

## **The Form Of Resolving The Laka Lalu Case With A Restorative Justice Approach According To Police Regulation Number 8 Of 2021 On Handling Criminal Acts Based On Restorative Justice**

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### **Abstract**

Judicial procedures in Indonesia in resolving criminal cases have not been in accordance with the wishes society to feel fair in law. People who feel less Justice issued opinion or criticism of judicial procedures in indonesia. The problem of traffic accidents refers to the act No. 22/2009 on LLAJ and Criminal Procedure Code. The second legal basis for the settlement of traffic accident cases it is not yet possible to solve problems based on restorative justice. This research aims to find out and analyze procedures to solve the problems of past accidents traffic that can cause casualties both serious injuries and fatalities using the approach of Justice restorative justice according to police Regulation Number 8 of 2021 on handling criminal acts based on Justice Restorative, a form of settlement of accident cases and then with a restorative justice approach according to the police Peraturan Number 8 of 2021 on handling criminal acts based on restorative justice and legal certainty to resolve the issue of laka and then with a restorative justice approach. Methods used in this research using empirical approach and normative juridical approach to the paradigm of analysis qualitative data. Research and Discussion: 1. Legal arrangement for settlement of traffic accident cases it is not based on restorative justice. 2. Legal weaknesses in the settlement of traffic accident cases using a restorative justice approach. 3. Reconstruction of last accident settlement law cross with restorative justice approach,

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namely by revising the provisions of Article 230 and Article 235 U.S. No. 22/2009 on LLAJ, so that the case of traffic accidents light, medium and heavy can based on restorative justice. Excluded against traffic accidents that cause casualties soul, the resolution of things based on restorative justice does not drop the prosecution of things

**Keywords:** *Settlement Of Traffic Matters, Justice, Restorative.*

## 1. INTRODUCTION

Indonesia is a country of law, it this is as stated in Article 1 paragraph (3) Basic Law Of The Republic Indonesia in 1945 the Fourth Amendment (UUD NRI 1945). The essence of the rule of law is a state administration emphasis on the bow of the handle power on the rule of law. Country Indonesia in its position as a country of law, in relation to law enforcement, especially in law enforcement against traffic accidents, must of course refer to Law No. 22 of 2009 on traffic and Road Transport as revised with the publication of Law No. 11 of 2020 on job creation (hereinafter referred to as law no. 22/2009 on LLAJ) which is the legal basis for law enforcement in law enforcement against offenders and / or perpetrators traffic crime. Legal provisions criminal is the realm of Public Law, where consequently the state has an important role to enforce it. Law enforcement criminal demands the work of institutions law enforcement incorporated in the system criminal justice system (criminal justice system).

The single-engine system is based on the Criminal Procedure Code, managed by employees of the process research and research by the police Penitentiary, pei demanded by the pei nuntutum and pemei ri iksaan Serta the passing of the verdict. Depending on the law enforcement agency, depending on the criminal, authority, attraction and function, decisions have been made in law of the Republic of Indonesia Number 2 of 2002, decree of the Republic of Indonesia number 11 of 2020 Cipta Keirja (hereinafter out of Law No. 2 year 2002 teni tang police). This is the general hotel policy for this act. It is a tug-of-war Road located in the mine, a settlement located in the following, close to the settlement teirhadap all criminal acts.

Basic duties appropriate for the sake of prohibited by the police as stipulated in law No. 2/2002 regarding the National Police above, it can be understood that the main task and function of the police is to enforce the law, namely by carrying out the function of investigating all criminal acts including criminal acts in the field of traffic. Indonesian traffic problems that are often encountered at this time are still traffic violations, congestion, air pollution and road accident problems. Where traffic accidents teirmasuk one type of criminal offense punishable by 3. To meni geti ahuii and meni ganalisi content of legal certainty against the settlement in law No. 22/2009 about LLAJ.

The resolution of criminal cases through the retributive justice approach, the rights of victims represented by *negi ara* are often neglected. Therefore, the settlement of cases based on restorative justice can be an alternative in resolving criminal cases in order to achieve justice for all parties, both victims, perpetrators and the community.

