

Resolution of Traffic Accident Cases Resulting in Death Through Restorative Justice (A Study at the Polrestabes Medan)

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ABSTRACT

Traffic accidents that result in fatalities are tragic events that not only affect the victim and the perpetrator, but also the victim's family and the wider community. In an effort to achieve a more humane and just resolution, restorative justice approaches have been adopted as an alternative to formal court proceedings in criminal cases. This study aims to analyze the application of restorative justice by the Traffic Unit (Satlantas) of Medan City Police (Polrestabes Medan) in handling fatal traffic accident cases and identify the supporting and inhibiting factors in its implementation. This research uses normative juridical method with qualitative approach, supported by primary and secondary data collected through literature study and interviews with police officers and related stakeholders. The results showed that the implementation of restorative justice at Satlantas Polrestabes Medan involved a mediation process between the offender and the victim's family, with the participation of community leaders and under police supervision. Agreements reached usually include an apology, compensation, and a commitment to prevent future offenses. Supporting factors for this approach include mutual agreement between the parties and support from the community and law enforcement.

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1. INTRODUCTION

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. Of the various problems, the main problem is traffic accidents. In the last 10 years, traffic accidents that have occurred in Indonesia have claimed an average of 10,000 lives per year. Traffic levels show that around 332 people die out of 1000 accidents that occur. (Arief Budiarto, 2017)

The Medan City Police (Polrestabes) released the number of traffic accidents (Lakalantas) in the

jurisdiction of the Medan Polresta throughout 2022. The figures show that Lakalantas has been quite high over the past year. The police noted that 1,665 accident cases occurred during 2022 and claimed the lives of 211 people. The death toll last year was 211 people, 752 people were seriously injured and 1,394 people were slightly injured, material losses due to accidents reached IDR 4.6 billion. When compared to the previous year of 2021, the number of accidents in 2022 has increased.

The Medan City Police (Polrestabes) released the number of traffic accidents (Lakalantas) in the jurisdiction of the Medan Polresta throughout 2022. The figures show that Lakalantas has been quite high over the past year. The police noted that 1,665 accident cases occurred during 2022 and claimed the lives of 211 people. The death toll last year was 211 people, 752 people were seriously injured and 1,394 people were slightly injured, material losses due to accidents reached IDR 4.6 billion. When compared to the previous year 2021, the number of accidents in 2022 has increased. In 2021, the number of accidents was 1,329 cases, deaths reached 197 people, the number of traffic violations in 2023 was 10,688 cases, while in 2022 the number of traffic violations was 14,233 cases.

The number of traffic violations in 2023 has decreased, with fines reaching Rp. 486,330,000. Although the number of traffic violations has decreased, the Medan Police highlighted the high fatality rate of accidents that claimed lives. The Medan Police Chief also appealed to the public, especially drivers, to continue to obey traffic regulations when driving. And prioritizing safety over speed when driving is expected to avoid accidents that can harm yourself or others.

Accidents not only cause fatalities, but also financial/material losses. The losses in Indonesia are estimated to reach 41.3 trillion rupiah. This is very concerning if strategic steps are not taken to improve safety and legal compliance in traffic. (Yuniar A, 2019). The increase in the number of motorized vehicles in Indonesia also has a significant impact on traffic problems in general, for example the increase in the number of motorized vehicles in 2023, namely 24,671,330 and in 2023 it amounted to 32,774,299 or an increase of 8,100,594 vehicles, where this increase is not balanced by the addition of adequate road length.

Road traffic and transportation have a strategic role in supporting national development and integration as part of efforts to advance public welfare as mandated by the 1945 Constitution of the Republic of Indonesia. According to Law of the Republic of Indonesia Number 22 of 2009 concerning Traffic, Transportation and Roads as part of the national transportation system, its potential and role must be developed to realize security, safety, order, and smoothness of road traffic and transportation in order to support economic development and regional development. The development of the national and international strategic environment demands the implementation of road traffic and transportation in accordance with the development of science and technology, regional autonomy, and accountability of state administration.

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 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. (Eko Iskandar, 2018)

At the level of resolving traffic accidents, the Indonesian National Police as the investigator in the accident, whether it resulted in the death of the victim or physical disability, has attempted to use mediation in resolving the accident case, as in the following cases:

1. Traffic accident case in the name of Tarmizi bin Muchtar, 46 years old, (Driver) with No: BP/299/XII/2023/LLMDN.

2. Traffic accident case in the name of Dwi Prasetyo Utomo, 20 years old, with No. BP/105/V/2023/LLMDN
3. Traffic accident case in the name of Andika Pradipta Bayu Angin bin Syamsudin Harahap, 25 years old, with No. BP/11/I/2023/LLMDN.

