

Implementation of Restorative Justice in Traffic Accident Cases (Research Study at the West Java Regional Police)

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Abstract. *SettlementTraffic accident cases often focus on criminal sanctions and ignore the social and emotional impacts experienced by victims and perpetrators. An alternative solution is a restorative justice approach. This approach aims to restore the situation after a traffic accident through deliberation and mediation involving the victim, perpetrator, community participation, and other relevant parties. The normative juridical approach method, the research specifications are carried out descriptively analytically, the data used for this research are secondary data, which consist of primary legal materials, secondary legal materials, and tertiary legal materials, the secondary data collection method uses document studies and literature studies and the data analysis method is carried out qualitatively. The mechanism of penal mediation as a form of discretion in resolving traffic accident cases is a written agreement from the perpetrator and victim signed on a seal and stamped, known/approved by the head of the RT/RW or the head of the neighborhood and known by other witnesses with the principle of consensus. The obstacles faced, namely the ability of the perpetrator to pay compensation, not according to the agreement, time and requires a lot of personnel, there is a gap that occurs between the applicable positive law and the legal interests that apply in the community, the skills and analytical abilities of the police regarding the level of violations are uneven, the mediation or restoration procedure is still unclear because there are no standard rules on restorative mediation in traffic accident cases, the perpetrator is less cooperative, and the influence of public opinion that will not necessarily accept the settlement of traffic accident criminal cases through mediation or restorative.*

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

1. Introduction

The legal consequences of traffic accidents include criminal penalties for the perpetrator or cause of the accident, and civil lawsuits for the resulting material losses. If a driver's unlawful actions result in significant losses for another party, it's natural for the injured party to demand compensation from the driver. This won't be a significant issue if the driver is also the owner of the vehicle.¹ However, if public transportation drivers, such as bus drivers, are generally only renters or employees who are financially unable to pay compensation, it's not uncommon for their obligation to pay compensation to be disproportionate to the losses incurred.²

Drivers who commit unlawful acts that cause traffic accidents that cause losses to the victim must compensate for the losses that have committed unlawful acts and caused losses, then he is obliged to compensate for the losses. The obligation to compensate for losses imposed by Article 1365 of the Civil Code on motor vehicle drivers who violate the law that cause losses in traffic accidents, in reality is not fully carried out by the drivers as the losses have been suffered by the victim.³ In traffic accidents that result in serious injuries or death, the victim is often found guilty. Observations show that every traffic accident resulting in serious injuries or death is brought to court. When the public prosecutor files a traffic accident case with the court, they will seek negligence on the part of the perpetrator or driver, which will base criminal charges on Articles 359 and 360 of the Criminal Code. Proving fault in traffic accidents is very difficult. Research shows that the element of negligence in traffic accidents is the driver's negligence and lack of caution. This is in accordance with Articles 359 and 360 of the Criminal Code.

¹Muhammad Dani Hamzah, *Penegakan Hukum Pada Kasus Tindak Pidana Kecelakaan Lalu Lintas Yang Menyebabkan Hilangnya Nyawa Orang*, Jurnal Daulat Hukum Vol. 1. No. 1 March 2018 ISSN: 2614-560X, p. 43-52

²Iskandar T., *Ganti Rugi Korban Kecelakaan Lalu Lintas Akibat Perbuatan Melanggar Hukum Pengemudi*, <https://media.neliti.com/media/publications/150107-ID-ganti-rugi-korban-kecelakaan-lalu-lintas.pdf>

³Article 1365 of the Civil Code

Addressing traffic accidents can involve legal enforcement, which can occur normally and peacefully, but can also occur due to legal violations, such as criminal prosecution. Resolving cases through the judicial system is a slow-moving law enforcement process, as it involves various levels, from the police, the prosecutor's office, the district court, the high court, and even the Supreme Court.⁴ Law enforcement carried out using formal justice methods in the form of repressive police action followed by a litigative legal process generally ends in a win-lose or lose-lose situation. The end result of this litigation process is simply the punishment of the perpetrator for their actions, while the restoration of the victim's rights and the physical and psychological losses suffered by the victim as a result of the incident cannot be fulfilled. The current form of punishment can also be said to not provide a deterrent effect for lawbreakers. Ultimately, this has an impact on the accumulation of cases, which is not insignificant in the courts. In order to follow the reorientation of criminal law reform, a new concept has emerged for the settlement of criminal cases: restorative justice. Although traffic accidents are regulated as criminal acts, case resolution often involves mechanisms outside the criminal justice system, including through decision-making institutions from law enforcement officials, joint discussions, consultations, and institutions that prioritize tolerance in society. Restorative justice is an approach that emphasizes the needs of victims, perpetrators, and community participation, rather than simply fulfilling legal provisions or imposing punishment.

