimes Based on Justice at the Hulu Sungai Tengah District Attorney's Office

Traffic accident crimes, where almost all factors of traffic accidents involving private vehicles or public vehicles are caused by human error. From a criminal law perspective, human error can be defined as a criminal act, therefore there are legal consequences regulated in Article 310 paragraph (2), (3), and (4) of the LLAJ Law.<sup>15</sup> Settlement of traffic accident crimes based on restorative justice can be implemented at the prosecution stage at the prosecutor's office.

Based on the results of research at the Hulu Sungai Tengah District Attorney's Office, during the period 2022 to 2024 the Hulu Sungai Tengah District Attorney's Office has implemented restorative justice in resolving traffic accident crimes. For more details, see the following table:

Table  
Implementation of Restorative Justice in Resolving Criminal Acts  
Traffic Accidents at Hulu Sungai Tengah District Attorney's Office 2022 to 2024

No	Year	Number of cases	Restorative Justice
1	2022	4	2

<sup>13</sup>R. 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

<sup>14</sup>Agus Effendi & Andri Winjaya Laksana, "Effectiveness of Handling Traffic Accident Cases Causing Death Based on Restorative Justice (Study: LP/A/227/V/2023/Spkt.Satlantas/Polresbatang/Polda Jateng)", *Legis Ratio Journal*, Volume 3 No.1, March 2024, p. 618, url :<https://jurnal.unissula.ac.id/index.php/rli/article/viewFile/36539/11766> accessed January 25, 2025.

<sup>15</sup>Iqbal Hannafiu Jati Wicaksono, et al, Application of the Principle of Restorative Justice to Traffic Accident Perpetrators Resulting in Death, *Borobudur Law and Society Journal*, Vol. 3 No. 1, 2024, p. 23

2	2023	7	6
3	2024	8	4
	Amount	19	12

Source: Hulu Sungai Tengah District Attorney's Office, 2024

The implementation of restorative justice in resolving traffic accidents at the Hulu Sungai Tengah District Attorney's Office is not much different from the implementation of other Perkaa because the main thing is that there is peace from the victim to the perpetrator and previously the Mediator Prosecutor could ensure that the SPDP that entered the General Criminal field was worth the RJ Effort and it will be clearer when the Case Files are submitted by the Investigator to the Prosecutor's Office in the Case file envelope it will be seen whether the Perpetrator has been convicted or not, and whether in the case file there has been peace from the Perpetrator to the Victim witnessed by the families of the twelve parties and the Apparatus in this case the Village Head, The next step when the file is complete, the Prosecutor Issues P21 along with its completeness where before stage 2 (submission of the suspect and evidence) the Mediator Prosecutor conducts a Profiling from the Mediator Prosecutor to the perpetrator's family, followed by the submission of the suspect and evidence. The Mediator Prosecutor based on the Letter of Order to facilitate the peace process based on RJ justice (RJ-1), makes an invitation to the perpetrators and their families, victims and families of village officials, including the Village Head, religious leaders, community leaders, traditional leaders, RT heads, Babinsa and Babinkantibmas and other related parties (RJ-2) to sit together to make peace efforts and issue a notification of the settlement of the case outside the Court based on restorative justice to the Police (RJ-3).<sup>16</sup>

According to Mrs. Herlinda, in the case of a traffic accident, previously the perpetrator and the victim had submitted a request for Restorative Justice along with a peace agreement letter. After the peace efforts are carried out, there will be results from the implementation of the peace efforts, namely success and failure, if successful it is stated in the Form (RJ-7) and if unsuccessful it is stated in the Minutes of Failure (RJ-12). After the implementation of the Restorative Justice Efforts carried out at the Restorative Justice House is successful, the Mediator Prosecutor reports evidence of documentation of the implementation, both from profiling, peace efforts, restorative justice administration and videos of the implementation, sent via Email to the South Kalimantan High Prosecutor's Office. Then an exposé is carried out together with the High Prosecutor's Office and if successful it will be forwarded to the Attorney General's Office, specifically the Deputy Attorney General for General Crimes where in the exposé the Mediator Prosecutor through the Head of the Prosecutor's Office explains the

<sup>16</sup>Results of an interview with Herlinda, as Head of Criminal Investigations at the Hulu Sungai Tengah District Attorney's Office, December 2, 2024

chronology of the case along with evidence that the perpetrator is in accordance with Articles 4, 5 and 6 (in Perja Number 15 of 2020). Furthermore, there is an agreement to Terminate Prosecution from the Criminal Investigation Unit of the Attorney General's Office of the Republic of Indonesia (RJ-34). Based on this letter of approval, a Decree on Case Resolution Based on Restorative Justice (RJ-35) was issued by the Hulu Sungai Tengah District Prosecutor's Office.<sup>17</sup>

To find out the implementation of restorative justice in resolving traffic accident crimes, the following describes an example of a case with suspect MJ who committed a crime as regulated in Article 310 Paragraph 4 of Law No. 22 of 2009 concerning Traffic and Road Transportation, namely "Any person who drives a motorized vehicle who due to his negligence causes a traffic accident resulting in the death of another person" as in Case File No: BP/29/VI/2023/Lantas dated June 7, 2023 from the Hulu Sungai Tengah Police Investigator.

