

MODEL OF SOLVING CASES OF HEAVY TRAFFIC ACCIDENTS THAT CAUSE DEATH

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Abstract

This study aims to study; 1) What are the Case Resolution Models that can be used to solve traffic accident cases that cause death?; 2) How effective is the model for solving cases of heavy traffic accidents that result in death? The research method used is empirical juridical with a legal approach, concept approach, and case studies. The results showed that; 1) Case Resolution Models that can be used to solve Traffic accident cases are: Alternative Dispute Resolution (ADR), Restorative Justice; 2) The settlement of traffic accident cases in Indonesia can be resolved through the criminal justice system, but in general the perpetrators hold an out-of-court peace process with the victim's family so that a peace agreement occurs between the parties. The peace model is known as the restorative justice approach model which until now has not been accommodated in laws and regulations so that law enforcement officials are hesitant to make peace agreements a consideration to stop or continue investigations. Efforts to approach restorative justice in traffic accident cases provide a sense of justice for both perpetrators and victims. However, the implementation of the termination of the investigation because a restorative justice approach has been carried out in traffic accidents cannot be carried out absolutely because there are several criteria that must be used as a benchmark in making decisions regarding investigations.

Keywords: Settlement Model, Severe Traffic Accident Cases, Causing Death Toll.

INTRODUCTION

Background

The Indonesian nation is currently carrying out development in the economic field, but also in the legal field. As the ideals and goals of the Indonesian nation, as stated in the Fourth Paragraph of the Preamble to the Constitution of the Republic of Indonesia Year 1945 (Nuryanto, 2018). The form of direct elaboration of the purpose of the state is concreted into article 1 paragraph 3 article 1 paragraph (3) which stipulates that "The State of Indonesia is a State of Law", After the amendment, the concept of the state of law in Indonesia is no longer a rechtsstaat or rule of law, but a State of Law in Indonesian principles.

Thus, the 1945 Constitution is the highest rule of law whose existence is based on the legitimacy of people's sovereignty and the rule of law. Therefore, the 1945 Constitution is seen as a form of general agreement "all Indonesian people" who have sovereignty. It also has the consequence that the 1945 Constitution is the highest rule in the life of the nation and state that regulates how people's sovereignty will be exercised. This is theoretically referred to as the Rule of the Constitution as one of the main principles of upholding a democratic rule of law (Usman, 2015), where the upholding of law is built through law with an ideal system. The ideal value system adopted in Indonesia is a legal system that provides and guarantees a sense of

legal justice, legal protection for both individuals and society, and legal certainty as norms agreed upon by the community in the form of national law.¹

The Unitary State of the Republic of Indonesia is a state based on Pancasila and the 1945 Constitution. The Republic of Indonesia is a country based on law.² Indonesia adheres to the notion of the rule of law (*rechtstaat*), *not based on mere power* (*machstaat*).³ This means that the Republic of Indonesia is a democratic state of law based on Pancasila and the 1945 Constitution. Indonesia is a country that aims to realize welfare for the people (*welfare state*). This noble goal will be impossible to achieve without development in various fields of life as an absolute condition for achieving this state ideal as stated in the fourth paragraph of the Preamble to the 1945 Constitution.

The national development goals referred to in this case are not only limited to development in the physical field, but also include development in the legal field. Traffic law has the dual function of creating order and tranquility or freedom for all levels of society. Traffic laws must combine the freedom of road users with the order that society wants to achieve.

Such a situation must be combined with law enforcement by law enforcement so that the community feels safe, and the resolution of traffic cases will give birth to a sense of justice. Traffic problems are interesting, because traffic regulations are non-spiritual or neutral legal systems. Enforcing traffic rules is an arduous task. In traffic regulations, there are two tasks, namely maintaining public order and public peace. In addition, community members basically want freedom in using road facilities, while law enforcement is tasked with creating security and order.⁴

Often accidents that occur on the highway are actually the result of the negligence of the road users themselves. The accident that occurred was quite concerning because the victims were not only property but also lives. A person who commits negligence in driving a motor vehicle, especially one that results in another person losing his life (dies), makes peace with the victim's family. Even though there has been peace between the parties, criminal cases that cause other people to die continue as ordinary criminal cases.

