



## **PRINCIPLES OF RESTORATIVE JUSTICE REGARDING CRIMINAL ACTS OF TRAFFIC ACCIDENTS FROM A JUSTICE PERSPECTIVE IN INDONESIA**

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**Abstract:** The existence of resolving cases outside of court through restorative justice or penal mediation is a new dimension to be studied from theoretical and practical aspects. Examined from the practical dimension, penal mediation will correlate with achievements in the world of justice. As time goes by, there is an increase in the volume of cases in all forms and variations entering the courts, 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 justice, namely legal certainty, expediency and justice. Do all types of criminal cases have to be filed and resolved before the court, or are there certain cases that can be resolved through penal mediation? In polarization and penal mediation mechanisms, as long as this is truly desired by the parties (suspect and victim), as well as to achieve broader interests, namely maintaining social harmonization. In its development, in responding to the legal needs of society which fulfills a sense of justice for all parties and refers to the authority of the Police as regulated in Article 16 and Article 18 of Law No.2/2022 concerning Polri, the Chief of Police of the Republic of Indonesia (Kapolri) deems it necessary to formulate a new concept in enforcement of criminal law that better accommodates the norms and values of justice, thereby encouraging the National Police Chief to issue Regulation of the Head of the National Police of the Republic of Indonesia Number 8 of 2021 concerning the handling of criminal acts based on restorative justice.

**Keywords:** Restorative Justice, Traffic Crime, Police National

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## **Introduction**

Indonesia is a legal state according to Article 1 Paragraph (3) of the 1945 Constitution. It seems that it has not yet achieved success in creating a standard of justice for formal mechanisms in criminal justice. The legal system in Indonesia still prioritizes a formal legal system, the police being responsible for investigations, the prosecutor's office responsible for prosecuting and the courts responsible for handing down decisions. On the other hand, it seems that law enforcement through formal means still has the weaknesses of criminal justice where the position of the victim and the community have not yet received their position so that the interests of both are neglected. Meanwhile, in the criminal case resolution model using a restorative justice approach, the active role of both parties is important in addition to the role of the perpetrator. Finally, a doctrine called restorative justice emerged. Restorative justice emerged more than twenty years ago as an alternative resolution of juvenile criminal cases. The United Nations (UN) Juvenile Justice Working Group defines restorative justice as a process of all parties sitting together to resolve problems with agreements between both parties so as to reach an agreement. This process is basically carried out through discretion (policy) and diversion, namely the transfer of the criminal court process outside the formal process to be resolved through deliberation.

Traffic problems are a problem faced by developed countries and also developing countries such as Indonesia. However, in Indonesia, the problems that are often encountered today are worse and bigger than in previous years, including accidents, traffic jams and air pollution as well as traffic violations. It is understood that road traffic and transportation have a strategic role in supporting national development and integration as part of efforts to advance general welfare as mandated by the 1945 Constitution of the Republic of Indonesia. That, road traffic and transportation as part of the national transportation system must develop its potential and role to realize security, safety, order and smooth traffic and road transportation in order to support economic development and regional development. The development of the national and international strategic environment demands the organization of road traffic and transportation in accordance with developments in science and technology, regional autonomy and accountability in state administration. Therefore, in organizing traffic, there are 4 (four) main factors that must be considered, namely:

- 1) Traffic and road transportation security is a condition where every person, item, and/or vehicle is free from unlawful acts and/or fear in traffic.



- 2) Traffic and road transportation safety is a condition where everyone is protected from the risk of accidents during traffic caused by humans, vehicles, roads and/or the environment.
- 3) Traffic order and road transportation is a traffic situation that occurs regularly in accordance with the rights and obligations of every road user.
- 4) Smooth traffic and road transportation is a condition of traffic and the use of transportation that is free from obstacles and congestion on the road.