The stages in resolving traffic accident criminal cases based on restorative justice are as follows:

#### 1) Case file research

At the stage of examining the case files, the Mediator Prosecutor can previously ensure that the SPDP that falls into the General Criminal field will be resolved through restorative justice and will be clearer when the case files are submitted by the investigator to the Prosecutor's Office in the case file envelope.

#### 2) Peace efforts

Peace efforts are carried out by the facilitator prosecutor at the time of the submission of the suspect and evidence from the investigator (stage 2). The prosecutor makes an invitation/summons to the perpetrator and the suspect's family, the victim's family, village officials (Village Head and RT Head), religious leaders, community leaders. In addition, the prosecutor also sends a notification letter of settlement of the case outside the court based on restorative justice addressed to the Hulu Sungai Tengah Police, which notification also serves as an invitation to participate in the peace process.<sup>18</sup>

#### 3) Peace process

The agreement was made by the parties without any element of coercion, pressure and deception from any party. The victim has forgiven the suspect unconditionally, the suspect admitted his actions/negligence due to negligence.

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<sup>17</sup>Results of an interview with Herlinda, as Head of Criminal Investigations at the Hulu Sungai Tengah District Attorney's Office, December 2, 2024

<sup>18</sup>Results of an interview with Mahendra Suganda, as Head of the Sub-Section for Prosecution, Execution and Examination at the Hulu Sungai Tengah District Attorney's Office, December 2, 2024.

#### 4) Report

The prosecutor prepared a successful settlement report and sent a letter of Request for approval to stop prosecution based on restorative justice in the case of a traffic accident to the high prosecutor's office and the attorney general's office. After receiving approval from the High Prosecutor's Office, a Letter of Determination of Case Settlement based on Restorative Justice was issued. In addition, the Hulu Sungai Tengah District Attorney's Office also sent a Letter of Notification of Case Settlement based on restorative justice to the police and the Court.

#### 5) Releasing the suspect from custody

Suspects who still have the status of detainees are released from detention by issuing a release order from detention and a report is made of the same.

The implementation of restorative justice in resolving traffic accidents at the Hulu Sungai Tengah District Attorney's Office is in line with the provisions of Perja Number 15 of 2020, where in the example of a traffic accident case, peace efforts are carried out when the suspect and evidence are handed over to the public prosecutor. This is in line with Article 7 of Perja Number 15 of 2020 stating that the Public Prosecutor offers peace efforts to the victim and suspect which are carried out without pressure, coercion, and intimidation. Peace efforts in resolving traffic accidents are carried out at the prosecution stage, namely when the responsibility for the suspect and evidence is handed over (stage two). Likewise, peace efforts between the perpetrator and the victim's family starting from the summons stage to the peace and reporting process are also in line with the provisions of Perja Number 15 of 2020. Regarding the place of peace, it is not carried out at the Prosecutor's office, but rather at the Paya Village Head's Office. This is in line with the provisions of Article 9 paragraph (4) of Perja Number 15 of 2024 which states that the peace process is carried out at the Prosecutor's Office unless there are conditions or circumstances that do not allow for security, health, or geographical reasons, the peace process can be carried out at a government office or other place agreed upon with a letter of order from the Head of the District Attorney's Office Branch or the Head of the District Attorney's Office. In the example case, unconditional peace was achieved, where after the peace was successful, the facilitator prosecutor immediately made a report and sent a request for approval of the settlement of the peace based on restorative justice. Furthermore, after obtaining approval from the High Prosecutor's Office, it was immediately followed up by releasing the suspect from detention. Thus, the implementation of restorative justice in resolving traffic accidents is in line with Perja Number 15 of 2020.

