

Implementation Restorative Justice on Traffic Accident Crimes Committed by Children in the Legal Area of the Gorontalo City Police

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Abstract

This study aims to determine the Implementation of Restorative Justice in Traffic Accident Crimes Committed by Children in the Gorontalo City Police Department and the Constraining or Inhibiting Factors in the Implementation of Restorative Justice in the Gorontalo City Police Department. This study uses the Juridical Sociological research method, Juridical Sociological is legal research using secondary data as its initial data, which is then continued with primary data in the field or on the community, examining the effectiveness of a Regulation and research that wants to find a relationship (correlation) between various symptoms or variables, as a data collection tool consisting of document studies or library materials and interviews (questionnaires). The results of the study show; The implementation of restorative justice in resolving traffic accident cases in the Gorontalo City Police Department jurisdiction has been in accordance with the provisions of laws and regulations, especially Perpol Number 8 of 2021, which is carried out after a request for a peaceful settlement of the case and an agreement from the perpetrator and victim signed by all parties involved in the traffic accident which is then followed up by investigators until a Termination of Investigation Order is issued. Obstacles or Constraints that arise in the Implementation of restorative justice, namely; first is the legal factor. Then the second is the factor from the perpetrator's and victim's families who have not reached a peace agreement. And the last is the Facilities and Infrastructure Factor. Law enforcers cannot work well if they are not equipped with adequate facilities and infrastructure.

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1. INTRODUCTION

Children are an inseparable part of human survival and the survival of the nation and state. In the Indonesian constitution, children play an important role because it is explicitly stated that the state guarantees every child's right to live, grow, develop and be protected from violence and discrimination. Therefore, the state's goal in guaranteeing every child's right to life is to promote general welfare.

Regulations regarding children in Indonesia are constitutionally mandated by Article 28 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Then this article is regulated in the Law which contains provisions regarding children. Children who experience legal problems, whether as perpetrators, victims or witnesses, all legal rights and protection given to them are regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. This arrangement aims to create a justice system that guarantees protection of the best interests of children and upholds their honor and dignity.

Traffic problems are a common challenge in developed and developing countries like Indonesia. In Indonesia, the problems currently faced have increased in severity and magnitude compared to previous years. These problems include accidents, traffic jams, air

pollution, and violations of traffic rules. Among the various existing problems, the main concern is traffic accidents.

Traffic flow in cities in the Republic of Indonesia, especially in the jurisdiction of the Gorontalo City Police Department, is increasingly congested due to technological advances, economic growth and an ever-increasing population. Related to this, problems arise regarding traffic accidents which often result in casualties and property damage. Various factors cause traffic accidents, including human, vehicle and road factors. A combination of these factors, such as humans and vehicles traveling above the specified speed limit, can cause tires to burst and traffic accidents occur.

A traffic accident is an unexpected event involving at least one motorized vehicle on a certain road section, which results in property damage and the potential for loss of life. The legal consequences of traffic accidents include criminal sanctions for the party responsible and potential civil lawsuits for financial losses. In Law of the Republic of Indonesia no. 22 of 2009 concerning Road Traffic and Transportation, Article 229 categorizes traffic accidents into three classifications: light, medium and heavy traffic accidents.

Traffic violation cases involving minors often give rise to controversy because of the complexity of applying criminal law, giving rise to a lot of debate. Belief in the need to uphold and enforce legal processes without bias (rule of law and law enforcement) remains important. Negligence, such as criminal negligence, especially in cases of motor vehicle accidents which result in the death of the victim, must be resolved through a legal process.

Restorative justice prioritizes the interests of the parties most affected by returning the conflict to them, including victims, perpetrators and society. By implementing a Restorative Justice approach, victims and families can anticipate a sense of relief from loss and suffering, while also easing the emotional burden borne by the perpetrator through forgiveness given by the victim or the victim's family.