The Police of the Republic of Indonesia (Polri) is a state instrument that plays a role in maintaining security and public order, law enforcement, protection, protection and service to the community in the context of maintaining domestic security. Therefore, the National Police is required to continue to develop to become more professional and closer to the community. In other words, the National Police is required to develop itself into a civil police force. As civil police, the position of the 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. Thus, in dealing with traffic accidents, the National Police as the party responsible, in a professional manner, attempts to reconcile the parties involved in the accident by means of penal mediation, or better known as criminal mediation.

The existence of resolving cases outside of court through restorative justice or penal mediation is a new dimension to be studied from theoretical and practical aspects. Examined from the practical dimension, penal mediation will correlate with achievements in the world of justice. As time goes by, there is an increase in the volume of cases in all forms and variations entering the courts, 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. Thus, in dealing with traffic accidents, "the National Police as the party responsible, in a professional manner, attempts to reconcile the parties involved in the accident by means of penal mediation, or better known as criminal mediation." "The existence of resolving cases outside of court through restorative justice or penal mediation is a new dimension to be studied from theoretical and practical aspects."

In its development, in responding to the legal needs of society which fulfills a sense of justice for all parties and refers to the authority of the Police as regulated in Article 16 and Article 18 of Law No.2/2022 concerning Polri, the Chief of Police of the Republic of Indonesia (Kapolri) deems it necessary to formulate a new concept in enforcement of criminal law that better accommodates the norms and values of justice, thereby encouraging the National Police Chief to issue Regulation of the Head of the National



Police of the Republic of Indonesia Number 8 of 2021 concerning the handling of criminal acts based on restorative justice. From the background above, the author is interested in compiling a dissertation with the title "Principles of Restorative Justice in Traffic Accident Crimes from a Justice Perspective in Indonesia".

Based on the background of the problem above, the problem can be formulated as follows:

- 1) Can the principles of restorative justice be applied to traffic accident cases from a justice perspective in Indonesia?
- 2) How is restorative justice used in resolving traffic accident cases from the perspective of laws and regulations in Indonesia?
- 3) What is the ideal criminal law formulation policy regarding the principles of restorative justice related to traffic accidents from a justice perspective in Indonesia?

## **Methods**

The type of research used is normative juridical legal research which focuses on positive legal studies. Normative juridical research is legal research that places law as a building system of norms. The norm system in question is about principles, norms, rules of laws and regulations, court decisions, as well as doctrines or teachings. Another name for normative legal research is doctrinaire legal research, also referred to as library research or document study. It is called doctrinal legal research, because this research is carried out or aimed only at written regulations or other legal materials. It is said to be library research or document study because this research is mostly carried out on secondary data in libraries.

In accordance with the character of normative legal science, the study of positive law includes the study of legal dogmatics, the study of legal theory, and the study of legal philosophy. At the level of legal dogmatics, emphasis is placed on identifying several laws and regulations related to the social system in Indonesia, while at the level of legal theory, a study is carried out on theories that can be used to analyze the value of justice, the legal system, the operation of law and progressive law. towards the principles of restorative justice for criminal traffic accidents. In terms of legal philosophy, the study focuses on the perspective of justice in Indonesia.

A research approach is a method or way of conducting research so that researchers obtain information from various aspects to find the issue



they are looking for an answer to. In accordance with the type of research, namely normative juridical, the research approach used in this research is:

- 1) Legislative Approach (Normative/Statute Approach) Namely by reviewing all laws and regulations related to the legal issue being handled. In this case, the approach is taken by reviewing the laws and regulations relating to traffic and road transportation and restorative justice.
- 2) Conceptual Approach (Conceptual Approach) This is a departure from the views and doctrines that have developed in legal science. By studying views and doctrines in legal science, researchers will find ideas that give rise to legal understandings, legal concepts and legal principles that are relevant to the content at hand.
- 3) A conceptual approach can also carry out research on legal concepts such as; legal sources, legal functions, legal institutions, and so on. This legal concept is in three domains or levels according to the level of legal science itself, namely: the level of dogmatic legal science, the legal concept is technical juridical, the legal theory level is the general concept of law, the legal philosophy level is the basic concept of law.
- 4) Case Approach, This approach is carried out by examining cases related to the legal issues being faced that have received court decisions and have permanent legal force. These cases can be cases that occur in Indonesia or in other countries. The main study in the case approach is ratio decidendi or reasoning, namely the court's considerations in arriving at a decision. Both for practical purposes and for academic studies, ratio decidendi or reasoning is a reference for preparing arguments in solving legal issues.
- 5) Historical Approach (Historical Approach) This approach is carried out within the framework of understanding the philosophy of legal rules over time, as well as understanding changes and developments in the philosophy that underlies these legal rules. This approach is carried out by examining the background of what is being studied and developments in regulations regarding the legal issues being faced. Such research is needed by researchers when researchers really want to reveal the philosophy and thought patterns that gave birth to something being studied.
- 6) Comparative Approach (Comparative Approach) comparative approach is carried out by conducting comparative legal studies. Comparative legal studies are activities to compare the laws of one country with the laws of other countries or the laws of one particular time with the laws of another time. In Bambang Sunggono's view, quoted by Suratman and Philips Dillah, the comparative approach uses elements of the legal system as the starting point for the comparison, where the legal system includes three main elements, namely: 1) legal structure which



includes legal institutions; 2) legal substance which includes a set of rules or regular behavior; and 3) legal culture which includes the set of values adhered to. Legal comparisons can be made against masi

## **Result / Discussion**

### **1. The principles of restorative justice be applied to traffic accident cases from a justice perspective in Indonesia**

Traffic accidents involving individuals who are minors produce new issues in terms of the application of the law to determine punitive measures for the responsibilities that must be borne by the child (Koloi, 2021). Traffic accident situations involving perpetrators who are minors often create debate in the context of the application of criminal law, thus potentially causing controversy. There is a view that says that the legal process must continue and be enforced regardless of the status of the perpetrator, with the principles of "rule of law" and "law enforcement". This means that even though the perpetrator is a child, if there is "negligence" or "negligence" in his actions, such as when driving a vehicle which results in an accident resulting in the death of the victim, the perpetrator must still be prosecuted legally.

Article 229 in Law Number 22 of 2009 concerning Road Traffic and Transportation (hereinafter referred to as the LLAJ Law) explains that a traffic accident refers to an unexpected and unintentional incident involving a vehicle, either with or without other road users. The incident resulted in financial loss and/or property loss. If the violation results in criminal impacts associated with the violation, then the violation can be considered a criminal offense. Restorative Justice or also known as "reparative justice" is a justice approach that focuses on the interests of victims and perpetrators of crime, and involves participation from the community. This approach does not only aim to comply with legal aspects or impose criminal penalties, but also focuses on fulfilling needs related to the reconciliation process.

Restorative justice is an alternative or alternative method in the criminal justice system that emphasizes the integration of criminal perpetrators and victims or society. This approach aims to create solutions that involve both parties and restore positive relations in society (Hamdi & Ikhwan, 2021). This approach focuses more on recovery, reconciliation and reducing the risk of criminal acts occurring in the future.



In previous research, the application of restorative justice in traffic accidents by minors was necessary because children are an inseparable part of human survival and the sustainability of a nation and state (Jos, 2022). Every child needs to receive the widest possible protection and opportunities to grow and develop optimally. For this reason, it is necessary to make protective efforts to realize the welfare of children by providing guarantees for the fulfillment of their rights without discriminatory treatment and the state has provided a legal umbrella, namely Law Number 23 of 2002 concerning Child Protection, which has now been amended by Law of the Republic of Indonesia Number 35 of 2014. Other research What efforts have been made to overcome obstacles in the implementation of restorative justice in traffic accidents, namely carrying out enlightenment regarding Traffic Law no. 22 of 2009 concerning Road Transport Traffic and National Police Chief Regulation Number 15 of 2013.

The novelty of this research is to examine the psychological impact of implementing restorative justice on minors involved in traffic accidents, both from the perspective of victims and perpetrators. This can provide insight into how the process affects their recovery and responsibilities. This research aims to analyze the application of restorative justice in resolving traffic accident cases involving minors.

