

RESTORATIVE JUSTICE POLICY TOWARDS PERPETRATORS OF TRAFFIC ACCIDENTS WITH DEATH

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Abstract

Traffic accidents are unpredictable in time, place and cause. Traffic accidents occur due to a lack of awareness of road users which then results in damage and even the safety of someone's life. Thus, a restorative justice approach emerged that focuses on the process of returning things to their original state by prioritizing a sense of peace between the perpetrator and the victim. The purpose of this study is to understand the application of restorative justice policies to the perpetrators of traffic violations with fatalities. The research uses normative juridical type of writing, with statute approach and concept approach. The legal materials used are primary legal materials including: The Book of Law. From this research it can be concluded: the legal basis governing the Implementation of Road Traffic and Transportation is Law Number 22 of 2009 and Government Regulation Number 30 of 2021. The restorative justice policy is regulated in the Regulation of the Indonesian National Police (PERKAPOLRI) Number 8 of 2021, the Prosecutor's Regulation (PERJA) Number 15 of 2020, and the Supreme Court Regulation Number 2 of 2012. Regulations regarding traffic offenders with fatalities have not been specifically regulated by law, so it needs to be a common concern in order to achieve fair law enforcement for traffic offenders with fatalities through a restorative justice approach.

Keywords: Traffic; Death Victims; Accident; Restorative Justice.

Abstrak

Kecelakaan lalu lintas tidak dapat diprediksi waktu, tempat, dan penyebabnya dan seringnya terjadi akibat kurangnya kesadaran pengguna jalan yang mengakibatkan kerusakan bahkan mengancam keselamatan jiwa seseorang. Pendekatan restorative justice hadir dengan menitikberatkan pada proses pengembalian sesuatu pada keadaan semula dengan mengutamakan rasa rela antara pelaku dan korban. Tujuan dari penelitian ini adalah untuk mengetahui penerapan kebijakan restorative justice pada pelaku pelanggaran lalu lintas yang mengakibatkan kematian. Penelitian ini menggunakan jenis penulisan yuridis normatif, dengan pendekatan perundang-undangan dan pendekatan konsep. Bahan hukum yang digunakan adalah bahan hukum primer yang meliputi: Kitab Undang-Undang Hukum Acara Pidana. Dari penelitian ini dapat disimpulkan: landasan hukum yang mengatur Penyelenggaraan Lalu Lintas dan Angkutan Jalan adalah Undang-Undang Nomor 22 Tahun 2009 dan Peraturan Pemerintah Nomor 30 Tahun 2021. Kebijakan keadilan restoratif diatur dalam Peraturan Kepolisian Negara Republik Indonesia (PERKAPOLRI) Nomor 8 Tahun 2021, Peraturan Kejaksaan (PERJA) Nomor 15 Tahun 2020, dan Peraturan Mahkamah Agung Nomor 2 Tahun 2012. Pengaturan mengenai pelanggaran lalu lintas dengan korban meninggal dunia belum diatur secara khusus dalam undang-undang, sehingga perlu menjadi perhatian bersama guna mewujudkan penegakan hukum yang adil bagi pelanggaran lalu lintas dengan korban meninggal dunia melalui pendekatan keadilan restoratif.

Kata kunci: Lalu Lintas; Korban Meninggal Dunia; Kecelakaan; Keadilan Restoratif.

Introduction

Law is the basic foundation in living in society. Indonesia as a country of law continues to strive to prioritize the interests of society above other interests. If we follow the expression "*ubi societas ubi ius*" then it means that law has existed since society existed. Living in society is a mode of survival for human beings, meaning that only by living in society can humans continue their lives through the fulfillment of two aspects, namely the physical aspect and the existential aspect. The physical aspect refers to the nature of humans as creatures who are truly alive physically. (Marzuki, 2017). The existential aspect is related to its existence which is different from other living beings. In the physical aspect, humans maintain their security against disturbances such as hunger, injustice and accidents. In the existential aspect, humans maintain their security from fear, ridicule and isolation.

The law aims to regulate human life so that it can be used as a means of achieving justice, through rational considerations it can accept the existence of law as a system of values and norms that exist and develop in society as an effort to realize the order of social life and not justify all forms of injustice that occur in society. (Nabilah, 2024). So the law is interpreted as a series of guidelines for achieving justice and a set of rules of behavior to regulate order in society (Hikmahanto, 2023).

