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Legal Reconstruction of Traffic Accident Settlement Based on Restorative Justice

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Abstract

The objectives of this research are to analyze and find legal weaknesses in the settlement of traffic accident cases using a restorative justice approach and how to reconstruct the legal settlement of traffic accident cases with a restorative justice approach. The method used in this study uses an empirical approach and a normative juridical approach with the paradigm used by the constructivism paradigm. The results of the research show that the Weakness of the law in the settlement of traffic accident cases is in the lack of integration of legal arrangements for the settlement of criminal cases in the criminal law system, especially in the Criminal Procedure Code according to the rules of each institution. As a result, arrangements for settling cases based on restorative justice have not been able to guarantee legal certainty Therefore the legal reconstruction of the settlement of traffic accident cases with a restorative justice approach proposed by the author can be done by revising the provisions of Article 230 and Article 235 of Law no. 22/2009 concerning LLAJ, so that light, moderate and severe traffic accident cases can be resolved based on restorative justice. In addition to this, for heavy traffic accidents that cause fatalities, the settlement of cases based on restorative justice must not abort the prosecution of cases as it involves fatalities and therefore it must be processed normally.

Keywords: Legal Reconstruction, Traffic Accident, Restorative Justice.

INTRODUCTION

A traffic accident is an incident on the road that is unexpected and unintentional involving vehicles with or without other road users which results in loss and/or loss of property, injuries, or lives which gives rise to legal consequences for the occurrence of criminal offenses and has implications for the emergence of criminal liability for the perpetrators and the existence of criminal charges before the court and the imposition of criminal sanctions if proven guilty. In other words, the occurrence of a traffic accident will result in criminal liability from the perpetrator (Prakosa, 2022).

Along with the development and renewal of criminal law, the idea of solving criminal cases with a restorative justice approach has begun to emerge. Criminal law enforcement with the concept of a retributive justice approach is felt by some to lack justice. Settlement of criminal cases through a retributive justice approach, the rights of victims represented by the state are often neglected. Therefore, it is necessary to reform to find alternatives in resolving criminal cases that can achieve justice for all parties, be they victims, perpetrators, and also the community (Widodo, 2018).

Considering that the number of accidental cases continues to increase so that it is directly proportional to the increase in the number of cases, the application of restorative justice in the settlement of accidental cases is fundamental enough to be considered as an alternative in the settlement of accidental cases.

The current settlement of traffic accidents refers to the provisions of Law Number 22 of 2009 concerning Road Traffic and Transportation as revised through Law Number 11 of 2020 concerning Job Creation (called Law No. 22.2009 concerning LLAJ). Based on the provisions of Law no. 22.2009 concerning LLAJ, every traffic accident case is processed under criminal justice procedures in accordance with applicable laws and regulations, as stipulated in Article 230 of the LLAJ Law.

In practice, in the settlement of traffic accident cases, ambiguity often occurs in the settlement of traffic accident cases. On the one hand, the settlement of traffic accident cases has been resolved through the judicial process; on the other hand, some have been resolved outside the judicial process, on the grounds that both parties have made peace.

Article 63 Paragraph (1) Regulation of the Head of the National Police of the Republic of Indonesia Number 15 of 2013 concerning Procedures for Handling Traffic Accidents (hereinafter referred to as Perkapolri No. 15 of 2013) stipulates that only minor and moderate traffic accidents are possible to be resolved out of court (Toebagus, 2022). Meanwhile, a serious traffic accident that resulted in the death of the victim cannot be resolved out of court.

The reality that occurs in society is that in cases of traffic accidents that cause fatalities, it is not uncommon for the victim's family to let go of the death of their family members because actually, a traffic accident is not an event that is desired by both the perpetrator and the victim. Some of the victims' families sometimes accept the death of the victim by submitting to God's provisions and will (fate), so inevitably and willingly or not they have to let go of the death of a family member.

The sincerity of the victim's family is a great opportunity for the perpetrator and the victim's family to resolve traffic accident cases through a restorative justice approach by carrying a settlement out of court (penal mediation). Polarization and penal mediation mechanisms, as long as this is really what the parties (suspects and victims) really want together, and to achieve a wider interest, namely the maintenance of social harmony.

