

Application of Restorative Justice to Solution of Traffic Accidents

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Abstract. The purpose of this research is to find out and analyze the Application of Restorative Justice to the Resolution of Traffic Accidents. To know and analyze the ideal justice regulations in the application of Restorative Justice on Traffic Accident Settlement. In this study, the approach method used is the sociological juridical approach method. The result of this research is the application of Restorative Justice to the Resolution of Traffic Accidents has often been 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 both the victim and the perpetrator have met in a legal solution to the problem.

Keywords: Application; Restorative Justice; Traffic Accidents.

1. Introduction

The Constitution of the Republic of Indonesia of 1945 (UUDNRI) as a result of the third amendment of Article 1 Paragraph (3) states that "Indonesia is a State of Law".¹ Indonesia is a legal state sourced from Pancasila and the 1945 Constitution as provided by the People's Consultative Assembly of the Republic of Indonesia Number III / MPR / 2000 on Legal Resources and Legislative Regulations.² A state of law is a State that guarantees the basic rights of its citizens well in the constitution from birth to death. In the life of the state there are many violations of the law by citizens who have grown up or children or in terms of children who are in conflict with the law. Article 28D paragraph (1) reads "every person has the right to the recognition, assurance, protection and assurance of a just law and of equal treatment before the law". The Constitution guarantees that everyone is not treated discriminately and violates human rights (HAM),

Protection for children becomes a priority as Article 28B paragraph (2) "Every child has the right to survive, grow and develop and receive protection from violence and discrimination". The basic rights stipulated in the constitution have subsequently been regulated in several statutory regulations, for example Law Number 11 of 2012 concerning the Juvenile Justice System in the preamble letter a, which reads "that children are a mandate and gift from God Almighty who has dignity and dignity as man completely ". The letter b reads "that in order to maintain their dignity,

¹ Sekretris Jenderal MPR RI. (2015). Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, *Perubahan ke III tanggal 9 November 2001*. Jakarta: MPR RI. p. 78.

² Article 1 paragraph (3) which reads: *The Source of National Basic Law is Pancasila as stated in the opening of the Constitution of the Republic of Indonesia 1945, namely the Supreme Godhead, Fair and Civilized Humanity, Indonesian Unity, and Citizenship Guided by Wisdom Wisdom in Consultation / representation, as well as by Creating Social Justice for All Indonesians.*

children have the right to special protection, especially legal protection in the judicial system".³

The country's commitment to child protection has indeed existed since the founding of this country. The opening of the NKRI Constitution of 1945 mentions, among other things, to promote public welfare and enlighten the life of the nation. The principle of legal protection of the child must be in accordance with the Convention on the Rights of the Child (Convention on the Right of the Child) as ratified by the Government of the Republic of Indonesia with the birth of Presidential Decree Number 36 of 1990 on the ratification of the Convention on the Rights of the Child Child). Child protection is one of the efforts to improve the well-being of children.

Traffic and Road Transport have a strategic role in supporting national development and integrity as part of efforts to promote public welfare, but it is on these highways that traffic accidents often occur. The occurrence of a high number of traffic accidents, among others human factors (human error), utility factors such as vehicle failure, road damage, excessive road load, and other supporting facilities have a role to play in the occurrence of traffic accidents.

The case of Abdul Qadir Jaelani (AQJ), the son of musician Ahmad Dhani in 2014 is one example. The case is decided by the Judiciary with a decision free from all criminal charges and dropped an order for the AQJ to be returned to his parents, although it is proven that it violates Article 310 of the LLAJ Law. This case belongs to "restorative justice" which is indeed regulated in the SPPA Act⁴.

Alternative Dispute Resolution "⁵.

Restorative justice is one of the paradigm shifts that provides a solution to the problem of child abuse, which assumes that the criminal justice system does not meet substantive justice, so it needs to be a consideration in the handling of child abuse problems, because this approach involves all parties in the settlement process to sit together. The purpose of restorative justice is to restore what is caused as a result of child mischief as well as efforts to improve the child's morale so that the child does not repeat his actions⁶. Imprisonment of children can interfere with the child's physical, mental and mental development⁷. However, today judges have used the term restorative justice in all matters whether children or adults.

The purpose of this research is to find out and analyze the Application of Restorative Justice to the Resolution of Traffic Accidents. To know and analyze the ideal and just

³ Explanation of the Law of the Republic of Indonesia Number 11 of 2012 on the Criminal Justice System of Children states "*Children are an inseparable part of the survival of human life and the survival of a nation and country. In the Indonesian Constitution, children have a strategic role that is explicitly stated that the State guarantees the rights of every child to survival, growth and development as well as protection from violence and discrimination. Therefore, the best interests of children should be lived as the best interests for the survival of mankind.*

⁴ www.bandung, bisnis.com, accessed on January 4, 2021, at 20:15

⁵ Zulfa, Eva Achjani. (2010). *Keadilan Restoratif Dan Revitalisasi Lembaga Adat Di Indonesia*. Jurnal Kriminologi Indonesia Vol. 6 No.II. h. 187.