Law is like a double-edged sword, on the one hand, it is a protector of community life in preventive studies, while on the other hand, it is a means of enforcing justice in its repressive order. (Royani et al., 2023). Law is made to achieve harmony between one's life and the lives of others. So in this case it is undeniable that everyone will have interests that are a way for someone to maintain their existence. These interests will then be the beginning of conflict, between

each person and each person. (Hikmanto, 2023)

Resolving disputes between people in court is divided into two types of case resolution, namely through the court and out-of-court channels. Dispute resolution through the court is carried out by filing a lawsuit with the competent judicial institution. This process involves a judge who will decide based on applicable law. The advantage of resolving through the court is that there is a legally binding decision. However, the process is often time-consuming, and expensive, and can cause tension between the parties. Settlement outside the court is generally faster, more cost-effective, and maintains good relations between the parties. Therefore, this method is often the choice before taking the case to court. (Risano, 2021)

Choosing the right settlement method depends on the complexity of the problem and the interests of each party. If possible, an out-of-court settlement is often more effective and beneficial for all parties involved. The existence of out-of-court settlement can be done through the Restorative Justice policy. In the context of investigation with Restorative Justice, its position is the gatekeeper of the criminal justice system.

The rapid growth and development in Indonesia are directly proportional to the activities of the community to interact with various parties in various places. Therefore, supporting these activities has an impact on the increasing need for transportation, both private and public transportation. The problems that arise in the future with the level of transportation density, one of which is traffic accidents.

The author obtained data from the Traffic Accident Unit of the Mojokerto Regency Police regarding traffic accidents that had occurred in the jurisdiction of the Mojokerto Regency Police in 2022 totaling

938 incidents with 864 incidents successfully resolved outside the court, namely through the Restorative Justice policy. The number of traffic accidents increased in 2023 with a total of 1010 from January 1 - December 27 and a total of 862 were successfully resolved with the Restorative Justice policy. In this case, there was one traffic accident that resulted in a fatality but could be resolved through the restorative justice policy while still paying attention to justice for both parties (the perpetrator or the victim's family). The success in taking the Restorative Justice path, police have been guided by Pori Regulation Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice. In this case, humanity is a consideration after there is a peace agreement between the two parties.

Research Methods

This research is normative legal research. Legal research is the process of finding legal principles, legal principles, and legal doctrines so that they can solve legal issues that are being discussed. In this case, it is related to the approach of legislation and the approach of concepts. The approach of legislation (statute law) is carried out by studying laws and regulations related to legal issues that are being discussed, while the approach of concepts begins with the principles and doctrines that develop in legal science. (Marzuki, 2008)

The legal sources used in this study include primary legal documents in the form of legal regulations in this case, the primary ones are obtained through regulations that are based on and written in several ways, namely: (1) Basic Laws of the Republic of Indonesia in 1945; (2) Book of Criminal Law (KUHP); (3) Law Number 22 of 2009 concerning Traffic and Road Transportation; (4) Regulation of the State Police of the Republic of Indonesia Number 8 of 2021 concerning Criminal Acts Based on Restorative Justice; (5) Regulation of the Republic of Indonesia

Law Number 15 of 2020 Concerning Termination of Prosecution Based on Restorative Justice.

The primary legal matters have been in accordance with the topic of the case formulated and classified according to sources in a hierarchy which are then reviewed comprehensively.

Results and Discussion

Law enforcement

The realization of good law enforcement in the criminal justice system is a manifestation of the success of handling a crime. In carrying out the criminal justice process, of course, an investigation and inquiry by the police is needed to determine whether or not a crime is appropriate to be referred to court. The process of investigating and investigating a crime is the only main step in determining whether or not a criminal case is appropriate to be continued to the prosecution process in the criminal justice system. This is intended to realize the objectives of the law, namely justice, wrongdoing, and crime while still prioritizing simple, fast, and light reasons. (Nurialinto, 2023) Law enforcement is a process to ensure the functioning of the law properly as a guideline for behavior in the context of legal relations in society and the state (Lalurensius, 2019). So that to enforce the law following the competence of the police, the police have the authority to conduct investigations and inquiries into criminal cases as regulated as follows.