Against these incidents, it often raises problems such as how the function of the peace letter made by the perpetrator of the crime with the family of the deceased. Also what are the legal consequences of the peace letter made by the perpetrator of the crime and the victim's family for the judge in deciding the case.

Every case of a traffic accident that occurs on the highway, of course, has legal consequences for the driver of the vehicle. Legal provisions governing fatal accidents that result in injury or death of a person, in general are the Criminal Code (Criminal Code) and specifically regulated in Law (Law) No. 22 of 2009 concerning Traffic. Often people view that traffic accidents that cause injuries and death, absolutely the fault is always on the driver of the vehicle concerned. Meanwhile, according to the prevailing legal theory that a person's fault is seen from the actual incident factor, what factors cause the traffic accident. This can be revealed from the chronology of events, testimonies including eyewitnesses who saw the accident. More specific laws and regulations regulate more specifically, in detail and firmly about traffic on highways

/ tolls and traffic accidents, including regulating negligence / negligence in driving vehicles to cause injury and death, namely Law Number 22 of 2009 concerning Road Traffic and Transportation ("Law LLAJ").

Therefore, since the constitutional reform, there have been felt law enforcement efforts such as: First, there is a tendency for law enforcement agencies to be more responsive and the willingness of law enforcement officials to build stronger cooperation with encouraging actors. Second, although it does not occur in all cases, in general where there is a strong group of driving actors, there will be legal processes that tend to run more transparently and relatively faster⁵

PROBLEM STATEMENT

1. What are the Case Resolution Models that can be used to solve traffic accident cases that cause death?;
2. How Effective is the Model of Resolving Cases of Heavy Traffic Accidents in Indonesia That Result in Death Victims?

THEORETICAL FRAMEWORK

This research departs from the juridical implications of peace in the case of traffic accidents resulting in death to criminal prosecution and investigation. This is related to the criminal liability of perpetrators of traffic accidents that cause people to die. On the other hand, peace between the two parties has been carried out even though the peaceful settlement of criminal cases has no legal basis, either in the Criminal Procedure Code (Law No. 8 of 1981) or in other legislation.

Peace in the case of traffic accidents is mostly done by the community, although legally there is no basis. The only handle on the part of the investigator to do so is the willingness of the victim / exposed to the crime or his family to sign a peace letter so that the victim states that he will not hold charges for the signing event is that with the stamp of peace, the victim states that he will not hold charges for the events that occur, both criminally and civilly. The basis of this statement makes the investigator have a handle to stop the investigation. Although there is no legal handle, it turns out that adhering to a statement signed by the victim/victim's family, is quite effective in making the settlement of criminal cases outside the court peaceful, never a problem so that such practices still occur in practice.

Criminal acts come from a term in Dutch law, namely: *strafbaarfeit*. There are also those who term it to be *delict* which comes from Latin *Delictum*. Anglo Saxon penal code uses the term *offense* or *criminal act*. According to Moeljatno, ⁶ Criminal acts are actions prohibited by a prohibition law which is accompanied by threats (sanctions) in the form of certain crimes, whoever violates the prohibition. The prohibition is aimed at the act, while the criminal threat is aimed at the person who caused the incident. Moeljatno separates between *criminal act* and *criminal responsibility* which is an element of a criminal act. According to Moeljatno are only the elements inherent in *criminal act* (punishable acts). Meanwhile, what includes the elements

of a criminal act is an act that meets the formulation of the law is against the law.

Concrete law enforcement is the enactment of positive laws in practice as they should be obeyed. Therefore, providing justice in a case means deciding the law in concreto in maintaining and guaranteeing the observance of material law using procedural means established by formal law. The main theory used in this study is the Law Enforcement Theory which is supported by the theory of Justice.

RESEARCH METHODOLOGY

1. Types of Research

This research is included in the type of collaborative research, where the approach method used is normative as well as empirical, namely normative juridical and empirical juridical collaboration. Normative legal research method, which is a study conducted by reviewing laws and regulations that apply or are applied to a particular legal problem. Normative research is often referred to as doctrinal research, which is research whose object of study is statutory documents and library materials.