Traffic accidents are one of the biggest causes of death in Indonesia. According to Law no. 22 of 2009 Article 1, paragraph 24 Traffic accidents are unexpected and unintentional road events involving vehicles with or without other road users, which result in loss of life and/or property. Children as perpetrators of traffic accidents have contributed the most to traffic accidents recently (Simangunsong & Panggabean, 2022). Children are a group that is vulnerable to the occurrence of a criminal act, either as victims, witnesses or as perpetrators of a criminal act. Apart from that, children are the nation's next generation who have an important role in realizing the nation's ideals and future (Wahyudi, 2015). Therefore, it is very important for children to receive adequate guidance and protection so that they can grow and develop optimally. Child protection is an effort aimed at guaranteeing and protecting children and their rights, so that they can live, grow and develop optimally in accordance with human dignity. Apart from that, protecting children also means providing them with protection from violence and discrimination.

Every child has dignity that should be upheld and every child born must receive their rights without the child asking (Prasetyo, 2020). This is in accordance with the provisions of the Convention on Children's Rights which was ratified by the Indonesian government through Presidential Decree Number 36 of 1990 which states the general principles of child



protection, namely non-discrimination, the best interests of children, survival and growth and development, and respect for children's participation (Ibrahim , 2018).Formal criminal justice processes can exacerbate this problem by providing severe and deterring consequences without providing opportunities for effective rehabilitation and recovery. This condition requires a different approach to dealing with cases of children in conflict with the law. Restorative justice and diversion are alternative approaches that offer more humane solutions and focus on recovery, reconciliation and responsibility.

Restorative justice as the goal of implementing diversion has been regulated in written regulations and has long been used by indigenous communities, however the existence of restorative justice among law enforcement officers is still a problem because the diversion process itself has not been strictly regulated. The application of restorative justice to juvenile crimes follows the implementation mechanism of diversion, namely the transfer of law from the criminal process to the extra-criminal process provided that the penalty is under 7 (seven) years and is not a repeat crime.

In realizing the concept of Diversion as an instrument in Restorative Justice in the Juvenile Criminal Justice System based on Law Number 11 of 2012, namely resolving criminal cases by involving the perpetrator, victim, family of the perpetrator/victim's family and other related parties to work together to find a fair solution. by emphasizing restoration to its original state and not retaliation (Hambali, 2019). At this time there is also National Police Chief Regulation Number 6 of 2019 concerning Investigation of Criminal Acts and Regulation Number 5 of 2020 concerning Termination of Prosecution Based on Restorative Justice. This provision is a "lighting star" for perpetrators, victims and the community who want a resolution process through mediation with various considerations of course.

The concept of restorative justice in resolving traffic accident cases will be very open with the publication of the Republic of Indonesia Police Circular Letter Number: SE/8/VII/2018 concerning the Implementation of Restorative Justice in Resolving Criminal Cases, in connection with the development of the purpose of punishment which is no longer just focused on efforts to suffer, but has led to efforts to improve in a more humane direction, so that by implementing the concept of restorative justice, imprisonment is not the best solution in resolving traffic accident cases, because the losses caused to victims can still be restored so that there is enthusiasm for seeking recovery while ensuring the creation of a sense of justice and humanity, prioritizing the interests of victims and perpetrators.



The mechanism for resolving traffic accident cases committed by minors is with a restorative justice approach, namely, when an accident occurs, the first thing to do is to investigate the crime scene (TKP) for both the victim and the perpetrator. After the crime scene is processed, the police make crime scene investigation report, from this report the police obtain evidence from the accident case; The investigators did it

## **2. The restorative justice used in resolving traffic accident cases from the perspective of laws and regulations in Indonesia.**

Article 3 of Law Number 22 of 2009 discusses roads and road transport explains that the purpose of having traffic rules on the road and transportation, namely creating an atmosphere of security, order and smooth service while traveling on the highway. Implementation of polite internal traffic national culture, achieving law enforcement and certainty for a good society safety of motorized vehicles and bicycles. 2 Everyone needs awareness road users to create safety and comfort in traffic. During carrying out the resolution of traffic accident cases, not all of them comply the provisions of Law No. 22 of 2009 Article 230 which states that "Accidents traffic is processed based on criminal justice based on the provisions of the law" but developments in solving criminal law now have Several phenomena of getting justice through restorative justice have occurred the difference between the applicable legislation and the reality that occurs in public.