Article 1 of Article 5 of the Criminal Procedure Code (KUHAP) states: "Investigation is the act of an investigator to search for and find an event that is suspected of being a criminal act to determine whether or not the investigation should be carried out according to the procedures set out in this law."

Article 1 Number 5 of the Criminal Procedure Code (KUHP) states that: "Investigation is a series of investigator actions to search for and find an event suspected of being a criminal act to determine whether or not an investigation can be carried out according to the method regulated in this law."

Both articles provide written authority for police officers as investigators to carry out, search for and find an event suspected of being a criminal act in the hope that through the investigation process evidence can be found that sheds light on the crime. So that in this case it can be a determinant of the completion of a crime or continuing to prosecution and trial.

In the modern state structure, the task of law enforcement is carried out by the executive component and implemented by the bureaucracy of the executive so it is often referred to as the law enforcement bureaucracy. Since the state has intervened in many areas of activity and service in society, the relationship of legal intervention has also become more intensive, such as in the fields of health, housing, and education. Therefore, law enforcement officers have a very strategic and significant function in enforcing the law. The following are law enforcement officers in Indonesia.

1. Investigator

In general, an investigator is someone who has the authority to seek evidence of a crime. Investigators in this case are police officers, prosecutors, and civil servants as well as parties who are given authority as stated in the Criminal Code (KUHP). The police are a subsystem of the criminal justice system as regulated in Law No. 2 of 2002 concerning the State Police of the Republic of Indonesia. According to Article 13 of Law No. 2 of 2002, it is emphasized that the police have the main task of maintaining

public security and order, enforcing the law, and providing protection, shelter, and service to the community. Meanwhile, in criminal justice, the police have special authority as investigators which are generally regulated in Article 15 and Article 16 of Law No. 2 of 2002 and the Criminal Procedure Code Articles 5 to 7 of the Criminal Procedure Code.

Prosecutor investigators have existed since the HIR (*herzien inlandsch regement*) era, investigations are part of a prosecution. This authority then makes the public prosecutor (Prosecutor) the coordinator of the investigation. Even the Prosecutor can also conduct their investigations according to the guidelines of Article 38 in conjunction with Article 39 Article 46 number 1 HIR. Especially in Article 284 number 2 of the Criminal Procedure Code in conjunction with Article 17 of Government Regulation No. 27 of 1983 concerning the Guidelines for the Implementation of the Criminal Procedure Code because it has expressly stated the authority of the prosecutor's office as an investigator for a certain criminal act... PPNS (Civil Servant Investigators) have special authority granted by law as a guideline for their respective legal bases and when carrying out their duties, PPNS are under the Coordination and Supervision of the Pori Investigators (Korwas PPNS). However, investigators have now developed and increased due to legal needs such as the addition of certain state institutions that also have investigative authority such as the Corruption Eradication Commission (KPK), BNN (National Narcotics Agency), PPATK (Financial Transaction Reporting and Analysis Center), BIN (State Intelligence Agency)

2. Office of prosecutor

The Prosecutor's Office is an institution that has the authority to prosecute a case after the case has been transferred from a police officer. In Law Number 16 of 2004 concerning the Prosecutor's Office, by the development of the state system, Indonesia places the Prosecutor's Office as part of the executive institution that is also subject to the president but is also included as a judicial institution when viewed in terms of its function. Article 24 of the third amendment to the 1945 Constitution emphasizes that judicial power must be carried out by the Supreme Court (MA) and other judicial bodies that have functions related to judicial power. Law Number 4 of 2004, Article 41 concerning judicial bodies then reaffirms which reads.

"Other bodies whose functions are related to judicial power include the State Police of the Republic of Indonesia, the Prosecutor's Office of the Republic of Indonesia, and other bodies that have been regulated in law."

3. Judiciary

It's a government institution authorised to hear, decide and settle cases at the first instance. Law No. 48 of 2009 on judicial power has placed the judiciary as a subsystem of criminal justice. In examining the defendant, the judge relies on the indictment made by the public prosecutor (JPU) based on the evidence stipulated in Article 184 of the Criminal Procedure Code which consists of at least 2 (two) pieces of evidence and with his/her belief, the judge makes a decision.

