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IMPLEMENTATION OF RESTORATIVE JUSTICE IN THE SETTLEMENT OF TRAFFIC ACCIDENTS PERFORMED BY UNDERAGES

(Study at the Police Traffic Unit – Cirebon City)

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Abstract:

Traffic accidents involving minors have increased from year to year due to the lack of orderly traffic, as for the formulation of the problem in this thesis, how to apply restorative justice to traffic accident cases committed by minors in the jurisdiction of the Polres - Cirebon City and to find out the problems and solutions. This study uses a sociological juridical research method with descriptive analysis specifications based on primary data and secondary data. Primary data was obtained by means of interviews and secondary data obtained by literature study and then analyzed qualitatively. Research problems are analyzed with law enforcement theory, accountability theory and restorative justice theory.

Based on the research results, the mechanism for solving traffic accident cases committed by minors with a restorative justice approach at the Cirebon City Police Traffic Unit at the Cirebon City Police Traffic Accident Unit, namely when an accident occurs, the first thing to do is to process the crime scene. (TKP) for victims and perpetrators, both of them. After processing the TKP, the police make a TKP processing report, from the minutes the police get evidence from the accident case; The investigators carried out the investigation, after the investigation process, they were given time for the victims and perpetrators to argue, from this process Restorative Justice began to occur; If the victim and perpetrator are willing to reconcile and the perpetrator is willing to pay compensation, the parties make a statement of peace and agree not to proceed with the case in court;

Another barrier to the use of restitution as a remedy for traffic accidents is:

- 1) Traffic accidents caused by the death of the victim;
- 2) The victim is unwilling to make peace
- 3) It is difficult to find common ground for material compensation given between the perpetrators and the victims.

Efforts made to overcome obstacles in the implementation of restorative justice in traffic accidents are conducting Enlightenment related to Traffic Law No. 22 of 2009 concerning Road Transport Traffic and Head of Police Regulation Number 15 of 2013 concerning Procedures for Settlement of Traffic Accidents, Help mediate both parties and carry out fast processing/handling of cases of minor traffic accidents which result in material losses with small/minor damage values but are still carried out in accordance with the

Keywords: Traffic Accidents, Minors, Restorative justice.

1. Introduction

Cases of road traffic accidents are particularly concerning from a quality and quantity point of view. In a traffic accident case, it often does not only result in minor or serious injuries, but also causes death. Although the number of vehicles involved in traffic accidents dropped by 10.06 percent during the 31st week compared with the preceding week, which is also the 31st week data were recorded throughout 2022. collected by Korlantas Polri as many as 974 cases with 189 people died, 142 people were seriously injured, and 1170 people were lightly injured with material damage of 1,675,500,000 rupiah. Whereas, in the previous week, there were 1,083 traffic accidents with 200 deaths, 135 serious injuries, and 139 persons with minor injuries with a total loss of 1,958,801,700 rupiah, in the 30th week.¹

Human error and negligence are the most frequent causes of traffic accidents. Driver/rider disobedience to traffic rules is the main cause of traffic accidents, besides the bad personal character of the driver/rider such as wanting to win alone, not caring about other people so that other people become troubled because of it, other than that another cause is want gain as much as possible even if you have to harm others².

In Indonesian criminal law, cases are usually resolved by justice. This penal justice approach must be reformed as an alternative to solving criminal problems with a focus on problem/conflict recovery and achieving balance in society, namely restorative justice. Through restorative justice, the basic solution is to achieve a balance between victims and perpetrators of crime, and then the criminal process can be carried out flexibly so that it is not limited to the need for justice. One such solution is the example of a minor. The purpose of restorative justice is to restore the consequences of a child's violation and to improve the morale of the child so that the child no longer repeats their actions. Imprisoning a child can interfere with his physical, mental and psychological development. In fact, many of the victims' families demanded the most severe punishment because of their reluctance to die to their loved ones, even if by chance, even before peace was achieved, it was very difficult to achieve.

Based on the problems mentioned above, the problems that will be discussed in the study entitled Application of Restorative justice in Settlement of Traffic Accident Cases Committed by Underage Children (Studies in the Traffic Police Unit of the Police - Cirebon City), With the brief explanation of the background above, there are several problems, among others:

1. What is the mechanism for resolving traffic accident cases committed by minors using a restorative justice approach at the Cirebon City Police Traffic Unit?
2. What are the obstacles found in solving traffic accident cases committed by children at the Cirebon City Police Traffic Unit?
3. How are the efforts made by the Cirebon City Police Traffic Unit to overcome these obstacles?