However, it is very unfortunate that the settlement of cases of serious traffic accidents that have caused serious injuries and lives through penal mediation has not yet been integrated into criminal law. Substantially, the Criminal Code and Law no. 22/2009 regarding LLAJ as material law and KUHAP as formal law have not accommodated legal developments in society, namely the desire to resolve past cases with a restorative justice approach. Even though the settlement of accidental cases using the approach of restorative justice is felt to provide quite a lot of benefits, and is seen as capable of realizing justice for all parties (Widodo, 2019).

Its development, in responding to the legal needs of society that fulfills a sense of justice for all parties and refers to the authority of the police as regulated in Articles 16 and Article 18 of Law no. 2/2002 on the National Police, the Head of the Indonesian National Police (Kapolri) deems it necessary to formulate 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 the benefit and sense of justice for the community in enforcement. criminal law, thereby encouraging the National Police Chief to issue Regulation of the Head of the Indonesian National Police Number 8 of 2021 concerning Handling of Crimes Based on Restorative Justice. Therefore, based on this description, the author is interested in conducting research and examining the problem in a scientific paper titled "*Legal Reconstruction of Traffic Accident Settlement Based on Restorative Justice*" where the main problem discussed in this article is as follows:

1. What Are the Weaknesses of The Implementation of Traffic Accident Settlement in Indonesia Currently?
2. How is the Legal Reconstruction of Traffic Accident Settlement Based on Restorative Justice?

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 Implementation of Traffic Accident Settlement in Indonesia Currently

Viewed from the aspect of material criminal law, the settlement of traffic accident cases based on restorative justice, whether it is carried out by stopping the investigation or stopping the prosecution, can be said to be not in accordance with the provisions of Article 230 and Article 235 of Law No. 22/2009 regarding Traffic and road transport (LLAJ). Because these two articles make it impossible to stop the investigation and prosecution of traffic accident cases as stipulated in Perpol No. 8/2021 concerning Handling of Criminal Cases Based on Justice and Perja No. 15/2020 concerning Termination of Prosecution Based on Restorative Justice, which has legal implications for stopping investigations and prosecutions by investigators.

Furthermore, seen from the aspect of criminal procedural law, the provisions for termination of investigation (SP3) refer to the Criminal Procedure Code. Normatively, the notion of investigation as defined in Article 1 point 2 of the Criminal Procedure Code and Article 1 number 13 of the Police Law, that what is meant by the investigation is "*a series of investigative actions in matters and according to the manner regulated in this law to seek and collect evidence which with that evidence makes it clear about the crime that occurred and in order to find the suspect*".

Jaya (2023), said that an investigation is "*a series of actions carried out by investigators in accordance with the method stipulated in the law to seek and collect evidence, and that evidence makes or becomes clear about the crime that occurred and at the same time finds the suspect or perpetrator of the crime.* ".

Andi Sofyan (2014) further explained that "*the essence of criminal investigations is to clarify matters, to pursue the perpetrators of crimes, while at the same time preventing innocent people from acting unnecessarily*". Thus, it can be seen that what is meant by the investigation is every action of the investigator to look for evidence that can convince or support the belief that the criminal act has actually occurred.

Investigations into a criminal case are sometimes when investigators find a dead end so that it is not possible to continue the investigation of the case. On the basis of these considerations, investigators are given the authority to terminate the investigation as stipulated in Article 109 paragraph (2) of the Criminal Procedure Code.

The Criminal Procedure Code does not provide further explanation regarding the termination of the investigation, the Criminal Procedure Code only emphasizes that the termination of the investigation can be carried out in accordance with the reasons listed in Article 109 paragraph (2), which states: *"... the investigator stopped the investigation because there was not enough evidence or an incident it turns out that this is not a criminal act or the investigation was terminated for the sake of law...*"

Based on the provisions of Article 109 paragraph (2), the termination of an investigation by an investigator is based on 3 (three) reasons, namely: there is not enough evidence, the act is not a crime and the investigation is stopped for the sake of the law. The legal consequence of stopping the investigation is the issuance of an Investigation Termination Warrant (SP3).

Investigators in carrying out investigation terminations are based on the authority that has been regulated in the law, which is regulated in Article 109 paragraph (2) of the Criminal Procedure Code. Where the Criminal Procedure Code has provided certain limits for the termination of investigations by investigators. Apart from being regulated in the Criminal Procedure Code, the authority of the police to carry out terminations is also regulated in Article 16 paragraph (1) letter h, which determines the authority of the police to terminate investigations.

