

The Application of Restorative Justice For Perpetrators and Victims of Traffic Accidents at The Medan City Police

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ABSTRACT	ABSTRAK
<p>Traffic accident rates continue to rise, causing material damage and casualties. Although regulated by Law No. 22 of 2009, case resolution processes are often ambiguous, with some cases being resolved through the judicial system and others through Restorative justice (RJ). This study employs both normative and empirical methods, including interviews at Polrestabes Medan, to assess the implementation of RJ, its legal basis, and the challenges faced. The results indicate that several regulations, such as Law No. 11 of 2012 and Police Chief Regulation No. SE/8/VII/2018, address RJ. However, challenges such as conflicts of interest, lack of cooperation between perpetrators and victims, and unclear legal frameworks hinder the effective application of RJ. The study recommends establishing clearer legal regulations for RJ in traffic accident cases and enhancing the functions of relevant institutions to address these issues at Medan City Police.</p> <p>Keywords: Medan city police, Restorative justice, Traffic accident crimes.</p>	<p>Angka kecelakaan lalu lintas terus meningkat, menyebabkan kerugian materi dan korban jiwa. Meskipun diatur oleh Undang-Undang No. 22 Tahun 2009, proses penyelesaian kasus sering kali ambigu, dengan beberapa kasus diselesaikan melalui sistem peradilan dan yang lainnya melalui Restorative Justice (RJ). Penelitian ini menggunakan metode normatif dan empiris, termasuk wawancara di Polrestabes Medan, untuk menilai implementasi RJ, dasar hukumnya, dan tantangan yang dihadapi. Hasil penelitian menunjukkan bahwa beberapa peraturan, seperti Undang-Undang No. 11 Tahun 2012 dan Peraturan Kepala Kepolisian No. SE/8/VII/2018, mengatur tentang RJ. Namun, tantangan seperti konflik kepentingan, kurangnya kerja sama antara pelaku dan korban, serta kerangka hukum yang tidak jelas menghambat penerapan RJ secara efektif. Penelitian ini merekomendasikan penetapan peraturan hukum yang lebih jelas mengenai RJ dalam kasus kecelakaan lalu lintas serta peningkatan fungsi lembaga terkait untuk menangani permasalahan tersebut di Kepolisian Kota Medan.</p> <p>Kata kunci: Kepolisian Kota Medan, Restorative Justice, Kejahatan kecelakaan lalu lintas.</p>
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1. Introduction

The number of traffic accidents in Indonesia remains relatively high, as evidenced by data from the Traffic Corps of the Indonesian National Police Headquarters. In 2019 alone, there were 109,000 recorded incidents. Towards the end of 2019, several fatal accidents occurred on toll roads, resulting in a concerning number of fatalities. According to data from Korlantas Polri, 27,910 people lost their lives in traffic accidents in 2018, while in 2017, the death toll was 29,810.

However, the number of traffic accidents has increased. In 2018, there were 103,672 recorded cases, compared to 101,022 cases in 2017. Driver negligence was the primary cause of the high number of traffic accidents, accounting for 33%. Road and weather conditions also contributed, each accounting for 29.7%. Motorcycles were involved in 73% of traffic accidents throughout 2018. Meanwhile, in 2019, Korlantas Polri recorded 32,403 traffic accidents in Indonesia during the first half of the year, resulting in 6,941 deaths.

In the Medan City Police jurisdiction, there were 1,425 traffic accident cases in 2018. This number increased to 1,555 cases in 2019 but decreased to 1,252 cases in 2020. Among these traffic accident cases, those resolved through Alternative Dispute Resolution (ADR) as a form of restorative justice totaled 21 cases in 2018. This number increased to 38 cases in 2019 and further increased to 58 cases in 2020.

Traffic accident cases are processed through criminal proceedings in accordance with the applicable legislation, namely the Road Traffic and Transportation Act (UU LLAJ). This law regulates criminal provisions in Chapter XX. However, there is often ambiguity in resolving traffic accident cases. Some cases are resolved through judicial processes, while others are settled outside of the legal process on the grounds that both parties have reached a settlement. Upon closer examination, it is often observed that settlements without legal proceedings, where both parties reconcile, frequently occur within the Indonesian National Police (Polri) as the investigative authority.

