

Legal Reconstruction of the Termination of Highway Traffic Accident Investigation Based on the Values of Justice

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Abstract

The research aims to analyze the weaknesses of the current rules for stopping the investigation of road traffic accident cases and how to reconstruct the rules for stopping the investigation of road traffic accident cases based on the value of justice. To achieve this goal, an empirical juridical approach is used. The research specification is descriptive analysis. Primary data was obtained directly from the field. Collecting data through field studies (interviews) and literature studies. The data is presented in the form of descriptions that are arranged systematically, logically, and rationally, and analyzed using qualitative descriptive techniques. Research shows that the weaknesses are caused by the imposing conditional crimes which include the following: (1) the legal substance, related laws, and regulations have not accommodated the unique traffic accident cases. (2) Legal structure, not all Resort Police (Polres) implement traffic accident cessation based on restoration justice. (3) The legal culture and public views on stopping the investigation of road traffic accident cases have not been fully understood by the public. and based on this, the legal Reconstruction of stopping investigations of road traffic accident cases based on the value of justice can be done by encouraging the immediate ratification of the Draft Criminal Code into the National Criminal Code, by expanding the basic criminal sanctions on traffic accident cases in the form of humanitarian assistance based on the agreement of the litigants. With the following formulas: 1. The agreement of the litigating parties is requested for a resolution/deed of reconciliation to the Court Judge. 2. The decree/deed of peace has legal force and executorial power as well as control by state institutions outside the police as investigators. 3. The deed of peace from the judge is used as the basis for stopping the investigation for the sake of the law because the application of restorative justice is needed in order to realize a fair and transparent law.

Keywords: Legal Reconstruction, Investigation, Traffic Accident, Justice Value.

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INTRODUCTION

Public order is a reflection of the performance of the Indonesian National Police (Polri) together with citizens as a civilized society. Therefore, a place where there are members of the National Police should be a place where there is order, the law is enforced, and justice is felt. And it should be felt by the weakest citizens.

The National Police of the Republic of Indonesia is a state instrument that plays a role in maintaining public security and order, enforcing the law, and providing protection, safety, and services to the community in the context of maintaining domestic security (Widodo, 2018).

The decline in the image of the Police in the eyes of the public is more complete when faced with dilemmatic situations and conditions. On the one hand, the Police appear as protectors and protectors of the community, at the same time they must be able to appear as law enforcers and enforcers of the community, to discipline the community in the same field and with the same target.

One of the problems faced today is the high number of road traffic accidents. The causative factors that can cause road traffic problems are: humans as road users, vehicles, road conditions, and weather.

The location of the role of humans as road users is a very important factor that can cause traffic problems therefore careful driving and strict order on

the road will reduce the possibility of traffic accidents. The awareness of each car driver and motorbike driver towards unwritten rules related to road manners can also affect the rate of accidents. The reason is that not everyone has the same awareness, mindset, and etiquette on the highway.

Currently, in the Criminal Code, the defendant in the accident case is subject to the Article of negligence, the defendant is also subject to the Traffic Law. However, in certain cases, the article is considered not to reflect the community's sense of justice, so a more serious article is needed. In the draft of the Bill in the National Criminal Code, it is written that the discussion of Article 359 related to negligence in traffic crimes will be discussed in the future. This shows that the drafters of the new Criminal Code Bill still need input on what types of crimes are imposed/applied to the offender, which can be considered to provide benefits to the victim/heir.

The development of science and technological advances also triggers the complexity of crime on the highway, which will affect the stability of domestic security. The emergence of new modes of highway crime is fast and tends to be unpredictable. In overcoming every challenge and dynamics of the police's duties as law enforcers which are increasingly complex, it is necessary to have the willingness of investigators to improve the quality of services that are precise in the VUCA era (volatility, uncertainty, complexity, and ambiguity) towards society 5.0.