The Criminal Procedure Code has regulated and determined in a limited manner regarding the reasons or matters causing the termination of an investigation into an alleged criminal act. Termination of investigation is the authority granted by law to investigators to be used by investigators as a basis or reason for terminating an investigation.

This arrangements and outlines regarding the reasons for stopping the investigation are based on the consideration that in using the authority to stop the investigation, the investigator examines the reasons that have been determined. Furthermore, there are several reasons for stopping the investigation in accordance with the formulation of Article 109 paragraph (2) of the Criminal Procedure Code, namely:

a. Not enough evidence was obtained. If the investigator does not obtain sufficient evidence to prosecute the suspect or the evidence obtained by the investigator is insufficient to prove the guilt of the suspect when presented

before the court, then based on these considerations the investigator has the authority to terminate the investigation.

b. The alleged incident is not a crime. If the results of the investigation and examination, the investigator is of the opinion that what is alleged against the suspect is not an act of violation and crime, in this case, the investigator has the authority to stop the investigation.
c. Termination of investigation for the sake of the law. Termination of an investigation based on legal reasons is basically in accordance with the reasons for the nullification of the right to prosecute and the loss of the right to carry out a crime regulated in Chapter VIII of the Criminal Code, as formulated in Articles 76.77 and Article 78 of the Criminal Code.

Then the termination of the investigation for the sake of law can be carried out if there are several circumstances that serve as the basis for stopping the investigation, including (Utomo, 2018):

a. Nebis in idem is one of the principles that apply in the Criminal Procedure Code. This principle determines that a person can no longer be prosecuted for the second time on the basis of the same act, against which the person concerned has already been tried and the case has been decided by a judge or competent court and the decision has obtained permanent legal force.
b. The suspect dies, and the death of the suspect automatically stops the investigation. This is in accordance with the principles of law that apply universally in the modern era, namely that a criminal offense committed by a person is the full responsibility of the perpetrator concerned. This legal principle is the affirmation of responsibility in criminal law, which teaches that a person's responsibility in criminal law is only imposed on the perpetrator of the crime.
c. Expired. In accordance with the provisions of Article 78 of the Criminal Code, when the deadline for prosecution as stipulated in Article 78 of the Criminal Code has been fulfilled, automatically according to the law the prosecution of perpetrators of criminal acts is no longer permitted. Logically, if the authority to prosecute before a court session has been removed against a person who has committed a crime, it is of course useless to carry out an investigation and examination of that person.

The reasons for stopping the investigation are generally very easy to understand, the first reason is that there is not enough evidence. Therefore it is not possible for the case to proceed at the pretrial examination stage, because the evidence found is deemed insufficient to prove the guilt alleged by the suspect.

The second reason is that the incident was apparently not a crime. In the investigation process, sometimes an act that was initially suspected of being a crime turns out to be for certain legal reasons that the event is considered not a crime or the act is a criminal act, but there are just reasons and reasons for the criminal elimination of the act. The third reason is that the termination of the investigation is carried out for the sake of the law. termination of investigation for the sake of law is basically in accordance with the reasons for the nullification of the right to sue and the loss of the right to carry out a crime regulated in Chapter VIII of the Criminal Code, as regulated in Articles 76, 77, and Article 78 and so on. Termination of investigation for the sake of law, the principle of nebis in idem, the suspect died, and because it expired.

Based on the reasons for stopping an investigation into a case regulated in the Criminal Procedure Code, there is no reason to stop an investigation based on restorative justice. The legal substance regulated in Perpol No. 8/2021 concerning the Handling of Criminal Cases Based on Restorative Justice is clearly contrary to the higher legal provisions above it, namely the Criminal Procedure Code which forms the basis for carrying out criminal justice processes (Law of Procedure).

Likewise with the termination of the prosecution of a criminal case based on restorative justice carried out by the public prosecutor based on Perja No. 15/2020 concerning PPBKR, if you look at the provisions regarding termination of prosecution regulated in the Criminal Procedure Code, then there is also a discrepancy or a legal conflict.

Based on Article 140 paragraph (2) of the Criminal Procedure Code, there are three reasons for the public prosecutor to be able to stop the prosecution of a criminal case, namely: 1) insufficient evidence, 2) the alleged act or event turns out to be not a crime, 3) the case is closed by law (set aside).

