



Restorative Justice On Death Caused By Traffic Accident

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Abstract: This study aims to determine how the application of Restorative Justice to Traffic Accidents That Cause Death. An empirical research method that serves to see the law in a real sense and examines how the law works in the community. The data collection process used interview techniques and direct data collection at the Gorontalo City Police Traffic Unit Office. This study uses a qualitative method by describing it descriptively. The results showed that many cases were not processed to the Gorontalo District Court because there were several factors, namely, Not getting sufficient evidence, the accident that occurred was not a crime, the perpetrator of the accident died, the perpetrator of the accident was still a minor, The family of the accident victim who has been sincere, and the family of the victim who does not want to deal with the court because it takes a long time and the criminal case has expired. Regarding efforts to resolve cases of traffic accidents that result in death, namely ADR (Alternative Dispute Resolution), Diversion, and SP3 (Termination of Investigation).

Keywords: Application; Restorative Justice; Traffic Accident.

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How to cite (Chicago Style):

Mohamad, Zulkifli. "Restorative Justice On Death Caused By Traffic Accident". *Estudiante Law Journal*. 4, no. 1 (2022): 173-193

1. Introduction

Discussing traffic issues, the term road transportation must often be strung after the word traffic. The two terms are often used in combination, especially in Law No. 22 of 2009 concerning Road Traffic and Transportation.

Based on Article 1 paragraph (1) of Law Number 22 of 2009 as follows: "Traffic and road transport is a unified system consisting of traffic, road transport, road transport traffic network, traffic infrastructure and road transport, vehicles, drivers, road users, and their management."¹

Law Number 22 of 2009 concerning Road Traffic and Transportation which was established has the aim of realizing safe, orderly, smooth, and integrated traffic and road transportation services with other modes of transportation to encourage the national economy as well as the realization of ethics in traffic and the realization of enforcement law and legal certainty for the community. With the law that regulates traffic and road transportation, it is possible to balance the current role of transportation with the problems regarding transportation.

Types of traffic violations under Article 229 of Law No. 22 of 2009 concerning Road Traffic and Transportation traffic accidents are classified into three parts, namely:²

1. Minor Traffic Accident ;
2. Medium Traffic Accident; or
3. Heavy Traffic Accident.

As it is well known that the flow of road traffic in major cities in the Republic of Indonesia in general and in particular in the Gorontalo City Police Legal Area, is increasingly congested and in line with technological developments and advances, economic development, and coupled with an increasing population. . In connection with the description, it will automatically arise a complex problem about traffic accidents that often cost lives and property.

Traffic accidents are unexpected events that involve at least one motorized vehicle on one road segment and result in material losses and even fatalities. The rate of population growth and the amount of traffic flow in the jurisdiction of the Gorontalo City Police is increasing rapidly, so the need for transportation

¹ Undang-undang Lalu Lintas Nomor 22 Tahun 2009 Tentang Lalu Lintas Dan Angkutan Jalan, hlm. 2

² Dian Ekawaty Ismail, dkk, *Penegakan Hukum Kecelakaan Lalu Lintas Akibat Jalan Rusak* (jurnal article, Gorontalo Law Review Vol. 3/No. 2/Oktober 2020) hlm. 126

infrastructure continues to grow. This situation greatly affects the level of existing services, so if it is not contracted with adequate transportation infrastructure, the resulting impact is the emergence of problems in traffic, such as congestion and accidents.

Accidents in addition to causing casualties, also cause financial/material losses. This is very concerning if strategic steps are not taken to improve safety and legal compliance in traffic.

The legal consequences of a traffic accident are criminal penalties for the creator or the cause of the incident and can also be accompanied by civil claims for material losses caused. As stated by Andi Hamzah, "In various kinds of mistakes, where people who do wrong cause harm to others, then he must pay compensation".³

But the criminal justice system must always promote the interests of law and justice. But there is a wrong view that the measure of success in law enforcement is only marked by the success of bringing suspects to court and then being sentenced. The measure of the success of law enforcement by law enforcement officers is marked by the achievement of the values of justice in society.⁴

Thus, in dealing with traffic accidents, the National Police as the responsible party, in a professional manner, seeks to reconcile the parties involved in the accident using restorative justice, better known as restorative justice.