Police investigations from the Promoter era are now transitioning to the *Presisi* (Precision) Police a term which stands for *Prediktif, Responsibilitas, and Transparansi berkeadilan* (Predictive, Responsibility, and Fair Transparency) (Kompas.com, 2022). Precise Police Transformation as ideas in understanding the challenges of future tasks and what the community hopes for the Police on suggestions from various parties. It is time for Polri investigators to respond to the hopes and desires of the community in law enforcement in the field of traffic in order to create a sense of justice. To ensure the interests and expectations of the community in creating security and order. Fair transparency is the realization of principles, ways of thinking, and systems that are open, accountable, humanistic, and easy to monitor as social control.

In connection with the conditions, facts above, and the issue of the transformation of the Precision Police, there are thoughts that lead to police action in the traffic accident unit in handling every incident of a responsive highway traffic accident and fair transparency. Therefore, Based on the above background, the authors are interested in conducting research titled "Legal Reconstruction Of The Termination Of Highway Traffic Accident Investigation

Based On The Values Of Justice" where the authors raise 2 (two) main issues as follows:

1. What are the weaknesses of the regulation of the termination of road traffic accident Investigations in Indonesia Currently?
2. How is the Legal Reconstruction of the regulation of the termination of road traffic accident Investigations in Indonesia based on Justice Value?

METHOD OF RESEARCH

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010):

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

RESEARCH RESULT AND DISCUSSION

1. Weaknesses of the Regulation of the Termination of Road Traffic Accident Investigations in Indonesia Currently

The laws and regulations governing the Termination of Traffic Accident Investigations are the

centers of the problem for which there is no unified view on the guidelines for Terminating Traffic Accident Investigations covering the nature, objectives to be achieved, as well as the measures in the Termination of Traffic Accident Investigations. Thus, in substance, the law regarding the regulation on Termination of Traffic Accident Investigations has not yet realized justice and certainty.

There are still confusion from investigators about the rules that can provide a sense of justice and certainty regarding the termination of the investigation of road traffic accident cases. Basically, every traffic accident begins with a violation, namely a violation that is careless, negligence, (Culpa) (Enggarsasi, 2017). So that the violation results in traffic accidents with material and/or fatalities.

Here, traffic accident investigators at the Traffic Unit at the Resort Police (Polres). Polres are required to be professional, not just ordinary traffic accidents that cause people to die. It turns out that traffic accidents can be used as the *modus operandi* of murder cases. A traffic accident with an intentional direction can be categorized as a homicide. To answer this problem, restorative justice is needed.

Restorative Justice is the actualization or development of Progressive Law which in the legal school is known as an effort to free oneself from the conventional way of working inherited by the positive law school with all its formal procedural doctrines and procedures which actually gives birth to formal justice, not substantial justice. Progressive Law selection because it is considered more soft or flexible (Ness, 2022).

According to Satjipto Raharjo, in Widodo (2019), law enforcement is essentially the enforcement of ideas or concepts about justice, truth, social benefits, and so on. So law enforcement is an attempt to make these ideas and concepts a reality. In essence, law enforcement embodies values or rules that contain justice and truth, law enforcement is not only the task of law enforcers who are known conventionally, but it is the duty of everyone. However, in relation to public law, it is the government that is responsible.

There are traffic accidents that can be applied by Restorative Justice, but the case is in the category of minor traffic accidents. See the criteria for traffic accidents in Law No. 22 of 2009 concerning LLAJ, what are the criteria for minor traffic accidents? Road traffic accidents are still a scary specter on Indonesian roads. There are various types, ranging from minor to serious accidents. However, how exactly can the accident be called light, moderate, or severe? In Law No. 22 of 2009 concerning Road Traffic and Transportation, where accidents are classified into three parts. In paragraph 2, regarding the Classification and

Handling of Traffic Accident Cases, Article 229 paragraphs one to four, traffic accidents are classified into:

- a. Minor Traffic Accident, which results in damage to Vehicles and (or) goods.
- b. Moderate Traffic Accidents, namely accidents that result in minor injuries and also damage to vehicles and (or) goods.
- c. Heavy traffic accidents, resulting in the victim's death or serious injury.