From the 3 (three) accident cases above, the Medan Police have attempted to conduct penal mediation by bringing together the perpetrators, victims and families to make peace with the terms and conditions agreed upon by the parties. In the context of investigation with restorative justice, the police are the gatekeepers of the criminal justice system. As Donald Black said, his role as investigators and criminal investigators places the police in contact with most common or ordinary crimes. Most police work reactively rather than proactively, relying heavily on members of the public to complain or report suspected criminal acts (Ananda S, 2021).

The change in the investigation model from being purely punitive (punishing) to restorative (restoring perpetrators and victims) is a change in more than just technique, but also in the culture of investigation. Therefore, it requires a long process of adaptation, which apparently cannot be postponed. For example, the scheme involving victims (victim's participation scheme) in the investigation or inquiry process is not easy because it requires a change from the usual "closed" patterns to being more "open". Not to mention the problem, victim participation itself is difficult to define, meaning to what extent participation is possible, although overall it has the potential to provide restorative benefits, especially the recovery and rehabilitation of victims (Eko Iskandar, 2018)

Based on the description above, several problems are formulated as follows:

1. How are the legal regulations regarding restorative justice in resolving traffic accident cases that result in death?
2. How to apply restorative justice in resolving traffic accident cases that result in fatalities?
3. What are the obstacles that the Medan Police Traffic Unit faces in implementing restorative justice in resolving traffic accident cases that result in fatalities?

2. METHODS

Legal research is conducted to find solutions to legal issues arising from the topics discussed in this paper. The research method used is normative juridical. Normative juridical legal research, or library legal research, is conducted by analyzing literature or secondary data relevant to the research topic. (Mahmud, 2005) According to Soerjono Soekanto, Normative legal research consists of: legal principles; legal systematics; Research on the level of legal synchronization; on legal history; comparative law.

Of the five types of normative legal research, those that will be used in this research are research on legal principles and comparative legal research. (Sukanto, 2009) This type of research examines legal norms and principles regarding legal regulations regarding cohabitation as regulated in National Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

3. RESULTS AND DISCUSSION

Legal Regulations Regarding Restorative Justice in Settling Traffic Accident Cases Causing Death.

Restorative justice as a concept is something new in the criminal law system in Indonesia. However, at the level of practice, restorative justice has long been known and also practiced by indigenous peoples of Indonesia through the implementation of the customary law system by various indigenous peoples of Indonesia. Such as the indigenous peoples of Papua, Toraja, Minangkabau, Kalimantan, Central Java and other indigenous communities that still hold strong to culture. The Indonesian state that makes Pancasila the basis of the state (national philosophy), in its position as such, Pancasila is the highest norm in the legal structure whose position is higher than the constitution or Basic Law. (Teguh P and Arie, 2015)

The basic values contained in Pancasila actually have a concept of restorative justice long before this idea was present and entered the juvenile criminal justice system. This can be seen in the formulation of the 4th Principle of Pancasila, which states that "people are led by the wisdom of deliberation among representatives."

Observing the formulation of the 4th Principle of Pancasila, it means that the Indonesian nation has long glorified the principle of deliberation as a habit in resolving every problem that occurs in society, including overcoming national problems on a national scale. Deliberation and consensus, in the context of restorative justice can be done in various ways, including mediation, compensation, or other methods agreed upon between the victim and the perpetrator. Other parties can be involved in the settlement process as mediators, if it turns out that no agreement is reached between the victim and the perpetrator, then the problem is processed through the courts (litigation).

Deliberation and consensus contained in the 4th Principle of Pancasila is a concept of resolving problems or disputes that aims to create a balance between the disputing parties, so that the problem can be resolved by reaching an agreement by accommodating the interests of the disputing parties. Settlement in this way will certainly be more capable of fulfilling and providing justice for all parties, which is the ultimate goal of the Pancasila state legal system. This is in accordance with the basic values contained in the 5th Principle of Pancasila, which means that national and state life is based on "social justice for all Indonesian people".

Historically, restorative justice was inspired by "community justice" which is still used in some non-Western cultures, especially indigenous populations. In its development, restorative justice was greatly influenced by ideas about equality and community relations.

Although the idea or concept of restorative justice does not come from Indonesian culture, restorative justice patterns are embedded in several traditions of indigenous communities in Indonesia. (Jonlar Purba, 2017). The alignment of restorative justice with the basic values of Pancasila is evidence that restorative justice has long been known and practiced by the Indonesian people. However, as an instrument in enforcing criminal law, the application of restorative justice is something new, especially in the criminal law system. Restorative Justice began to be known and applied in the Indonesian legal system after the issuance of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which stipulates that the resolution of cases of children in conflict with the law is carried out through a restorative justice approach.

Positive law stipulates that criminal cases cannot be resolved outside the court process, but in certain cases it is possible to implement it. In practice, criminal law enforcement in Indonesia, although there is no formal legal basis, criminal cases are often resolved outside the court process through the discretion of law enforcement officers, peace mechanisms, customary institutions and so on.