Through the pattern of resolving criminal cases with restorative justice efforts, Polri investigators have the authority to make decisions or provide other policies outside of the laws and regulations in resolving criminal cases that are handled based on the situation and conditions, which aim for the general interest.⁵ *"Restorative justice is a theory of justice that emphasizes repairing the harm caused or*

³Joko Suryanto, "Standar Operasional Prosedur Kepolisian Dalam Menangani Perkara Kecelakaan Lalu Lintas Yang Mengakibatkan Luka Berat Atau Meninggal Dunia Berdasarkan Pasal 229 Ayat (1) Huruf C Uu Nomor 22 Tahun 2009" *Jurnal Hukum Prodi Ilmu Hukum, Fakultas Hukum Universitas Tanjungpura*; Vol 3, No 3 (2015).

⁴Yunan Hilmy, "Penegakan Hukum Oleh Kepolisian Melalui Pendekatan Restorative Justice Dalam Sistem Hukum Nasional", *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, Vol.2, Nomor 2 2013.

⁵Alfano Ramadhan, "Diskresi Penyidik Polri Sebagai Alternatif Penanganan Perkara Pidana", *Magister Hukum Fakultas Hukum Universitas Islam Indonesia Yogyakarta Indonesia*; LEXRenaissan NO. 1 VOL. 6 JANUARI 2021: 25-41

*revealed by criminal behavior. It is best accomplished through an inclusive and cooperative process”.*⁶

The term *restorative justice* is a foreign term that has only been known in Indonesia since the 1960s era with the term Restorative Justice. In some developed countries, restorative justice is not just a discourse by academics of criminal law and criminology. In North America, Australia, and several countries in Europe, restorative justice has been applied in the conventional criminal justice process, starting from the investigation, prosecution, adjudication, and execution stages.⁷

Restorative justice or restorative justice is justice that seeks to return the situation to its original condition, benefits and wins all parties, and is not confined to rigid and procedural legal mechanisms.⁸

Restorative justice is the most recommended form of police discretion against perpetrators in conflict with the law. This is because the concept of restorative justice involves various parties to resolve a problem related to the criminal act committed by the perpetrator. Which reveals the 5 key 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 as a result of the crime;
- c. Restorative justice provides direct accountability from the perpetrator as a whole;
- d. Restorative justice seeks the reunification of citizens who are divided or separated because of criminal acts;
- e. Restorative justice provides resilience to the community to prevent the occurrence of further criminal acts.⁹

Meanwhile, the legal basis or legal umbrella for the National Police for the settlement of criminal cases outside the Court of Alternative Dispute Resolution (ADR) by way of peace is as follows:

⁶ Johnstone dan Van Ness, 2005, *The Meaning Of Restorative Justice*, Makalah untuk Konfrensi Lima Tahunan PBB Ke-11, Workshop 2, Diterjemahkan oleh Tubagus Indra Jaya, Bangkok-Thailand, hlm. 2-3.

⁷ Eriyantouw Wahid, 2019 *Keadilan Restorativ Dan Peradilan Konvensional Dalam Hukum Pidana*, Jakarta: Universitas Trisakti, hlm.1.

⁸ Musakkir, “*Kajian Sosiologi Hukum Terhadap Penerapan Prinsip Keadilan Restoratif Dalam Penyelesaian Perkara Pidana*”, *Jurnal Ilmu Hukum Amanna Gappa*, Fakultas Hukum Universitas Hasanuddin, Vol.19, Nomor 3 September 2011, hlm.214-215.

