



Restorative Justice in Settlement of Traffic Accidents with Minor Injured Victims

Eri Noviyani; Subekti

Faculty of Law; Dr. Soetomo University, Surabaya, Indonesia

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Abstract

The Police of the Republic of Indonesia have the main task of maintaining security and public order, law enforcement and protection, and protectors and public servants are required to be wise in dealing with traffic accident problems under these conditions. The Traffic Unit of the Pasuruan City Police took policy steps to accommodate the hopes of the parties involved in the accident by taking a Restorative Justice approach. This study analyzes the considerations of investigators using Restorative Justice to resolve Traffic Accident Cases. This research is normative legal research using statutory and conceptual approaches. The study results show that the settlement of traffic accident cases using a restorative justice approach at the Pasuruan Police Traffic Unit is based on a peace process between the perpetrator and the victim. The agreement obtained from the peace process was then outlined in a letter of agreement signed by the parties, namely the perpetrator and the victim/victim's family, later known by local government officials and witnessed by community leaders.

Keywords: *Traffic Accidents; Cases; Restorative Justice*

Introduction

The Indonesian National Police is a state instrument that plays a role in maintaining public order and security, law enforcement, protection, protection and service to the community in the context of maintaining domestic security. Therefore, the Indonesian National Police are required to continue to develop to become more professional and closer to the community. In other words. The Indonesian National Police are required to develop themselves into civilian police. As civilian police, the position of the Indonesian National Police in state organizations has a dominant influence in administering the police in a proportional and professional manner which is a supporting condition for the realization of good governance (Sadjijono, 2008). Thus, in handling traffic accidents, the Indonesian National Police, as the responsible party, in a professional way, seeks to reconcile the parties who have had an accident by means of penal mediation or better known as criminal mediation.

As a developing country, Indonesia is inseparable from the problems experienced by other countries, ranging from economic, legal and social issues. The development of its infrastructure development will follow the development of a country. With the acceleration of development efforts in all fields, including the economic sector, the development of road or land transportation facilities has progressed rapidly. This progress turned out to cause very complicated problems in traffic management, such as the emergence of traffic accidents on the highway.

Pasuruan has the same problem as other cities, namely the problem of legal awareness in traffic by its own citizens or immigrant residents who work in Pasuruan or who have other interests in the city of Pasuruan. In everyday life, we encounter many road traffic accidents involving motorized vehicles and motorized vehicles, motorized vehicles and non-motorized vehicles, and so on. Law Number 22 of 2009 concerning Road Traffic and Transportation which was formed, has the aim of realizing safe, orderly, smooth and integrated road traffic and transportation services with other modes of transportation to encourage the national economy and the realization of ethics in traffic and the realization of enforcement law and legal certainty for the community. The existence of laws that regulate road traffic and transportation, it can balance the role of transportation today with problems regarding transportation.

The elements of traffic accidents are accidents, so we can conclude that those caused by negligence, based on data obtained at the Pasuruan Police Traffic Unit, the settlement of traffic accident cases are mostly resolved by Restorative Justice, empirically the parties involved in the accident are mostly from the parties involved. The victim wants the cause of the accident to compensate for the losses suffered by the victim involved in the accident. If the expectations of the victim are fulfilled, the victim does not sue criminally against the party causing the accident, and the parties hope that the case of the accident experienced will not proceed to court, it is enough to be resolved in police stage.

The National Police have the main task of maintaining security and public order, law enforcement and protection; protectors and public servants are required to be wise in dealing with traffic accident problems under these conditions. The Pasuruan Police Traffic Unit then took policy steps to accommodate the hopes of the parties involved in the accident by taking the Restorative Justice approach.

The Restorative Justice approach is an approach that focuses more on conditions for creating justice and balance for the perpetrators of crime and the victims themselves. Procedural and criminal justice mechanisms that focus on punishment are changed to a dialogue and mediation process to create an agreement on a more just and balanced settlement of criminal cases for victims and perpetrators, especially those involved in the accident request that it be resolved outside the court in accordance with the provisions that apply. There are also times when the family itself is involved and the one who suffers a loss (Mudzakir, 2013).