It can be said that the settlement of the case based on Restorative Justice, referring to Perpol No. 8 of 2021 concerning PTPBKR, it indirectly reduces the judicial burden in resolving cases that continue to increase, so that it becomes a burden for the courts to review and prosecute relevant cases. It can also provide justice to all parties, including victims and perpetrators.

## **2. RESEARCH METHOD**

The method of approach in this thesis research is normative approach and empirical approach. Normative approach, namely by analyzing the norms that are the basis for resolving traffic accident cases based on restorative justice. Empirical juridical approach is a research approach that identifies and conceptualizes law as a real and functional social institution in real life systems.<sup>65</sup> in relation to this thesis research, the empirical juridical approach aims to obtain empirical legal knowledge by conducting research directly to the object to determine the application of restorative justice in the settlement of accident cases that resulted in serious injury and death in Medan Polrestabes traffic.

## **3. RESULT AND ANALYSIS**

### **A. Consideration Investigators Use Restorative Justice Approach In The Settlement Of Cases Of Traffic Accidents**

Traffic accidents under the provisions of Law No. 22/2009 on LLAJ is seen as a criminal act or a criminal offense. It is regulated in Article 310 paragraph (2), (3) and (4) of Law No. 22/2009 about LLAJ. According to the provisions of the criminal law, a person who commits a criminal offense as a consequence must be sentenced to criminal sanctions. Similarly, the perpetrators of this traffic accident must be subject to criminal sanctions as stipulated in Article 310 paragraph (2), (3) and (4) of Law No. 22/2009 about LLAJ.

It should be understood that a traffic accident can be said to be an accidental event (incident). In other words, although traffic accidents are

viewed as criminal acts that are threatened with legal sanctions by law, in the fulfillment of the criminal element of traffic accidents, in general, there is no element of intent (schuld), but rather an element of negligence (culpa). To make it easier to understand that the perpetrator had no intention, so what happened was beyond the perpetrator's expectations. This is as regulated and mentioned in Article 1 Number 25 of Law No. 22/2009 of the LLAJ, which defines a traffic accident as “an unforeseen and unintentional event involving a vehicle with or without other road users resulting in human casualties and/or loss of property”.

Traffic accidents can occur anywhere and at any time, causing injuries, casualties and property. One of the causes is the intensity of the vehicle is quite high and dense, plus the legal awareness of road users and motorists who are still very minimal.

As described in the previous sub-section that most of the traffic accident cases that occur in the Polrestabes Medan jurisdiction are resolved through a restorative justice approach, this is known to be the minimum number of cases that are P21 or continued at the prosecution stage. Settlement of traffic accidents through restorative justice approach due to the pattern of such a settlement has long been known in the community. The pattern of problem solving is prioritizing deliberation in reaching a consensus on resolving conflicts between communities. This local wisdom is a habit that later became the legal system, which is a legal institution (legal structure) that lives in the Community (living law). The legal system that developed in the community is known as the customary law system.

Responding to the legal system that develops in the community (living law), related to the settlement of light traffic cases outside the court (penal mediation), although it does not have a legal basis set forth in the law, especially law No. 22/2009 on LLAJ and KUHAP which are the basic references in the implementation of the criminal justice system, but in practice the settlement of traffic accident cases in the Medan Polrestabes Traffic Unit is mostly resolved through penal mediation.

The settlement of traffic accident cases in Polrestabes Medan using a restorative justice approach with penal mediation is carried out in order to create justice in accordance with the expectations of the community by prioritizing the interests of victims, perpetrators and the community in order to reach an agreement to jointly seek a solution to the crime and its implications by emphasizing recovery not retaliation. M. Nur, as an investigator in Satlantas Polrestabes Medan, suggested that: settlement of traffic accident cases in Satlantas Polrestabes Medan basically, investigators are more likely to make decisions to resolve traffic accident cases through a restorative justice approach. This is based on the consideration that there is no necessity to use criminal law in solving a criminal case, except for crimes

that are qualified as general offenses and are qualified as serious crimes, such as murder.