As a form of human rights protection based on development era, faced with criminal acts and providing justification for the perpetrators then there will be punishment as a result of the behavior that has been carried out. 3 Events This is contrary to human rights but rather a solution problem of road accidents. Solving social problems through alternative solutions which is better known as Alternative Dispute Resolution (ADR) which is carried out for reach a mutual agreement through mediation as an effort to approach justice restorative. This approach is carried out as a legal or non-litigation process so that a problem resolution occurs that is mutually beneficial to all parties and no party is harmed.

In overcoming legal problems, restorative justice is a solution very well known in the community because it provides effective solutions and comprehensive. This resolution aims to involve families, victims, accident perpetrators and the public to follow legal regulations and improve the act is not against the law based on one's own awareness used for improve social behavior and explain that the implementation is restorative justice has a simple basic concept. Shift in criminal implementation a criminal justice system that prioritizes justice for victims and criminals as well as



alternative solutions such as social and others are part of Restorative justice. In resolving traffic cases, this concept can be implemented for the benefit of all parties.

Road traffic and transportation have great potential and are strategic in supporting efforts national development and integration as an effort to realize general prosperity for the nation Indonesia. The huge potential for road traffic and transportation must be built and organized to make it happen smooth, safe, secure and orderly traffic and road transportation. The organization of road traffic and transportation must be carried out consistently to realize the system efficient national traffic to pass future obstacles therefore in 2009 a law has been passed that fully explains road traffic and transportation namely Law Number 22 of 2009 concerning Road Traffic and Transportation. In The development of Law Number 22 of 2009 concerning road traffic and transportation is expected can be used as a guideline for implementing road traffic and transportation safely and orderly so that Motor vehicle drivers can drive safely and safely to their destination but in fact there are many traffic accidents in Indonesia, according to data quoted from the National Police Traffic Corps, the number of traffic accidents that will occur in 2022 is as many as 6,707 traffic accidents with 452 deaths and serious injuries as many as 972 people, 6,704 people with minor injuries and material losses of around Rp. 13,000,000,000 (thirteen billion rupiah).

Almost all traffic accident factors involve private vehicles and public transportation the cause is dominated by human error. In general terms, human error means an incident where mental or planned activities fail to achieve the desired results. Traffic accidents that occur due to negligence or human error. In a criminal law perspective Human error can be defined as a criminal act therefore there are legal consequences regulated in Article 310 paragraphs (2), (3), and (4) Law Number 22 of 2009 concerning Traffic and Road Transport. As a rule of law, all kinds of policies and law enforcement must be based on provisions applicable laws and regulations. As stated by Gustav Radbruch In order to enforce the law, it must fulfill 3 (three) criteria, namely justice, benefit and certainty law The purpose of law is to regulate human interaction peacefully to protect, and maintaining various legal interests of certain parties. Development of criminal law enforcement Currently, it prioritizes the aspect of restoration to the original state before the crime occurred.

The legal approach used by law enforcers in resolving criminal acts today using a family approach, this term is called a restorative justice approach, alternative that is quite popular in various parts of the world for handling unlawful acts. This aims to restore the condition of victims who have suffered as a result of crime by paying compensation loss to victims,



making peace, carrying out social work and agreements. Others, it aims to repair the consequences of crimes that have been committed based on awareness and conviction of the perpetrator as a basis for restoring social life. Draft This restorative justice does not look at justice from only one side, but looks at justice from various parties, both for the benefit of victims, perpetrators and society.