⁶ Prihatin AN, Dodik. (2012). *Penerapan Model Restorative Justice Terhadap Anak Sebagai Tersangka Pelaku Kecelakaan Lalu Lintas Di Wilayah Hukum Kepolisian Resor Jember*. Universitas Jember Bagian Hukum Pidana. p. 4.

⁷ Loc.cit.

regulation in the application of Restorative Justice on the Resolution of Traffic Accidents.

2. Research Methods

In this study, the approach method used is the sociological juridical approach method. To obtain the data needed to compile this legal writing, the research specifications used in this study are descriptive analysis.

3. Results and Discussion

3.1. The Application of Restorative Justice to the Resolution of Traffic Accidents.

Equality before the law is one of the important principles in modern law, where it becomes one of the joints of the Rule of Law doctrine in developing countries such as Indonesia, so this principle is used as a foundation by every human being in law enforcement. Increased traffic activity triggers an increase in traffic-related issues, one of which is traffic accidents. The problem is that it is difficult to provide law enforcement that can have a detrimental effect so that traffic awareness arises.⁸

The development of the mode of land transport makes human activities easier, undoubtedly the increasing development of land transport there is also the risk of lurking traffic accidents. Society as a citizen is entitled to legal protection and certainty.⁹

As a traffic system itself, of course, there is a need to synchronize between the components of traffic in it so that the traffic can run in accordance with the real expectations. Similarly, the purpose of the formation of the traffic system is so that each component incorporated in the traffic can have its own space so that it can realize traffic and road transport that is safe, secure, fast, smooth, orderly and organized, comfortable and efficient. in a traffic management and road transport.¹⁰

Restorative justice has several forms of process as applied in various countries, including: (1) victim offender mediation, (2) family group conferencing, (3) restorative conferencing, (4) community restorative boards, (5) restorative circles or restorative systems (restorative circles or restorative systems).

Restorative conferencing also involves more participants than mediator-victim mediation, in response to traffic violations. This technique is voluntary (voluntary), which consists of the perpetrator, the victim, the family of the parties, to achieve the consequences and restitution (compensation). This model can be used at any stage of the criminal justice process, but is usually used relatively early. For example in some

⁸ Muhammad Dani Hamzah, *Penegakan Hukum Pada Kasus Tindak Pidana Kecelakaan Lalu Lintas Yang Menyebabkan Hilangnya Nyawa Orang*, Jurnal Daulat Hukum Vol. 1. No. 1 March 2018 ISSN: 2614-560X, Unissula

⁹ Cahya Primarta, *Analisis Undang-Undang Nomor 40 Tahun 2014 Tentang Perasuransian Terhadap Jaminan Sosial Korban Kecelakaan Lalu Lintas di PT. Jasa Raharja (Persero) Cabang Jawa Tengah*, Jurnal Daulat Hukum Vol. 1. No. 1 March 2018 ISSN: 2614-560X, Unissula

¹⁰ Bhakti Satriya Perdana Sugiyanto, Gunarto, *Peran Satlantas Polres Rembang Dalam Menanggulangi Tingginya Kecelakaan Akibat Parkir Liar (Studi Kasus di Kabupaten Rembang)*, Jurnal Daulat Hukum Vol. 1. No. 1 March 2018 ISSN: 2614-560X, Unissula

jurisdictions, the police have developed this program as an alternative to the arrest and reference to the formal criminal justice system.

If restorative justice is defined as: (1) the reintegration of the perpetrator with his community, and (2) the restoration of the relationship between the victim of the crime, the perpetrator, and other parties affected by the occurrence of the crime, then the investigative processes must be designed progressive in that direction.¹¹

Application with restorative justice to achieve justice for all parties both victims, perpetrators and society. Because the purpose of criminal law is to establish involvement and peace in society. The existence of restorative justice is sought to repair the damage caused by replacing material losses and social sanctions in addition to providing detrimental effects.

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.

3.2. An idealistic regulation in the application of Restorative Justice to the Resolution of Traffic Accidents.

Positive legal conditions in the field of crime in Indonesia like this can certainly not be allowed or wait until there is a change in the law that allows the concept of restorative justice to be applied. This means that practically can not rely on the existence of positive laws in advance that provide the basis of legitimacy of the application of the concept of restorative justice in crime prevention practices in Indonesia, especially when changes in criminal law or criminal law are generally not a legislative priority. The neglect of the concept of restorative justice in the Indonesian criminal justice system means the neglect of the victim and his family as well as members of the community affected by the crime. That is, the criminal justice system is unbalanced in seeing the three parties involved in the occurrence of crime,

In this context it is worth noting the expression of Satjipto Rahardjo, that now more and more libraries show how small the angle occupied by the law in the midst of the vastness of the world of order, has even talked about "lawless order". This situation is possible due to the creativity of society itself in giving birth or creating social rules. Rules created in such a spontaneous manner have a much higher speed than the creation of laws through legislation that can take years.¹²The expression shows that in the creation of order the existence of law is not everything, especially law in the sense of the formation of state power reserved for it (legislative body). Therefore, an important issue that needs to be considered is to dynamize the work of the concept of restorative justice in Indonesia in the context of inadequate criminal law or provide adequate regulatory basis, and its application in the process of investigation, prosecution, and court hearings.