2. Method

With this research method, which is based on a sociological juridical approach, empirical research is the way to do it. The sociological approach to social interaction is

¹[ps://otomotif.kompas.com/read/2020/08/06/082200515/kasus-kecelakaan-lalu-lintas-di-indonesia-diklaim-turun-10-persen-diakses-pada-tanggal-11-Desember-2022-Pukul-03.09-WIB](https://otomotif.kompas.com/read/2020/08/06/082200515/kasus-kecelakaan-lalu-lintas-di-indonesia-diklaim-turun-10-persen-diakses-pada-tanggal-11-Desember-2022-Pukul-03.09-WIB)

² Marjan Miharja, *Diversion and Restorative justice in Handling Traffic Accidents*, Pasuruan, Qiara Media, 2001, p.,5.

used for the purpose of studying how legal aspects play a role in society's interactions, and it also helps identify and clarify findings from other types of material not covered by law. The research location chosen in this study is in the area of the Polres Traffic Unit - Cirebon City, West Java. This location was chosen with the consideration that in practice the settlement of traffic accident problems uses peace in some cases of traffic accidents. There are 2 (two) types of data sources used in this empirical legal research, namely primary data and secondary data, viz:

1. Primary Data Source

Data obtained from field surveys shall be the primary data. Primary data, for example the behavior of community members observed in research, will be gathered directly from major sources.³ In the primary data in this study, namely data obtained by researchers from the results of interviews and observations made to the Officers of the Cirebon City Police Traffic Unit.

2. Secondary Data Sources

Secondary data is data that is collected, processed and then presented by other parties, both in terms of form and content of secondary data that have been formed and filled in by previous researchers, thus future researchers do not have oversight of data collection, management, analysis and construction.⁴ In the secondary data in this study, obtained from a second source which is a complement. The secondary data includes official documents, books as well as from research results which are used as reference material and literature regarding the provisions of restorative justice.

The data collection techniques used in this study include:

- a. Observation
- b. Interview
- c. documentation

3. Mechanism of settlement of traffic accident cases carried out by minors with a restorative justice approach to the Cirebon City Police Traffic Unit?

Before the author explains about the settlement of traffic accidents involving minors carried out through a restorative justice approach in the jurisdiction of the Cirebon City Police, the author will first convey that the settlement of traffic accident cases can be carried out in the following way⁵ :

1) Settlement Through ADR (Alternative Dispute Resolution)

ADR is a foreign concept with different meanings in Indonesian, e.g.: dispute resolution options and alternative dispute resolution mechanisms; MAPSPPSOutofcourt ADR Options and Cooperation Dispute Resolution Mechanism.

However, Article 1 paragraph 10 of Law No. 30 of 1999 concerning arbitration means that an Alternative Dispute Resolution (ADR) is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely settlements outside the court by way of consultation, negotiation, mediation, conciliation, or expert judgment.

In practice, essentially ADR can be interpreted as an alternative to litigation or an alternative to adjudication.

³ Soerjono Soekamto, *introduction to legal research*, Jakarta, ui pres, 1986, p. 10.

⁴ *ibid*, p. 12.

⁵ Interview with Head of Binmas AKP Dadang Suprayogi, S.H. On January 24, 2023 at 14.45 WIB

Alternative to litigation means all out-of-court dispute settlement mechanisms, so that in this case arbitration is included as part of ADR. Whereas, Alternative to adjudication means a dispute resolution mechanism that is consensus or cooperative in nature, not through the procedure of filing a lawsuit against a third party who has the authority to make a decision. Consultation, negotiation, mediation and conciliation as well as expert opinion shall be part of the ADR but arbitration is excluded..

Settlement of cases through ADR must be guided by the Chief of Police Regulation number 15 of 2013 article 6, article 61, article 62 and article 63

2) Settlement by Diversion ⁶

Diversion is the diversion of settlement of cases of minors from the criminal justice process to processes outside of criminal justice, as referred to in Article 1 number 7 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (“SPPA Law”). Law on the Juvenile Criminal Justice System has substantially regulated restorative justice and diversion which is intended to avoid and distance children from the judicial process so as to avoid stigmatization of children who are in conflict with the law and it is hoped that children can return to the social environment fairly.

This is what is mentioned in the General Explanation section of the Law on the Juvenile Criminal Justice System. Diversion is expressly stated in Article 5 paragraph (3) that in the juvenile justice system it is mandatory to seek diversion. Article 8 paragraph (1) of the Juvenile Criminal Justice System Law also stipulates that the diversion process is carried out through deliberations involving children and their parents/guardians, victims and/or their parents/guardians, social counselors, and professional social workers based on a restorative justice approach.