⁹<http://edwinnotaris.blogspot.co.id/2013/09/restorative-justice-pengertian-prinsip.html>, Tanggal 12 Agustus 2022, Pukul 15.25 Wib

- 1) Article 3 paragraph (1) of Law Number 14 of 1970 Jo. Law No. 4 of 2004 Jo. Law Number 48 of 2009 concerning Judicial Power, all courts in the entire territory of the Republic of Indonesia are state courts and are stipulated by law; stated in the explanation: "This provision does not rule out the possibility of resolving cases outside the state court through reconciliation or arbitration".
- 2) Article 3 paragraph (2) of Law Number 4 of 2004 concerning the Judicial Powers of the State Courts implements and affirms law and justice based on Pancasila.
- 3) Article 1 Number 27 of the Regulation of the Head of the Indonesian National Police Number 6 of 2019 concerning Criminal Investigations states that this restorative justice must involve the perpetrator, the victim, and/or their family as well as related parties. This aims to achieve justice for all parties.¹⁰

Also regulates the rights, obligations, and responsibilities responsibility of service providers for third-party losses as a result of road transport operators.

In traffic accidents that occur, among others, caused by fatigue, carelessness, lack of caution, and boredom experienced by the driver, it does not even rule out the possibility of accidents due to things beyond human reason. For example, environmental conditions, namely rainy weather affects work operations on vehicles such as longer braking distances, and slippery roads, visibility is also affected because the wipers cannot work perfectly or heavy rain causes visibility to be more limited. Smoke and fog can also affect visibility, especially in mountainous areas.¹¹

The polemic also occurred in the case of a fatal accident carried out by ZM which the case will be discussed by the author in the thesis, in the description of the case it is explained that the Mio M3 motorcycle accident with the vehicle number plate DM 3588 JA driven by ZM hit 2 (two) people pedestrian. It was recorded that 1 (one) teenage girl survived and 1 (one) adult died who was none other than the mother of the teenage girl.

The above case should have resulted in a large amount of criminal responsibility and consequences, in which the act resulted in the victim being killed or injured. However, as the case progressed, the police only sought to resolve cases outside the court (restorative justice).

¹⁰ https://nasional.tempo.co/read/1557863/kapolri-sering-sebut-restorative-justice-syarat-rj-selesaikan-perkara-pidana#google_vignette, Minggu, 6 Februari 2022 09:01 WIB

¹¹ Umi Enggarsasi, dkk, *Kajian Terhadap Faktor-Faktor Penyebab Kecelakaan Lalu Lintas Dalam Upaya Perbaikan Pencegahan Kecelakaan Lalu Lintas* (jurnal article, Perbaikan Vol. 22/No.1/Sep 2017) hlm 241

2. Method

Suratman and Philips Dilah stated that: “Legal research is research that has an object of the law. Law is not only in the sense of being a rule or norm (*law in the book*) but includes law relating to the behavior of people's lives (*law in action*). For this legal research, the research used is empirical legal research. Empirical legal research is another term used in sociological legal research and can also be referred to as field research.¹² Observation or observation is an activity carried out by researchers in the context of collecting data by observing the phenomenon of a certain society at a certain time.¹³

Data analysis is the process of organizing and sorting data into patterns, categories, and basic units of description so that themes can be found and working hypotheses can be formulated. So after the secondary data is obtained then it is arranged systematically and the substance is analyzed qualitatively to obtain an overview of the subject matter using deductive thinking methods. While primary data is grouped based on research variables and then analyzed qualitatively to obtain a clear picture of the subject matter.¹⁴

3. Application of Restorative Justice Against Traffic Accidents That Cause Death

In general, the application of restorative justice, especially in Indonesia itself, has big challenges from a legal perspective. This is not only a challenge for law enforcement officers themselves but has become part of the challenge of Indonesia which is becoming a state of law. So that the goal is that the application of restorative justice can provide benefits to the community, nation, and country.