This research uses various approaches, with the aim of obtaining information from various aspects of the issue under study. Therefore, to solve the problems that are the subject of discussion in this study, the following approaches are used:

1. Statute approach is an approach taken by reviewing laws and regulations related to the legal issue being raised.⁷
2. The conceptual approach *is* an approach that departs from the views and doctrines that develop in the science of law.⁸

2. Research Data Sources

The data source of a study is primary data and secondary data. Because this research is empirical and normative legal research, the sources studied are primary data sources, secondary data, and tertiary data.⁹

Primary legal materials are data that are materials in binding legal research sorted based on the hierarchy of legislation.¹⁰

Secondary legal materials, namely legal materials that can provide explanations to legal materials that can provide explanations to primary legal materials, which can be in the form of draft legislation, research results, textbooks, scientific journals, newspapers (newspapers), *pamphlets*, *leflats*, *brochures*, and *internet news*.¹¹

Tertiary legal material, also is a legal material that can explain both primary legal material and secondary legal material, in the form of dictionaries, encyclopedias, lexicons and others related to the problem under study.¹²

3. Data Collection Techniques

In this section, researchers get accurate and authentic data because it is done by collecting data sources, both primary and secondary data, which are adjusted to the research approach. To classify primary data, data collection is carried out in several ways including observation (observation) and interviews as well as documentation.¹³

4. Data Analysis

The research technique in this study is descriptive analytical, where the analysis is carried out critically. The data collected in this study will be analyzed descriptively with a *qualitative approach*, namely by providing a thorough and in-depth explanation and explanation (*holistic / verstelen*).¹⁴

RESEARCH RESULTS

Case Resolution Model that can be used to solve Traffic Accident Cases

An accident is an unplanned and uncontrolled act, when the action and reaction of objects, materials, or radiation causes injury or possible injury. Traffic is the movement of vehicles, people and animals on the road. Motor Vehicles a motor vehicle is a vehicle driven by engineering equipment located on that vehicle. Traffic Accident a traffic accident is an unexpected and accidental road event involving a vehicle with or without other road users resulting in human casualties and/or property loss. Motorcycles a motorcycle is a two-wheeled motor vehicle with or without houses and with or without side carriages or a three-wheeled motor vehicle without houses.

Classification of Traffic Accidents Based on Law Number 22 of 2009 concerning Traffic and Road Transportation, article 229 explains that the characteristics of traffic accidents can be divided into 3 (three) groups, namely:¹⁵

1. Minor Traffic Accidents, namely accidents that result in damage to vehicles and/or goods.
2. Moderate Traffic Accidents, which are accidents that result in minor injuries and damage to vehicles and/or goods.
3. Heavy Traffic Accidents, which are accidents that result in death or serious injury.

Definition of Traffic Literally the term traffic can be interpreted as the movement (back and forth) of humans or goods from one place to another using public road facilities. The definition of traffic is as follows: "traffic is walking back and forth, back and forth, regarding travel, and about transportation between one place and another (by shipping roads, air transportation, land and so on)". However, the definition of traffic in Law No. 22 of 2009 concerning Road Traffic and Transportation in article 1 point 2 is that traffic is the movement of vehicles and people in road traffic space, while what is meant by road traffic space is infrastructure that is demolished for the movement of vehicles, people, and / or goods in the form of roads and supporting facilities.

Accidents do not happen by chance, but there is a cause. Because there is a cause, the cause of the accident must be analyzed and found, so that corrective action to the cause can be taken and with further preventive efforts the accident can be prevented. An accident is an unplanned and uncontrolled act, when the action and reaction of objects, materials, or radiation causes injury or possible injury. An accident can be defined as any unplanned and controlled event that can be caused by humans, situations, environmental factors, or a combination of these things that interfere with the work process and can cause injury or not, pain, death, property damage or other unwanted events¹⁶.