The juvenile criminal justice system must prioritize Restorative Justice and prioritize diversion to prevent stigmatization of children. The juvenile criminal justice system must prioritize peace between victims and children, resolve cases outside the judicial process, and avoid detaining children. Community involvement and fostering a sense of responsibility in children are also the main goals. Republic of Indonesia State Police Regulation Number 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice regulates the implementation of Restorative Justice in resolving criminal cases, including traffic accident cases. Before the enactment of Perpol No. 8 of 2021, the resolution of criminal cases originating from traffic accidents was under the authority of Law of the Republic of Indonesia Number 2 of 2002 concerning the State Police of the Republic of Indonesia.

Traffic accident data for children as perpetrators of criminal acts at the Gorontalo City Police from 2022 to 2024 which were resolved through the Restorative Justice approach was 90 cases out of 124 traffic accident cases that occurred with reference to the Republic of Indonesia State Police Regulation Number 8 of 2021 concerning Handling Criminal Offenses Based on Restorative Justice. Peaceful efforts are always sought to resolve traffic accidents (restorative justice). Based on the results of an interview with the Assistant Investigator of the Gorontalo City Police traffic accident unit Bripka Fyrdam on July 9 2024 regarding the number of cases that were successfully implemented by Restorative Justice at the Gorontalo City Police Station: "In implementing Restorative Justice for traffic accidents involving children at the Gorontalo City Police Station, the number of cases that failed to reach a peaceful agreement between the perpetrator and the victim, ranging from 25% to 35% who were unsuccessful."

Considering the data above and the management requirements as mandated in the National Police Chief's Circular Number: SE/8/VII/2018 concerning the Implementation of Restorative Justice in Resolving Criminal Cases, it is important to examine how Restorative Justice is implemented in handling traffic accident cases involving children. underage by Gorontalo City Police Traffic Unit Investigators. This includes facilitating peaceful negotiations between the perpetrator and the victim to stop the settlement of traffic accident cases at the Public Prosecutor level before the issuance of a Notice of Commencement of Investigation (SPDP). Identifying these influencing factors is important to find out whether current practices are in accordance with the directions in the National Police Chief's Circular.

2. RESEARCH METHOD (12 Pt)

The approach method that the author will use in this research is the Sociological Juridical approach method. The Sociological Juridical Approach focuses on conducting research to obtain empirical legal knowledge by being directly involved with the object. Sociological Juridical Research involves the use of secondary data for initial analysis, followed by primary data collection in the field or community to evaluate the effectiveness of a Regulation and investigate and (correlation) between various phenomena or variables, as a data collection tool consisting of the study of documents or library materials and interview (questionnaire).

3. RESEARCH RESULTS AND DISCUSSION (12 Pt)

1. Application of Restorative Justice in Resolving Traffic Accident Crimes Committed by Children as Criminal Perpetrators at the Gorontalo City Police.

Restorative justice in criminal law must attempt to return the situation to the state before the crime occurred. Restorative justice and diversion are used in the juvenile criminal justice system to uphold the system's core principles, ensuring its effective operation and maintenance. The Gorontalo City Police handle traffic accident cases in accordance with relevant regulations and laws. The current criminal justice system has not effectively ensured comprehensive justice, including fair treatment for all parties involved in the case, namely the perpetrator and the victim.

The problem of traffic accident cases involving children as perpetrators resulting in death also occurs in the jurisdiction of the Gorontalo City Police, where the number of accident cases is as follows: In 2022, data from the Gorontalo City Police has recorded 24 cases with 1 person dying. No one suffered serious injuries, and there were 23 people with minor injuries. In 2023 there will be 73 cases with 3 deaths, 1 person seriously injured, and 69 people with minor injuries. Meanwhile, in 2024 there will be 27 cases where no victims died, 1 person was seriously injured, and 26 people had minor injuries.

Based on the results of research at the Gorontalo City Police, mediation is always sought to resolve traffic accident cases, whether in the light, medium or serious categories, through a restorative justice approach. The concept of Restorative Justice is basically simple. The concept of justice has evolved from simply seeking retribution from victims against perpetrators. Instead, the focus is on providing support to victims and facilitating reconciliation for perpetrators, with help from family and community if necessary.