The Pasuruan Police Traffic Unit sees greater benefits if it is resolved with Restorative Justice rather than cases proceeding according to CJS (Criminal Justice System) and fulfilling a sense of justice from the people involved in the accident and their families (Zaidan, 2015). Given the existence of a restorative justice approach to solving crimes in traffic accidents in Indonesia in general, this research will discuss the considerations of investigators using restorative justice to resolve traffic accident cases.

Method

This research is normative legal research (Isnaini & Wanda, 2017). The problem approach used in this study is the statutory approach, the conceptual approach and the case approach.

Discussion

Punishment in Indonesian law is a way or process to impose sanctions or punishments for someone who has committed a crime or violation. Punishment is another word for punishment. The punishment must be specific for each crime, and the severity of the punishment must not exceed the amount required to prevent certain attacks from being committed. Punishment can only be accepted if it gives hope for preventing more significant crimes (Rahardjo, 2000).

According to Sudarto, punishment comes from the basic word "law", so it can be interpreted as "establishing the law" or "deciding about the punishment" (Muladi; Barda Nawawi Arief, 2005). In this sense, establishing law is not only for a criminal law event but can also be civil law (Utomo, 2020). Punishment is an action against a perpetrator of a crime, where punishment is intended not because someone has committed a crime but so that the perpetrator of the crime will no longer do evil and other people are afraid of committing similar crimes. So from the statement above, we can conclude that punishment or punishment is an action against the perpetrators of crimes where the aim is not to give revenge to the perpetrators. Still, the perpetrators are given guidance so that they will not repeat their actions later.

In criminal law enforcement, expediency cannot be separated from utilitarian theory because criminal law enforcement has goals based on certain benefits, not just to take revenge on people who commit crimes but have certain useful goals (Bakhri, 2009). Here, expediency is defined as happiness. A good law is a law that gives happiness to many people.

Restorative Justice or often translated as restoration justice is an approach model that emerged in the 1960s in efforts to settle criminal cases. Unlike the approach used in the conventional criminal justice system, this approach emphasizes the direct participation of perpetrators, victims and the public in resolving criminal cases.

Liebmann defines restorative justice as a legal system that "aims to restore the welfare of victims, perpetrators and communities damaged by crime, and to prevent further violations or criminal acts *rusak oleh kejahatan, dan untuk mencegah pelanggaran atau tindakan kejahatan lebih lanjut* (Liebmann, 2007). Liebmann also provides a formulation of the basic principles of restorative justice as follows:

- a. Prioritize victim support and healing.
- b. Violators are responsible for what they do.
- c. Dialogue between the victim and the perpetrator to reach an understanding.
- d. There is an attempt to put the losses incurred properly.
- e. Offenders must be aware of how to avoid crime in the future.
- f. The community helps integrate the two parties, both victims and perpetrators (Liebmann, 2007).

A British criminologist, Tony F. Marshall, in his writing "Restorative Justice an Overview", says: "Restorative Justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offense, and its implication for the future" (Isnaini & Wanda, 2017). An explanation of the definition of restorative Justice put forward by Toni Marshal in his writing "Restorative Justice an Overview", developed by Susan Sharpe in her book "Restorative Justice a Vision For Hearing and Change", which reveals five fundamental principles of restorative Justice, namely:

- a. Restorative Justice contains full participation and consensus.
- b. Restorative Justice seeks to heal the damage or loss that has occurred due to a crime.
- c. Restorative Justice provides direct accountability from the perpetrators as a whole.
- d. Restorative Justice seeks the reunification of members of a society divided or separated by criminal acts.
- e. Restorative Justice provides resilience to the community in order to prevent further criminal acts from occurring.

Meanwhile, Marlina mentions in her book that the concept of restorative Justice is a process of resolving acts of law violations that occur by bringing victims and perpetrators (suspects) together to sit in a meeting to be able to talk (Marlina, 2009). In Marlina's opinion, it can be understood that the settlement of a criminal case through restorative Justice is basically a settlement carried out jointly between the perpetrator and the victim in a forum.