Based on Law Number 22 of 2009 concerning Road Traffic and Transportation, disclosing a traffic accident is an unexpected and accidental road event involving vehicles with or without other road users resulting in human casualties and/or property losses. A traffic accident is an event in road traffic involving at least one vehicle that causes injury or damage or loss to its owner (victim) (WHO, 1984). Traffic accidents are events that are difficult to predict when and where they occur.¹⁷

Accidents are not only trauma, injury, or disability but also death. Accident cases are difficult to minimize and tend to increase with the increase in road length and the number of movements from vehicles. From several definitions of traffic accidents, it can be concluded that a traffic accident is an event in road traffic that is unexpected and undesirable that is difficult to predict when and where it occurs, involving at least one vehicle with or without other road users that causes injury, trauma, disability, death and/or property loss to its owner (victim).¹⁸

Based on Law Number 22 of 2009 states that a traffic accident is an unexpected and accidental road event caused by vehicles with or without other road users resulting in human casualties and/or property losses. Traffic accidents are events in road traffic caused by at least one vehicle causing injury, damage, or loss to its owner or victim (WHO, 1984). Technically, a traffic accident is defined as an event caused by many factors that accidentally occur (*Random Multy Factor Event*). In a simple sense, that a traffic accident occurs when all factors of the situation simultaneously at one particular point in time coincide with occurring. This means that it is difficult to predict exactly where and when an accident will occur.¹⁹

Traffic accidents are a serious problem in Indonesia. Viewed from a macroeconomic perspective, accidents are inefficiencies in the implementation of transportation or a loss that reduces the quantity and quality of people and goods transported including increasing the totality of transportation costs. Accidents do not occur by chance, but are caused by several factors that cause accidents that must be analyzed so that corrective actions and preventive efforts (prevention) of traffic accidents can be carried out. Traffic accidents claim the lives of about 1.2 million people every year according to WHO. In this regard, various programs for handling road traffic accidents have been implemented by various agencies, both government and private.²⁰

The following is a model of Law Enforcement Approach in solving traffic accident cases:

1. Alternative Dispute Resolution (ADR)

In the case of traffic accidents, it is appropriate if it can be resolved with the concept of out-of-court criminal case settlement known as ADR or better known as the restorative punishment model if the perpetrator and his victim agree to reconcile and resolve the case peacefully or familiarly. That such a model was born out of the current criminal justice and penal justice system poses a problem. In the current criminal justice system, the purpose of punishment is imprisonment, revenge, and infliction of suffering as a consequence of his actions. Sentencing indicators are measured by the extent to which prisoners are subject to criminal regulations. So, the approach is more to security (security approach).

In addition to imprisonment that has consequences for the families of prisoners, the current system is considered not to relieve or heal victims. Moreover, the legal process takes a long time. In contrast, the restorative model emphasizes conflict resolution. This restorative punishment involves victims, families and other parties in solving problems. In addition, making criminal offenders responsible for repairing the losses caused by their actions. On victims and their families, the emphasis is on the recovery of asset losses, physical suffering, security, dignity and satisfaction or a sense of justice. For the perpetrator and the community, the goal is to give shame so that the perpetrator does not repeat his actions again and the community accepts him. With the restorative model, the perpetrator does not need to go to jail if the interests and losses of the victim have been restored, while the perpetrator has expressed regret.²¹

However, it should be noted that efforts to resolve certain criminal cases through *conciliation procedures and/or* alternative settlements outside the court through peaceful remedies or known as ADR or penal mediation, can indeed be justified but that does not mean it can be done immediately but must still pay attention to existing criteria for the resolution of criminal cases to be carried out in a way that at best. The criteria that must be considered, besides the juridical aspect, it is also a sociological aspect. In the juridical aspect, among others, related to the unlawful nature, the dangerous nature of the act, the type of crime (strafsoort), the severity of the crime (strafmaat), the way in which the crime is carried out (strafmodus), the conditions resulting from the crime. While sociological aspects include related to the existence of family relationships or close kinship between the perpetrator and the victim, character, age and condition of the perpetrator, the background of the occurrence of the act, the psychological condition of the perpetrator and whether the perpetrator first committed the act or not, the perpetrator repairs or compensates the losses caused by his actions, the perpetrator admits his wrong actions, the perpetrator regrets and will not repeat his wrong actions, The perpetrator apologizes to the victim and/or the victim's family has forgiven him.