4. Lawyer

Lawyers are an important pillar in law enforcement efforts. Lawyers are one of the tools of the judicial process that has an equal position with other law enforcers in upholding the law and justice. This is then the

basis for Law number 18 of 2003 concerning Lawyers which in Article 5 Point 1 states that Lawyers have the status of law enforcers who are free and independent and have been guaranteed by laws and regulations.

5. Correctional Institution

Correctional institution is an institution that is responsible for the detention, guidance and supervision of prisoners while serving a criminal sentence.

The presence of correctional institutions as correctional institutions has been regulated in Law Number 12 of 1995 concerning Corrections which changed the imprisonment system into a correctional system. A convict during the criminal period or what is meant in this case is imprisonment is the responsibility of the correctional institution to take care of him. This action is in line with the 1945 Constitution and is guided by the 2nd *sia pancasila* which reads 'humanity that is fair and civilised' meaning that every human being is entitled to equal treatment before the law despite the status of prisoners and also in the 5th *sia* namely 'social justice for all Indonesian people' which means that prisoners are also entitled by norms to get the opportunity to interact and socialise.

Traffic offences

Traffic offences are deviant acts that are self-inflicted and contrary to the law. Sanctions for offenders are generally lighter than for criminals. The term 'offence' is a statutory offence (*wetsdelicten*), meaning that an act that is against the law becomes known after there is a law that regulates it. Oeh therefore it can be said to be an offence if there are elements of an offence, namely: (1) The existence of acts contrary to the Act; (2) Actions that cause legal consequences. From the above understanding, it can be concluded that a traffic offence is an act or action committed by a person while driving a public or private vehicle including

pedestrians that is contrary to the applicable traffic regulations.

traffic offences are categorised as acts that are followed by sanctions, so that in this case criminal sanctions and administrative sanctions can be imposed. There are several violations of traffic laws in Indonesia which are categorised into three, namely:

a. Minor offences

Minor violations are the most common violations of traffic laws. The maximum criminal sanction is 15 days-2 months or a maximum fine of Rp 100,000.00-Rp 500,000.00. The categories of minor offences include wearing dangerous accessories on vehicles, not having a vehicle number plate, and not prioritising pedestrians or cyclists.

b. Medium offences

Moderate offences are those that carry a maximum penalty of three to four years or a maximum fine of Rp 500,000 to Rp 1,000,000. These offences include not having a driving licence, not concentrating while driving, and breaking through a railway crossing.

c. Serious offences

Serious offences carry a maximum penalty of six months or more with a maximum fine of more than IDR 1,000,000. Violations that fall into this category are damaging or disrupting the function of the railway.

Restorative Justice

Restorative justice is a 'victim-centered' reaction, meaning that a crime allows victims, perpetrators, families, and community leaders to continue to pay attention to the losses resulting from the crime that has occurred. The intensity is directed at reparation, restoration of damage, losses suffered due to the crime, and being

able to initiate and facilitate peace efforts between the two parties (Muladi, 2022)

Revisiting the history of human life, the most dominant mechanism in resolving criminal cases is using the Restorative Justice approach. Through the Restorative Justice approach, the resolution of dispute mechanisms in court is considered better and fairer. Restorative justice prioritizes a crime as a form of loss or damage. While justice is an effort to repair damage to elevate the role of victims of crime, in this case, there are third parties, namely perpetrators of crimes and community leaders who are then greatly needed in the justice system to realize the welfare and security of society. Resocialization is the short-term objective of the criminal justice system, crime prevention is the medium term and the welfare and security of society are the main goals in the long term of upholding justice in society.