As the responsible authority, the Indonesian National Police (Polri) addresses traffic accidents in a professional manner by attempting to mediate between the parties involved through penal mediation, also known as criminal mediation. According to Indonesian positive law, specifically in Article 235 of the Road Traffic and Transportation Act (UU LLAJ), it is stated that if the perpetrator or defendant of a traffic accident has provided compensation to the victim's family, it does not absolve them of criminal liability. This legal provision creates hesitation among Polri officers, who, despite their role in serving and protecting the community, are uncertain about resolving traffic accidents through reconciliation due to the lack of a clear legal framework governing the settlement of such cases.

The criminal justice procedures, which traditionally focus on punishment, are transformed into a process of dialogue and mediation aimed at reaching a fair and balanced resolution for both victims and perpetrators (Siswantoro & Miharja, 2019). According to Setyo Utomo, another prominent feature of restorative justice is that crime is viewed as a social phenomenon rather than merely a violation of criminal law. Crime is considered an act that harms individuals and disrupts social relationships. This perspective contrasts with criminal law, which treats crime as a matter for the state. The state is seen as the sole authority for imposing punishment, although traditional communities may also have the capacity to administer sanctions (Utomo, 2010).

Restorative justice aims to empower victims, offenders, families, and communities to rectify unlawful acts by using awareness and consciousness as a foundation for improving

social life. It focuses on resolving criminal cases both within and outside the court system, emphasizing dialogue and direct participation of the offender, victim, and community in the resolution process. The goal is to restore the situation to its original state (reparation), which defines the essence of restorative justice.

The Black's Law Dictionary defines restorative justice as follows Restorative justice sanction: An alternative delinquency sanction focused on repairing the harm done, meeting the victim's needs, and holding the offender responsible for his or her actions. Restorative justice sanction use abalanced approach, producing the least restrictive disposition while stressingthe offender's accountability and providing relief to the victim. The offender may be ordered to make restitution, to perform community service, or to make amends in some other way that the court orders (Black et al., 1999).

The existence of case resolution outside the court system through restorative justice or penal mediation represents a new dimension to be examined from both theoretical and practical aspects. From a practical perspective, penal mediation correlates with the effectiveness of the judiciary. Over time, as the volume of cases and their various forms submitted to the courts increases, this results in a burden for the judiciary in examining and adjudicating cases in line with the principles of "simple, swift, and cost-effective justice" without compromising the fundamental objectives of the judiciary: legal certainty, utility, and justice (HM Nurhasan, 2017). Not all types of criminal cases necessarily have to be submitted and resolved in court. Certain cases can be addressed through penal mediation, provided that both parties (the suspect and the victim) genuinely desire this approach and it serves a broader interest, such as maintaining social harmony. Penal mediation is applicable when it is agreed upon by both parties and is intended to achieve social reconciliation, thus providing an alternative to traditional court proceedings for cases where it may be deemed appropriate and beneficial.

Based on the background description above, the research will explore the methods and legal foundations for applying restorative justice in resolving traffic accident crimes at the Medan City Police. Additionally, it will examine the obstacles and challenges faced by investigators in implementing restorative justice for traffic accident cases within this jurisdiction.

2. Method

This research is a normative juridical study with a descriptive-analytical nature. The research approach utilizes both the statutory approach and the case approach. The data used in this study includes primary, secondary, and tertiary legal materials, such as official documents, books, reports, research findings, and other relevant sources. These materials are collected through library research, employing documentary study techniques and in-depth interviews. Once the data is gathered, it will be analyzed qualitatively and conclusions will be drawn deductively.

3. Result & Discussion

A. The Resolution Method for Traffic Accident Crimes through a Restorative Justice Approach

The process of resolving traffic accident crimes through a restorative justice approach begins with the Police Report (Berita Acara Pemeriksaan, BAP). The BAP consists of statements provided by the defendant outside of court, which cannot be used as valid evidence. According to Police Report No. LP/0201/627/V/TUK.7.2.3/2020/LL, dated May 11, 2020, the scene of the traffic accident was visited at Jalan Menteng III in front of House No. 10, Binjai Village, Denai Subdistrict, Medan City. On Monday, May 11, 2020, at approximately 13:30 WIB, Yusuf Afandi and Sovian Simatupang, also with the rank of, both from the aforementioned office, were present at the scene.

Upon the arrival of the investigator and assistant investigator at the scene, they found one unit of a Honda Beat motorcycle with license plate BK 3628 AIS in a damaged condition, along with witnesses. They proceeded by taking photographs and creating a detailed sketch of the scene, as attached. The actions taken included securing the scene along with the traffic accident evidence, conducting an examination at the scene, preparing the police report and sketch of the scene, interviewing witnesses, and sending the visum et repertum to Santa Elisabeth Hospital Medan.