The existence of restorative justice in the criminal justice system can be said to be between "existing" and "non-existent". It is said so, on the one hand because restorative justice in the provisions of the law is not known in the Criminal Justice System, but at the level under the law it is known in a limited way through the discretion of law enforcers and is partial in nature. Then, on the other hand, it turns out that the practice of restorative justice has been carried out by the Indonesian people and the settlement is carried out outside the court such as through the mechanism of customary institutions. (Lilik Mulyadi, 2018)

Based on the description above, it can be understood that restorative justice has not been integrated into the criminal justice system. However, along with the renewal of criminal law and criminal procedure law, the concept of restorative justice has begun to be applied in the resolution of criminal cases in certain cases, such as minor crimes. The resolution of criminal acts through the restorative justice approach has only been explicitly regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. The restorative justice approach is carried out through diversion at each level through a mediation process. Article 1 paragraph (7) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states that diversion is the transfer of the resolution of juvenile cases from the criminal justice process to a process outside the criminal justice system. Diversion is carried out for 30

(Thirty) days to reach an agreement between the two parties.

Legally, the legal provisions that are the basis for Medan Police Traffic Accident investigators in implementing restorative justice in resolving traffic accident cases refer to the provisions of Article 18 paragraph (1) of Law Number 2 of 2002 concerning the Republic of Indonesia National Police (referred to as the Police Law), which states: "For the public interest, officials of the Republic of Indonesia National Police in carrying out their duties and authorities can act according to their own judgment". According to the provisions of Article 230 of the LLAJ Law, that: "every traffic accident case that meets the elements of a crime must be resolved through the criminal justice process". This means that the police must carry out/carry out legal action, the legal action in question is to conduct an investigation into every report of a traffic accident victim and at the same time transfer the case that has been completed to the Prosecutor's Office.

In practice, police investigators when receiving reports of traffic accident victims do not immediately take legal action as stated in Article 230 of the Traffic, Transportation and Road Law. In certain circumstances, police investigators often resolve traffic accident cases through a restorative justice approach or penal mediation. Thus, the ideal role that should be carried out by police investigators is not carried out in accordance with the law. This is where Traffic Accident investigators use their discretionary authority in responding to and resolving traffic accident cases as stipulated in Article 18 of the Traffic, Transportation and Road Law.

Another legal basis that is the basis for traffic police investigators to apply penal mediation in resolving criminal cases of traffic accidents is to refer to the Letter of the Chief of Police Number Pol: B/3022/XII/2009/SDEOPS, dated December 14, 2009 concerning Handling Cases Through Alternative Dispute Resolution (ADR). The principle of penal mediation referred to in the Letter of the Chief of Police emphasizes that the resolution of criminal cases using ADR can only be implemented if there is an agreement from the parties, both the victim and the suspect or the disputing parties, but if there is no agreement, it will still be resolved in accordance with applicable legal procedures.

Furthermore, the discretion of traffic accident investigators is also seen in the application of Article 63 paragraph (3) of Regulation of the Chief of Police Number 15 of 2013 concerning Procedures for Handling Traffic Accidents. In the provisions of Article 63 paragraph (3) of Regulation of the Chief of Police Number 15 of 2013, it is stipulated that: "Settlement of cases outside of court hearings as referred to in paragraph (2) may be carried out as long as a police report has not been made". This provision provides an opportunity for police investigators in the traffic accident unit to carry out discretionary actions in resolving traffic accident cases through penal mediation.

Settlement of traffic accident cases through a restorative justice approach by settling cases outside the court (penal mediation) is basically the implementation of discretionary authority carried out by the police as stated in Article 18 paragraph (1) of the Indonesian National Police Law. However, in the context of the Republic of Indonesia as a country of law, discretionary actions carried out by law enforcement officers must also be legally accountable. In response to this, police leaders often seek the right legal basis to legalize the termination of cases for the sake of public interest which is included in pure crimes.

In accordance with Secret Telegram Letter Number STR/583/VIII/2012 concerning the implementation of Restorative Justice from the Head of Criminal Investigation Unit to the Directors of Criminal Investigation Units, Directors of Special Criminal Investigation Units, and Directors of Narcotics Investigation Units in all Regional Police in the Republic of Indonesia, related to the implementation of police authority to take or carry out actions based on their own assessment based on considerations of the benefits and risks of such actions and truly in the public interest as regulated and stated in Article 18 of the Police Law.

In its development, the Chief of Police also issued a Circular Letter of the Chief of Police Number 8 of 2018 concerning the Implementation of Restorative Justice in the Settlement of Criminal Cases. This circular letter of the Chief of Police concerning Restorative Justice is then used as a legal basis and guideline for investigators and investigators of the Police who carry out investigations/investigations,

including as a guarantee of legal protection and supervision of control, in the application of the principle of restorative justice in the concept of investigation and investigation of criminal acts in order to realize the public interest and sense of justice of the community, so that it can realize uniformity of understanding and application of restorative justice in the Police Environment.