⁴Satjipto Rahardjo, (2003), *Sisi-Sisi Lain dari Hukum di Indonesia*, Kompas : Jakarta.

On the other hand, the legal consequences of traffic accidents include criminal penalties for the perpetrator or cause of the incident, which can also be accompanied by civil lawsuits for the material losses incurred. In practice, the parties involved in an accident often resolve the compensation issue themselves, by voluntarily providing compensation, compensation, and assistance to the party considered the victim, sometimes without even considering whether they were right or wrong. This practice is likened to a peace settlement where the victim and the perpetrator sit together in a meeting to discuss their situation. Peace itself is not actually a form of true restorative justice. All forms of traffic violations that result in minor injuries, serious injuries, or even death can be implemented using the restorative justice system.⁵ Article 1 paragraph (3) of Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice states that Restorative Justice is the resolution of Criminal Acts by involving the perpetrator, victim, the perpetrator's family, the victim's family, community leaders, religious leaders, traditional leaders or stakeholders to jointly seek a just resolution through peace by emphasizing restoration to the original state. Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice assists investigators and 35 Polri investigators in carrying out investigations and inquiries, including providing legal protection. This is done with the note that all formal and material requirements are met during the Restorative Justice process to resolve traffic accidents.

2. Research Methods

The approach method used in this research is normative juridical, namely a type of approach that uses the provisions of legislation that apply in a country or a doctrinal legal approach method, namely legal theories and opinions of legal scientists, especially those related to the problems discussed.⁶ The juridical-normative approach used in this research is an approach through positive law, namely the application of Restorative Justice in traffic accident criminal cases.

The problem approach will then be sharpened with a conceptual approach, namely an approach carried out by using concepts understood from the thoughts of experts or specialists in fields related to the problem being discussed.⁷

⁵Bagus Basuki Hadi, Tinjauan Yuridis Terhadap Penerapan Restorative Justice Dalam Kecelakaan Lalu Lintas (Studi Kasus Di Polres Jakarta Selatan Tahun 2018 - 2020), *Jurnal Ilmiah Wahana Pendidikan*, 9 (9), 114-127

⁶Jonaedi Efendi dan Johnny Ibrahim, (2018), *Metodologi Penelitian Hukum Normatif dan Empiris*, Prenadamedia Group, Depok.

⁷Ronny Hanitijo Soemitro, (2010), *Metode Penelitian Hukum dan Yurimetri*. Ghalia Indonesi, Jakarta.

The case study approach in normative legal research aims to study the application of norms in legal practice. Decided cases, as defined in jurisprudence, are the focus of the research. While cases themselves have empirical significance, in normative legal research, legal decisions are studied to gain insight into the impact of the normative dimension within a legal rule and to use the results of the analysis as input for legal explanation.

3. Results and Discussion

3.1. Implementation of Restorative Justice in the process of resolving traffic accident criminal cases within the scope of the West Java Regional Police.

An accident is an unexpected and/or unintentional event involving a vehicle or other road user, resulting in human casualties and/or property damage. Traffic accidents generally occur not due to the driver's intent, but rather due to the driver's negligence and lack of discipline in complying with regulations.⁸

Criminal liability related to accidents that cause material loss, or even death, is based on the element of intent (*intentionordolus*) or negligence (*negligenceorschool*). The high number of accidents in Indonesia reflects the low public awareness of the importance of obeying traffic rules. Factors such as physical and mental fatigue, the influence of alcohol or drugs, lack of skills, failure to maintain a safe distance, and excessive speed are some of the main causes of traffic accidents. This condition is exacerbated by the psychological stress of road users, which can increase the risk of negligence. In addition, the driver's age factor also contributes to the risk of accidents. Driving conditions will have different impacts for different age groups. Young drivers, aged 17-50 years, usually have good driving skills, but have an unstable psychological condition. Conversely, drivers aged over 50 years old usually have begun to decline in driving skills, but have a better psychological condition. This overall situation shows the need to increase awareness and discipline in driving to reduce the fatal impact of traffic accidents which continues to increase.