Statement made by M. Nur, as an investigator in the Medan Polrestabes Satlantas above, when associated with crime reduction policies, it can basically be justified. Criminal policy perspective, then crime prevention efforts not only use penal means, but also can use non-penal means.

Law enforcement means as a whole the activities of the implementers of law enforcement towards the enforcement of the law, justice and protection of human dignity, order and peace and legal certainty in accordance with the 1945 Constitution. Law enforcement, which is associated with the protection of society against crime, is certainly related to the problem of criminal law enforcement. The purpose of the establishment of criminal law is as a means of criminal politics to provide “protection of society” which is also often known as “social Defense”.

According to the provisions of Article 13 of Law No. 22/2009 on LLAJ, that the police is the leading institution in law enforcement efforts that have the authority, among others, a series of investigations, searches, arrests, examinations and delegating cases to the prosecutor's office to be tried in court. With this sequence of activities, it can be said that the police is an institution that holds the main function in law enforcement.

In addition, the police are also required to be able to serve social purposes in the form of maintaining security and order as well as providing protection, protection and service to the community. In this function, it has become an obligation for the police to be able to carry out law enforcement functions that can truly realize a sense of justice for the wider community, especially justice for victims and perpetrators. This is also the basis for the initial consideration for the police to apply restorative justice in the settlement of criminal cases, especially in the settlement of traffic accidents.

In addition to philosophical considerations in the form of achieving legal justice in society, another consideration for investigators to apply restorative justice in the settlement of criminal cases is the consideration of social aspects of society. Consideration of social aspects of the application of restorative justice in the settlement of cases of accidental death. According To M. Nur, as an investigator in the Medan Polrestabes Satlantas that: solving criminal cases using restorative justice methods provides many benefits, both for law enforcement officers, perpetrators, victims and the community. For law enforcement officers (police) settlement of cases outside

the court will speed up the process of resolving cases. As for the perpetrators of crimes, the process of settling cases outside the court will provide its own benefits, namely the release or release of the perpetrator from the threat of imprisonment as stipulated in the law. In addition, the perpetrator is also regardless of the stigma or ugly stamp of society, that the perpetrator is a former criminal (ex-convict) who in fact is a criminal. While the benefit for the victim is to recover the recovery and losses incurred from the consequences of the perpetrator's actions. As for the benefits to society, namely the creation of a harmonious atmosphere or family relationships, where settlement through penal mediation will reduce the impact of social conflicts.

Further, M. Nur, as an investigator at Satlantas Polrestabes Medan explained that the benefits specifically received by victims in the settlement of traffic accident cases through a restorative justice approach, namely:

- a) The problem of medical costs and damage to the victim's vehicle can be borne by the suspect.
- b) Evidence belonging to the suspect can immediately be taken to be repaired and reused.
- c) Between the victim and the suspect can foster a better relationship so as not to cause feelings of resentment and new problems let alone the city of Medan is very small and the people there in general still have a very close kinship.

Viewed from the juridical aspect, the application of restorative justice by investigators is based on the discretionary authority owned by the police as regulated and mentioned in Article 18 of law no. 2/2002 about the police. In addition, in the internal police there are rules that guide the implementation of restorative justice as stipulated in Perpol No. 8/2021 on the handling of criminal cases based on restraining Justice.

Other considerations for police investigators in the settlement of traffic accident cases by way of restorative justice approach according to M. Nur, as investigators in Medan Polrestabes traffic, including:

- a) Accident case then involving the perpetrator / suspect is still a child category (someone who is not yet 18 years old in accordance with Law No. 23 of 2002 on Child Protection Jo Law No. 11 of 2012 on juvenile criminal justice system);
- b) Traffic accidents involving the suspect / perpetrator with the victim there is still a family relationship / family.
- c) The existence of an agreement between the two parties will not sue the impactor / suspect, because the victim or the family of the deceased recognizes his subordinate position than the victim is the wrong position.