The principles of restorative justice are as follows:

- a. Make the perpetrators of criminal acts responsible for repairing the losses caused by their mistakes.
- b. Provide opportunities for perpetrators of criminal acts to prove their capacity and quality in addition to dealing with their guilt constructively.
- c. Involve victims, families, and other parties in solving problems.
- d. Create a forum to work together to solve problems.¹⁵

Based on what was stated by Soerjono S. That to create harmony within the community, at least several factors must be met, for example, the rule of law must

¹² *Ibid*, hlm.53.

¹³ Mukti Fajar dan Yulianto Achmad, *Dualisme Penelitian Hukum Normatis & Empiris* (Yogyakarta: Pustaka Pelajar, 2013), hlm. 167-168.

¹⁴ Amiruddin. 2006. *Pengantar Metode Penelitian Hukum*. Jakarta : PT Raja Grafindo Persada

¹⁵ Eva Achjani Zulfa, 2019, *Keadilan Restoratif*, Cetakan Ke-Tujuh, Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia, hlm. 101.

be related to one another, so that there is no conflict of rules. Furthermore, the second is clear regulations that are very influential in carrying out law enforcement so that there is harmony with the community, besides that what must also be considered is the ability of law enforcers to carry out their duties and responsibilities. Furthermore, thirdly, the community is aware of the law this will have a big influence on the implementation of the legal process, in general, the community with the law will arise their doubts about the legal process that is running, the doubt can take the form of fear of dealing with the legal process. law, a sense of being indifferent to the existence of regulatory provisions that regulate and limit community activities. the last one is that the facilities and infrastructure must be adequate, this is one of the major influences on the implementation of law enforcement.

Based on fact, traffic accidents that result in death are categorized as traffic accidents in the severe category, because they have harmed other people and essentially have caused serious injuries or have made other people disabled, and/or from these actions, their activities are no longer as usual. cause someone to die. Related to this, it is regulated in the Criminal Code, especially in Article 358, where it is stated that:

1. Anyone who commits an act that has caused another person to suffer serious injury, by his act can be punished with a threat of 8 years in prison;
2. Anyone who commits an act that has resulted in the death of another person, by his act can be sentenced to 10 years in prison.

Traffic accidents are a problem that arises in a society where every day there must be traffic accidents, so a more optimal form of law enforcement must be needed. Problems in the scope of law enforcement will exist forever as long as humans live and develop, so with that law enforcement will vary according to human development. Law enforcement cannot be separated from the important role or active role of law enforcers, especially the police in resolving a criminal event.

On the victim's side, restorative justice gives the power to provide the perpetrator with the opportunity to express his regret to the victim and it is better if it is facilitated to meet in a professional meeting. This perspective of restorative justice is the result of a shift in law from *lex talionis* or *retributive justice* by emphasizing restorative *efforts*. To recover victims, when using a more *retributive* and *legalistic approach*, it is difficult to treat the victim's wounds. So restorative justice seeks to emphasize the perpetrator's responsibility for his behavior that causes harm to others.¹⁶

Regarding the application of restorative justice to traffic accidents that resulted in death based on the results of interviews with Briпка Firdam, the Gorontalo

¹⁶ H. Siswanto Sunarso, 2014, *victimologi dalam sistem peradilan Pidana*, Jakarta: Sinar Grafika, hlm. 157.

City Police Traffic Unit Investigator, he explained that for efforts to resolve traffic accidents that resulted in death, one solution was ADR. Where the perpetrators and the victims carried out negotiations and deliberation or mediation processes, such as in the case of a past accident that resulted in death on Jl. Prof. Dr. HB Jassin.¹⁷

1. Discretion

Soebekti defines discretion as a policy based on considerations of justice without being bound by the provisions of the law and based on justice. Discretion in the Indonesian legal system is contained in Article 7 paragraph (1) point 1 of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP) which states that investigators because of their obligations have the authority to take other actions according to the responsible law. This was later confirmed in Article 18 paragraphs (1) and (2) of Law no. 2 of 2002 concerning the National Police of the Republic of Indonesia (UU Polri), that the National Police may take actions according to their judgment in carrying out their duties and authorities in very necessary circumstances by taking into account the laws and regulations and the Indonesian Police Code of Ethics (Police Code of Ethics). Based on these provisions, the police have the authority to stop the investigation of a case.