Driver error can often be inferred from violations of traffic regulations. Examples of these errors include failing to signal when turning, lane violations, traffic conflicts with other vehicles, and speed limit violations. This demonstrates that driver carelessness and negligence in controlling their vehicle can lead to traffic accidents. Furthermore, drivers' lack of understanding of the potential legal consequences of such negligence leads them to ignore or even frequently forget the rules and etiquette of driving, resulting in accidents.⁹

⁸Soerjono Soekanto, (2007), *Pokok-pokok Sosiologi Hukum*, Raja Grafindo Persada, Jakarta.

⁹W. Prodjodikoro, (2003), *Tindak-Tindak Pidana Tertentu di Indonesia*, Refika Aditama Bandung.

For example, a traffic accident occurred on Saturday, May 11, 2023, on Jalan Ciater, Subang. A bus lost control on a downhill curve, colliding with several oncoming vehicles, parked vehicles, and a utility pole. This incident resulted in 11 deaths, 31 injuries, and damage to several vehicles.¹⁰

The number of traffic accidents in Indonesia from January to August 2024 reached 79,220 incidents. The highest number of accidents occurred in April 2024, with 11,924 incidents. On average, the Indonesian National Police Traffic Corps handles more than 10,000 accidents each month. The number of vehicles involved in traffic accidents was 722,470 units. Motorcycles were the most frequently involved vehicle, with 552,155 units. Minibuses were involved in accidents at 54,309 units. Large vehicles such as trucks were involved in accidents at 28,504 units. Meanwhile, the number of traffic accident victims was 117,962 people, with a breakdown of 99,689 people suffering minor injuries, 9,744 people suffering serious injuries, and 8,505 people dying.¹¹ Meanwhile, in 2023, in the West Java jurisdiction, there were 9,014 traffic accidents with 3,213 fatalities.¹²

a. Number of Traffic Accidents in West Java

Meanwhile, in West Java, the West Java Regional Police (Polda Jabar) recorded three major accidents that attracted attention throughout 2024, including the Habibah Jaya Kencana Bus accident that hit a Mitsubishi Fuso truck on the Cipali Toll Road, resulting in 12 deaths. Next, an accident on the Cikampek Toll Road involving three vehicles, namely a Daihatsu Grand Max minibus, a Primajasa Bus, and a Toyota Rush minibus, which resulted in 12 deaths. And finally, a Transputra Fajar Bus lost control in the Ciater area, Subang, which hit a Feroza vehicle and three motorcycles in front of a mosque, resulting in five deaths.

The number of traffic accidents (*laka lantas*) within the jurisdiction of the West Java Regional Police (Polda Jabar) experienced a significant decline throughout 2021. The number of traffic accidents recorded was 6,591, compared to 13,735 in 2020. This represents a 53.5 percent decrease compared to the previous year, or a decrease of 7,144 incidents. The number of fatalities in accidents throughout 2021 also decreased. In 2020, the number of fatalities was 6,229, compared to 1,136 in 2021, a decrease of 50 percent. Meanwhile, the number of seriously injured victims in 2020 was 1,092, compared to 428 in 2021, a decrease of 61 percent. There was a decrease of 664 seriously injured victims compared to the

¹⁰Lis Diana Ningsih, Ajeng Meiliana Rizky, Prayoga Luthfil Hadi, & Wimpy Santosa, *Pertanggungjawaban Pidana Kejadian Kecelakaan Lalu Lintas Di Wilayah Hukum Polres Subang, Jurnal HPJI (Himpunan Pengembangan Jalan Indonesia)* Vol. 11 No. 1 January 2025: 75–82

¹¹https://pusiknas.polri.go.id/detail_artikel/belasan_ribu_kecelakaan_lalu_lintas_terjadi_tiap_bulan

¹²<https://www.kompas.id/baca/nusantara/2023/12/30/3213-warga-jawa-barat-tewas-akibat-lakalantas-knkt-ungkap-penyebabnya>

previous year. Material losses due to traffic accidents in 2021 amounted to IDR 11,283,900,000 and in 2020 it was IDR 22,687,125,000, a decrease of 50 percent.

Meanwhile, in 2023, the West Java Regional Police recorded 9,014 traffic accidents. The number of traffic accidents (*lakalantas*) in 2023 decreased compared to the previous year, which recorded 9,553 cases. This represents a decrease of approximately 539 cases, or approximately 6 percent, compared to 2022. The number of fatalities due to traffic accidents throughout 2023 reached 3,123, down from 3,510 in the previous year. The number of fatalities decreased by 297, or 8 percent.