The implementation mechanism for restorative justice in resolving traffic accident crimes involves several key steps. Initially, upon receiving a peace settlement request signed by both parties (the complainant and the accused), an administrative review is conducted to ensure that the formal requirements for resolving the case through restorative justice are met. Once the formal requirements are fulfilled, the peace settlement request is submitted to the superior of the investigator for approval. After receiving approval from the investigator's superior (such as the Director of Criminal Investigation, the Regional Police Chief, or the District Police Chief), a date is set for the signing of the peace agreement.

The process then includes holding a conference where all involved parties sign an agreement. Following this, a memorandum is drafted to inform the supervisor or head of the unit about the request for a special case hearing aimed at terminating the case. The special case hearing is then conducted with the participation of the complainant, the complainant's family, the accused, the accused's family, representatives from community leaders appointed by the investigator, the handling investigator, and representatives from internal oversight functions, legal functions, and government elements if necessary.

Administrative documentation and a report of the special case hearing are prepared, leading to the issuance of a decree of termination of the investigation or prosecution based on restorative justice. For cases in the investigation stage, the investigator issues a decree of termination of the investigation, signed by the Director of Criminal Investigation at the National Police Headquarters, the Director of Criminal Investigation at the Regional

Police, or the District Police Chief. For cases in the prosecution stage, the investigator issues a decree of termination of the prosecution, as outlined in the circular letter, and signed by the same authorities. Finally, the case is recorded in the new register B-19 as a restorative justice case, marking it as resolved.

B. Restorative Justice Efforts for Perpetrators and Victims of Traffic Accidents at the Medan City Police

Traffic offenses are characterized by their distinct nature. Traffic accidents, in particular, are crimes where the elements of intention are absent, replaced instead by negligence and deficiencies on the part of the offender. In some cases, the victims are not external individuals deliberately targeted but rather family members of the offender, which often results in the offender also being a victim. Despite this familial relationship, traffic offenses are classified as ordinary crimes, and the offenders are subject to legal processes and enforcement by law enforcement authorities (Putri & Tajudin, 2015).

In the case of ordinary crimes, the criminal justice system is capable of conducting investigations, prosecutions, and trials independently of the victim, as it is the system's obligation to process such offenses. This differs from complaint-based crimes, where the investigation process can only commence upon a complaint from the victim. Restorative justice, however, should also be considered by judges as a basis for deliberation when rendering a decision, allowing for an approach that emphasizes repair and reconciliation in the sentencing process (Putri & Tajudin, 2015).

In various principles and models of restorative justice, the process of dialogue between the offender and the victim is fundamental and crucial to its implementation. Direct dialogue allows the victim to express their feelings, articulate their expectations regarding the fulfillment of their rights, and voice their desires for the resolution of the criminal case. This dialogue also aims to prompt the offender to reflect on their actions, recognize their mistakes, and accept responsibility for their crimes with full awareness. Additionally, through this process, the community can participate in achieving and monitoring the agreed-upon outcomes. Thus, restorative justice is often associated with case resolution through mediation (penal mediation) (Pradityo, 2016).

Traffic offenses and road transportation violations are regulated under the Law on Traffic and Road Transport (UU LLAJ). As a law outside of codified legislation, UU LLAJ also outlines procedural aspects for handling traffic and road transport violations. This regulation includes provisions that specify that the investigation of traffic and road transport offenses is conducted by officers of the Indonesian National Police and/or certain civil servant investigators who have been given specific authority under the law (Ruslan Renggong, 2021).

The regulation of traffic accidents under the Law on Traffic and Road Transport (UU LLAJ) plays a strategic role in supporting national development and integration, as part of efforts to advance public welfare as mandated by the 1945 Constitution. As a component

of the national transportation system, traffic and road transport must develop their potential and role to ensure safety, welfare, and order in traffic and road transport, thereby supporting economic development, advancements in science and technology, regional autonomy, and accountability in governance. Each traffic accident case inevitably carries legal consequences for the driver involved (Bahari, 2010).