The Regulation of the Indonesian National Police which is often referred to as the National Police Regulation or Perpol concerning the Handling of Crimes based on Restorative Justice is a step by the Police in realizing the settlement of criminal acts by prioritizing Restorative Justice which emphasizes recovery back to its original state and the balance of protection and interests of victims and perpetrators of criminal acts. Not being oriented toward punishment is a legal requirement in society.

The Police Regulation concerning the Handling of Crimes based on Restorative Justice is a new concept in criminal law enforcement that accommodates the norms and values that apply in society as a solution while providing legal certainty, especially benefits and a sense of community justice, in order to answer the development of community legal needs that meet the sense of justice of all parties, which is a manifestation of Polri's authority in accordance with Article 16 and Article 18 of Law No. 02 of 2002 concerning the Indonesian National Police.

Restorative Justice is the settlement of criminal acts by involving perpetrators, victims, and families of perpetrators, families of victims, community leaders, religious leaders, traditional leaders, or stakeholders to jointly seek a just settlement through peace by emphasizing re-election to its original state. (Article 1 letter 3 Police Regulation No.8/2021)

What is interesting in this research is the phrase to terminate an investigation for the sake of law based on restorative justice; this phrase is implied and written in Perpol number 8 of 2021. However, in the Criminal Code and the Criminal Procedure Code, there is no phrase to terminate an investigation for the sake of law based on restorative justice. The Criminal Code stipulates that the prosecution will fail because there is not enough evidence; not a crime; and by law (suspect died, or the crime has expired). The findings of this research are that the regulations in the Perpol are still contrary to the laws above.

Termination of an investigation is one of the cases settlement activities carried out if: There is not enough evidence; the incident does not constitute a crime or; Discontinued by law because: (The suspect died, the criminal charge has expired, or the complaint

is revoked (complaint offense), the crime has obtained a judge's decision which has permanent and definite legal force).

Based on the foregoing, it can be said that the weaknesses in the current terms of the investigation of road traffic accident cases include: First, the process of stopping the investigation is not running properly. Research that only cases that were P-21 were notified to the prosecution (Putri, 2015). Second, from the Polres that were sampled, not all of them terminated the investigation of highway traffic accidents for the sake of the law because of the implementation of the restoration of Justice, because the termination of the investigation was not the domain of the restoration of Justice. Third, there is no social control, whether, in terms of stopping the investigation by investigators, there are still parties who do not benefit.

2. Legal Reconstruction of the Regulation of the Termination of Road Traffic Accident Investigations in Indonesia Based on Justice Value

Road Traffic is the movement of people, goods, and animals. Many problems arise with the ongoing traffic on the highway, which is still the homework for The Nation, including Violations, Congestion, and Traffic accidents on the highway. As a result of traffic violations, there are road traffic accidents, so there are many legal relationships that arise as a result of legal actions from legal subjects. This legal action is the beginning of the birth of legal relations, namely interactions between legal subjects that have legal relevance or have legal consequences.

Government legal actions are actions that by their nature cause legal consequences, there are several possibilities for government legal actions, depending on the legal instruments used by the government when carrying out legal actions. The legal instruments commonly used are decisions and stipulations in taking legal actions. This is because the decisions issued by the government are statutory regulations.

In relation to the legislation, which regulates the termination of investigations of road traffic accident cases, which is the center of the problem, there is a unified view of the guidelines for stopping investigations carried out by the National Police as investigators. Termination of Highway Traffic Accident Investigations aims to ensure legal certainty, create a sense of justice and provide benefits for the parties involved in road traffic accidents. Therefore, the National Police must have uniform formal guidelines in Terminating the Investigation of Highway Traffic Accident Cases. Of course, it is necessary to expand the criminal sanctions in the Criminal Code against cases of traffic accidents due to unintentional (Culpa) actions.