- d) Traffic accidents involving between the motor and the motor and the car, because usually if the motor / car is damaged, the impactor will only compensate for material losses. Meanwhile, if there are minor injuries, the impactor takes him to the nearest hospital and pays for treatment.

Accident cases where the suspect/impactor is not necessarily the one who is always wrong, but the victim can also be the cause of traffic accidents, and the occurrence of traffic accidents also exist until being a victim because of his own negligence, for example when the traffic light is still red but instead remains terabas, finally he himself was hit by a car/motorcycle from the opposite direction which should have been the lights from the opposite direction were green.

- e) 6. In the case of an accident where the suspect dies, the victim does not sue the impactor/suspect, because the victim or the family of the deceased recognizes his subordinate position than the victim is the wrong position.
- f) In the case of the accident, the victim who died was the wrong position, so the case could not be raised to court.
- g) Cases of accidents where the impactor / suspect is in an unhealthy state or according to a crazy doctor or something like that.

In addition to the considerations mentioned above, in the settlement of traffic accident cases through a restorative justice approach, the consequences arising from the victim are also a fundamental consideration for investigators. Against the victims who died, although restorative justice can be applied in the form of compensation and funeral costs, but the settlement of the case cannot be resolved outside the court (penal mediation). In other words, the settlement of the case continues as it should, up to the stage of passing the decision by the court. This is as stated by M. Nur, as an investigator in Satlantas Polrestabes Medan, as follows: penal mediation against traffic accidents if they only cause minor losses or minor injuries, which can then be resolved by mediation between the perpetrator and the victim. Meanwhile, if in the accident caused great losses such as, casualties, mediation cannot be carried out, as for the payment of damages in the form of hospital fees and burial of the victim's body is only one of the considerations that will be used by the judge in handing down the verdict to the defendant.

Based on the above, it can be concluded that the application of restorative justice in the settlement of traffic accident cases through penal mediation can only be implemented in traffic accidents that cause minor losses or in cases of mild and moderate accidents. As for accidents belonging to the category of serious accidents, which caused the death of the victim cannot be resolved through penal mediation. However, restorative justice can still be applied, in the form of providing compensation to the victim's family (grief money) and covering the funeral costs of the body which will be a consideration for the judge in passing a verdict against the defendant.

### **B. Traffic Accident Settlement Mechanism Based On Restorative Justice**

The settlement of a criminal case initially begins with a direct meeting between the perpetrator and the victim of a criminal act, without the intervention of third parties, including interference from the state (law enforcers who are members of the criminal justice system). But after the existence of a state is formed, the settlement of conflicts between perpetrators and victims is taken over and becomes the authority of the state. The existence of state authority, law enforcement agencies tend to apply positive law, rather than using a restorative justice approach. Regarding the authority of the state, Mudzakkir argued that : the state, in this case the police and prosecutors, has a dominant role and monopolizes the reaction to violators of the criminal law by being the legitimate representative of society or the public interest, in fact, through a long historical process has taken over the role of the victim as the party who suffers from crime. The Netherlands had recognized the victim's position as an independent party in the criminal justice system. But in 1838 the position of independent victim or known as *partie civile* was abolished.

After the existence of the state is recognized, the position of the next victim is taken over by the state. Here the state is authorized to monopolize the entire social reaction to crime, by prohibiting acts of a private nature. In such a situation, the victim loses his position in the criminal justice system. This is as stated by Wirjono Prodjodikoro, as follows: The role of the state in criminal law enforcement efforts causes victims as individuals to lose their position in the criminal justice system, whereas victims who are unconcretely are directly harmed, then the state seems to be transformed into a victim of every crime that occurs in society.

Settlement of criminal cases based on restorative justice basically seeks to provide attention and protection to the victim by restoring the victim's condition. Recovery of victims of traffic accidents is by way of indemnification and recovery of victims.