This is according to the results of an interview with the Assistant Investigator of the Gorontalo City Police traffic accident unit, Bripka Fyrdam, who stated: "that as much as possible the resolution of traffic accident cases is carried out through

Restorative Justice. Apart from that, we, as law enforcers from the Gorontalo City Police, resolve traffic accidents through restorative justice for children who are in conflict with the law as perpetrators of criminal acts, with processes including mediation between perpetrators and victims, making peace statements and implementing mediation."

Meanwhile, the Gorontalo City Police Department resolves traffic accident cases using a Restorative Justice system which aims to create a sense of justice for both parties. This is done by implementing Restorative Justice (Mediation) in the following way:

a. Mediation between Perpetrator and Victim

Victim-offender mediation, also known as dialogue or reconciliation, involves a meeting between the perpetrator and the victim. Additionally, when implementing Restorative Justice through mediation between perpetrators and victims, the first step involves creating a Peace agreement. The Gorontalo City Police will assess the effectiveness of the mediation system by determining whether a resolution between the victim and perpetrator can be achieved peacefully, as well as identifying any obstacles that hinder a peaceful resolution.

Mediation will involve assessing the victim's condition to facilitate communication between the victim and the perpetrator. The Gorontalo City Police prioritize assessing the severity of injuries or losses experienced by the victim and determining whether the perpetrator is also a victim in the accident when handling traffic accident cases. The meaning of the second scenario relates to the situation where the individual responsible for the accident by crossing traffic illegally also experiences losses or becomes a victim as a result of his own violation. In this scenario, the case will be referred back to the relevant parties, namely the victim's family. The parties involved in a traffic accident will receive compensation for the losses incurred, regardless of the amount and feasibility of mediation. Decisions regarding the appropriateness of mediation and the acceptability of mediation are communicated to the parties involved in the traffic accident.

b. Make a Peace Statement

In issuing a peace statement, the parties involved must begin to resolve the problem peacefully. The police will facilitate mediation forums and provide space to resolve conflicts. So that both parties can reach a resolution and make peace, the police will guide them to give a statement of peace. This statement must be signed by both parties and signed on a stamp duty. It is vital that the case is resolved and that both parties have reached a state of reconciliation.

In handling traffic accident cases, the Gorontalo City Police consider potential criminal acts that may occur. If an accident occurs involving criminal negligence by the perpetrator, the police have the authority to handle it. Apart from that, the possibility of resolving the case through mediation can be considered before it is returned to the relevant parties. If the settlement can be done amicably, it will be done through mediation.

c. Implementation of Mediation

The application of Restorative Justice is the resolution of cases through deliberation facilitated by investigators. After reaching an agreement, the victim submitted a withdrawal report to investigators. Furthermore, investigators issued an Order to Stop the Investigation (SP3) on the grounds that there was insufficient

evidence, so the case was closed. This approach to resolving criminal cases has the potential to fulfill a sense of justice and community needs, but can pose challenges in terms of legality and legal certainty. This method of resolution also raises the question of whether it can be called penal mediation. Penal mediation in the context of resolving criminal cases is resolving criminal cases through deliberation accompanied by a neutral mediator. This process involves victims, perpetrators, parents and community leaders, with the aim of facilitating recovery for all parties involved and the community environment. At the Gorontalo City Police, resolving traffic accident cases may require several mediations in order to reach a satisfactory agreement between the parties involved.

The Gorontalo City Police resolve traffic accident cases using a Restorative Justice approach, especially through mediation, while still being guided by applicable laws and regulations. The statutory regulations governing the implementation of Restorative Justice in resolving traffic accident cases by the Gorontalo City Police, especially the Gakkum Satlantas Unit, are based on Law Number 22 of 2009 concerning Road Traffic and Transportation and Police Regulation Number 21 of 2021 which regulates the application of Restorative Justice in resolving criminal cases. The police have the authority to implement Restorative Justice in handling criminal acts as regulated in statutory regulations.

2. Constraints or Obstacles faced by investigators in resolving criminal acts of traffic accidents committed by children as perpetrators of criminal acts at the Gorontalo City Police Station with the principle of Restorative Justice.