This diversion is aimed at Article 6 of the Law on the Juvenile Criminal Justice System:

- a) Achieving peace between the victim and the child;
- b) Resolving child cases outside the judicial process;
- c) Prevent children from deprivation of independence;
- d) Encouraging the community to participate; And
- e) Instill a sense of responsibility to children.

It is true that at the level of investigation, prosecution and examination of cases of children in district courts it is mandatory to seek diversion as referred to in Article 7 paragraph (1) of the Law on the Juvenile Criminal Justice System. Diversion is only carried out in terms of a criminal act committed [Article 7 paragraph (2) of the Juvenile Criminal Justice System Law:

Prior to the settlement of traffic accidents committed by minors through a restorative justice approach in the jurisdiction of the Cirebon City Police, the author first described the number of traffic accidents that occurred in the jurisdiction of the Cirebon City Police as follows⁷:

Table 4.1

⁶ *ibid*

⁷ Interview with Head of Public AKP Triyono Raharja, S.IK., M.H., CPHR. On December 13, 2022 at 09.15 WIB

Data on the number of traffic accidents that occurred in the jurisdiction of the Cirebon City district based on traffic accident criteria from 2020 to 2022

No	year	criteria				amount	information
		general	blood	Tbl	single		
1	2020	54	3	17	2	76	Case
2	2021	66	5	15	1	87	Case
3	2022	46	4	14	3	67	Case
Total		166	12	46	6	230	Case

Source: Cirebon City Police Traffic Unit 2022

Based on the table above, the author can explain that the amount of data on traffic accidents that occurred in the legal area of the Cirebon City Police based on traffic accident criteria from 2020 to 2022 saw a decrease in the number of traffic accident cases. There have been 76 road traffic accidents over the period 2020 to 2022, with 67 cases during this period. There are several criteria in regard to traffic accidents, such as the general crash, blood or hit & run and a single accident.

Furthermore, the table below will describe the number of traffic accidents that occurred in the jurisdiction of the Cirebon City Police, based on the age of the perpetrators of traffic accidents as follows:

Table 4.2

Data on the number of traffic accidents that occurred in the jurisdiction of the Cirebon City district based on the age of traffic accident perpetrators from 2020 to 2022

No	year	criteria				
		< 17 year	18-35 year	36-60 year	amount	Keterangan
1	2020	18	30	28	76	Case
2	2021	19	37	31	87	Case
3	2022	20	24	18	67	Case
Total		57	91	77	230	Case

Source: Cirebon City Police Traffic Unit 2022

Based on the table above, the author can explain that the amount of data on traffic accident cases that occur in the jurisdiction of the Cirebon City Police is based on the age of the perpetrators involved in traffic accidents from 2020 to 2022. There is an increase in traffic accident cases involving perpetrators aged less than 17 Years. Meanwhile, for the age of traffic accident cases involving perpetrators aged 18 to 35 years, there has been a decrease in the age of perpetrators from 2020 to 2022. Meanwhile, traffic accident cases involving perpetrators aged 36 to 60 years have decreased traffic accidents from 2020 to 2022.

The following below illustrates the amount of traffic accident data based on the criteria for traffic accident victims as follows:

Table 4.3

Data on the number of traffic accidents that occurred in the jurisdiction of the Cirebon City district based on the criteria for traffic accident victims from 2020 to 2022

No	year	criteria			amount	information
		die	seriously injured	minor injuries		

1	2020	36	28	78	76	Case
2	2021	35	11	114	87	Case
3	2022	27	6	87	67	Case
Jumlah		98	45	279	230	Case

Source: Cirebon City Police Traffic Unit 2022

Based on the table above, the author can explain that from 2020 to 2022 there has been a decrease in the number of victims who died as a result of traffic accidents, while from 2020 to 2022 there has been a decrease in the number of victims who were seriously injured. Furthermore, from 2020 to 2022 there will be an increase in the number of minor injuries caused by traffic accidents in the jurisdiction of the Cirebon City Police. The following below illustrates the number of traffic accidents whose cases were resolved using restorative justice.

Table 4.4

Data on the number of traffic accidents that occurred in the jurisdiction of the Cirebon City district based on the settlement of traffic accident cases from 2020 to 2022

No	Tahun	Penyelesaian		Jumlah	Keterangan
		restoratif	Tidak restoratif		
1	2020	11	65	76	Case
2	2021	21	66	87	Case
3	2022	18	49	67	Case
Jumlah		50	180	230	Case

Source: Cirebon City Police Traffic Unit 2022

Based on the table above, the author can describe the amount of traffic accident data in the jurisdiction of the Cirebon City Police where the settlement of cases is carried out based on restorative justice. As for the data, in 2020 there were 76 traffic accident cases of which 11 (eleven) cases were resolved by restorative justice, in 2021 there were 87 traffic accident cases where 21 cases were resolved by restorative justice. And in 2022 there were 67 cases of traffic accidents of which 18 cases were resolved with restorative justice.