Other actions referred to in the Criminal Procedure Code are accompanied by a requirement that the termination of the investigation/investigation is carried out based on:

- 1) Does not conflict with any of the legal rules;
- 2) In line with legal obligations that require an official action to be taken;
- 3) The action must be appropriate, reasonable, and included in the work environment;
- 4) On due consideration based on compelling circumstances; and
- 5) Respect human rights.

The Law on the National Police explains that acting according to self-assessment is an action that can be taken by the Police, who must consider the benefits and risks of their actions in the public interest. Discretion can be exercised at every level of the judicial process from the police, and prosecutors, to the court as a judicial system which includes the act of interpreting the law, the use of authority, and the choice of action from law enforcement.

2. ADR (Alternative Dispute Resolution)

¹⁷ Results of an interview with Mr. Bripka Firdam, Accident Investigator of the Gorontalo City Police Traffic Unit, Friday 22 July 2022, 09:00

Based on the current legislation in Indonesia, in principle, criminal cases cannot be settled out of court, although in certain cases there is a settlement of criminal cases out of court. Several social problems and conditions can be conducive factors for the emergence of crime. Article 1 number 10 of Law Number 30 of 1999 means that Alternative Dispute Resolution (ADR) is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely settlements out of court using consultation, negotiation, mediation, conciliation, or expert assessment.

ADR can be interpreted as an Alternative to Limitation or Alternative to Adjudication. Alternative to Limitation means all dispute resolution mechanisms outside the court, so in this case, arbitration is part of ADR. Meanwhile, an Alternative to adjudication means a consensus or cooperative dispute resolution mechanism, not through a procedure for filing a lawsuit to a third party authorized to make a decision. Included in the ADR are consultation, negotiation, mediation, conciliation, and expert opinion, while arbitration is not included in ADR.

The handling of cases through ADR is clarified in the regulation of the Head of the National Police of the Republic of Indonesia Number 7 of 2008 concerning Basic Guidelines for Strategy and Implementation of the Community Police in Carrying out the Duties of the Police, namely in Article 14 of the application of the ADR concept of patterns of solving social problems through alternative routes that are more effective in the form of efforts to neutralize problems. In addition to going through the legal process, for example through peace efforts so that the concept of a restorative justice approach *has* a regulation even though it is outside of Law Number 22 of 2009 concerning Road Traffic and Transportation, and the police are obliged to implement it.

The concept of restorative justice or *restorative justice* is a new approach model in efforts to resolve criminal cases. The approach or concept of restorative justice or *restorative justice* focuses more on the direct participation of perpetrators, victims, and the community in the process of resolving criminal cases. Therefore, this approach is popularly also referred to as the "non-state justice system" where the role of the state in resolving criminal cases is small or even non-existent.

Through the pattern of resolving criminal cases with restorative justice efforts, Polri investigators have the authority to make decisions or provide other policies outside of the laws and regulations in resolving criminal cases that are handled based on the situation and conditions, which aim for the general interest.

There are several conditions for resolving cases with this restorative justice approach. This requirement has been regulated in Article 12 letters A and B of the Regulation of the Head of the Indonesian National Police Number 6 of 2019 concerning Criminal Investigations, including the following:

- 1) The criminal act that is resolved is a minor crime or a criminal offense which is a complaint offense whether it is absolute/relative.
 - 2) There is a desire from the litigants (perpetrators and victims) to make peace and the consequences of these problems do not have a broad/negative impact on people's lives.
 - 3) Reconciliatory activities must be carried out by bringing together the litigants and involving social institutions such as local community leaders.
 - 4) In resolving cases, it is necessary to pay attention to factors of intention, age, socio-economic conditions, the level of losses incurred, family/kinship relationships and not being a repeat act (recidivism).
 - 5) If the act begins with an agreement/engagement (leading to civil).
 - 6) The victim must withdraw the report/complaint.
 - 7) In the event of dissatisfaction of the parties to the litigation after being carried out outside the court mechanism, a settlement will be carried out according to the applicable legal procedures.
 - 8) If there is a repetition of a crime committed, a legal process must be carried out by applicable regulations/laws.
- Thus mediation can be interpreted as an effort or action from those involved in criminal cases (law enforcement, perpetrators, and victims) to resolve the criminal case outside the formal procedure or judicial process, both at the stage of the investigation, prosecution and trial.

Based on data from the Traffic Accident Unit of the Traffic Directorate of the Gorontalo City Police, the resolution of traffic accidents using the ADR method is used by investigators by bringing together the victim and the perpetrator of the accident. Where the investigator here acts as a mediator and tries to help the perpetrators talk to the victims so that the settlement can be carried out peacefully, and also negotiate so that the victims also get compensation costs so that justice between the two parties can be realized.¹⁸

¹⁸ Results of an interview with Mr. Bripka Firdam, Accident Investigator of the Gorontalo City Police Traffic Unit, Friday 22 July 2022, 09:00

3. Diversion

Diversion is an effort to resolve cases from the judicial process by moving outside the criminal justice process. If the peace made by the police is a meeting point between the two parties, by the provisions of the law, then a delegation is carried out for examination of the files to the court. Then in court, the judge will issue a ruling which usually terminates the case. And also stipulates the payment of compensation for the victim by the agreement to compensate for the loss.

Diversion solutions are applied to cases of accidents caused by minors. Every child who enters the criminal justice system as a perpetrator must fulfill the principles of non-discrimination, which is best for the interests of the child, the survival and development of the child, and respect for the opinion of the child.

With the birth of the Law on the Juvenile Criminal Justice System, there is a fundamental change, namely the use of a restorative justice approach through diversion, according to Article 1 Point 7 of the SPPA Law, what is meant by diversion is "the transfer of the settlement of children's cases from the criminal justice process to an outside process. criminal justice". This regulation regulates the obligations of law enforcers in seeking diversion at all stages of the legal process.

The stages of completion by diversion, namely:

- a. The police received a report about an accident somewhere.
- b. Visiting the crime scene
- c. Carry out the investigation and investigation process.
- d. Seize evidence.
- e. Examine witnesses.
- f. SP3 (Termination of Investigation).

Termination of an investigation is the authority of the investigator, which is the authority of the investigator as regulated in Article 109 paragraph (2) of the Criminal Code. The reasons for stopping the investigation are regulated in a limited manner in the article, namely:

- Sufficient evidence is not obtained, namely if the investigator does not obtain sufficient evidence to prosecute the suspect or the evidence obtained by the investigator is not sufficient to prove the suspect's guilt.
- The incident investigated by investigators did not constitute a crime.
- The investigation is terminated for the sake of law, this reason can be used if there are reasons for the abolition of the right to sue and the

loss of the right to carry out a crime, namely, among others, the suspect dies, or because the criminal case has expired.

SP3 is given by referring to Article 109 paragraph (2) of the Criminal Code, namely:

- If it is the police investigator who stops the investigation, notification of the termination of the investigation is conveyed to the public prosecutor and the suspect or his family.
- If it is a civil servant investigator who stops the investigation, the notification of the investigation is submitted to:
 - a) Police investigators, as officials authorized to coordinate the investigation.
 - b) Public Prosecutor.

Based on the results of research conducted by researchers at the Gorontalo City Police Traffic Unit, researchers obtained data by conducting interviews with Mr. Bripka Firdam as the Gorontalo City Police Traffic Laka investigator. Restorative Justice approach:¹⁹

- a. The first time an accident occurred, namely the crime scene, both to the victim and the perpetrator.
- b. After the crime scene is processed, the police make a crime scene report, from the report the police get evidence from the accident case.
- c. The investigators conducted an investigation, after the investigation process, time was given to the victim and the perpetrator for deliberation, from this process Restorative Justice began.
- d. If the victim and perpetrator are willing to make peace and the perpetrator is willing to pay compensation, the parties make a statement of peace and agree not to proceed with the case to court.