Based on the results of an interview with the Assistant Investigator of the Gorontalo City Police Traffic Accident Unit Bripka Fyrdam regarding the main problems in implementing Restorative Justice in general are:

a. Legal Factors

Based on the provisions of Article 12 of the National Police Regulation Number 6 of 2019 concerning Criminal Investigation, one of the material conditions that must be fulfilled for restorative justice to be carried out is the existence of a limiting principle for the perpetrator, namely that the level of the perpetrator's guilt is relatively not serious, namely the error is in the form of intent and the perpetrator is not a recidivist. Likewise, Article 10 of Perpol Number 8 of 2021 states that the special conditions for carrying out restorative justice in traffic accident cases are traffic accidents that result in material loss and/or minor injuries to the victim; or traffic accidents on the road due to negligence which result in human casualties and/or property loss. In traffic accident cases, if it meets the elements in Article 311 of Law Number 22 of 2009 concerning Road Traffic and Transportation then restorative justice cannot be carried out, because there is an element of intent.

Based on the provisions of Article 311 of Law Number 22 of 2009, if the driver/perpetrator is proven to fulfill the elements of intent, then according to statutory regulations it cannot be resolved based on restorative justice. However, in Article 311 there is no further explanation regarding the form of intentionality that results in traffic accidents. This can make investigators hesitate to carry out restorative justice if the victim suffers serious injuries or even dies.

b. Factors from the families of the perpetrators and victims

Obstacle factors from the perpetrator's family: There are cases of traffic accidents involving minors. Challenges arise when minors involved in traffic accidents do not

have family support or live far from parents who work abroad. This situation complicates the process of assisting them during examinations and mediation. The issue of responsibility to provide compensation to victims under constraint agreements arises when the family of a minor perpetrator is unable to pay due to financial constraints, lack of family support, or the unwillingness or inability of siblings to meet the victim's compensation demands. This makes the results of the mediation process meaningless for all parties involved.

The inhibiting factor for the victim's family is their low understanding of Restorative Justice. As ordinary people, they may not know what is meant by Restorative Justice. The lack of outreach from the government and police also causes the public to be less aware of the importance of implementing Restorative Justice for children who have committed criminal acts. On the other hand, society tends to prioritize punishment as a deterrent without considering the child's future. Apart from that, there are individuals who take advantage of the diversion process to gain profits from victims. If the victim suffers material or physical loss, the victim's family will demand quite large compensation. Compensation negotiations can hinder reaching a diversion agreement.

c. Facilities and Infrastructure Factors.

Law enforcers need adequate facilities and infrastructure to carry out their roles effectively. Without these necessary resources, they cannot fulfill their duties. In the context of implementing Restorative Justice, facilities and infrastructure play an important role in supporting its success. These resources are important in supporting an investigation, including human, equipment, and financial resources. Adequate facilities and infrastructure are very important in supporting law enforcement efforts and assisting in the successful completion of investigations. The necessary facilities and infrastructure include an educated and skilled workforce, effective organization, adequate equipment, adequate financial resources. Failure to fulfill these requirements could hinder the fulfillment of the peace agreement between the two parties.

4. CONCLUSION

The Gorontalo City Police have implemented restorative justice to resolve traffic cases in accordance with Perpol Number 8 of 2021. This process only occurs after permission for a peaceful resolution and agreement from the perpetrator and victim. All parties involved in a traffic accident must sign a document which will be followed up by investigators until an Order to Stop the Investigation is issued. In this case, the perpetrator offers compensation to the victim to foster a sense of justice for both parties and potentially improve relations between them after a traffic accident. And the obstacles or obstacles that arise in the application of restorative justice in resolving traffic accident cases involving children as perpetrators in the jurisdiction of the Gorontalo City Police Department are the first legal factor, in Article 311 of Law Number 22 of 2009 concerning Road Traffic and Transportation, no restorative justice can be carried out, because there is an element of intention. Then secondly, there are factors from the families of the perpetrators and victims who did not reach a peace agreement. And finally, namely the Facilities and Infrastructure Factor. Law enforcers cannot work well if they are not equipped with adequate facilities and infrastructure.

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