One example in analyzing a case or case whose settlement is carried out outside the related court through a restorative justice approach is as follows:

Suspect Identity

Name of suspect: Doni Silalahi

Male gender

15 years old

Occupation : Student

Address : Jl. Raya Sunan Gunung Jati. The jurisdiction includes Kec. Map and Kec. Suranenggala, Kab. CirebonKronologis kejadian perkara/kasus⁸:

There was a traffic accident on Sunday 03 October 2022 at around 10.00 WIB, on Jl. Dr, Cipto Mangunkusumo, – Kel. Pekiran – Kec. Kesambi City of Cirebon, when the two-wheeled vehicle N Max BK 8101 TP was driven on behalf of Doni Silalahi with 1 (one) friend traveling from the north, then before the road turned to the left, it overtook a

⁸ Interview with Head of Public AKP Triyono Raharja, S.IK., M.H., CPHR. On December 13, 2022 at 09.15 WIB

motorcycle type vehicle in front of it by using the right lane and upon arrival at the road turning left from the south direction at the same time coming from the opposite direction, namely the opposite direction, the Mitsubishi Tronton twelve-wheeled vehicle Police Number B 9579 UIS driven on behalf of Irham Siregar carrying 1 (one) top passenger Jon Arifin's name. Seeing this, the driver of the Mitsubishi Tronton twelve-wheeled vehicle, Police Number B 9579 UIS, tried to avoid going left while braking, but a collision was unavoidable. Kesambi No. 56, Kesambi, Kec. Kesambi, Cirebon City, West Java.

Before the discussion continues, it is better for the author to explain the stages in the process of investigating and investigating a traffic accident crime, as for the stages in the investigation and investigation process, which can be seen in the points below.

Stages of Handling Traffic Accidents

The process of investigating and investigating a traffic accident case really needs to be done, so that the case becomes bright without any party feeling aggrieved and to avoid stipulating the status of someone involved in the traffic accident case, steps/procedures are taken to make it clear and bright. as for the stages carried out by the Investigator in starting an Accident Case, are as follows⁹ :

1. Existence of Reports or Events

If an event is discovered directly, reports have been made and information has been received from both parties involved or the general public who knows and witnessed events as described below for each stage, a new case may be opened :

- a) After receiving reports from the public.
- b) The nearest police officer/Traffic Accident Unit or Traffic Function Picket at that time must immediately go to the TKP, take First Action at the TKP, provide First Aid, and especially for Traffic Accident Unit Officers carry out TKP processing.
- c) In the event of a Traffic Accident resulting in human casualties, the Integrated Police officer is obliged to inform the officer of the nearest hospital.
- d) In the event of a Traffic Accident containing dangerous and/or toxic goods and/or causing a dangerous situation, the officer is obliged to inform it and ask for assistance from the relevant agency.

2. Executing Officer

The police officers who visit are the officers who know or receive the report, or the police officers who perform their duties on the picket line, according to their abilities.¹⁰.

3. Witness

Witness is anyone who has first hand knowledge of a crime or dramatic event through his senses, e.g. sight, hearing, smell, touch, and can provide important information for the purpose of determining crucial verdicts in criminal cases or incidents. Witness testimony is the first piece of evidence referred to in the Criminal Procedure

⁹ Interview with Head of Public AKP Triyono Raharja, S.IK., M.H., CPHR. On December 13, 2022 at 09.15 WIB

¹⁰ Interview with Head of Criminal Investigation Unit AKP Perida Apriani Sisera Panjaitan, S.IK., M.H. On January 10, 2023 at 09.45 WIB

Code (KUHP), in general there are no cases that escape the evidence of witness testimony.

4. Suspect Tersangka

A suspect is someone who is suspected of having committed a crime and there is sufficient reason to be examined before a court hearing. Meanwhile, according to the Criminal Procedure Code Article 1, the accused is a suspect who is prosecuted, examined and tried in court.

5. Victims

Victims are those who suffer physically and spiritually as a result of the actions of other people who seek to fulfill their own or other people's interests that conflict with the interests of the injured party's human rights.