A case of restorative justice for a traffic offense resolved at Polrestabas Medan involved the following incident: On Monday, May 11, 2020, at approximately 13:00 WIB, the offender and a pedestrian named Tiurma br. Sitorus were involved in a traffic accident. Tiurma br. Sitorus had left her home and walked to Jalan Menteng III to call for a motorized pedicab heading to Jalan Krakatau. Upon reaching the location of the incident, while walking along the edge of the road towards Jalan Menteng Raya, she was suddenly struck from behind by a Honda Beat motorcycle with license plate BK 3628 AIS. The collision caused her to be thrown onto the asphalt, resulting in injuries that required medical attention”

In cases of traffic offenses violating Article 310, paragraph (2) and Article 310, paragraph (3) of the Law on Traffic and Road Transport (UU LLAJ), the investigation may be terminated (SP3) if a case review has been conducted. This termination aims to ensure legal certainty, a sense of justice, and the utility of the law, as outlined in Article 30, paragraph (1) of the 2019 Police Regulation (Perkab). The case can be closed, but if new evidence (novum) emerges, the case may be reopened.

Typically, both the offender and the victim will have engaged in discussions and reached a mutual agreement. They may decide to pursue reconciliation, having come to an understanding that addresses their sense of justice. Both parties often feel that they have achieved a satisfactory resolution through this process (Taufik Rambe, 2020).

The basis for the police to terminate traffic accident cases is grounded in several regulations. The primary reference is the Regulation of the Chief of Police No. 15 of 2013 concerning the Procedures for Handling Traffic Accidents. This regulation outlines the procedural framework for managing such cases. Additionally, the Regulation of the Chief of Police No. 6 of 2019 on Criminal Investigation replaces the previous Regulation No. 14 of 2012. This update provides comprehensive guidelines for the investigation of criminal cases, including traffic accidents. Moreover, the Circular Letter of the Chief of Police No. 8 of 2018 addresses the implementation of restorative justice. This circular guides the application of restorative justice principles in resolving cases, including those involving traffic accidents, aiming for a more rehabilitative and reconciliatory approach.

The basis for the police to close a traffic accident case is grounded in several regulations. The primary reference is the Indonesian National Police Regulation No. 15 of 2013 concerning Procedures for Handling Traffic Accidents. Additionally, the Indonesian National Police Regulation No. 6 of 2019 concerning Criminal Investigation, which replaces Regulation No. 14 of 2012, also serves as a legal basis in the investigation

process. The Chief of Police Circular Letter No. 8 of 2018 on the Implementation of Restorative Justice further guides the decision to close the case.

The efforts made by the police in handling traffic accident cases involve several key steps. First, the examination of the crime scene (TKP) is conducted in an integrated manner to ensure that all evidence and information are thoroughly collected. Victims are promptly taken to the nearest general hospital for necessary medical treatment. Traffic flow management and site guarding are carried out around the TKP to prevent congestion and ensure safety. The public is prohibited from approaching or entering the TKP to preserve the integrity of the evidence.

The police also encourage public participation in securing evidence. Investigations are conducted on suspects, witnesses, and individuals who saw or heard the traffic accident. Coordination with PT. Asuransi Kecelakaan Jasa Raharja is performed to expedite the delivery of accident compensation. Mechanics are involved to assess the condition of the vehicle, especially for vehicle safety checks. Further investigation is then conducted by the Traffic Accident Unit of the Traffic Police (Supriadi, 2021).

Efforts by the Traffic Police Unit to avoid conflicts or complaints from victims involve several strategic steps. Officers strive to remain neutral and direct the offender to make a courtesy visit and offer condolences to the victim. Additionally, a deliberation is held with the assistance of local village or sub-district officials. Following this communication, the investigator requests assistance from the Tanjung Gusta Correctional Center. The Tanjung Gusta Correctional Center then conducts a survey of both the victim and the offender, and coordinates with the Traffic Police Unit of Polrestabes Medan to ensure that the resolution process adheres to the principles of restorative justice.

4. Conclusion

Restorative Justice (RJ) within the Indonesian judicial system is a new approach aimed at restoring the losses suffered by crime victims. Although there is no specific legislation regulating RJ, several regulations such as Law No. 11 of 2012 on the Juvenile Justice System and the Chief of Police Circular Letter No. SE/8/VII/2018 have incorporated RJ into the criminal justice context. At Polrestabes Medan, RJ is implemented through mediation processes between offenders and victims, and subsequently proposed for the cessation of investigation based on the Chief of Police Circular Letter.

However, there are challenges in implementing RJ, such as the lack of a clear legal framework and insufficient cooperation among the involved parties. It is anticipated that the government will clarify regulations regarding RJ, especially in the context of traffic accident offenses. Additionally, enhancing the role and capacity of related institutions is crucial to ensure effective implementation of RJ. This is essential for RJ to become an effective solution for resolving criminal cases, particularly at Polrestabes Medan.

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