The fact is that Law No. 22/2009 on LLAJ has accommodated the responsibility of perpetrators of traffic accidents against victims. It is



regulated in Article 235 paragraph (1) and Paragraph (2) of Law No/. 22/2009 on LLAJ, which determines the following :

(1) if the victim dies as a result of a traffic accident as meant in Article 229 paragraph (1) letter c, the driver, owner and/or Public Transport Company shall provide assistance to the victim's heirs in the form of medical expenses and/or funeral expenses by not dropping the criminal case.

(2) if there is an injury to the body or health of the victim due to an accident then as meant in Article 229 paragraph (1) letter b, letter c the driver, owner and/or Public Transport Company shall provide assistance to the victim's heirs in the form of medical expenses and/or funeral expenses by not dropping the criminal case.

Provisions Of Article 64 Perkapolri No. 15/2013 on procedures for handling traffic accidents, determines that in cases of moderate traffic accidents, when the elements of the criminal act are met, the settlement of the case is completed with a short event. Furthermore, in Article 65, it determines that in cases of heavy traffic accidents, when the elements of the criminal offense are met, the resolution of the case is completed by ordinary events.

From these provisions, the settlement of traffic accident cases that are possible to be resolved outside the court using a restorative justice approach is only a minor traffic accident. As for medium and heavy traffic accidents, the settlement must be processed through a criminal justice process according to the provisions of applicable laws and regulations. This means that moderate and severe traffic accidents are not resolved through restorative justice.

When considering the formulation of Article 230, which says that traffic accidents referred to in Article 229 paragraph (2), Paragraph (3) and Paragraph (4) are processed by criminal justice in accordance with the provisions of laws and regulations, it is clear that against all types of traffic accidents formulated in Article 229 of law no. 22/2009 on LLAJ, indeed, cannot be resolved on the basis of restorative justice. This is reaffirmed in the provisions of Article 235 paragraphs (1) and (2) and then confirms that, recovery or compensation of damages to the victim or to his heirs does not invalidate the lawsuit.

However, when referring to the provisions of Article 10 of Perpol No. 8/2021 on the handling of criminal acts based on restorative justice, then traffic accidents can be resolved based on restorative justice. Just as long as

the defendant's actions meet the criteria or general requirements of criminal acts that can be resolved based on restorative justice, namely the general and formal requirements as mentioned in Article 5 and Article 6 of the Perpol No. 8/2021 on the treatment of criminal acts based on restorative justice. In the case of a criminal case, including a traffic accident case is resolved based on restorative justice, according to the provisions of Article 2 Paragraph (5) of Perpol No. 8 /2021 on the handling of criminal acts based on restorative justice, then the case can be carried out with the termination of the investigation and investigation (SP3).

Termination of Investigation and investigation (SP3), in order to resolve traffic accidents based on restorative justice based on Perpol No. 8/2021 regarding PTPBKR, it is carried out if in the process of handling the case it has fulfilled the general conditions and special conditions that have been set.

Termination of the investigation and investigation (SP3) is done by submitting a written application to :

- a) Head of the National Police Criminal Investigation Agency, for the level of Police Headquarters;
- b) The head of the Regional Police, for the Regional Police level; or
- c) Chief of Resort police, for Resort police and sector Police levels.

Letter of request for termination of Investigation and inquiry (SP3), made and filed by the perpetrator, victim, perpetrator's Family, victim's family or other related parties. This means that, the submission of a letter of request for termination of Investigation and investigation (SP3), can be made and filed by only one party related to the criminal case of the traffic accident, it can even be filed by the legal counsel of the suspect or victim. Submission of a letter of request for termination of Investigation and investigation (SP3) accompanied by a statement of peace and evidence that recovery has been made against the victim.

In the settlement of a traffic accident case, the peace process between the perpetrator and the victim can be held by asking for the help of a third party as a mediator if a negotiated settlement is not reached. In the event that there has been an agreement between the parties involved, it is set out in an affidavit and submitted to the investigator/assistant investigator. The investigator after receiving the affidavit is attached in the case file for the consideration of the judge in making a decision.