2. Restorative Justice

Restorative *Justice* is a term that has been known in Indonesian law since the 1960s as one of the stages in the conventional criminal justice system. Initially, Restorative Justice is a concept of case resolution that has been used by indigenous peoples in Indonesia as a method of solving cases that occur within the indigenous community concerned without involving state officials.

Miriam Liebman defines Restorative Justice as: "*Restorative justice has become the term generally used for an approach to criminal justice (and other justice systems such as a school disciplinary system) that emphasizes restoring the victim and community rather than punishing the offender*" (Restorative justice has become a commonly used term in the penal approach (as a penal system such as a disciplinary school system) that emphasizes the concept of putting the victim and environment back in their original state rather than punishing the perpetrator of the crime.)²²

The concept of Restorative Justice emphasizes a justice based on peace which in solving a case does not recognize justice based on revenge or punishment of perpetrators. The application of this concept is a form of development in the criminal justice system that focuses on the involvement between perpetrators and victims in solving a case where it is not one of the mechanisms known in conventional criminal procedural law today.

Van Ness, as quoted by Mudzakkir, says that Restorative Justice is characterized by several propositions, namely: ²³ 1. Crime is a conflict between individuals that results in harm to the victim, society and the perpetrator himself. 2. The goal to be achieved of the criminal justice process is to reconcile between the parties while remedying the harm caused by the crime. 3. The criminal justice process should facilitate the active participation of victims, offenders and the public. Criminal justice should not be dominated by the state to the exclusion of everything else.

The Restorative Justice approach in solving a crime provides an opportunity for the parties involved, especially perpetrators and victims, to participate in the resolution of cases so that there is a transfer of functions of perpetrators and victims where in conventional criminal procedural law, perpetrators and victims only function as witnesses in solving cases carried out by law enforcement officials. This perspective has created a renewal in the resolution of a case that imposing a crime against a perpetrator who is legally considered guilty of a criminal act does not guarantee the fulfillment of the interests of the victim and has a deterrent effect on the perpetrator. However, deliberation between perpetrators and victims applied in restorative justice can certainly achieve this that between perpetrators and victims will choose a form of case resolution that meets the interests of both where restorative justice seeks to emphasize the responsibility of the perpetrator for his behavior that causes harm to others.²⁴

In principle, Restorative *Justice seeks* peace outside the court involving the perpetrator of a criminal act (his family) against the victim. In Restorative Justice, the resolution of a legal problem that occurs between the perpetrator and the victim of a criminal act can be achieved if there is an agreement or agreement between the parties so as to provide an opportunity for the

perpetrator to be responsible for all his actions by compensating for losses due to the criminal act he committed.²⁵

The Effectiveness of the Model for Resolving Cases of Heavy Traffic Accidents That Resulted in Death in Indonesia

The settlement of traffic accident cases in Indonesia can be resolved through the criminal justice system, but in general the perpetrators hold an out-of-court peace process with the victim's family so that a peace agreement occurs between the parties. The peace model is known as the restorative justice approach model which until now has not been accommodated in laws and regulations so that law enforcement officials are hesitant to make peace agreements a consideration to stop or continue investigations. Efforts to approach restorative justice in traffic accident cases provide a sense of justice for both perpetrators and victims. However, the implementation of the termination of the investigation because a restorative justice approach has been carried out in traffic accidents cannot be carried out absolutely because there are several criteria that must be used as a benchmark in making decisions regarding investigations.