### **3.2. Obstacles and Solutions in the Implementation of Restorative Justice in the Settlement of Traffic Accident Crimes Based on Justice at the Hulu Sungai Tengah District Attorney's Office**

The implementation of traffic accident case resolution at the Hulu Sungai District Attorney's Office did not have any obstacles because previously the community in Hulu Sungai Tengah Regency had often received socialization from the Attorney's Office regarding restorative justice. However, sometimes in its implementation several things arise, namely:<sup>19</sup>

#### 1) Lack of public understanding in the use of Indonesian

Many people in the jurisdiction of the Hulu Sungai Tengah District Attorney's Office do not really understand how to use Indonesian. This is because most people use the Banjar regional language in their daily interactions, especially people in rural areas who more often use Banjar (regional language). As a result, when the mediator prosecutor explains using Indonesian, the community does not really understand/comprehend the intent conveyed by the Mediator Prosecutor. That's why we overcome this by using Banjar (Regional Language).

Efforts to overcome these obstacles are that the Mediator Prosecutor tries to use Banjar Language (Regional Language) during the mediation process, so that the parties can fully understand the intent and purpose of resolving traffic accident cases based on restorative justice.

#### 2) The long distance between the prosecutor's office and the location of the incident

Hulu Sungai Tengah Regency is located in South Kalimantan Province, which has a geographical condition dominated by hills and mountains. Given its location in the interior, many villages in Hulu Sungai Tengah are still difficult to access, especially during the rainy season when the roads become muddy and overflow. The long distance between the prosecutor's office and the location of the parties involved in the case does not allow for efforts and peace processes to be carried out at the Hulu Sungai Tengah District Attorney's Office. This is due to considerations of the long distance, limited funds and limited time.

Efforts to overcome these obstacles are by using the Village Hall Office as the RJ House in resolving traffic accident cases based on restorative justice. In this case, all parties involved, both the perpetrators, victims, and religious and community leaders, are invited to come to the local Village Head's office for the peace process. In this case, the mediator prosecutor comes to the location (Village Head's Office) to carry out the peace process.

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<sup>19</sup>Results of an interview with Herlinda, as Head of General Crimes at the Hulu Sungai Tengah District Attorney's Office, December 2, 2024.



3) A suitable means of transportation is required to get to the RJ location.

As is known, the Hulu Sungai Tengah Region is a hilly area, dense forest and rivers, so it requires proper transportation to reach rural areas with rocky terrain or floods. For prosecutors who carry out case resolution based on restorative justice who must visit locations in rural areas, they need a fleet to travel to locations that are difficult to reach.

The solution to overcome these obstacles is to use the means of transportation owned by the Prosecutor's Office, while if the fleet is not available, use a private fleet that is deemed suitable for traversing difficult terrain.

4) Time limitations for resolving cases based on restorative justice

Based on the provisions of Article 9 paragraph (5) of Perja Number 15 of 2020, the peace process and fulfillment of obligations in the settlement of disputes based on restorative justice are carried out within a maximum of 14 days from the transfer of responsibility for the suspect and evidence (stage two). In the case of a peace agreement after the fulfillment of obligations is carried out without conditions, it is not a problem, but if the peace agreement is made with conditions, it may take more than 14 days. This happens if the perpetrator must provide compensation or accident compensation for the victim, which requires time to collect money. If the time has passed 14 days, while the perpetrator has not fulfilled the obligation, the agreement can be considered failed and the case will continue to the court process.

The solution to overcome these obstacles is to implement peace efforts on the same day as the submission of the suspect and evidence from the investigator to the Public Prosecutor (Phase II). With this policy, it is hoped that the perpetrator can fulfill his obligations before the deadline runs out, so that the fulfillment of the requirements can be met.

5) Legal and regulatory barriers

In general, there are currently no regulations in the form of laws that regulate the settlement of criminal acts based on restorative justice. Currently, regulations for the settlement of criminal acts based on restorative justice are only those that apply to each law enforcement institution, where in the prosecutor's office it is regulated in Perja Number 15 of 2020. In criminal acts of traffic accidents due to negligence, based on Perja Number 15 of 2020, case resolution can be carried out based on restorative justice by fulfilling certain requirements. However, based on the LLAJ Law which regulates criminal acts of traffic accidents, it still emphasizes a retributive approach with criminal sanctions for perpetrators of criminal acts of traffic accidents. Meanwhile, Perja Number 15 of 2020 is only valid for the prosecutor's office, and does not have the same legal force as the law.

#### 4. Conclusion

The implementation of restorative justice in resolving traffic accidents based on justice at the Hulu Sungai Tengah District Attorney's Office has been in line with Perja Number 15 of 2020, but there are still several obstacles both internally and externally. Therefore, it is necessary to reform the laws and regulations related to the resolution of traffic accidents based on restorative justice that is equivalent to the law and the need for prosecutors to supervise perpetrators of crimes to prevent repeated crimes.

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