Based on the provisions mentioned above, it is understood that the determination and reimbursement of material losses as a result of an accident event can then be resolved out of court by means of deliberation between the parties to reach a consensus. This means that, in relation to compensation for the rights of victims, it can be settled out of court and can be carried out against all types of accidents, be it light, medium or heavy accidents.

Settlement of laka cases then at the investigation level can be done by way of deliberation and settlement of cases outside the court (penal mediation). Here, police investigating authorities will generally facilitate the settlement of cases outside the court based on requests generally submitted by the perpetrator. Police investigators will provide time and opportunity for the perpetrator and victim to negotiate to reach a peace agreement. Implementation of negotiations between victims and perpetrators can be done at the police station, namely in Polrestabesta Medan or elsewhere as agreed. The results of the agreement obtained from the deliberations conducted between the perpetrator and the victim are then set forth in a written agreement. The agreement outlined in the agreement will be the basis for investigators to take discretionary action, in the form of issuing SP3 letters to the case.

**Tabel. 1**

Tahun	Jlh Laka Lantas	Jlh Korban			Penyelesaian Perkara	
		MD	LB	LR	P21	SP3
2018	305	98	143	398	4	167
2019	329	109	164	414	3	164
2020	267	86	141	304	10	202
2021	276	76	127	386	10	193
2022	288	88	124	328	5	218

Sumber : Data Rekapitulasi Laka Lantas dan SELRA Perkara Laka Lantas Polrestabes Medan Tahun 2018-2022

**Tabel. 2**

**Rekapitulasi Data Kecelakaan Lalu Lintas dan SELRA Perkara  
Kecelakaan Lalu Lintas Tahun 2021-2022**

No	Tahun	Jlh Laka	Korban			KERMAT	SELRA	Tuggakan
			MD	LB	LR		RJ (SP3)	
<i>1</i>	<i>3</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>	<i>8</i>	<i>9</i>
1	2021	277	76	127	386	235.875,000	148	100
2	2022	288	88	124	328	276.650,000	158	90
<b>Jumlah</b>		<b>565</b>	<b>164</b>	<b>251</b>	<b>714</b>	<b>512.525.000</b>	<b>306</b>	<b>190</b>

Sumber : Data Rekapitulasi Laka Lantas dan SELRA Perkara Laka Lantas Polrestabes Medan Tahun 2018-2019.

Considering the data in the table above, it can be seen that the settlement of traffic accident cases is more likely to be stopped by investigators than by continuing the case in the prosecution process by delegating the case to the Public Prosecutor. This analysis is based on the comparison of cases that reached the level of P21 with the case of SP3. This means that in the settlement of the case then in Medan Polrestabes traffic is predominantly done outside the court.

Data on the table. 7 describes the Laka Lantas event and the Laka Lantas case at Polrestabes Medan in 2018-2022. Based on the data in Table. 1, it can be seen that of the total number of cases, namely as much Of the 277 cases that occurred in 2018, 148 cases or 53.42% were resolved through the restorative justice approach. Meanwhile, in 2019, out of 288 direct accident cases, 158 cases or (54.86%) were resolved through the restorative justice approach.

Then in Column 2 of the table. 2, indicates the existence of a number of delinquent matters, namely a number of matters that have not yet been resolved. The occurrence of arrears due to several factors, among others: 1) accident and then hit-and-Run, 2) one of the riders fled. In the event that the case is resolved through a restorative justice approach, the occurrence of arrears in the case due to the lack of an amicable agreement between the perpetrator and the victim.

The settlement of the laka case then on the Medan Polrestabes Satlantas has been running in accordance with community expectations. Although, in some cases there are still some obstacles, but these obstacles are still within the limits that can be tolerated, so as not to interfere with the process of resolving the case of the accident, especially in the settlement of the case with the restorative justice approach.

#### 4. CONCLUSION

The form of settlement of traffic accident cases based on restorative justice is carried out by carrying out deliberation (peace) between the perpetrator and the victim. If an agreement is reached between the perpetrator and the victim, the process of resolving the case can be stopped.

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