Restorative justice is also based on norms and cultural values in society, which provide resolution that meets justice. The application of restorative justice is built through standard procedures based on a systems theory approach, which accommodates all roles and functions of system elements criminal justice. Therefore, legitimacy, legality, responsibility and supervision are guaranteed philosophical, juridical and sociological. As a result, the application of the concept of restorative justice in the justice system Criminal law is a strategic choice in legal politics. Restorative justice will support enforcement laws in Indonesia as necessary in order to realize democracy in Indonesia based on Pancasila and the 1945 Constitution.

However, the application of the principles of restorative justice in the criminal law environment is still limited against just a few criminal acts, for example crimes against children, women who are confronted with law, minor crimes (tipiring) and narcotics crimes (addicts). Rules containing related with restrictions on the scope of resolving criminal acts regarding restorative justice as follows regulated based on the Decree of the Director General of the General Courts No. 1691/DJU/SK/PS.00/12/2020 concerning Guidelines for Implementing Restorative Justice in the Court Environment General. Then Article 5 of the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning termination of prosecution based on restorative justice, conditions imposed in the settlement through restorative justice is a criminal act committed for the first time by suspect, the crime is punishable by a fine or not more than five years in prison imprisonment and criminal acts are carried out with the value of evidence or the value of losses incurred as a result from criminal acts of no more than IDR 2,500,000.00 (two million five hundred thousand rupiah).

The urgency of implementing restorative justice arises when a traffic accident occurs death. The concept of restorative justice regarding criminal accidents that result in death Victims in the Indonesian criminal justice system have not been clearly regulated, so law enforcers experienced difficulties and dilemmas for law enforcers due to the handling of cases in cases formal and legal punishment. 10 On the one hand, the application of restorative justice to criminal acts Accidents that cause fatalities provide an alternative for resolving cases through



mediation and compensation, however, on the one hand, it raises concerns about the emergence of arbitrariness perpetrators of criminal acts because they are able to provide compensation so that it does not have a deterrent effect on

**3. The ideal criminal law formulation policy regarding the principles of restorative justice related to traffic accidents from a justice perspective in Indonesia.**

According to Article 1 of Law Number 22 of 2009 concerning Road Traffic and Transportation, A traffic accident is an incident that occurs on the road, whether it occurs accidentally or not unexpected incidents involving vehicles with or without other road users. which can result injuries, property loss and death. According to article 229 of Law Number 22 of 2009, provisions regarding traffic accidents can classified based on three things, namely accident rate, casualty rate and by type accidents that occur, the classification is explained as follows:

- 1) Based on accident rate, Minor traffic accidents are accidents that result in damage to vehicles and or property.
- 2) Medium traffic accidents are accidents that cause minor injuries and damage on vehicles and/or property.
- 3) Serious traffic accidents are accidents that result in death or serious injury.
- 4) Based on the level of victims, The victim had minor injuries Accidents that are not life threatening and cause serious injury and do not require medical assistance from the hospital.
- 5) The victim was seriously injured Traffic accidents that cause victims to suffer serious injuries that can be dangerous life safety and requires further medical action.
- 6) The victim died Traffic accidents that cause death/death.
- 7) Based on the type of accident that occurs, traffic accidents are classified into several categories collisions are.
- 8) Front-on collision This type of collision involves two oncoming vehicles that collide head-on opposite the front of one vehicle to the front of another vehicle directly.
- 9) Front-side collision This type of collision involves two moving vehicles where the front of the vehicle one hit the side of the other vehicle.
- 10) Front-rear collision This type of collision involves two vehicles traveling in the same direction
- 11) The front of one vehicle hit the rear of the vehicle in front. Side-to-side collision.
- 12) This type of collision involves two moving vehicles on the side of the vehicle one hit the side of the other vehicle.