Restorative justice as a concept is a new thing in the criminal law system in Indonesia. However, at the level of restorative justice practice has long been known and also practiced by indigenous peoples of Indonesia through the implementation of customary law systems by various kinds of indigenous peoples of Indonesia. Such as the indigenous peoples of Papua, Toraja, Minangkabau, Kalimantan, Central Java and other indigenous communities that still hold strong culture. The Indonesian state that makes Pancasila the basis of the state (philosophical nation), in such a position, then Pancasila is the highest norm in the legal structure whose position is higher than the constitution or Basic Law.²⁶

The basic values contained in Pancasila actually have the concept of *restorative justice* long before this idea was present and entered the juvenile criminal justice system. This can be seen in the formulation of the 4th Precept of Pancasila, which states that "peoplehood is led by wisdom in representative consultations." Looking at the formulation of the 4th Precept of Pancasila, it means that the Indonesian nation has long glorified the principle of deliberation as a habit in solving every problem that occurs in society, including overcoming national problems on a national scale.²⁷

Deliberation and consensus, in the context of restorative justice, can be carried out in various ways, including mediation, compensation, or other methods agreed between victims and perpetrators. Other parties can be involved in the settlement process as mediators, if it turns out that no agreement is reached between the victim and the perpetrator, then the matter is processed through court channels (litigation). Deliberation and consensus contained in the 4th Precept of Pancasila is a concept of problem resolution or dispute that aims to create a balance between the parties to the dispute, so that the problem can be resolved by reaching an agreement by accommodating the interests of the parties to the dispute.

Settlement in this way will certainly be better able to fulfill and provide justice for all parties, which is the ultimate goal of the Pancasila state legal system. This is in accordance with the basic values contained in the 5th Precept of Pancasila, which means that the life of the nation and state, is based on "social justice for all Indonesian people".

Historically, *restorative justice* has been inspired by "*community justice*" which is still used in some cultures of non-Western societies, especially *indigenous populations*. Its development, *restorative justice* is much influenced by thoughts about equality and public relations. Although the idea or idea of restorative justice *does not come from the culture of Indonesian society*, restorative justice patterns are *embedded in several traditions of indigenous peoples in Indonesia*.²⁸

The compatibility of *restorative justice with the basic values of Pancasila as proof that restorative justice has long been known and practiced by the Indonesian people*. However, as an instrument in criminal law enforcement, the application of restorative justice is a new thing, especially in the criminal law system. *Restorative Justice* began to be known and applied in the Indonesian legal system after the issuance of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which specifies that the resolution of child cases facing the law is carried out through a *restorative justice approach*.

Positive law stipulates that criminal cases cannot be resolved outside the court process, but in certain cases it is possible to carry it out. In practice criminal law enforcement in Indonesia, although there is no formal legal basis, criminal cases are often resolved outside the court process through the discretion of law enforcement officials, peace mechanisms, customary institutions and so on.

The existence of *restorative justice* in the criminal justice system can be said to be between "existing" and "nothing". That being said, on the one hand because *restorative justice* in the provisions of the law is not known in the Criminal Justice System, but at the level under the law it is known in a limited way through the discretion of law enforcement and is partial. Then, on the other hand, it turns out that the practice of restorative justice has been carried out by the Indonesian people and the settlement is carried out outside the court such as through the mechanism of customary institutions.²⁹

Based on the description above, it can be understood that *restorative justice* has not been integrated in the criminal justice system. However, along with the reforms in criminal law and criminal procedural law, the concept of restorative justice began to be applied in solving criminal cases in certain cases, such as for minor crimes. The resolution of criminal acts through a *restorative justice approach* is explicitly regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. The *restorative justice approach* is carried out through diversion at each level through the mediation process. Article 1 paragraph (7) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, states that diversion is a transfer of the resolution of child cases from the criminal justice process to processes outside criminal justice. Diversion is carried out for 30 days to reach an agreement between the two parties.³⁰

Juridically, the legal provisions that are the basis for investigators of the Laka Lantas Polres Batubara in applying *restorative justice* in solving traffic accident cases refer to the provisions of Article 18 paragraph (1) of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia (called the National Police Law), which states: "In the public interest officials of the National Police of the Republic of Indonesia in carrying out their duties and authorities may act according to his own judgment".