Traffic accidents in the jurisdiction of the West Java Regional Police in 2024 were 7,442, a decrease of 21% (or 1,884) compared to the number of traffic accidents in 2023 of 9,326. The decrease in the number of accidents also had an impact on the number of victims. The number of fatalities due to traffic accidents in 2024 was 2,778 people, compared to 3,445 people in 2023, resulting in a decrease of 20% or 667 people. However, there was an increase in the number of seriously injured victims. The number of seriously injured victims in 2024 was 627 people, compared to 767 people in 2023, an increase of 28% or 170 people.

Based on the analysis and evaluation results, a decrease also occurred in the number of seriously injured victims to 627 people, from the previous 767 people in 2023. The number of minor injuries also decreased from 10,152 people in 2023 to 8,313 people in 2024. Meanwhile, material losses due to traffic accidents in 2024 amounted to Rp 18,021,069,901, compared to Rp 20,378,276,017 in 2023, a decrease of 12 percent, or Rp 2,357,206,116.

b. Handling Traffic Accident Cases in West Java Through Restorative Justice

Of the many traffic accident cases that occurred in West Java Province, the Traffic Directorate of the Republic of Indonesia National Police of the West Java Region, the settlement of traffic accident cases is carried out, through both penal and non-penal means. Traffic accident cases handled by the West Java Regional Police of the Republic of Indonesia National Police of the Traffic Directorate amounted to 5,624 cases. Of the total cases, there are 1,009 traffic accident cases that have been P21 which means notification that the results of the investigation are complete. Then there are 1,335 traffic accident cases that were stopped based on the Investigation Termination Order (SP3). Furthermore, there are 1,054 cases that were resolved through Alternative Dispute Resolution (ADR) or also known as Alternative Dispute Resolution (APS), namely settlement outside the court through consultation, negotiation, mediation, conciliation, or expert assessment. Then 2,061 cases were resolved through Brief Reports (BAS). And 147 cases were resolved through diversion, and 18 cases were transferred.

In resolving traffic accident cases, a peace process between the perpetrator and victim can be conducted by requesting the assistance of a third party as a mediator if a consensus cannot be reached through deliberation. ADS or APS generally means through mediation for peace, which culminates in restorative justice. In resolving traffic accident cases, a peace process between the perpetrator and victim can be conducted by requesting the assistance of a third party as a mediator if a consensus cannot be reached through deliberation. If an agreement has been reached between the parties involved, it is stated in a written statement and submitted to the investigator/assistant investigator.¹³

The Indonesian National Police (Polri) has issued regulations for the implementation of restorative justice by police institutions, namely Police Regulation No. 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice (Perpol No. 8 of 2021). The role of implementing restorative justice is delegated to the Community Security and Order Supervisory Agency (Bhabinkamtibmas). The police are tasked with resolving disputes between citizens or communities through restorative justice mechanisms.

According to Article 11 of Police Regulation No. 8 of 2021, Bhabinkamtibmas are the frontline officers in carrying out the police functions described above. They interact directly with the community in their daily lives. Bhabinkamtibmas are tasked with maintaining public security and order in villages, sub-districts, and equivalent areas. Bhabinkamtibmas are authorized to resolve disputes between residents or communities through restorative justice mechanisms in cases of minor crimes.

Handling of minor assault crimes using Restorative Justice is classified as a problem-solving process carried out by the Bhabinkamtibmas based on the mutual consent of both parties without any pressure from any party, by creating a form of mutual agreement format signed by both parties, then acknowledged by the local Bhabinkamtibmas as proof that they have made peace without going through a legal process.

In the event that an agreement has been reached between the parties involved, it is stated in a written statement and submitted to the investigator/assistant investigator. Based on these provisions, it is understood that the determination and compensation for material losses resulting from a traffic accident can be resolved outside the court through deliberation between the parties to reach a consensus. This means that compensation for the victim's rights can be resolved

¹³Irvan, Delmiati, S., & Amiruddin. (2024). Penyelesaian Kasus Kecelakaan Lalu Lintas Yang Menimbulkan Luka Berat Berdasarkan Keadilan Restoratif. *Unes Journal of Swara Justisia*, 8(3), 711-724. <https://doi.org/10.31933/r12cd826>

outside the court and can be carried out for all types of traffic accidents, whether minor, moderate, or serious traffic accidents.