Then in terms of terminating the investigation, in order to create uniformity in the implementation of the termination and to become a guideline for the police in terminating, the Chief of Police also issued Circular Letter of the Chief of Police Number 7 of 2018 concerning Termination of Investigation. Based on the description above, it can be understood that the legal basis for the implementation of restorative justice in resolving traffic accident cases through out-of-court settlement (penal mediation) is based on the discretionary authority held by the police. Police discretion occurs when a police officer is faced with making a decision when there are various choices of action. Meanwhile, what is meant by police discretion in investigating criminal acts is the discretion carried out by investigators at the technical level of investigation or ignoring the technical level of investigation while still paying attention to procedures and laws and regulations, which aim to maintain public security and order.

Implementation of Restorative Justice in Resolving Traffic Accident Cases Resulting in Fatalities

The settlement of criminal cases is carried out directly between the perpetrator and the victim of the crime without the intervention of a third party. However, after the existence of the state is formed, the resolution of the conflict between the perpetrator and the victim of the crime becomes the authority of the state. From the authority of the state here, the implementation of positive law is more applied than the restorative justice approach.

Mudzakkir, stated that the State, in this case the police and prosecutors, has a dominant role and monopolizes the reaction to criminal law violators by becoming the legitimate representative of society or public interest, in fact through a long historical process has taken over the role of the victim as the party suffering from the crime. The Netherlands had recognized the position of the victim as an independent party in the criminal justice system. However, in 1838 the position of the independent victim or known as *partie civile* was abolished. (Muzzakir, 2010)

The position of the victim is then taken over by the state, by monopolizing all social reactions to crime and prohibiting personal actions. Wirjono Prodjodikoro stated that the role of the state in efforts to enforce criminal law causes victims as individuals to lose their position in the criminal justice system, even though the inconcreto victims are directly harmed, then the state seems to become a victim of every crime that occurs in society. (Wirjono, 2017).

The empirical and sociological basis for the application of restorative justice in resolving criminal cases, especially traffic accident cases, the Head of Traffic Police of Medan Police provided the following explanation:

The settlement of traffic accident cases that place officers with perpetrators of criminal acts currently often causes dissatisfaction from both the victims and the perpetrators of criminal acts. Victims often feel that their interests are not being considered, while limited criminal sanctions cause perpetrators of traffic accidents to feel that they are being treated inappropriately for the actions they have committed. The dissatisfaction with the implementation of criminal law enforcement carried out by law enforcement officers, both by perpetrators and victims of criminal acts, makes penal mediation one of the alternatives that can be offered, considering that with penal mediation, victims and perpetrators of criminal acts can seek and reach an agreement that is closest to the wishes and interests of the victim and perpetrator. (interview with Kompol Andika Temanta Purba, 2024)

Criminal mediation is an alternative conflict resolution between the perpetrator and the victim of a crime which is expected to restore the balance of interests, especially the victim who has been harmed by the actions of the perpetrator of the crime. Based on the description above, the settlement of criminal cases carried out by law enforcement officers can be seen that the settlement of criminal cases of traffic accidents at the investigation level can be resolved peacefully outside the court.

The police generally facilitate the settlement of cases outside the court because of requests that are generally made by perpetrators of criminal acts, the form of facility provided is to provide time for the perpetrator and victim to negotiate, negotiations can be carried out at the police station, namely at the Medan Police Headquarters or elsewhere. The results of the agreement between the perpetrator and the victim are then stated in a written agreement. The agreement stated in the agreement will be the basis for the police to take discretionary action, by issuing a Letter of Termination of Case Investigation (SP3).

In general, cases that are resolved peacefully, the victims receive compensation. However, perpetrators of criminal acts, although willing to provide compensation, are generally not willing to admit their actions and apologize openly to victims of criminal acts. In the context of investigating traffic accidents at the Medan Police, restorative justice is more used because it can provide justice for the parties and can provide an opportunity to decide on the incident that has occurred.

The settlement of traffic accident cases using the restorative justice approach by means of settling cases outside the court (penal mediation) at the Medan Police Headquarters can be seen from the statistical data on the settlement of traffic accident cases in the last 5 (five) years, which can be seen in the following table:

Table. 1
Settlement of Traffic Accident Cases 2019-2023

Year	Traffic Accident Road	Victim Street			Case Resolution	
		MD	LB	LR	P21	SP3
2019	305	98	143	398	4	167
2020	329	109	164	414	3	164
2021	267	86	141	304	10	202
2022	277	76	127	386	10	193
2023	288	88	124	328	5	218

Table 2
Recapitulation of Traffic Accident Data and SELRA Traffic Accident Cases 2023-2019

No	Year	Jlh Laka	Victim			KIND	SELRA	Arrears
			MD	LB	LR		RJ (SP3)	
1	3	3	4	5	6	7	8	9
1	2022	277	76	127	386	235,875, 000	148	100
2	2023	288	88	124	328	276,650,000	158	90
Amount		565	164	251	714	512,525,000	306	190

Source: Traffic Accident Recapitulation Data and Traffic Accident Case SELRA Medan Police 2019-2023.