Perja Provisions No. 15/2020 concerning PPBKR, says that the termination of prosecution based on restorative justice is based on legal interests. At first glance, this provision seems to refer to the third reason for the termination of prosecution as stipulated in Article 140 paragraph (2) of the Criminal Procedure Code. However, when referring back to the reasons for legal interests referred to in Article 140 paragraph (2) of the Criminal Procedure Code, then there is a discrepancy in the reasons set out in Perja No. 15/2020 concerning PPBKR on the grounds of legal interest

referred to in Article 140 paragraph (2) of the Criminal Procedure Code.

Termination of prosecution by the public prosecutor for reasons of legal interest as stated in Article 140 paragraph (2) of the Criminal Procedure Code, due to certain circumstances, which include: 1) because the suspect/defendant died (Article 77 of the Criminal Code), 2) the case is nebis in idem (Article 76 of the Criminal Code), or the case has expired (Articles 78 and 80 of the Criminal Code). 257 Thus, there is no reason to stop the prosecution based on restorative justice. This means that there is no legal harmonization or synchronization between Perja No. 15/2020 concerning PPBKR with the Criminal Procedure Code.

Realizing legal certainty from the settlement of criminal cases based on restorative justice as stipulated in Perpol No. 8/2021 concerning LLAJ and Perja No. 15/2020 concerning PPBKR, the legal substance contained in these two regulations must comply with statutory regulations in accordance with the hierarchical system of statutory regulations stipulated in Article 7 paragraph (1) of Law Number 12 of 2011 Formation of Legislation The invitation has been revised twice, most recently by Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 Formation of Legislation.

2. Legal Reconstruction of Traffic Accident Settlement Based on Restorative Justice

Substantially, seen from the material legal aspects governing traffic accident crimes regulated in Law no. 22/2009 concerning Traffic Accidents, there are still obstacles to the implementation of the settlement of traffic accident cases based on restorative justice, both at the investigative and prosecution levels.

Several articles that become juridical obstacles in the implementation of traffic accident settlement based on restorative justice are the provisions of Article 230 and Article 235 UU No. 22/2009 regarding LLAJ. The substance of the two articles does not allow for the settlement of traffic accident cases based on restorative justice, both at the investigative and prosecution levels which are guided by Perpol No. 8/2021 Concerning the Handling of Crimes Based on Restorative Justice and Perja No. 15/2020 concerning PPBKR.

To be able to apply the two regulations mentioned above, it is necessary to at least make changes to Articles 230 and 235 of Law no. 22/2009 on LLAJ by adding a clause on restorative justice.

Based on the results of the reconstruction of the provisions of Article 230 and Article 235 of Law no. 22/2009 regarding LLAJ, minor and moderate accidents can be terminated by investigation and prosecution, if an agreement is reached between the perpetrator and the victim to resolve the case based on restorative justice in accordance with the terms and mechanism for ending the investigation and prosecution regulated in Perpol No. 8/2021 Concerning the Handling of Crimes Based on Restorative Justice and Perja No. 15/2020 concerning PPBKR.

As for the types of serious traffic accidents that cause fatalities (life), then the settlement of cases based on restorative justice can be used as a basis for judges or mitigating matters for the defendant in passing a decision (verdict) against the defendant (Listiyanto, 2013).

Therefore, the reconstruction intended by the author is in Article 230 and Article 235 of Law no. 22/2009 concerning LLAJ, it is hoped that the settlement of traffic accident cases is based on restorative justice which currently refers to the provisions of Perpol No. 8/2021 Concerning the Handling of Crimes Based on Restorative Justice and Perja No. 15/2020 concerning PPBKR can realize three legal objectives, namely providing certainty, justice, and legal benefits.

CONCLUSION

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

1. Weaknesses in the law in the settlement of traffic accident cases is the lack of integration of legal arrangements for the settlement of criminal cases in the criminal law system, especially in the Criminal Procedure Code according to the rules of each institution. As a result, arrangements for settling cases based on restorative justice have not been able to guarantee legal certainty.
2. The legal reconstruction of the settlement of traffic accident cases with a restorative justice approach proposed by the author can be done by revising the provisions of Article 230 and Article 235 of Law no. 22/2009 concerning LLAJ, so that light, moderate, and severe traffic accident cases can be resolved based on restorative justice. In addition to this, for heavy traffic accidents that cause fatalities, the settlement of cases based on restorative justice must not abort the prosecution of cases as it involves fatalities and therefore it must be processed normally.

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