6. Traffic Accident Investigation

In the context of examining witnesses, suspects or victims by performing the activities listed below, is a series of detective activity undertaken by Assistant Detective Inspectors in police from the place where the crime has taken place:

- a. Investigators conduct an assessment of the results of TKP processing to determine whether or not the elements of a crime were involved in a Traffic Accident as a basis for conducting an investigation.
- b. Investigators carry out traffic accident investigations, if there is sufficient evidence or the elements of a crime are fulfilled.
- c. The investigator terminates the traffic accident investigation, if there is not enough evidence or it is not a crime or is null and void.
- d. Traffic Accident Investigators convey the progress of the investigation to the victim or the victim's family through a Letter of Notification of the Progress of Investigation Results (SP2HP).
- e. The procedures for investigating Traffic Accidents are carried out in accordance with the Criminal Procedure Law and the provisions of the laws and regulations.

Traffic accidents are one of the social problems that exist in the legal area of the Cirebon City Police. Based on the Traffic Accident data that the authors have mentioned above. Polri is a government institution tasked with conducting traffic accident investigations and investigations. Locations of Traffic Accidents (TKP) that occurred in the jurisdiction of the Cirebon City Police mostly occurred in remote areas, far from residential areas. We know that together with Jalintim (East Cross Road), which is in the jurisdiction of the Cirebon City Police, traffic accidents often occur.

The Traffic Accident Case that occurred above according to the Assistant Investigator at the Cirebon City Police has been resolved through settlement of cases outside the trial by issuing a decree Number: S.Tap/22/V/2018/Lantas concerning Settlement of Cases Outside the Court. From the results of investigations into suspects, witnesses, experts and evidence it turns out that the incident was suspected as a criminal act that was alleged to be the suspect so that the investigation into the suspect's case was resolved by ADR¹¹.

According to Janu Hariyanto, the case above can be resolved with a restorative justice approach because the accident is still classified as a Minor Accident and each party

¹¹ Interview with Janu Hariyanto, Assistant Investigator at the Cirebon City Police, December 7, 2022 at 11.24 WIB

has agreed to settle the case outside the trial/Restorative justice, the settlement of the traffic accident case above, is in accordance with the settlement indicators

- 1) Traffic Accident Cases are classified as Minor Accidents.
- 2) The existence of a peace agreement between the two parties. Each party agrees to settle the case outside the court, on the basis of a peace agreement letter witnessed by witnesses and known by the village head/lurah.
- 3) As a result of the accident suffered material losses and the victim of the traffic accident suffered minor injuries which immediately recovered/recovered, did not cause permanent injury and the victim stated that he would not proceed with this traffic accident case both criminally and civilly.

4) As a result of an accident, the material damage/loss has been agreed for repairs¹² Furthermore, according to Septiadi Ishar, the case above has been decided with restorative justice, namely that each party has agreed to settle the case outside the court by means of peace, therefore the case is not proceeding through legal channels.¹³

Septiadi Ishar further explained that the settlement of traffic accident cases that have been contained in the ADR concept, above, is in accordance with the settlement indicators in accordance with the ADR concept, including:

- 1) Each party has agreed to declare a settlement of the case peacefully. The agreement/peace has been made/written in a peace agreement letter witnessed by witnesses from both parties and known by the village head/lurah.
- 2) Traffic Accidents are categorized as Minor, resulting from accidents, as follows:
 - a) Material Loss
 - b) The victim suffered minor injuries/abrasions

The Head of the Resort Police for the City of Cirebon, said/was of the opinion that ¹⁴: Domestic security is the main requirement in supporting the realization of a just, prosperous and prosperous civil society. The carrying out of the function of maintaining internal security is carried out by the National Police together with all elements of society as well as carrying out other security functions through the activities of maintaining security and order, law enforcement as well as protection, protection and community service.

In carrying out its duties, the National Police is guided by applicable legal regulations by carrying out law enforcement activities aimed at realizing social justice with legal certainty so as to create legal order in society according to law enforcement duties. However, these law enforcement activities should pay attention to various aspects of life in society and not only based on the principle of legality alone but also consider the principle of legitimacy in the form of local and situational wisdom. This is based on the phenomenon of the development of the current situation of society, especially with regard to law enforcement activities where some people are dissatisfied with law enforcement mechanisms and the criminal justice process carried out by law enforcers

¹² Interview with Septiadi Ishar, Assistant Investigator at the Cirebon City Police, December 7, 2022 at 11.24 WIB

¹³ Interview with Septiadi Ishar, Assistant Investigator at the Cirebon City Police, December 7, 2022 at 11.24 WIB

¹⁴ Interview with the Cirebon Police Chief AKBP Arie Indra Sentanu, S.H., S.I.K, December 19, 2022 at 09.24 WIB

and want that acts of law violations, especially minor ones, can be resolved outside the judicial process. crime by paying attention to and taking into account the sense of justice in society and the public interest.