Termination of Highway Traffic Accident Investigations is an integral part of the criminal justice

system process, this can be seen from the process carried out by the Police, where people who are involved in road traffic accidents hope that the police will not proceed until the trial in Court, because it is considered complicated, troublesome, convoluted and takes a long time. Even though the parties involved in the traffic accident have agreed to make a peace agreement.

Police performance also requires supervision or control from government agencies. Therefore, the investigation and termination of the investigation by the National Police should not be reported to the Prosecutor, but the facts on the ground are not working. So to get social control, legal force, the power of execution, and the peace agreement that has occurred from the parties involved in the traffic accident, and then the parties ask the judge in the court to issue a peace deed.

The termination of the investigation of Highway Traffic Accident Cases is intended to provide legal certainty for criminals and other members of the community. After the reconciliation, the judge examines whether the parties have truly accepted each other and no one has any objections or is burdened with reconciliation due to the Highway Traffic Accident Case, to ensure that the reconciliation has truly fulfilled all the requirements set by the judge. So the judge immediately issued a deed of peace, in order to avoid other legal remedies (Pakaya, 2022).

In the customs and culture of the Indonesian people, there are certain parties who often take advantage of the situation to take advantage. Peace if the judge is not asked to make a deed of peace means that peace only binds both parties, and does not yet have legal force, so if one day there will be more serious problems.

The parties must ask the judge to issue a peace deed when there is an agreement in the traffic accident case so that with the peace deed that has obtained legal force; the parties request the investigator to terminate the investigation of the Highway Traffic Accident Case (Wirawan, 2022).

Based on this, the Reconstruction as meant by the author is the rule for Terminating the Investigation of Road Traffic Accident Cases: First, the legal substance (regulations), the need for formal administration similarities that are used as guidelines for investigators in order to realize legal certainty. There is a need for criminal expansion in the National Criminal Code for Culpa offenses in traffic accident cases. Second, the Legal Structure (Law Enforcement Apparatus) There needs to be social control in stopping direct investigations in order to ensure the realization of a sense of social justice. Third, Legal Culture (Society); there are still parties who take advantage and take

advantage of every traffic accident case if peace is realized between the parties. It is necessary to understand that the peace statement only binds the parties, so there is a need for a peace deed/determination from the judge.

With the reconstruction of the law, he can formulate a new criminal expansion. The criminal extensions are Humanitarian crimes, namely assistance for medical expenses and or funeral costs to victims and/or compensation based on humanitarian values to heirs, for Culpa's actions that result in road traffic accidents with loss of life and material. Criminals for suspects who are poor/mediocre results, can be applied Make a statement of apology to the victim's heirs and the state must be present through the social service, provide guidance according to their skills, and be directed to work humanely so that the results can be divided in 2, partly for himself, partly given to the heirs of the victim.

Furthermore, to provide certainty (normative legal) as the basis for law enforcement officers (Investigators) and to realize fair transparency in stopping the investigation of road traffic accident cases. Perpol Rule 8/2021 Concerning Handling of TP Based on Restorative Justice, in Article 15 paragraph (3) if there is a peace agreement between the parties involved in a traffic accident in the case of negligence / Culpa, the investigator is obliged to request the determination of a peace statement/peace deed to the judge at the Court. The stipulation of peace or peace deed has executive power, with the existence of a peace deed from the judge; investigators can use the basis for terminating Highway traffic accident cases in order to realize justice and legal certainty.