Based on the explanation above, many people already have vehicles, from the results of research conducted by researchers, it was found that there were elements of negligence or negligence in traffic, both drivers and other road users, and were less careful in using the road.

When the researcher interviewed one of the people who was the perpetrator of the accident that occurred on Jalan Prof. Dr. HB Jassin, he said that "when it happened at night around 20:30, I was from home Mo Balia, I was a Kaka who gave birth at the Aloe Saboe Hospital, I just don't know why I like Mo Baputar, when I pass there, it looks like so there was a feeling that something was going to happen, then there was no one there at all, when the distance was less than 1

¹⁹ Results of an interview with Mr. Bripka Firdam, Accident Investigator of the Gorontalo City Police Traffic Unit, Friday 22 July 2022, 09:00

meter, suddenly a paramount appeared in the middle of the road, Takagi tried to dodge because of the position of the motorbike so he couldn't avoid being hit so he could be hit by a paramount ."

Then the researcher interviewed 2 people from the victim's side, namely the victim's husband and the child of the accident victim who died who turned out to be a survivor of the accident, he said "before the accident happened, I and ti mama had just returned from bajenguk ti opa who was sick in the hospital. Mira clinic, when I got home there was a rickshaw because it was indeed close to the house from there because Ruma was on the road so you could cross Kasana but before crossing it, make sure with Ti Mama there were no vehicles at all, right in the middle of the road suddenly a motorbike appeared, not even 2 seconds, someone immediately appeared wearing a glowing white shirt, he immediately arrested me, I saw that he was pale from the motorbike that hit by starch mama, I was so taken directly, ti om who crashed there was a ti number, my new mom was so standard like with ti om at the Mira clinic so that you can get first aid, but in the end, tomorrow, mommy will die." The victim's husband "When discussing with the perpetrator of the accident, some of the family did not accept it and would continue the case to court, but I as the husband of the deceased tried to convince him because maybe he had already died. Finally, the family was able to accept and let go of the deceased. The perpetrators of the accident also provided funeral expenses and assistance in the form of rice as well as costs for prayers for up to 100 days. The police made a peace statement to agree not to continue the case until the court which I signed with the perpetrator."²⁰

Based on the explanation above, traffic accidents occur by chance, where the factors causing the accident occur beyond human reason which makes the case part of the intermediary or destiny of the victim's death. This is evident from the statements of the perpetrators and survivors who did not see the whereabouts of both parties until an accident occurred. By hearing the explanations from the perpetrators and survivors, this Restorative Justice is carried out solely to restore the relationship between the victim and the perpetrator, especially for the perpetrator so that the perpetrator does not feel pressured when carrying out the court process but also does not eliminate the sense of responsibility for his actions.

In addition, Mr. Bripka Firdam as the investigator for the Traffic Police of Gorontalo City reiterated that:

1. Families of accident victims who were processed through mediation received assistance in the form of funeral costs from the perpetrators of the accident.

²⁰ The results of interviews with the perpetrators of the accident and the families of the victims who had an accident, Saturday, July 23, 2022, 10:00

2. If the perpetrator of the accident is still a minor, then the process taken to resolve the case is through diversion by involving the parents of the perpetrator who is directed by the authorities in the case. According to Article 5 of Law no. 11 of 2012, for children under the age of 8 years who commit a crime, investigators can hand the child back to his parents or foster parents. If it is deemed that it cannot be fostered, it is submitted to the Ministry of Social Affairs.
3. If the perpetrator of the accident has been processed through mediation, but seeing the situation and condition of the perpetrator that is not possible, the competent police will take further action so that there is a deterrent effect for the perpetrator of the accident, such as being obliged to report or be detained for a specified period.