For example, consider a traffic accident in Bogor Regency. The perpetrator and victim agreed to resolve the case through amicable means. In such circumstances, the Bogor Police Resort only provided a venue but did not participate in the meeting, much less provide any opinion on the matter. The police, in this case the investigator, could only mediate with the parties after the parties had held discussions and reached a point of agreement. The agreement should be made in written form and signed by the parties. Ideally, the written agreement should be made known to the Village Head/Lurah where the victim resides. The deliberation between the perpetrator and the victim ended peacefully before the case went to investigation because there were no fatalities, and the perpetrator agreed to pay compensation of Rp 30 million.

Settlement of traffic accident cases through the courts often creates dissatisfaction, both on the part of the victim and the perpetrator. Victims often feel that their rights and interests are not being considered, while limited criminal sanctions cause traffic accident perpetrators to feel that they are being treated inappropriately for their actions. The dissatisfaction with the implementation of law enforcement by law enforcement, both by victims and perpetrators, makes case resolution based on restorative justice an alternative that can be offered to resolve conflicts between victims and perpetrators. Considering that the resolution of cases through peace, victims and perpetrators can seek and reach an agreement that best aligns with the wishes and interests of both parties, both victims and perpetrators. The use of restorative justice as an alternative conflict resolution between victims and perpetrators is expected to restore the balance of interests, especially in restoring the rights of victims who have been harmed as a result of the perpetrator's actions.

3.2. Obstacles faced in the process of resolving traffic accident criminal cases within the scope of the West Java Regional Police and their solutions.

There are several obstacles in implementing the resolution of traffic accident criminal cases, both legally and non-legally.

a. Legally

From a legal perspective, the resolution of traffic accident cases using a restorative justice approach has not been regulated in Law Number 22 of 2009 concerning Traffic and Road Transportation.

The legal substance governing the settlement of traffic accident cases in Law Number 22 of 2009 concerning Traffic and Road Transportation expressly explains

that every traffic accident must be resolved through a criminal justice process in accordance with the provisions of the law. The provisions of Article 230 in conjunction with Article 235 of Law Number 22 of 2009 concerning Traffic and Road Transportation, expressly stipulate that the settlement of traffic accident cases is resolved and processed according to the provisions of statutory regulations. Furthermore, according to the provisions of Article 235 of Law Number 22 of 2009 concerning Traffic and Road Transportation, restoration of the victim's rights does not waive criminal prosecution.

Meanwhile, Indonesian National Police Regulation Number 8 of 2021 concerning the Handling of Criminal Offenses Based on Restorative Justice stipulates that case handling based on restorative justice results in the termination of the investigation (SP3). However, on the other hand, police sometimes still tend to use conventional criminal law approaches, namely Article 310 of the Criminal Code (negligence causing death/injury) or Article 359 of the Criminal Code (negligence causing death), which are repressive.

In practice, the mediation or restoration procedure remains unclear because there are no standard regulations regarding restorative mediation in traffic accidents, thus depending on the policies of the National Police (specifically the Traffic Directorate). Meanwhile, National Police Regulation No. 8 of 2021 concerning Traffic Accident Handling only regulates technical investigations, not detailed restorative mechanisms. The police can only terminate an investigation (SP3) based on Article 109 of the Criminal Procedure Code if there is insufficient evidence or if it is not a criminal offense. Another factor hindering the police in implementing restorative justice is the difficulty in meeting the requirements: no fatalities, minor material losses, and a peaceful settlement between both parties. If a victim dies, the police tend to pursue criminal proceedings even if the victim's family has forgiven the victim.

Thus, a legal conflict exists between Law Number 22 of 2009 concerning Traffic and Road Transportation and Indonesian National Police Regulation Number 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice. This will result in a lack of legal certainty in resolving traffic accident cases through the application of restorative justice. Meanwhile, some members of the public, both perpetrators and victims of traffic accidents, desire a restorative justice approach to resolving legal issues.

Furthermore, another legal obstacle is the lack of an institution to oversee the implementation of restorative justice, which can lead to perpetrators being negligent in carrying out their obligations. It is often found in the field that parties obligated to provide compensation to victims fail to fulfill their responsibilities. Furthermore, there is no oversight of the implementation of peace agreements

reached in case resolutions based on restorative justice, which in this case leaves victims feeling disadvantaged.