These definitions explain that in restorative Justice, what is prioritized is not the imposition of punishment on criminal offenders but how the perpetrators can be held accountable for the criminal acts committed. And how the victim can get Justice. Until things get back to normal, restorative Justice is the settlement of criminal cases by involving perpetrators, victims, families of perpetrators/victims, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state and not retaliation. Restorative Justice is an alternative effort to resolve criminal cases that emphasizes problem/conflict recovery and balancing society. This concept focuses on conditions for creating Justice and balances for perpetrators and victims, with the aim of minimizing the overcapacity of detention centres. Restorative Justice is basically a peaceful process that involves those who have a role in a particular crime and are collectively identified as suffering losses, and at the same time, have needs and obligations, with the intention of recovering them as much as possible and treating them as best as possible.

Restorative Justice has developed globally throughout the world. In many countries, restorative Justice is one of a number of important approaches to crime and Justice that are continually considered in the justice system and the constitution. In accordance with the spread of this process throughout the world, several innovations have emerged that are indeed open for restorative Justice. It makes it easier for restorative Justice to view that:

- a. Crime is a violation of people and relations between citizens.
- b. Breach creates liability.
- c. Justice includes victims, offenders, and citizens in an effort to put things right.
- d. The central focus: victims need to recover the losses they have suffered (both physically, psychologically and materially), and the perpetrators are responsible for recovering it (usually by way of acknowledgement of guilt from the perpetrators, apologies and feelings of regret from the perpetrators and granting compensation or restitution) (Ali, 2009) .

So far, the use of the Restorative Justice process in Indonesia has been based on discretion. This diversion is an attempt to divert the criminal justice process from the formal process to be resolved through deliberation. The settlement of problems and disputes through deliberation is not a foreign thing for the people of Indonesia. Since before the Dutch came to Indonesia, customary law, which is the original law of Indonesia, has used deliberation to resolve all kinds of disputes, both civil and criminal, with the aim of restoring balance or restoring the situation. This system is in accordance with the objectives of the criminal justice system itself, formulated by Madjono as follows:

- a. Prevent people from becoming victims of crime.
- b. Resolving criminal cases that have occurred so that the community is satisfied that Justice has been upheld and the guilty have been punished; and
- c. Ensuring that those who have committed crimes do not repeat their crimes (Atmasasmita, 1996).

Bagir Manan argues that the principle in the Restorative Justice system is: "building joint participation between perpetrators, victims and community groups to resolve an incident or crime. Placing perpetrators, victims, and the community as stakeholders who work together and immediately try to find a solution that is considered fair for all parties (win win solution) (Manan, 2008)."

In a restorative process, the interests of the victim are far more central than in the current criminal procedural processes. In several countries, legislation has been adopted that stipulates the procedural rights that victims have during a criminal or juvenile criminal procedure law process (Hutauruk, 2014). The form or variation of the application of restorative Justice is a practice that is part of a tradition in society or the result of research and long journeys from examples taken as an alternative way to resolve criminal cases outside of court. (Hatta Isnaini Wahyu Utomo, 2019).

The police are the gatekeepers of the criminal justice system. As Donald Black said, his role as a criminal investigator and investigator places the police in touch with most ordinary or common crimes. Most of the police are reactive rather than proactive, relying heavily on members of the public to complain or report suspected crimes. With sufficient evidence, based on the Criminal Procedure Code (KUHAP), the police as investigators will transfer the case to the Attorney General's Office for prosecution. An important question, in this case, is whether it is possible for the police as investigators to implement restorative justice processes. In response to this problem, it is first explained regarding the legal provisions that generally apply to the procedure for settling traffic accident cases.

Traffic accidents are criminal acts, and this is regulated in Article 310 paragraphs (2), (3) and (4) of Law Number 22 of 2009 concerning Road Traffic and Transportation. A person who commits a criminal act as a consequence must be subject to criminal sanctions. Likewise, the perpetrators of traffic accident crimes must be subject to criminal sanctions as stipulated in Article 310 paragraphs (2), (3) and (4) of Law Number 22 of 2009 concerning Road Traffic and Transportation.