4. Conclusion

The application of restorative justice to traffic accidents that result in death can be said to be effective because it is in line with Article 12 letters A and B of the Indonesian Police Chief Regulation Number 6 of 2019 concerning Criminal Investigations. As for what must be addressed to reduce the level of traffic accidents in the jurisdiction of the Gorontalo City Police, namely the legal structure and law enforcement officers who do not educate the public, especially active drivers in Gorontalo City, as well as the legal culture of the people who are far from obedience and awareness in driving or driving. traffic in Gorontalo City.

Reference

Book:

Eriyantouw Wahid, 2019 *Keadilan Restoratif Dan Peradilan Konvensional Dalam Hukum Pidana*, Jakarta: Universitas Trisakti

Eva Achjani Zulfa, 2019, *Keadilan Restoratif*, Cetakan Ke-Tujuh, Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia

H. Siswanto Sunarso, 2014, *victimologi dalam sistem peradilan Pidan*, Jakarta: Sinar Grafika

Mukti Fajar dan Yulianto Achmad. 2013. *Dualisme Penelitian Hukum Normatis & Empiris*. Yogyakarta: Pustaka Pelajar

Suratman dan Philips Dilah. 2013. *Metode Penelitian Hukum*. Bandung: Alfabeta

Journal:

- Alfano Ramadhan, *"Diskresi Penyidik Polri Sebagai Alternatif Penanganan Perkara Pidana"*, Magister Hukum Fakultas Hukum Universitas Islam Indonesia Yogyakarta Indonesia; LEXRenaissan NO. 1 VOL. 6 JANUARI 2021
- Dian Ekawaty Ismail, dkk, *Penegakan Hukum Kecelakaan Lalu Lintas Akibat Jalan Rusak* (jurnal article, Gorontalo Law Review Vol. 3/No. 2/Oktober 2020)
- Musakkir, *"Kajian Sosiologi Hukum Terhadap Penerapan Prinsip Keadilan Restoratif Dalam Penyelesaian Perkara Pidana"*, Jurnal Ilmu Hukum Amanna Gappa, Fakultas Hukum Universitas Hasanuddin, Vol.19, Nomor 3 September 2011
- Johnstone dan Van Ness, 2005, *The Meaning Of Restorative Justice*, Makalah untuk Konfrensi Lima Tahunan PBB Ke-11, Workshop 2, Diterjemahkan oleh Tubagus Indra Jaya, Bangkok-Thailand
- Joko Suryanto, *"Standar Operasional Prosedur Kepolisian Dalam Menangani Perkara Kecelakaan Lalu Lintas Yang Mengakibatkan luka Berat Atau Meninggal Dunia Berdasarkan Pasal 229 Ayat (1) Huruf C Uu Nomor 22 Tahun 2009"* Jurnal Hukum Prodi Ilmu Hukum, Fakultas Hukum Universitas Tanjungpura; Vol 3, No 3 (2015).
- Umi Enggarsasi, dkk, *Kajian Terhadap Faktor-Faktor Penyebab Kecelakaan Lalu Lintas Dalam Upaya Perbaikan Pencegahan Kecelakaan Lalu Lintas* (jurnal article, Perbaikan Vol. 22/No.1/Sep 2017)
- Yunan Hilmy, *"Penegakan Hukum Oleh Kepolisian Melalui Pendekatan Restorative Justice Dalam Sistem Hukum Nasional"*, Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional, Vol.2, Nomor 2 2013.

Internet:

- <http://edwinnotaris.blogspot.co.id/2013/09/restorative-justice-pengertian-prinsip.html>, Tanggal 6 Februari 2022, Pukul 15.25 Wib
- https://nasional.tempo.co/read/1557863/kapolri-sering-sebut-restorative-justice-syarat-rj-selesaikan-perkara-pidana#google_vignette, Minggu, 6 Februari 2022 09:01 WIB