Within the jurisdiction of the West Java Regional Police, the implementation of restorative justice in traffic accident cases faces several specific legal and practical obstacles. The West Java Regional Police refer to Police Chief Regulation No. 8 of 2021 concerning Traffic Accident Management, but this regulation does not specifically regulate restorative justice mechanisms. The West Java Regional Police do not have a specific standard operating procedure (SOP) binding all police stations (Polres) for handling traffic accident mediation. Mediation decisions often depend on the policies of the local Police Chief/Sector Police Chief, resulting in a lack of uniformity.

If a traffic accident results in serious injury or death (Article 310/359 of the Criminal Code), the police are required to file a criminal complaint, even if a settlement agreement has been reached. Article 109 of the Criminal Procedure Code only permits an SP3 (Termination of Investigation) if there is insufficient evidence or if the case is not a criminal offense, not due to a settlement agreement. Furthermore, a settlement agreement at the police level (e.g., a peace agreement) is not binding on the court. The victim or their family can still file a report with the court, thereby still risking prosecution for the perpetrator.

b. Non-Juridically

Non-judicial settlement of traffic accident cases, such as fatal traffic accidents, such as the pile-up on the Purbaleunyi Toll Road, is often politicized by the media and the public. The public often reacts in various ways to news of traffic accidents, one of which is continued harassment because the victims are unwilling to resolve the case amicably. The public often forces the police to pursue legal action even after the victim's family has reconciled. Meanwhile, reconciliation often fails because victims demand large compensation, making it difficult for perpetrators to meet restorative requirements, especially when there is economic disparity between the victim and perpetrator. If the perpetrator is a poor driver and the victim demands high compensation, mediation often fails. This occurs because there is no legal aid mechanism that guarantees fair compensation.

Another obstacle faced by investigators in implementing Restorative Justice is that the perpetrator is less cooperative towards the victim after the accident, on the other hand, the victim does not want to forgive the perpetrator, which causes a prolonged conflict. In handling the incident of children as perpetrators of traffic accidents by carrying out the restoration justice process, investigators are required to mediate both parties, both the perpetrator and the victim, but the presence of a third party can cloud the atmosphere of consolidation, and there is

still a lack of public understanding about the diversion approach. The public is also rarely willing to actively provide assistance in the investigation process.

Nevertheless, efforts to implement restorative justice within the jurisdiction of the West Java Regional Police are carried out through non-judicial mediation by the Traffic Accident Unit. Several police stations in West Java, such as Bandung City, Cimahi, and Bogor Regency, have practiced peaceful deliberation before cases go to investigation, provided there are no fatalities and losses are under IDR 50 million. In 2023, a traffic accident involving a truck driver as the perpetrator, through mediation by the police, the truck driver and the victim agreed to a peace settlement with IDR 30 million in compensation, the case not proceeding to court. However, there are also failed restorative justice efforts, such as the fatal collision case on the Cipularang Toll Road in 2022. Although the victim's family forgave the perpetrator, the Purwakarta District Attorney's Office still prosecuted the perpetrator due to public pressure.

Another effort undertaken by the West Java Regional Police is collaborating with the Witness and Victim Protection Agency (LPSK) and the Legal Aid Institute (LBH) in various city and district jurisdictions in West Java to ensure justice for both parties (perpetrators and victims). The West Java Regional Police are promoting restorative justice by utilizing social media to educate people about resolving traffic accidents without trial through the Prioritize Peace campaign.

3.3. Implementation of Restorative Justice in the process of resolving traffic accident criminal cases within the scope of the West Java Regional Police.

Restorative Justice is a series of processes for resolving criminal cases outside the court which aims to restore the relationship between the parties and the losses suffered by the victim of the crime and is expected to be used as a basis for consideration by the panel of judges in the criminal court in reducing the criminal sanctions imposed on the perpetrator of the crime.¹⁴

Restorative justice is an approach to resolving criminal cases that emphasizes restoration, not retribution. Restorative justice focuses on at least three areas: first, repairing the harm caused by the crime by involving the victim. Second, ensuring the perpetrator's accountability. Finally, preventing similar harm in the future.