Based on these considerations, it is necessary to establish guidelines for regional units in the field of dealing with social problems resulting from societies through mechanisms other than judicial processes and certain cases aimed at satisfying society's wishes and sense of justice based on legislation, among others:

1. Undang-undang Nomor 2 Tahun 2002 tentang Kepolisian Negara RI
2. Undang-undang Nomor 8 Tahun 1981 tentang KUHP
3. Undang-undang Nomor 1 Tahun 1946 tentang KUHP
4. Undang-undang Nomor 22 Tahun 2009 tentang LLAJR
5. Undang-undang Nomor 11 Tahun 2012 tentang system peradilan anak
6. Peraturan Kapolri Nomor 15 tahun 2013 tentang Tatacara penanganan kecelakaan lalu lintas

Thus the author can conclude that the mechanism for resolving traffic accident cases carried out by minors with a restorative justice approach at the Cirebon City Police Traffic Unit, namely when an accident occurs, the first thing to do is to treat the crime scene (TKP) both to victims and perpetrators. After processing the TKP, the police make a TKP processing report, from the minutes the police get evidence from the accident case; The investigators carried out the investigation, after the investigation process, they were given time for the victims and perpetrators to argue, from this process Restorative Justice began to occur; If the victim and perpetrator are willing to reconcile and the perpetrator is willing to pay compensation, the parties make a statement of peace and agree not to proceed with the case in court; The purpose of having Restorative Justice is solely to restore the relationship between victims and perpetrators, especially for children, so that children do not feel pressured when carrying out court proceedings but also do not eliminate their sense of responsibility for the losses they have done.

On this basis, the implementation of restorative justice at the Cirebon City Police Station is currently carried out through Diversion, which is expected to resolve accident cases, and then carry out disappearances with children as criminals. In accordance with Section 1 (7) of Law no. 11 of 2012, sabotage is the transfer of settlement of children from the criminal justice process to processes outside the criminal justice. The actions of the police in pursuing the diversion policy do not mean that they are abusing the powers of paragraph 1 of Article 7 of Law no. 11 of 2012, but the basis for this action by the police is letter j part (1) of article 7 of the Criminal Procedure Code, which states: "take other actions in accordance with the law who are responsible". This means that the police can act responsibly in certain circumstances in accordance with legal standards for case resolution. This power is given to investigators (police) in accordance with their duties or obligations. In connection with the declaration of peace, cases of traffic accidents with child offenders were resolved as proof of agreement. The aim of exercising restorative justice through the Diversion process is to prevent children from being detained so that children as perpetrators avoid being labeled / labeled children as criminals and teach children to be responsible for their actions. The result to be achieved with restorative justice is to encourage children to take responsibility for their actions by giving them the opportunity to compensate for mistakes made by doing good with victims.

4. Obstacles found in resolving traffic accident cases committed by children at the Cirebon City Police Traffic Unit.

There are a number of factors that will influence law enforcement. Likewise with law enforcement efforts related to solving minor traffic accident cases in a restorative way that seeks to further realize a sense of justice. Soerjono Soekanto explained that a variety of factors influence the law enforcement process to prevent and punish criminal offences which take place in society. These factors may have a positive or adverse effect on each other.

As for the factors that influence law enforcement according to Soerjono Soekanto, among others ¹⁵:

1. Legal factors
2. Law enforcement factors Facility and infrastructure factors.
3. Community factors and
4. Cultural factors or legal culture

The five factors that influence law enforcement described by Soerjono Soekanto above, also greatly influence the effectiveness of the settlement of minor traffic accident cases in order to realize a traffic accident settlement that meets a sense of justice, both in terms of victims and perpetrators of crimes.