Based on table. 1 above, it can be seen that the settlement of traffic accident cases tends to be carried out by terminating the investigation by investigators compared to continuing the case in the prosecution process by referring the case to the Public Prosecutor. This can be seen from the comparison of P21 cases with cases that are SP3. This means that the settlement of traffic accident cases is more dominantly carried out outside the court.

Based on the data in table. 2 above, which describes the Traffic Accidents and Traffic Accident Case Reports at the Medan Police Headquarters in 2022-2023, it is known that out of 277 traffic accident cases in 2022, 148 cases or (53.42%) were resolved through a restorative justice approach. Meanwhile,

in 2023, out of 288 traffic accidents in the jurisdiction of the Medan Police Headquarters, 158 cases or (54.86%) were resolved through a restorative justice approach. Column 9 of Table. 2 shows a number of outstanding cases, namely traffic accident cases that have not been resolved. The occurrence of case backlogs is due to several causal factors, namely:

1. Traffic accident hit and run incident,
2. One of the riders fled.

In the case of cases resolved through a restorative justice approach, the occurrence of a backlog of cases is due to the absence of a peace agreement between the perpetrator and the victim. Based on the description above, it can be concluded that the implementation of restorative justice in resolving traffic accident cases at the Medan Police Headquarters has gone according to expectations. Although, in several traffic accident cases there are still several obstacles, these obstacles are still within tolerable limits, and do not interfere with the process of resolving traffic accident cases, especially the resolution of traffic accident cases through a restorative justice approach. *restorative justice*.

Obstacles in the Implementation of Restorative Justice in the Settlement of Traffic Accident Cases Resulting in Fatalities

Several factors that are obstacles in the implementation of restorative justice in resolving traffic accident cases at the Batubara Police Traffic Unit, which consist of:

a. Legal substance factors

The legal substance governing the settlement of traffic accident cases in the LLAJ Law explicitly explains that every traffic accident must be resolved through a criminal justice process in accordance with the provisions of the law. This provision means that the settlement of traffic accident cases cannot be resolved outside the court through a restorative justice approach.

The criminal law system in Indonesia still applies the doctrine of legal positivism rigidly. This is a consequence of the application of the principle of legality as regulated and stated in Article 1 paragraph 1 of the Criminal Code. However, the direction of legal development in Indonesia wants the application of law in accordance with social justice, not the opposite as stated in the law. Such a situation is certainly very contrary to the principle of legal certainty that applies in the legal system in Indonesia, and also in the context of the state of Indonesia as a state of law which has the consequence that every government administration must be based on law. Traffic accidents that cause the loss of life or injury to other people in the criminal law applicable in Indonesia are included in criminal acts, the resolution of which falls into the realm of public law (criminal law), where the resolution is taken over by the state.

The Indonesian National Police institution according to the law is given the authority to enforce the law, on the other hand the Indonesian National Police is also given the space to carry out police discretionary actions based on its own assessment for the public interest. However, in the implementation of this discretion, there are no definite limits that specifically regulate and identify how the police carry out these discretionary actions. This is clearly an obstacle for the police in implementing restorative justice in resolving traffic accident cases. Regarding the obstacles to legal substance, the Head of Traffic Unit of the Medan Police, provided the following explanation:

The lack of regulation of the application of restorative justice in the criminal law system in Indonesia has become an obstacle for the police in applying the concept of restorative justice in resolving traffic accident cases. Where, discretionary actions carried out by law enforcers often give rise to negative assumptions or stigmas from the community, especially victims towards law enforcement officers in implementing 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. (Ananda, 2024)

Such conditions are a dilemma for law enforcement officers, on the one hand they must respond to the wishes of the parties to resolve cases outside the court using the restorative justice method, on the other hand they are faced with legal uncertainty in making discretionary policies to resolve cases

outside the court through restorative justice. Even if there are any, the regulations that are the legal basis for the implementation of restorative justice only apply within the police in the form of a circular from the Chief of Police, while the provisions of Article 18 of the Police Law which are the basis for the implementation of discretionary authority are still very multi-interpretable in their implementation.

Considering the substantial obstacles mentioned above, it is necessary to revise the LLAJ Law. So that the LLAJ Law can be a source of law that is in accordance with *das sein* and *dassollen*, which is in accordance with the sense of justice of the community. Bagir Manan as quoted by CST Kansil stated:

The source of law is the "sense of justice" law is only what fulfills the sense of justice of the greatest number of people who are subject to it. A legal regulation that is not in accordance with the sense of justice of the greatest number of people cannot be binding. Such regulations are not "law" even though they are still obeyed or enforced. The law exists because members of society have feelings about what the law should be. Only rules that arise from the legal feelings of members of a society have authority/power.