The concept of Restorative Justice views criminal acts not as crimes against the state or the public, but as crimes against the victim, so that in resolving them the

¹⁴Nurwianti, A, Implementasi Restoratif/Restorative Justice Dalam Penyelesaian Tindak Pidana Kecelakaan Lalu Lintas Yang Dilakukan Oleh Anak Di Polres Rembang, *Jurnal Hukum Khaira Ummah*, Vol. 12 No. 4, 2017, p. 705

emphasis is on the victim's recovery, not on punishing the perpetrator. Therefore, restorative justice can be interpreted as a series of judicial processes that essentially aim to restore the losses suffered by crime victims. Justice in criminal law must aim to restore the situation to the way it was before the crime occurred. When someone commits a crime, the situation changes. This is where the law plays a role in protecting the rights of every crime victim.

In cases of traffic accidents that cause losses to victims from a positive legal perspective, this has been accommodated by the enactment of the Traffic Law, namely Article 236 paragraph (2) of Law Number 22 of 2009 concerning Traffic and Road Transportation, which states that: The obligation to compensate for losses as referred to in paragraph (1) in Traffic Accidents as referred to in Article 229 paragraph (2) can be carried out outside the court if a peaceful agreement is reached between the parties involved.

Restorative justice is a discretionary action implemented by investigators, with the rationale that this action can effectively resolve traffic violations, where the suspect committed a traffic violation and due to his negligence caused injury or death to another person. However, this action raises complex problems, where on the one hand, this discretionary action is an application of criminal law carried out in accordance with its own policies to make the law effective that is running rigidly. While on the other hand, this action becomes a stumbling block for law enforcement, especially investigators, where investigators are always blamed for the implementation of their discretion because this discretionary action gives rise to discrimination in the application of the law.

The conditions for discretionary action include:

- a. Such discretionary action must be truly carried out or based on the principle of necessity,
- b. Discretionary actions taken are strictly in the interests of police duties,
- c. The most appropriate action to achieve a target is the disappearance of a disturbance or the absence of something that is not feared,
- d. The principle of balance in taking discretionary action must always be maintained, namely between the nature of the action or target used and the size of the disturbance or the severity of the object that must be acted upon.

Discretion is essentially part of the effort to combat crime, according to Muladi.¹⁵ that efforts to combat crime are manifested in various forms, namely:

¹⁵Muladi. (1997). *HAM, Politik dan Sistem Peradilan Pidana*, Semarang: BP Undip, p.100

"The first form is repressive in nature, using penal means which are often referred to as the criminal justice system, the second is efforts without using penalties (prevention without punishment) and the third is utilizing efforts to form public opinion about crime and socialize the law widely through mass media. Prevention without punishment as a non-criminal justice system criminal policy can be distinguished, in the typology of preventive measures, namely primary prevention, secondary prevention, and tertiary prevention."

Therefore, discretion has positive and negative sides, namely:

1). Positive Side

From a police organizational perspective, the use of discretion is a solution to overcome existing legal limitations as a basis for carrying out duties while adapting to ongoing societal developments and changes. In deciding which problems to address and how to address them, police policymakers and field officers base their decisions on the principle of necessity. This means that police will only use discretion when necessary or as needed.

Making choices about the use of discretion is one way to build police morale. Patrol officers' experience in making decisions in a variety of situations, environments, and with various parties involved can broaden their intellectual horizons and prepare them to govern others with a sense of justice, rather than arbitrariness and excessive zeal.

2). Negative Side

The problems surrounding the use of police discretion have led to frequent low-visibility decisions by officers. The existence and freedom of police discretion are not widely appreciated or understood by the public. This results in both being rarely understood by either police administrators or authorities. The exercise of discretion by officers is uncommon or never scrutinized by the public, authorities, police administrators, or supervisors. Patrol and detective officers work alone or with loyal and trusted colleagues. The use of discretion by officers cannot be assessed, particularly when an arrest is not made or an official report is not made by the officer (the situations in which police-community relations most often occur).

4. Conclusion

Implementation of Restorative Justice in the process of resolving traffic accident criminal cases within the scope of the West Java Regional Police. The form of police discretion in the West Java jurisdiction in traffic accident cases is through penal mediation, by seeking a settlement between the parties involved peacefully