The existence of a third party has made the atmosphere of consolidation worse. There is still a lack of public understanding of the diversionary approach. Provide information about understanding road safety and the minimum age limit for children driving motorized vehicles in schools designed for minors; Carrying out outreach with the aim of parents within the framework of the Cirebon City regional police program, meeting in villages to understand the importance of orderly traffic; Prohibit children from driving vehicles under the age of 17 and take coercive measures to prevent possible traffic accidents involving minors

The obstacles often faced by investigators from the Cirebon City Police Traffic Unit in handling traffic accidents with a restorative justice approach, including ¹⁶

- 1) In order to satisfy the demands of the victim's family, the existence of the victim's family, which does not wish to forgive the victim, requires a large amount of nominal compensation, where the victim's losses are substantial, so that the family of the perpetrator, who comes from a normal family, finds it difficult to meet the demands of the victim's family.
- 2) There is still a negative stigma from society, especially victims towards law enforcement officials in applying the concept of restorative justice, because there are not a few victims who have negative prejudice against investigators/assisting investigators who want to resolve criminal cases that befall them through peaceful means with the perpetrators, many victims who assume that the investigator defended and was paid by the perpetrator.
- 3) One of the Parties who resides/lives outside Cirebon City District or West Java Province, considering that the jurisdiction of the Cirebon City Police is partly an Inter-Provincial/Jalintim crossing that connects West Java Province to Central Java Province,

¹⁵ Soerjono Soekanto. *Factors Influencing Law Enforcement*. Jakarta, Rajawali Press, 2010. P, 8.

¹⁶ Interview with Septiadi Ishar, Assistant Investigator at the Cirebon City Police, December 7, 2022 at 11.24 WIB

and East Java so that it becomes an obstacle/ Obstacles in Settlement of Traffic Accidents Through a Restorative Justice Approach

There are further obstacles to the application of a restorative justice system for traffic accidents.¹⁷

- 1) Traffic accidents caused by the death of the victim;
- 2) The victim is unwilling to make peace
- 3) It is difficult to find common ground for material compensation given between the perpetrators and the victims.

In connection with the 3 (three) obstacles mentioned above, this is more in the personal interests of both parties and or one of the parties who wishes the Traffic Accident case to be discontinued, meanwhile according to the assessment of the Investigator/Assisting Investigator and statutory regulations that not all cases/ traffic accident cases that have been carried out by peace are stopped and peace does not drop charges.

Based on these data, it can be concluded that law enforcement against traffic crimes that occurred in the jurisdiction of the Cirebon City Police has been carried out properly. This can be seen from the series of processes of settlement of traffic crime cases, starting from the investigation process by the Police in the form of examination, filing and delegation of cases, evidence and suspects to the Prosecutor, delegation of suspects to Court and preparation of indictments by the Prosecutor, and examination and imposition crime by the Panel of Judges, which has been carried out in accordance with the procedure for settling cases as stipulated in the provisions of the Criminal Procedure Code.

However, even though it has been implemented well, the authors argue that the implementation of law enforcement has not been optimal. This can be seen at least in 2 (two) things, namely:

First, there are still perpetrators of criminal acts who cannot be uncovered and or arrested by police investigators, because they fled after a criminal accident occurred. Second, the imposition of punishment on the perpetrators, has not considered the impact caused by the actions of the perpetrators in the form of the number of victims who died due to the driver's negligence in driving his vehicle..

Traffic accidents that cause the loss of other people's lives or injuries are included in the category of violations that can be resolved criminally (solved by the state) and can also be resolved peacefully. Polri as a law enforcement apparatus is given a mandate by law to enforce the law, on the other hand Polri is also given space to carry out police discretionary actions based on its own judgment for the public interest.

5. Efforts made by the Cirebon City Police Traffic Unit to overcome these obstacles.

¹⁷ Interview with Janu Hariyanto, Assistant Investigator at the Cirebon City Police, December 7, 2022 at 11.24 WIB

In order to overcome the obstacles which have been faced when dealing with traffic accidents through a restorative justice approach in the jurisdiction of Cirebon City Police, efforts shall be made as follows¹⁸ :

- 1) While the handling/investigation of the accident case is ongoing, if each party wishes to make peace/settlement outside of the trial, the investigator will help mediate between the two parties. In addition, the investigating officer called on both parties to be acquainted with Law No. 22 of 2009 article 310 in order that they could understand each other's cases involving traffic accidents. Because a traffic accident is a case that both (both the suspect and the victim or those involved) do not want this to happen but it is the negligence of each party. So that the victim's family, who initially did not accept/do not want to forgive the suspect or demand a large enough nominal compensation, can understand the traffic accident incident/case and can be sincere. In general society Settlement of cases through a Restorative justice approach is more often known/understood as Settlement in a Familial manner. Settlement in a family can be done if each party or both parties do not feel pressured and harmed.
- 2) Facing the still negative stigma from society, both from victims and suspects in law enforcement implementing the concept of Restorative justice, not a few victims have negative prejudice against investigators/assistant investigators who want to help mediate the settlement of traffic accident cases through peaceful means , however, it is misinterpreted by assuming that the investigator is defending and being paid by one, especially the perpetrators.
- 3) In response to this, the Assistant Investigator gives freedom to both parties to negotiate. The Assistant Investigator will participate in mediation if the two parties cannot reach an agreement and ask the Investigator/Assisting Investigator to help carry out mediation. This can anticipate negative assumptions that settlement of peace/out of court is not the desire/will of the Investigator/Assistant Investigator or the opinion of Defending or being paid for by one particular party.
- 4) In the case of a Light Traffic Accident case involving Drivers of both parties or one of the parties domiciled outside Cirebon City District or West Java Province, the Cirebon City Police Assistant Traffic Unit Investigator in handling Light Traffic Accident Cases resulting in material losses that worth minor damage, the process is carried out quickly and simply but does not violate existing laws and regulations, it is still processed according to the rules. If the result of the accident causes the victim to suffer minor injuries (abrasions or bruises), the Assistant Investigator must wait for the results of the doctor's statement/post-mortem results from the doctor stating that the victim has completely recovered and there have been no other disturbances/impacts/effects.