The meaning of law conveyed by Bagir Manan above means that the "law" applied in society must reflect the sense of justice of society. This means that if the law applied or enforced does not fulfill the elements of justice that exist in the views of society in general, then the provisions of the law cannot be binding. As a consequence of the failure to fulfill the elements of justice in a statutory regulation, society seeks to find a law that can better realize a "sense of justice", one of which is by using a restorative justice approach.

b. Law Enforcement Factors

No matter how good a rule of law is, its implementation is highly dependent on the ability of law enforcement officers, because if law enforcement officers do not have adequate ability in enforcing the law, then the law will not be able to provide benefits to the community. In relation to the ability of police officers at the Traffic Accident Unit of the Medan Police Headquarters who handle minor traffic accident cases, according to Ananda, that:

There are no significant obstacles from the police, the resolution of minor traffic accidents using the restorative justice method at the Medan Police Traffic Unit has not encountered any significant obstacles so far, so it can be said that the application of restorative justice in resolving traffic accident cases at the Medan Police Traffic Unit has received support from existing stakeholders. Law enforcement is actually more focused on discretion.

Discretion involves decision making that is not bound by law, where personal judgment also plays a role. In law enforcement, discretion is very important, because:

- 1) There is no legislation that is so complete that it can regulate all human behavior.
- 2) There are delays in adapting legislation to developments in society, which gives rise to uncertainty.
- 3) Lack of funds to implement legislation as intended by the legislators.
- 4) There are individual cases that require special handling.

The peaceful resolution of minor traffic accident cases in an effort to realize justice is not only influenced by legal factors, namely the lack of explicit regulations regarding the implementation of restorative justice, but is also influenced by law enforcement factors.

The application of the concept of restorative justice in resolving minor traffic accident cases, the role of the police as law enforcers greatly influences the success of resolving traffic accident cases that are carried out peacefully. The influence of law enforcers in this case the police can be seen from the authority held by the police as investigators.

It is known that Article 230 of Law No. 22 of 2009 UULLAJ states that: "every traffic accident case that meets the elements of a crime must be resolved through the criminal justice process". This means that the police must carry out/conduct legal action, the legal action in question is to conduct an investigation into every report of a victim of a minor traffic accident, and at the same time transfer the case that has been completed to the Prosecutor's Office.

In practice, police investigators do not immediately take such legal action when receiving reports

from traffic accident victims. This means that the ideal role that police investigators should play is not implemented. Traffic accident investigators often use their discretionary authority in responding to and resolving minor traffic accident cases. For example: The discretionary authority exercised by police investigators in implementing the concept of resolving cases outside the court, which clearly contradicts the provisions of Article 230 of Law No. 22 of 2009. Furthermore, the discretion of traffic accident investigators is also seen in the application of Article 63 paragraph (3) of Regulation of the Chief of Police No. 15 of 2013, where in the provisions of Article 63 paragraph (3) of Regulation of the Chief of Police No. 15 of 2013, it is determined that: "Resolving cases outside the court as referred to in paragraph (2) can be implemented as long as a police report has not been made."

Regarding the provisions of Article 63 paragraph (3) of Regulation of the Chief of Police No. 15 of 2013, there is also discretion carried out by traffic accident investigators, where the settlement of traffic accident cases outside the court is still possible before the case files are transferred to the Prosecutor's Office. This can be done by terminating the investigation as regulated in Article 109 of the Criminal Procedure Code. In Article 109 of the Criminal Procedure Code there are 3 reasons for terminating the investigation, namely the case is not a criminal act, there is insufficient evidence and by law. The reasons by law referred to in Article 109 of the Criminal Procedure Code are if the suspect dies, expires and ne bis in idem, the complaint offense whose complaint has been withdrawn, and others.

Related to the termination of investigations into minor traffic accident cases, questions arise, namely regarding the mechanism for terminating case investigations and the legal basis for terminating case investigations. This is a fundamental question in the application of the restorative justice concept in resolving traffic accident cases.

Referring to traffic accident data that occurred in the jurisdiction of the Medan Police, it can be seen that out of 584 cases that occurred in the jurisdiction of the Deli Serdang Police, all were resolved peacefully, and it is truly impossible that out of 584 cases that occurred there were no victim reports. So how is restorative justice implemented when a report has been made by a traffic accident victim, while the provisions of Article 63 paragraph (3) of Perkap No. 15 of 2013 stipulate that out-of-court settlements can only be made before a police report is made. Furthermore, the problem is regarding the mechanism for terminating the investigation into the report of a minor traffic accident.

