

Settlement of Traffic Accident Cases Outside of Court in the Legal Area of Makassar Police

Mas'ud Lahaseng

Pendidikan Pancasila dan Kewarganegaraan, Pascasarjana, Universitas Negeri Makassar

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Abstract

This study is a qualitative descriptive study that aims (i) To find out criminal acts, especially traffic accidents that do not have to be resolved through the courts (ii) To find out the police's considerations in mediating the perpetrators and victims of accidents and to find out whether the out-of-court settlement method is working well (iii) The method or method used by officers (Traffic Police) to resolve traffic accident cases outside the Court. The data collection method is through interviews and documentation and data analysis is carried out through data reduction, data display and data verification. The results of the study show (i) The settlement of traffic accidents outside the court by the police is a minor accident but does not result in serious injuries or even loss of life (ii) The settlement of traffic accidents outside the court by the police is considered better and more effective because it has a shorter process (iii) The method of settlement outside the court is P21, SP3, Diversion, ADR.

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Corresponding Author:

Mas'ud Lahaseng

Universitas Negeri Makassar

Email: masudtato04@gmail.com

1. INTRODUCTION

Transportation is an essential aspect of human life, which supports mobility and economic activity, and directly influences people's welfare. In the context of transportation management, security and safety on the road is a top priority to ensure that traffic and road transportation run orderly, efficiently and comfortably. For this reason, the government has carried out various regulatory updates to accommodate current developments and societal demands. One of these regulations is Law Number 22 of 2009 concerning Road Traffic and Transportation which replaces Law Number 14 of 1992, due to the need to update the regulations to be more appropriate to current conditions and challenges. This regulation aims to create safe, comfortable, fast, orderly transportation, as well as reduce the number of traffic accidents which are increasing day by day.

On the other hand, statistical data shows that traffic accidents are an increasingly complex problem, both in Indonesia and globally. According to the Makassar Police, the number of traffic accidents has increased from year to year, as happened between 2016 and 2018, where the number of accident incidents increased significantly. In cases of traffic accidents that occur, law enforcement often involves an out-of-court settlement process, especially through approaches *Alternative Dispute Resolution* (ADR) or mediation. The ADR approach focuses on resolving conflicts between victims and perpetrators peacefully and promoting peace, without having to go through a long and sometimes emotionally draining and costly litigation process. However, resolving accident cases outside of court raises its own dilemma regarding legal certainty and protection of victims' rights.

Another approach that is starting to be implemented in the context of resolving traffic accident cases is *restorative justice* or restorative justice. Restorative justice differs from a retributive approach which places more emphasis on punishment and retribution.

According to Bambang Waluyo (2016:158), *restorative justice* is an approach in the justice system that focuses more on restoring relationships between perpetrators, victims and affected communities. Howard Zehr (in Waluyo, 2016) defines *restorative justice* as a process to involve all parties involved in a conflict to reach a peaceful resolution with the main goal being recovery, not retribution. Within this framework, the restorative justice approach aims to create a conducive environment for victims to obtain the right to restitution and for perpetrators to restore responsibility for their actions.

Approach *restorative justice* in the case of traffic accidents, it provides its own benefits, especially in the context of Indonesian society which has traditional values that emphasize peace and social harmony. In line with research conducted by Susetyo (2013), (Ariefianto, n.d.) and Yuniar (2014), *restorative justice* can provide more positive outcomes in resolving cases because it focuses on social healing rather than retaliation. This approach allows victims and perpetrators to reach peaceful agreements based on mutual interests, as well as creating more humane conditions for resolving conflicts that occur. Apart from that, Bambang Waluyo (2016) also stated that this approach can help perpetrators in the process of social recovery, where they are given the opportunity to correct mistakes and rebuild healthy relationships with society.

Apart from having a more humanistic value of justice, *restorative justice* It is also considered more effective in preventing potential prolonged conflicts that may arise as a result of conventional litigation processes. Research conducted by John Braithwaite (2002) shows that restorative justice has a greater impact in reducing recidivism rates, or repetition of crimes, compared to conventional justice approaches. This happens because the restorative justice approach emphasizes a dialogue process between perpetrators and victims that helps perpetrators to admit mistakes and understand the impact of their actions, which then reduces the possibility of similar violations occurring in the future.

Restorative justice focuses on creating harmony between perpetrators, victims and members of society, not on administering punishment. There are five main elements of justice (Arief et al., 2018) *restorative justice* among others:

- 1) *Restorative justice* is a form of justice in the legal concept in the criminal process or criminal justice system that is universally recognized. This concept is increasingly being applied in various criminal cases in developed countries.
- 2) *Restorative justice* views criminal acts as violations against the victim, not against the state or the public. This violation can be experienced by individuals or groups.
- 3) *Restorative justice* focuses on the suffering or loss experienced by the victim, not on punishing the perpetrator.
- 4) Approach *Restorative justice* This can be done through dialogue, either directly or indirectly, in the form of mediation, Reconciliation, or through court proceedings.
- 5) *Restorative justice* is not limited to traditional reconciliation.