Thus the author's opinion in overcoming these obstacles include:

1. Police Provide understanding to both parties so that each party can understand the traffic accident incident/case. Because a traffic accident is a case that both (both the suspect and the victim or those involved) do not want this to happen but it is the negligence of each party. So that the victim's family, which initially did not accept/did

¹⁸ Interview with Head of Public AKP Triyono Raharja, S.IK., M.H., CPHR. On December 13, 2022 at 09.15 WIB

not want to forgive the suspect or demanded a large enough nominal compensation, can understand the traffic accident incident/case and be able to let it go.

2. The Assistant Investigator gives freedom to both parties to negotiate. With an impartial position between the two parties.
3. For one of the parties outside the city of Cirebon, the Cirebon City Police Traffic Unit Assistant Investigator in handling Light Traffic Accident Cases that result in material losses worth small damage, the process is fast and simple but does not violate existing laws and regulations, still processed according to the rules.

6. Conclusion

1. The mechanism for solving traffic accident cases committed by minors with a restorative justice approach at the Cirebon City Police Traffic Unit at the Cirebon City Police Traffic Unit, namely when an accident occurs, the first thing to do is to process the crime scene (TKP) for both victims and perpetrators. After processing the TKP, the police make a TKP processing report, from the minutes the police get evidence from the accident case; The investigators carried out the investigation, after the investigation process, they were given time for the victims and perpetrators to argue, from this process Restorative Justice began to occur; If the victim and perpetrator are willing to reconcile and the perpetrator is willing to pay compensation, the parties make a statement of peace and agree not to proceed with the case in court; The purpose of having Restorative Justice is solely to restore the relationship between victims and perpetrators, especially for children, so that children do not feel pressured when carrying out court proceedings but also do not eliminate their sense of responsibility for the losses they have done.
2. Obstacles found in solving traffic accident cases committed by children at the Cirebon City Police Traffic Unit.
 - a. The existence of the victim's family who did not want to forgive the victim demanded a relatively large nominal compensation, where the losses suffered by the victim were quite large, so that the perpetrator's family who came from an ordinary family found it difficult to meet the demands of the victim's family.
 - b. There is still a negative stigma from society, especially victims towards law enforcement officials in applying the concept of restorative justice, because not a few victims have negative prejudice against investigators/assisting investigators who want to resolve criminal cases that befall them through peaceful means with the perpetrators, many victims think that The investigator defended and was paid by the perpetrator.
 - c. One of the Parties who resides/lives outside Cirebon City District or West Java Province, considering that the jurisdiction of the Cirebon City Police is partly an Inter-Provincial/Jalintim crossing that connects West Java Province to Central Java Province, and East Java so that it becomes an obstacle/obstacle in Settlement of Traffic Accidents Through a Restorative Justice Approach
3. Efforts made by the Cirebon City Police Traffic Unit to overcome these obstacles.
 - a. Police Provide understanding to both parties so that each party can understand the traffic accident incident/case. Because a traffic accident is a case that both (both the suspect and the victim or those involved) do not want this to happen but it is the negligence of each party. So that the victim's family, which initially did not accept/did

not want to forgive the suspect or demanded a large enough nominal compensation, can understand the traffic accident incident/case and be able to let it go.

- b. The Assistant Investigator gives freedom to both parties to negotiate. With an impartial position between the two parties.
- c. For one of the parties outside the city of Cirebon, the Cirebon City Police Traffic Unit Assistant Investigator in handling Light Traffic Accident Cases that result in material losses worth small damage, the process is carried out fast and simple but does not violate existing laws and regulations, still being processed by the rules

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