¹¹ Roach Anleu, Sharyn L. (2010). *Law and Social Change, Second Edition*. Los Angeles: SAGE. p. 165.

¹² Rahardjo, Satjipto. (2007). *Biarkan Hukum Mengalir, Catatan Kritis tentang Pergulatan Manusia dan Hukum*. Jakarta: Kompas. p. 29.

In one online encyclopedia, it is said that Restorative justice (or often also called "reparative justice") or in Indonesian terms can be translated as "justice or restorative or reparative justice" is an approach to justice that focuses on the needs of victims and perpetrators, as well as the society involved, not satisfying the principles of abstract law or punishing the perpetrator. Victims take an active role in the process, while perpetrators are encouraged to take responsibility for their actions, "to make up for losses they have made by apologizing, returning stolen money, or community service. Restorative involves both victims and perpetrators and focuses on their needs personally.

The fatality rate of a traffic accident is measured by the consequences of the existing accident. The more casualties resulting from accidents that occur the higher the fatality of the traffic accident. This level of fatality is measured by specific coefficients. Similarly, in taking steps to reduce the number of accidents, the fatality rate of an accident must be reduced, of course by paying attention and numbering the safety factors in driving in accordance with the applicable rules.¹³

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.

4. Closing

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.

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For the public / drivers / road users to understand and obey the rules of law that apply in the stages of a traffic accident process.

5. References

Journals:

- [1] Bhakti Satriya Perdana Sugiyanto, Gunarto, Peran Satlantas Polres Rembang Dalam Menanggulangi Tingginya Kecelakaan Akibat Parkir Liar (Studi Kasus di

¹³ Dadik Purnomo, Jawade Hafidz, *Peran Sat Lantas Polres Rembang Dalam Menekan Angka Kecelakaan Lalu Lintas*, Jurnal Daulat Hukum Vol. 1. No. 1 March 2018 ISSN: 2614-560X, Unissula

- Kabupaten Rembang), Jurnal Daulat Hukum Vol. 1. No. 1 March 2018 ISSN: 2614-560X, Unissula
- [2] Cahya Primarta, *Analisis Undang-Undang Nomor 40 Tahun 2014 Tentang Perasuransian Terhadap Jaminan Sosial Korban Kecelakaan Lalu Lintas di PT. Jasa Raharja (Persero) Cabang Jawa Tengah*, Jurnal Daulat Hukum Vol. 1. No. 1 March 2018 ISSN: 2614-560X, Unissula
- [3] Dadik Purnomo, Jawade Hafidz, *Peran Sat Lantas Polres Rembang Dalam Menekan Angka Kecelakaan Lalu Lintas*, Jurnal Daulat Hukum Vol. 1. No. 1 March 2018 ISSN: 2614-560X, Unissula
- [4] Dodik Prihatin AN. 2012. *Penerapan Model Restorative Justice Terhadap Anak Sebagai Tersangka Pelaku Kecelakaan Lalu Lintas Di Wilayah Hukum Kepolisian Resor Jember*. Universitas Jember Bagian Hukum Pidana.
- [5] Eva Achjani Zulfa. *Keadilan Restoratif Dan Revitalisasi Lembaga Adat Di Indonesia*. Jurnal Kriminologi Indonesia Vol. 6 No.II. 2010,
- [6] Muhammad Dani Hamzah, *Penegakan Hukum Pada Kasus Tindak Pidana Kecelakaan Lalu Lintas Yang Menyebabkan Hilangnya Nyawa Orang*, Jurnal Daulat Hukum Vol. 1. No. 1 March 2018 ISSN: 2614-560X, Unissula
- [7] Sekretaris Jenderal MPR RI. (2015). *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Perubahan ke III tanggal 9 November 2001*. Jakarta: MPR RI.

Books:

- [1] Anleu, Sharyn L Roach. (2010). *Law and Social Change*. Second Edition. Los Angeles: SAGE.
- [2] Rahardjo, Satjipto. (2007). *Biarkan Hukum Mengalir, Catatan Kritis tentang Pergulatan Manusia dan Hukum*. Jakarta: Kompas.

Internet:

www.bandung, bisnis.com