through the ADR (Alternative Dispute Resolution) mechanism. Investigators provide an opportunity for the parties to reach a peace agreement. The penal mediation mechanism as a form of discretion in resolving traffic accident cases is a written agreement from the perpetrator and victim signed with a seal and stamped, acknowledged/approved by the RT/RW head or neighborhood head and acknowledged by other witnesses based on the principle of deliberation and consensus. After a peace agreement is reached, investigators record the traffic accident in a register book and properly recorded. Based on the Letter of the Chief of Police No. B/3022/XII/2009/Sdeops dated December 14, 2009, cases that have been resolved through ADR should no longer be touched by other legal actions that are counterproductive to the objectives of community policing. Obstacles faced in the process of resolving traffic accident criminal cases within the scope of the West Java Regional Police, namely: The perpetrator's ability to pay compensation, not according to the agreement, time and requires a lot of personnel, there is a gap that occurs between the applicable positive law and the legal interests that apply in society, the skills and analytical abilities of the police regarding the level of violations are uneven, mediation or restoration procedures are still unclear because there are no standard rules regarding restorative mediation in traffic accident cases, the perpetrator is less cooperative, and the influence of public opinion that will not necessarily accept the settlement of traffic accident criminal cases through mediation or restorative. Especially if the perpetrator is innocent, instead becomes the party harmed by the discretionary decision. As a result, the developing public opinion will judge the police negatively. The solution, the West Java Regional Police regulate the criteria for cases that can be restored, binding mediation procedures, and the role of mediators by issuing SOP Restorative Justice for traffic accident cases.

5. References

Journals:

- Bagus Basuki Hadi, Tinjauan Yuridis Terhadap Penerapan Restorative Justice Dalam Kecelakaan Lalu Lintas (Studi Kasus Di Polres Jakarta Selatan Tahun 2018 - 2020), *Jurnal Ilmiah Wahana Pendidikan*, 9 (9), 114-127
- Irvan, Delmiati, S., & Amiruddin. (2024). Penyelesaian Kasus Kecelakaan Lalu Lintas Yang Menimbulkan Luka Berat Berdasarkan Keadilan Restoratif. *Unes Journal of Swara Justisia*, 8(3), 711-724. <https://doi.org/10.31933/r12cd826>
- Lis Diana Ningsih, Ajeng Meiliana Rizky, Prayoga Luthfil Hadi, & Wimpy Santosa, Pertanggungjawaban Pidana Kejadian Kecelakaan Lalu Lintas Di Wilayah Hukum Polres Subang, *Jurnal HPJI (Himpunan Pengembangan Jalan Indonesia)* Vol. 11 No. 1 January 2025: 75–82

Muhammad Dani Hamzah, *Penegakan Hukum Pada Kasus Tindak Pidana Kecelakaan Lalu Lintas Yang Menyebabkan Hilangnya Nyawa Orang*, Jurnal Daulat Hukum Vol. 1. No. 1 March 2018 ISSN: 2614-560X

Nurwianti, A, Implementasi Restoratif/Restorative Justice Dalam Penyelesaian Tindak Pidana Kecelakaan Lalu Lintas Yang Dilakukan Oleh Anak Di Polres Rembang, *Jurnal Hukum Khaira Ummah*, Vol. 12 No. 4, 2017

Books:

Jonaedi Efendi dan Johnny Ibrahim, (2018), *Metodologi Penelitian Hukum Normatif dan Empiris*, Prenadamedia Group, Depok.

Muladi. (1997). *HAM, Politik dan Sistem Peradilan Pidana*, Semarang: BP Undip

Ronny Hanitijo Soemitro, (2010), *Metode Penelitian Hukum dan Yurimetri*. Ghalia Indonesi, Jakarta.

Satjipto Rahardjo, (2003), *Sisi-Sisi Lain dari Hukum di Indonesia*, Kompas : Jakarta.

Soerjono Soekanto, (2007), *Pokok-pokok Sosiologi Hukum*, Raja Grafindo Persada, Jakarta.

W. Prodjodikoro, (2003), *Tindak-Tindak Pidana Tertentu di Indonesia*, Refika Aditama Bandung.

Internet:

https://pusiknas.polri.go.id/detail_artikel/belasan_ribu_kecelakaan_lalu_lintas_t_erjadi_tiap_bulan

<https://www.kompas.id/baca/nusantara/2023/12/30/3213-warga-jawa-barat-tewas-akibat-lakalantas-knkt-ungkap-penyebabnya>

Iskandar T., *Ganti Rugi Korban Kecelakaan Lalu Lintas Akibat Perbuatan Melanggar Hukum Pengemudi*, <https://media.neliti.com/media/publications/150107-ID-ganti-rugi-korban-kecelakaan-lalu-lintas.pdf>

Regulation:

Article 1365 of the Civil Code