Based on the laws and regulations in Indonesia, criminal cases cannot be resolved out of court, including traffic accident criminal cases, so they must be resolved through the criminal justice system. Thus, the settlement of traffic accident cases still refers to the provisions of Law Number 22 of 2009 concerning Road Traffic and Transportation. Based on the information provided by investigators at the Traffic Unit of the Pasuruan Police concerning accident reports received from victims, legal proceedings are still being carried out, including:

- a. Continuing to make investigative filings in the context of orderly administration and anticipating cases of accidents and then it is possible that there will not be a peaceful agreement.
- b. Inform the victim's family that the victim's injuries are not dangerous.
- c. Providing opportunities for victims, suspects, and their families to meet in peace efforts.
- d. Document the crime scene, the victim's condition during the accident and the vehicle involved.
- e. The results of the agreement between the two parties by making a statement that the local Lurah knew. Then the accident investigator can then consider that the settlement of the accident case can be resolved peacefully or amicably.

Based on the information above, it can be understood that the use of alternative solutions to traffic accident cases can only be used after an agreement has been reached between the parties, namely the victim and the perpetrator. This means that the alternative settlement of traffic accident cases still depends on the wishes of the parties, namely the victim and the perpetrator, without any element of coercion or intimidation to make peace in resolving the case. In other words, the settlement of minor traffic accident cases outside the court is a manifestation of the will of the parties based on the willingness and awareness of each party, especially the perpetrator, who is aware of his mistakes and wishes to take responsibility for his mistakes by admitting and apologizing to the victim and his family.

Traffic accidents can be said as events that are not intentional. In other words, even though a traffic accident is seen as a criminal act punishable by law, the fulfilment of the criminal element of a traffic accident generally does not contain an element of intent (*schuld*) but rather an element of negligence (*culpa*). To make it easier to understand that the perpetrators had no intention, what happened was beyond the expectations of the perpetrators. Traffic accidents can occur anywhere and anytime, causing loss of life, property or property.

Traffic accidents often occur in cities, such as the city of Pasuruan. One reason is the intensity of vehicles which is relatively high and dense, plus the legal awareness of road users and drivers still needs to be improved. Related to minor traffic accidents, settlement of cases is more likely to be resolved in a family manner. This is considering the local wisdom that has existed in the community for a long time, prioritising deliberation in reaching a consensus on conflict resolution between communities. This local wisdom is a habit which later becomes a legal system, which is a legal institution (legal structure) that

lives in society (living law). The legal system that develops in the community is known as the customary law system. In practice, criminal cases are often resolved not through the criminal justice process but through deliberation/peace mechanisms. However, the problem faced is that there is no legal forum or umbrella in settlement of criminal cases through mediation. The prevailing legal doctrine is that criminal cases cannot be mediated.

In its development, in a traffic accident criminal case, efforts must be made for a settlement outside the criminal justice system, one of which is the legal instrument using the restorative justice method. Regarding minor accidents, the police, as the frontline in the law enforcement process, have responded to legal developments in society. Traffic accident resolution practice. Particularly minor accidents, which are usually resolved out of court or peacefully receive a positive response from the National Police Chief. Responding to the practice of settling minor accident cases, which are usually resolved through penal mediation (outside court), the National Police then issued the Chief of Police Regulation Number 15 of 2013 concerning Procedures for Handling Traffic Accidents.

Regulation of the Chief of Police Number 15 of 2013 concerning Procedures for Handling Traffic Accidents is a guideline for Traffic Units in handling Traffic Accident cases. Article 36 Regulation of the Chief of Police Number 15 of 2013, regulates:

- 1) The handling of minor traffic accidents for which sufficient evidence or the elements of a crime have been fulfilled is carried out by means of a brief examination process.
- 2) The process of a brief examination of minor traffic accidents if there is an amicable agreement between the parties involved is settled out of court.

The provisions of Article 36 of the Chief of Police Regulation Number 15 of 2013 concerning Handling Traffic Accidents are in line with the explanation given by investigators at the Traffic Accident Unit of the Pasuruan Police, explaining that the settlement of traffic accident cases is carried out based on established Standard Operations (SOP), where:

"Every report received by the Police, the investigator who receives and is appointed to carry out the investigation continues to carry out his obligations as an investigator, namely to conduct an investigation and investigation of the report. In traffic accident cases, based on the provisions stipulated in the Chief of Police Regulation Number 15 of 2013, traffic accident cases can be resolved out of court. Therefore, in cases of traffic accidents that are classified as mild, an opportunity is given to both parties (victims and perpetrators) to make efforts to resolve them peacefully. If the two parties obtain an amicable agreement, then the legal process against this case will no longer be carried out by further legal action."