- 13) A type of collision involving a moving vehicle and a pedestrian Cross the street.
- 14) Own collision A type of collision where a vehicle that is moving has an accident as a result by himself.
- 15) This type of collision involves more than two vehicles driving and then crashing resulting in a series of accidents.
- 16) This type of collision is where a moving vehicle hits an object still on the road Then according to article 48 of Perkap No.15 of 2013 there are types of traffic accidents that are prominent, a prominent traffic accident is a traffic accident that involves

The concept of a restorative justice approach is an approach that focuses more on conditions for the creation of justice and balance for the perpetrators of crime and the victims themselves. Procedures and criminal justice mechanisms that focus on sentencing are transformed into a process of dialogue and mediation to create an agreement on a more just and balanced settlement of criminal cases for victims and perpetrator. Restorative justice or restorative justice contains the meaning, namely a rapprochement and redemption of mistakes that the perpetrators of criminal acts (their families) want to do to the victims of these crimes (their families) (peace efforts) outside the court with the intent and purpose that legal problems that arise as a result the occurrence of these criminal acts can be resolved properly by achieving agreement and agreement between the parties

Based on Restorative Justice and the Supreme Court through the Decree of the Director General of the General Judiciary Agency of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020 concerning Enactment Guidelines for Implementing Restorative Justice. The Criminal Code as the main material law and the Criminal Procedure Code as the formal legal main have not yet regulated the method of "consensus" which is the core value of the concept of restorative justice in resolving criminal cases. In the perspective of ius constitendum, legal policies/politics are needed to regulate the application of the concept of restorative justice in criminal law enforcement, both at the Investigation, Prosecution and Judicial levels.

When people interpret justice as Conferencing and Mediation with restorative justice, then in fact it is something that is legitimate and legal according to Indonesian law. Furthermore, the government is responsible for preserving order and society is very much responsible for building peace. Article 4 paragraph (1) Law no. 48 of 2009 also stipulates that courts adjudicating according to law do not discriminate between people but the fact is that attention in criminal courts so far has only focused on



perpetrators and people as victims of criminal acts. It would be a different matter if the parties in a criminal case (victim-community) were each given access through restorative justice media.

Restorative Justice in the science of criminal law must aim to restore the situation to how it was before the crime occurred. When someone violates the law, things change. So that's where the role of law is to protect the rights of every victim of crime. In the conventional criminal justice process, restitution or compensation is known for victims, while restoration has a broader meaning. Restoration includes restoring the relationship between the victim and the perpetrator. Restoration of this relationship can be based on mutual agreement between the victim and the perpetrator. Victims can convey the losses they have suffered and the perpetrators are also given the opportunity to atone for them, through mechanisms of compensation, peace, social work, and other agreements.

The out-of-court settlement sought by Police Investigators in a restorative justice manner is an act of the Police Investigator's discretion, in which the settlement is sought in a fair manner by involving the perpetrators, victims, families of the respective parties and other parties involved in a crime jointly seeking a solution against the crime of traffic accidents and their implications by emphasizing recovery back to its original state as it was before the traffic accident. Discretion in the Indonesian legal system is contained in Article 7 paragraph (1) point 1 of Act No. 8 of 1981 concerning the Criminal Procedure Code, which states that investigators because of their obligations have the authority to take other actions according to the law who are responsible. This is then emphasized in Article 18 paragraphs (1) and (2) of Act No. 2 of 2002 concerning the Indonesian National Police, that the National Police can take action according to its own judgment in carrying out its duties and authorities in very necessary circumstances with due observance of statutory regulations. -Regional Police Regulations and Code of Ethics.

Traffic crime is a crime that is classified as having distinctive characteristics. A traffic accident is a criminal act which does not have an element of intent but negligence and carelessness on the part of the perpetrator, which according to the laws and regulations of a traffic crime is an ordinary delict. For ordinary offenses, the criminal justice system can carry out the process of investigation, prosecution and trial without having to depend on the victim because it is the obligation of the system to process these criminal acts, in contrast to complaint offenses where the criminal justice system, in this case the investigative process, can only be carried out if there are complaints from victims. The restorative justice approach should also be used by judges as a basis for consideration in making a decision. In the case of traffic accidents, the resolution with a restorative



justice approach does not always go smoothly. There are obstacles in efforts to apply the concept of restorative justice. The main problem of implementing restorative justice actually lies in the following factors, namely the legal factor itself, law enforcement factors, namely the parties who form or apply the law.