In case of a traffic accident, *restorative justice* not only provides a sense of justice for victims, but also allows perpetrators to play an active role in the recovery process. Bagir (2008) explains that *restorative justice* in the context of accident resolution, it allows perpetrators to feel empathy for victims, so that they are more encouraged to take responsibility and make voluntary repair efforts. This approach is also in line with local wisdom values in Indonesia, which prioritize deliberation to reach consensus in resolving conflicts.

The aim of this research is to examine in more depth how to implement it *restorative justice* in resolving traffic accident cases carried out outside of court, as well as analyzing the effectiveness of this approach in fulfilling a sense of justice for victims and perpetrators. It is hoped that this research can contribute to academic literature and become a reference for legal practitioners in their efforts to create more inclusive and peace-focused solutions

to traffic accident cases. With a deep understanding of *restorative justice*, it is hoped that it can provide alternative solutions in handling traffic accident cases and reduce the burden on the courts, so that law in Indonesia can be more effective and adaptive to the needs of society.

2. RESEARCH METHOD (12 Pt)

This research is a qualitative descriptive study which aims to describe and describe realistic phenomena related to "Settlement of traffic accident cases outside of court", especially for the community and the police in depth. This research was carried out at Makassar Police. The research location was chosen purposely, which was determined by the researcher based on certain criteria or considerations in this research.

The data collection techniques used in this research were interviews and documentation. Interviews were conducted with the Traffic Unit and Head of the Traffic Accident Unit who are tasked with directly handling road accidents. Other data was obtained through documents containing accident figures and out-of-court traffic accident settlements which are archives from the Makassar Traffic Police.

3. RESEARCH RESULTS AND DISCUSSION

3.1. Settlement of criminal cases, especially traffic accidents, which are settled outside of court

Settlement of traffic accidents when an accident occurs, the police in this case become a mediator or mediator between the two parties, the police in resolving an accident look and examine the case first, if the accident is only a minor accident which only results in damage or injury, but only scratches then in this case, the police take action by trying to discuss this case first with both parties. If both parties want the case to go to mediation, then both parties negotiate first how the perpetrator in this case wants to bear everything. For damage or loss resulting from negligence, the perpetrator offers the amount of loss he must bear, when the victim, in this case, agrees to the gift and accepts all forms of the gift, then both parties write it in the form of an agreement on paper and affix it with a stamp in order to gain strength. the agreement is legal and signed by both parties and the police are also signatories as parties who are aware of the agreement and agreement.

3.2. Settlement of Traffic Accident Cases Outside of Court Goes Well

Out-of-court settlement is a way of resolving unlawful acts or criminal acts, especially traffic accidents, which is considered better and more effective than resolving problems through the court process. This is in line with the research conducted (Mustafa et al., 2023) where the approach to *restorative justice* assumed to be the most recent shift from various models and mechanisms which work in the criminal justice system in handling current criminal cases. The police also seem to appreciate this habit of the community so that regulations are made that are in line with the community's habits, in this case the Regulation of the Head of the National Police of the Republic of Indonesia Number 7 of 2008 concerning Basic Guidelines for the Strategy and Implementation of Community Policing in Carrying Out Police Duties, namely in article 14-point f that "Application of the Alternative Dispute Resolution Concept

3.3. Ways and Methods for Resolving Traffic Accident Cases Outside of Court

Agreement In the case of resolving traffic accidents, the important point that must be achieved first is to agree that this problem is resolved in the form of deliberation or in a family manner, in this case the problem that occurs between the two parties holds discussions involving the perpetrator and the victim, or the perpetrator's family and the victim's family, which witnessed by the police to sit down together, in terms of agreeing

on things that are considered to be the losses suffered by both (perpetrator, victim). This is in line with the research conducted (Ariwibawa & Madjid, 2023; Ramadhani & Suyatna, 2024) who said that the implementation *restorative justice* This is done by mutual forgiveness by both parties, then the party that hit undertakes to provide compensation to the victim, and help with medical expenses and repairs to the victim's vehicle.

4. CONCLUSION

Settlement of traffic accidents outside of court by the police is first agreed upon by both parties, so that the police can mediate and resolve the problem more easily. The types of accidents that can be resolved through mediation by the police are minor accidents that do not cause serious injuries or take someone's life. This out-of-court settlement is considered better and more effective because the process is shorter, costs less, and allows both parties to reconcile, forgive each other, and admit their respective mistakes more quickly. The resolution methods commonly used by the police in handling traffic accidents outside of court include P21, SP3, diversion, and ADR (Alternative Dispute Resolution).

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