Based on the opinion expressed by the investigators from the Traffic Accident Unit of the Pasuruan Police above, it is known that the settlement of traffic accident cases that fall into the mild category through a penal mediation approach already has a legal basis as stipulated in the Chief of Police Regulation No. 15 of 2013 concerning Handling Traffic Accidents.

Unlike the case with traffic accidents which cause fatalities (death), both Law Number 22 of 2009 concerning LLAJ and the Chief of Police Regulation Number 15 of 2013 concerning Handling Traffic Accidents does not provide an opportunity for penal mediation (settlement of cases out of court). Therefore, even though reconciliation has been carried out, legal proceedings and criminal justice against the perpetrators must still be carried out.

According to Muladi, the model of the criminal justice system that is suitable for Indonesia is the "daad dader strafrecht", which is called the balance of interests model. This model is a realistic model that considers the various interests that must be protected by criminal law, namely the interests of the state, public interests, individual interests, the interests of the perpetrators of criminal acts and the interests of

victims. Based on the opinion expressed by Muladi above, related to the application of restorative justice in settlement of cases of minor traffic accidents is a form of manifestation of the criminal justice system, which is implemented based on the balance and interests of the parties, especially the perpetrators of criminal acts and victims (Atmasasmita, 2013).

Settlement of criminal cases using the restorative justice method provides many benefits and is suitable for law enforcement officials, perpetrators of crimes and victims. For law enforcement officials (police), peaceful settlement of cases outside the court will speed up settling cases. Whereas for perpetrators of crimes, settling cases outside the court will provide its benefits, namely the release or release of perpetrators of criminal acts from the threat of imprisonment as regulated in law. In addition, the perpetrators of criminal acts are also free from the stigma or bad brand from a society that the perpetrators are former criminals (former convicts) who incidentally are criminals.

Settlement in peace is beneficial for the victim, whereas settlement through a restorative justice approach is more useful because cases can be resolved quickly. Based on the information provided by the victim's family, that: "Peaceful (family) settlement of cases is very beneficial for us because the rights to receive compensation can be fulfilled. Based on the description above, it can be understood that the settlement of criminal cases using the restorative justice method is felt to be more beneficial to the parties, in terms of the victim, the settlement of cases using the restorative justice method provides benefits in the form of compensation for the losses suffered by the victim due to the actions that have been committed. Carried out by the perpetrator

From the perpetrator's point of view, peaceful settlement of cases provides its benefits in that the perpetrator can avoid punishment in the form of "jail", which can create a stigma of labour both for the perpetrator himself and his family. Especially if the child is the perpetrator of a crime, punishment by putting the child in prison will give a bad stigma to the child.

A restorative justice approach will create a sense of responsibility from the perpetrator to repair the losses incurred from his actions. For victims, the emphasis is on recovery of asset loss, physical suffering, security, dignity and satisfaction or a sense of justice. Thus, it can be understood that the settlement of traffic accident cases using the restorative justice method provides many benefits, especially for the perpetrators and the victims.

Conclusion

Investigators consider the need for a restorative justice approach in traffic accident cases based on mutual respect between victims and perpetrators so that there will be no buildup/disputes that occur in the future. Restorative justice is justice that prioritizes kinship between newspapers and perpetrators to agree to make peace. The mechanism for resolving traffic accident cases by adult and child perpetrators uses a restorative justice approach at the Pasuruan Police Traffic Unit, based on a peace process between the perpetrator and the victim. The agreement obtained from the peace process was then outlined in a letter of agreement signed by the parties, namely the perpetrator and the victim/victim's family, later known by local government officials and witnessed by community leaders.

The mechanism has uniformity and does not depend on the discretionary actions of the police (investigators), which have the potential to be abused. Settlement of cases peacefully outside the court can achieve more justice. There needs to be an understanding given to the public, especially victims and perpetrators, regarding their rights and obligations that must be carried out related to the settlement of cases in a family manner. With this understanding, each party can fulfil its obligations and otherwise receive its rights. So that in this process, there is a balance between victims and perpetrators, which in the end, will fulfil a sense of justice for all parties.

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