Faced with such a situation, traffic accident investigators will use their discretionary authority, and the application of this authority can still be legally accounted for. The discretion exercised by traffic accident investigators is: as long as the case has not been transferred to the prosecutor's office, it is still possible for the case to be resolved peacefully.

It is important to note that minor traffic accidents, whether serious, moderate or minor, are included in the form of ordinary crimes. Thus, related to the termination of the investigation, it is not possible by withdrawing the complaint by the victim. Then the question arises, what is the basis for making SP3 by the investigator, while the traffic accident case is not a complaint crime? SP3 can be carried out on the investigation process of cases that are not complaint crimes based on the consideration that when the complainant/victim withdraws their report that was previously given to the investigator, it needs to be strengthened by making a follow-up Witness BAP, in which the reporting witness is asked whether the previous statement is still valid or is declared withdrawn by the victim which in the Criminal Procedure Code is referred to as witness evidence. Because it has been withdrawn by the victim who is the main witness in the case, the strength of the witness's (victim's) statement as one of the pieces of evidence "Has Lost Its Power". If the witness's statement as evidence has lost its power as evidence, then the results of the investigation which were previously "Sufficient Evidence" have changed to "Insufficient Evidence". Thus the requirements for issuing SP3 can be met.

Based on the description above, the influence of law enforcement officers in the implementation of restorative justice to realize justice tends to provide a positive influence. This can be seen from the knowledge possessed by the police in the law enforcement process and also the knowledge of police

investigators in utilizing the discretionary authority regulated in the Law responsibly and directed towards the objectives of the law, namely realizing justice, benefit and certainty.

Based on the above opinion, it can be seen that there are no very significant obstacles in resolving traffic accident cases using the restorative justice method. Therefore, resolving criminal traffic accident cases using the restorative justice method does not require special expertise by investigators.

Based on the above information, it can be said that the Police, especially Traffic Accident investigators, in addition to having the ability to conduct investigations and inquiries into various matters related to traffic accidents, are also required to have the ability to communicate with the public, especially in this case victims and perpetrators.

c. Community factors

In the initial explanation, it has been explained that the settlement of minor traffic accident cases peacefully (outside the court) is the desire of the parties to resolve the case amicably. This desire is based on an agreement between the parties regarding matters agreed upon in relation to the settlement of the case, especially regarding the issue of compensation which is the victim's right which is more emphasized in the process of resolving the case peacefully. The reality that often occurs in society is that the agreement in the peace process, often the process is interfered with by a third party, such as intimidation, the existence of material interests of a third party so that the amount of compensation submitted by the victim is too large.

It is appropriate that the resolution by means of restorative justice through an agreement between the victim and the perpetrator must be based on the principle of balance, so that the goal of resolving the case peacefully can be realized, namely achieving justice and better fulfilling the sense of justice of all parties.

The influence of modernization today, there has been a paradigm shift in the meaning of life. Modern society prioritizes economic values over family values. Thus, the perspective of modern society in interpreting life in material terms will indirectly affect the process of resolving accident cases outside the court. This means that the victim in the mediation process prioritizes the values of material losses suffered, without considering the perpetrator's attitude of responsibility and the perpetrator's desire to admit his mistake by realizing an apology from the perpetrator to the victim. (Harahap et al., 2023) The position of the perpetrator who is in two choices, namely fulfilling the victim's demands or undergoing criminal punishment often creates an unbalanced situation in the mediation process. According to the author, the community factor in this case greatly influences the achievement of justice in resolving cases outside the court, especially the intervention of third parties who try to profit from the process of resolving the case.

d. Legal culture factors

An important factor to support the effective implementation of a legal regulation is the legal culture factor of society. The law will run effectively or will be obeyed by society, conversely the law is also needed to change the legal culture of society. Therefore, the substance of law with legal culture is an inseparable unity, especially in relation to law enforcement efforts.

Based on this statement, regulations in the field of traffic, especially those related to the settlement of criminal cases of traffic accidents, should be aligned with legal values that have become the legal culture of society, namely the existence of a custom in society to resolve problems faced by means of deliberation to reach a consensus.

The Medan Police Assistant Investigator explained that the victim's attitude regarding the implementation of the settlement using the restorative justice method:

- 1) Accepting, having previously agreed on the things that must be the perpetrator's obligation towards the victim, such as the amount of compensation, medical costs.
- 2) Refuse, if there is no agreement between the parties regarding the amount of compensation and medical expenses. However, in practice, it is very rare for an agreement not to be reached, because

the victim also greatly appreciates the attitude of the perpetrator who wants to resolve the case amicably.

Based on the description above, it can be said that the legal culture of society that has developed for a long time, namely respecting someone's apology for a mistake they have made, is a form of reflection of the legal culture of Indonesian society, especially the people of Medan City.