Criminal law requires written and firm rules. Meanwhile, most of the laws in society are not written. The emergence of legal terminology that lives in society in the 2023 Criminal Code is nothing more than to refer to laws other than laws stipulated by the state. Thus, at first glance, the 2023 Criminal Code seems to open up opportunities for legal pluralism even though the settlement mechanism still uses criminal justice. In other words, the principle of legality is faced with the application of laws that live in society. (Ningtias, 2023)

1. Context of Investigation

The authorized institution in conducting investigations is the police, which in terms of the realization of restorative policies is guided by the regulation of the head of the Indonesian Republic Police Number 8 of 2021. The police institution is still considered reactive, which means that it still relies on the public to report any suspected criminal acts. The police should also have full authority to seek information, make arrests, and stop investigations. This is

as stated in Article 7 Number 1 of the Code of Criminal Procedure and in Law Number 2 of 2002 concerning the Indonesian Republic Police, which has the following authority.

- a) Receive reports or complaints of a criminal act;
- b) Take the first action when at the scene;
- c) Ask the suspect to stop and then check the suspect's identification;
- d) Make arrests, detentions, searches, and confiscations;
- e) Conducting examination and confiscation of letters.

From the explanation above, normatively there are no special laws or special provisions governing the restorative justice policy in the process of investigating traffic violations. Therefore, if the restorative policy is interpreted as the reintegration of the perpetrator of the crime with the community which aims to restore the relationship as before between the perpetrator, the victim, and all parties who are harmed, then the investigation process must be integrated progressively in line with the restorative policy.

2. Context of Prosecution

Prosecution can be carried out by the Prosecutor's Office as the authorized party if there has been a transfer of the case at the investigation stage. The authority of the Prosecutor's Office in implementing the restorative policy is a form of legal effort to produce a fair, fast, and low-cost justice system both in the detention process, pre-prosecution, preparation of indictments, and carrying out criminal prosecution. This policy has been regulated in the Prosecutor's Regulation number 15 of 2015 concerning the termination of prosecution based on restorative justice.

The implementation of restorative policies is extreme for the Prosecutor's Office because in this case, the Prosecutor's Office plays a role to divert, namely

diverting the prosecution process to a case resolution outside the court which is possible to be carried out in certain cases as per the law. So the creativity of the Prosecutor's Office as a Public Prosecutor is very much needed for the development of restorative policies. So the Prosecutor's Office is required to be able to build a strategy as well as a problem-oriented approach. This is certainly not easy, because it shifts the paradigm that all Prosecutors as case processors become case solvers.

The decision of the Head of the Prosecutor's Office becomes the controller at the prosecution stage, in this case the bureaucracy has remote authority with the real conditions of traffic violation cases which can then distort the resolution of traffic violation cases by implementing restorative justice policies. (Luhut, 2009) .

3. Examination Context

In this case, the judge has the authority to examine, decide and resolve cases at the first level. Examination based on the settlement of minor criminal acts that have been regulated in the Supreme Court Regulation Number 2 of 2012. However, the problem that is still clear in the context of the examination is the difference in principle between the justice system and the restorative policy. As stated in the civil procedure code, the openness system is derived from the principle of open court hearings for the public. So the panel of judges and legal counsel must essentially assess and respect the interests of each party... Therefore, judges are expected to be able to design a meeting mode for all interested parties so that no one feels disadvantaged as regulated in the civil procedure code.

Conclusion

The restorative justice policy in resolving criminal acts through three stages, namely: (1) The investigation stage as regulated in the regulation of the head of the

Indonesian Republic Police number 8 of 2021; (2) The prosecution stage as regulated in the prosecutor's office regulation number 15 of 2020 and (3) The examination stage regulated in the Supreme Court regulation number 2 of 2012 concerning the adjustment of minor crimes and the amount of fines in the criminal code. Law enforcement carried out by law enforcement officers in violations of the law based on the restorative policy still pays attention to the interests of each party and provides the rights of all parties to be respected and treated equally in the eyes of the law.

Recommendations

The government and all authorized parties are expected to jointly realize law enforcement for traffic violators, especially those who cause fatalities, to the maximum. So that the public feels satisfied with the performance of law enforcement officers with the principle of equality before the law as a real principle. Because as far as the author knows, there are no special regulations regarding traffic violators in the restorative justice policy for victims who have died. Law enforcement against traffic violators must continue to be supervised so that it is hoped that there will be no more criminal acts of traffic violations that due to negligence cause fatalities.

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Nomor 15 Tahun 2020 Tentang
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Tentang Penanganan Tindak Pidana
Berdasarkan Keadilan Restoratif



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