According to the provisions of Article 230 of the LLAJ Law, that: "every traffic accident case that meets the criminal elements must be resolved through the criminal justice process". This means that the police must carry out / take legal action, while the legal action in question is to investigate every report of traffic accident victims and at the same time delegate the case that has been completed to the Prosecutor's Office.³¹

In practice, police investigators in receiving reports of victims of traffic accidents do not necessarily take legal action as mentioned in Article 230 of the LLAJ Law. In certain circumstances, police investigators often resolve traffic accident cases through a restorative justice approach or penal mediation. Thus, the ideal role that police investigators should perform is not carried out in accordance with the sound of the law. This is where investigator Laka then uses his discretionary authority in responding to and solving traffic accident cases as stipulated in Article 18 of the LLAJ Law.

Another legal basis that is the basis for traffic police investigators to apply penal mediation in solving criminal cases is referring to the Letter of the Chief of Police Pol Number: B/3022/XII/2009/SDEOPS, dated December 14, 2009 concerning Case Handling through *Alternative Dispute Resolution* (ADR). The principle of penal mediation referred to in the Letter of the Chief of Police emphasizes that the settlement of criminal cases using ADR can only be carried out if there is agreement from the parties, both victims and suspects or parties to the dispute, but if there is no agreement, it is still resolved in accordance with applicable legal procedures. Furthermore, the discretion of the laka investigator is also seen in the application of Article 63 paragraph (3) of Perkap Number 15 of 2013 concerning Procedures for Handling Traffic Accidents. In the provisions of Article 63 paragraph (3) of Perkap Number 15 of 2013, it is determined that: "The settlement of cases outside the court as referred to in paragraph (2) can be carried out as long as a police report has not been made". This provision provides an opportunity for police investigators in the laka unit to take discretionary actions in solving traffic accident cases through penal mediation.³²

The settlement of traffic accident cases through a *restorative justice* approach by settling cases outside the court (penal mediation) is basically the exercise of discretionary authority exercised by the police as mentioned in Article 18 paragraph (1) of the Police Law. However, in the context of Indonesia as a state of law, discretionary actions taken by law enforcement officials must also be legally accountable. In response to this, police leaders often look for the right legal basis to legalize the termination of cases in the public interest, which includes pure delicacies.

In its development, the Chief of Police also issued a Circular Letter of the Chief of Police Number 8 of 2018 concerning the Application of Restorative *Justice* in the Settlement of Criminal Cases. This circular letter of the Chief of Police on *Restorative Justice* is further used as a legal basis and guideline for investigators and investigators of the National Police who carry out investigations / investigations, including as a guarantee of legal protection and control supervision, in the application of the principles of restorative *justice* in the concept of investigation and investigation of criminal acts in order to realize the public interest and a sense of community justice, so as to realize uniformity in understanding and application of restorative justice *in* the National Police Environment.

Then in terms of stopping the investigation, to create uniformity in the implementation of the termination and become a guideline for the police in carrying out the termination, the Chief of Police also issued a Circular Letter of the Chief of Police Number 7 of 2018 concerning Termination of Investigation. Based on the description above, it can be understood that the legal basis for the implementation of restorative justice in resolving traffic accident cases through out-of-court case settlement (penal mediation) is based on the discretionary authority possessed by the police. Police discretion occurs when a police officer is faced with decision-making when there are various options for action. Meanwhile, what is meant by police discretion in investigating criminal acts is discretion carried out by investigators at the technical level of investigation or ignoring the technical level of investigation while still paying attention to procedures and laws and regulations, which aim to maintain public security and order.³³

CONCLUSION

Based on the results of research and discussion, several things can be concluded as follows:

1. Case Resolution models that can be used to solve traffic accident cases are: **Alternative Dispute Resolution (ADR), Restorative Justice**
2. The settlement of traffic accident cases in Indonesia can be resolved through the criminal justice system, but in general the perpetrators hold an out-of-court peace process with the victim's family so that a peace agreement occurs between the parties. The peace model is known as the *restorative justice* approach model which until now has not been accommodated in laws and regulations so that law enforcement officials are hesitant to make peace agreements a consideration to stop or continue investigations. Efforts to approach *restorative justice* in traffic accident cases provide a sense of justice for both perpetrators and victims. However, the implementation of the termination of the investigation because a *restorative justice* approach has been carried out in traffic accidents cannot be carried out absolutely because there are several criteria that must be used as a benchmark in making decisions regarding investigations.

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