Restorative justice as one of the efforts to seek peaceful conflict resolution outside the court is still difficult to implement. In Indonesia there are many customary laws that can become restorative justice, but their existence is not recognized by the state or not codified in national law. Customary law can resolve conflicts that arise in society and provide satisfaction to the conflicting parties. The emergence of the idea of restorative justice as a criticism of the implementation of the criminal justice system with imprisonment which is considered ineffective in resolving social conflicts. This is because the parties involved in the conflict are not involved in resolving the conflict. Victims are still victims, perpetrators who are imprisoned also raise new problems for families and so on.

## **Conclusion**

Restorative justice is a cutting-edge approach in the criminal justice system which changes the paradigm of "handling criminal cases is complex" to become simpler. In the resolution of criminal cases, this approach is focused on the direct participation of perpetrators, victims, and community by making the interests of the victims the main concerns. Restorative justice-based law enforcement in Indonesia is different from other countries. The primary goal of retributive justice is retaliation, which then places the state in a dominant position and makes the offender the focus while excluding the victim and the community. The cases handled by the Traffic Unit of Indonesian City Police Resort were handled with a restorative justice approach and succeeded in ensuring peace between the perpetrator and the victim without elevating the case to the prosecutor's office. The lack of socialization in the community and no further regulations in the law are the obstacles faced in its application. Therefore, it is necessary to improve the use of restorative justice by incorporating it into criminal procedural law so that investigators will have a solid legal basis, and its application will be mandatory if the predetermined conditions are met model, namely, placing perpetrators, victims, and the community as law enforcement relations who will solve problems through mediation which benefits all parties.

The restorative justice approach provides a space for perpetrators where they can apologize and admit their guilt to the victim and the



community, and then the victim has the right to material and psychological losses due to the crime experienced. This approach can benefit both victims and perpetrators and may even reduce recidivism rates among young offenders and future delinquents which concerns the juvenile justice system provides that the juvenile justice system shall prioritize a restorative justice approach, serving as a marker for the shift in the direction of law enforcement in Indonesia. The application of restorative justice can be launched at the level of investigation, prosecution, and court trial through seeking diversion so that peace can be made between victims and child offenders. The Head of the Indonesian National Police has also taken a step forward by making Circular No. SE/8/VII/2018 which concerns the application of restorative justice on the settlement of criminal cases, strengthened by the Regulation of the Chief of the Indonesian National Police Number 8 of 2021.

These two statutes are critical for the police investigators since they allow case investigations to end when there is harmony between the victim and the offender. However, the application of restorative justice as regulated in the Circular Letter of The Head of the Indonesian National Police and the Regulation of the Chief of the Indonesian National Police is applied only in small criminal cases and in cases which have not been assigned to the prosecutor's office. Thus, this regulation has not yet covered other criminal cases which did not meet these two criteria. The Indonesian City Police Resort is a law enforcement institution which is under the police policies at the central level. Thus, their special unit which handles traffic accident cases must seek in resolving them through a restorative justice approach. As a metropolitan city and the capital city.

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The application of Restorative Justice in the Resolution of Traffic Accidents is often done by the police, especially traffic accidents and the most common is family group conferencing, because in this case this application is more active where the whole family of victims and perpetrators already met in a solution to a legal problem encountered. The ideal regulation in the application of Restorative Justice in resolving traffic accident cases that are often done is only a positive legal approach because the police apply through the idea of legacy that is only attached to the law, some victims and families of victims do not want to take penal mediation. a meeting between the perpetrator and the victim so that the police as law enforcement officers must perform their duties in accordance with applicable regulations. For the public / drivers / road users to understand and obey the rules of law that apply in the stages of a traffic accident process.



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