So, although compensation is the main requirement in the implementation of traffic accident case settlement outside the court, it does not mean that compensation is a fundamental obstacle in the peaceful settlement process. The most fundamental thing in the peaceful settlement process is the perpetrator's desire to admit his mistake and apologize to the victim, which is a form of good faith from the perpetrator's attitude towards the victim. Then, the substance of the amount of compensation that must be borne by the perpetrator is entered, and regarding this, a discussion is indeed needed between the victim and the perpetrator regarding the perpetrator's ability to bear the burden of compensation suffered by the victim.

The attitude of forgiving each other's mistakes is also a reflection of Indonesian culture (*silaturahmi*), which is always maintaining good relations with others. This is also reflected during religious holidays, where the phenomenon of forgiving each other between community groups has become a tradition that has occurred from generation to generation.

Based on various information received from the results of interviews and observations conducted, it can be analyzed that there are several factors that influence the resolution of minor traffic accident cases in realizing justice. These factors are then analyzed based on the theory of law enforcement developed by Soerjono Soekanto. Conceptually, the core of law enforcement lies in the activity of harmonizing the relationship of values outlined in solid and embodied rules and attitudes as a series of final stage value descriptions, to create, maintain and defend peace in social life.

Law enforcement as a process, is essentially the application of discretion concerning making decisions that are not strictly regulated by legal rules, but have elements of personal judgment, citing Roscoe Pound's opinion, that in essence discretion is between law and morals (ethics in the narrow sense). Law enforcement does not merely mean the implementation of legislation, although in reality in Indonesia the tendency is that way, so that law enforcement is very popular.

The cultural factor which is actually united with the social factor is deliberately distinguished, because in the discussion the problem of the value system which is the core of spiritual or non-material culture is presented. As a system (or subsystem of the social system) the law includes structure, substance, and culture.

According to Koesnoe in Soejono Soekanto, culture is the basis for the application of customary law. Customary law is customary law that applies among the majority of the people. In addition, written law (legislation) also applies which arises from certain groups in society who have official power and authority. The statutory law must be able to reflect the values that are the basis of customary law so that the statutory law can apply effectively.

The influence of modernization activities in the material field, for example, is not impossible to place material values in a higher position than moral values. One of the consequences of placing material values in a higher position than moral values is that in the process of institutionalizing law in society, the existence of negative sanctions is more important than awareness to obey the law. This means that the severity of the threat of punishment for violations becomes a benchmark for the authority of the law, legal compliance is then also based on cost and benefit.

Based on the description above, it can be understood that community culture also greatly influences the success of peaceful settlement of traffic accident cases in relation to realizing justice for the interests of children. Thus, it can be said that the influence of community legal culture has an influence on the implementation of peaceful settlement of minor traffic accident cases (restorative justice).

For example, at the level of legislation, it is apparent that Law No. 22 of 2009 concerning UULLAJ, does not fully reflect the values that are the basis for the application of customary law, so that in its

implementation this law does not run effectively. In particular, concerning the settlement of minor traffic accident cases, which according to the law must be resolved according to or based on the criminal justice process. However, in reality in the jurisdiction of the Medan Police, several traffic accident cases were resolved peacefully. This shows that there is no agreement between the will of the community which is part of the legal culture of the community and the will of the law.

The legal culture factor of society, especially in village (customary) communities, tends to have a culture of mutual forgiveness and upholding kinship ties, so that these community habit factors can have a positive influence on the peaceful resolution of minor traffic accident cases (outside the court) which aims to provide and realize justice for all parties (victims and perpetrators).

4. CONCLUSION

Based on the matters that have been discussed, the following conclusions can be drawn::

1. The settlement of traffic accident cases that cause serious injuries and deaths through a restorative justice approach has not been clearly regulated in the law. The legal basis for the implementation of restorative justice in the settlement of traffic accident cases refers to police discretionary actions as regulated in Article 18 of the Indonesian National Police Law. In addition, the implementation of restorative justice refers to the Circular Letter of the Chief of Police Number 8 of 2018 concerning the Implementation of Restorative Justice in the Settlement of Criminal Cases.
2. The mechanism for resolving traffic accident cases committed by children with a restorative justice approach at the Medan Police Traffic Accident Unit is based on a peace process between the perpetrator and the victim. The agreement obtained from the peace process is then stated in a letter of agreement signed by the parties, namely the perpetrator and the victim/victim's family and then known by local government officials witnessed by community leaders.
3. The obstacles to the implementation of restorative justice in resolving traffic accident cases that cause serious injuries and deaths at the Medan Police Traffic Unit are influenced by several factors, including the legal substance that does not yet support it, where the implementation of restorative justice has not been regulated in the Traffic, Transportation and Road Law, thus creating a negative perception for victims if investigators offer victims to resolve cases amicably (peacefully). In addition, the legal culture of society currently tends to have a paradigm of material values in determining the measure of justice, thus causing the failure of the peace process agreement between the perpetrator and the victim.

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