CONCLUSION

Based on the results of the research, the following conclusions can be drawn:

1. The weaknesses that are found by the Author are in the termination of the investigation of road traffic accident cases at this time, such as, First, the process of stopping the investigation did not run properly, every time starting an investigation and stopping an investigation the investigator notified the prosecutor, but the results of the study showed that only cases that are P-21 are notified to the prosecution. Second, from the Polres that were sampled, not all of them terminated the investigation of highway traffic accidents for the sake of the law because of the implementation of the restoration of Justice, because the termination of the investigation was not the domain of the restoration of Justice. Third, there is no social control, whether, in terms of stopping the investigation by investigators, there are still parties who do not benefit.
2. The legal reconstruction proposed by the author is in the rules for the termination of investigation of

highway traffic accident cases: First, legal substance (regulations), the need for formal administrative equality that is used as a guide for investigators in order to realize legal certainty. There is a need for criminal expansion in the National Criminal Code for Culpa offenses in traffic accident cases. Second, the Legal Structure (Law Enforcement Apparatus) There needs to be social control in stopping direct investigations in order to ensure the realization of a sense of social justice. Third, Legal Culture (Society); there are still parties who take advantage and take advantage of every traffic accident case if peace is realized between the parties. It is necessary to understand that the peace statement only binds the parties, so there is a need for a peace deed or determination from the judge.

REFERENCES

- Enggarsasi, U., & Sa'diyah, N. K. (2017). Kajian terhadap faktor-faktor penyebab kecelakaan lalu lintas dalam upaya perbaikan pencegahan kecelakaan lalu lintas. *Perspektif*, 22(3), 238-247. 10.30742/perspektif.v22i3.632.
- Faisal. (2010). *Menerobos Positivisme Hukum*. Rangkang Education, Yogyakarta, p.56.
- Kompas.com. (2022). *Arti Presisi, Slogan Polri Era Kapolri Jenderal Listyo Sigit Prabowo*, taken from <https://nasional.kompas.com/read/2022/08/28/04030061/arti-presisi-slogan-polri-era-kapolri-jenderal-listyo-sigit-prabowo>, on 17 September 2022.
- Ness, D., Strong, K., Derby, J., & Parker, L. (2022). *Restoring Justice: An Introduction to Restorative Justice 6th edition*. 10.4324/9781003159773.
- Pakaya, R. H., & Retnowati, T. (2022). Legal Protection for Victims of Traffic Accidents Due to Against The Law. *YURISDIKSI: Jurnal Wacana Hukum dan Sains*, 18(1), 96-113. 10.55173/yurisdiksi.v18i1.127.
- Pratama, T. G. W. (2020). The urgency for implementing crytomnesia on Indonesian copyright law. *Saudi Journal of Humanities and Social Sciences*, 5(10), 508-514. DOI:10.36348/sjhss.2020.v05i10.001
- Putri, N. S., & Tajudin, I. (2015). Penyelesaian tindak pidana lalu lintas melalui pendekatan restorative justice sebagai dasar penghentian penyidikan dan perwujudan asas keadilan dalam penjatuhan putusan. *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)*, 2(1). 10.22304/pjih.v2n1.a9.
- Widodo, W., & Galang, T. (2019, October). Poverty, Evictions and Development: Efforts to Build Social Welfare through the Concept of Welfare State in Indonesia. In *3rd International Conference on Globalization of Law and Local*

Wisdom (ICGLOW 2019) (pp. 260-263). Atlantis Press. Dx.Doi.Org/10.2991/Icglow-19.2019.65

- Widodo, W., Budoyo, S., & Pratama, T. G. W. (2018). The role of law politics on creating good governance and clean governance for a free-corruption Indonesia in 2030. *The Social Sciences*, 13(8), 1307-1311.
- Wirawan, A. A., Renggong, R., & Madiung, B. (2022). ANALISIS PENYIDIKAN TERHADAP TERSANGKA PELANGGAR LALU LINTAS YANG MENGAKIBATKAN KORBAN JIWA. *Indonesian Journal of Legality of Law*, 4(2), 178-182. 10.35965/ijlf.v4i2.1472.