



The Implementation of Restorative Justice by Indonesian National Police Investigators in Traffic Accidents Resulting in Death

Budi Utomo¹

¹Central Java Regional Police, Semarang, Indonesia

Received February 25 2018, Accepted July 15 2018, Published November 30 2018

DOI: 10.15294/ijcls.v3i2.17168

How to cite:

Utomo, B. (2018). 'The Implementation of Restorative Justice by Indonesian National Police Investigators in Traffic Accidents Resulting in Death', *Indonesian Journal of Criminal Law Studies* 3(2): 81-98. DOI: 10.15294/ijcls.v3i2.17168

Abstract

The essence of criminal law enforcement is normatively integrated in the criminal justice system from investigation, prosecution, trial examination and execution of judgment which leads to criminalization, but in its development there is an alternative law enforcement desired by the justice seekers through restorative justice which prioritizes recovery at the original state as a result of the crime. Therefore, it is necessary to analyze the importance of restorative justice by Indonesian National Police Investigators in traffic accidents resulting in death, as well as its implementation. The theoretical concepts used are implementation, restorative justice, law enforcement, criminal law policy, justice, traffic accidents, and Police Investigators. Qualitative research approach, type of socio-juridical research, focuses on the importance of restorative justice and its implementation by Indonesian National Police Investigators in traffic accidents resulting in death. Location of research is in Resort Police of Semarang. The results of research on the importance of restorative justice and its implementation by Indonesian National Police Investigators in traffic accidents resulting in death are analyzed through philosophical, sociological and juridical point of view, while its implementation is analyzed by the implementation model of George C. Edward III which shows that restorative justice has not been understood optimally by Indonesian National Police investigators and the community even though in reality have been practiced in the duties or daily life. The obstacles, namely the absence of legal restorative justice umbrella is firm and clear, still weak understanding of Indonesian National Police Investigators and the public, especially the parties related to the settlement of criminal cases through restorative justice. Efforts to overcome these obstacles, Police Investigators in the settlement of criminal acts through restorative justice refers to the rules that are directly or indirectly relevant, organizing socialization about restorative justice within the Indonesian National Police, especially Indonesian National Police Investigators, and the public.

Keyword: Penal Policy, Police, Restorative Justice

*Email: budiutomo@gmail.com

Address: Central Java Regional Police, Semarang, Indonesia

This work is licensed under a Creative Commons Attribution-Non Commercial ShareAlike 4.0 International License. All writings published in this journal are personal views of the authors and do not represent the views of this journal and the author's affiliated institutions.

INTRODUCTION

Theoretically as well as practice, law enforcement in Indonesia is more dominated by positivism so that in law enforcement is more positivistic. Positivism, in law theory and law enforcement practice, puts forward procedural issues so much as to override substantive justice for the sake of procedure. The punishment system in Indonesia is inseparable from the rules derived from the Dutch colonial legacy of *Wetboek van Strafrecht voor Nederlandsch Indie* (WVSNI). WVSNI is designated as a material criminal law in Indonesia based on Law Number 1 of 1946 on the Rule of Criminal Law and formally named the Criminal Code.

Looking at the historical background of the enactment of the Criminal Code, there is a proposal that the existing Criminal Code in Indonesia now needs to be reformed. The need for the amendment of the Criminal Code is also in line with the outcome of the 1976 UN Congress on Prevention of Crime and Treatment of Offenders. In the congress it was stated that the criminal law that has been in effect in various countries, generally derived from the foreign law of the colonial era that has been obsolete and unjust and out of date and not in accordance with the development of life in society. This is because the criminal law is not rooted in cultural values and even some are not in accordance with the aspirations of society and not in accordance with the social needs of the present. Dutch as the original country of the Criminal Code or WVSNI, has undergone several changes adapted to the times.

The punishment system contained in Article 10 of the Criminal Code is essentially still embracing retributive paradigm, which is to give appropriate retribution for crimes perpetrated by the perpetrator. The Retributive paradigm is used with the aim to provide deterrent effect, so that the perpetrators do not repeat the crime and prevent the society to do the crime. The use of retributive paradigm, it has not been able to recover the losses and suffering experienced by the victim. Although the perpetrator has been found guilty and sentenced, the victim's condition cannot go back to normal.

These weaknesses, led to the idea of a punishment system oriented to the recovery of victims' losses and suffering, known as restorative justice. The victim is the most disadvantaged party due to the crime. Restorative justice is proposed to reject coercive means and replace it with reparative means. Restorative justice accommodates the interests of the parties, including victims as victims that are involved in the determination of sanctions for perpetrators. Restorative justice returns conflicts to the most affected parties (victims, perpetrators and their communities) and gives priority to their interests. By embracing the restorative justice paradigm, it is hoped that the harm and suffering experienced by the victim and his family can be recovered and the burden of guilt of the criminals can be reduced because they have received forgiveness from the victims and their families.

The mechanism or procedure of criminal law enforcement in Indonesia is regulated in Law Number 8 of 1981 on Criminal Procedure Code or commonly referred to as the Criminal Procedure Code, abbreviated KUHAP and its implementing regulation namely Government Regulation Number 27 of 1983 on the Implementation of the Book of Law The Law on Criminal Procedure and Government Regulation Number 58 of 2010 concerning Amendment to Government Regulation Number 27 of 1983 regarding the Implementation of the Criminal Procedure Code and Government Regulation Number 92 of 2015 on the Second Amendment to Government Regulation Number 27 of 1983 regarding the Implementation of the Law -The Criminal Procedure Code.

The handling and settlement of integrated criminal cases in a criminal justice system consisting of: Police as Investigator, Prosecutor as Public Prosecutor and Judge

Executor, Judge as Case Breaker, Penitentiary as implementing the punishment. In addition to the four pillars of law enforcement with the enactment of Law No. 18 of 2003 on Advocates, the Advocate is also status as law enforcement. The criminal justice process starts from the stage of investigation, prosecution, examination in the court until the implementation of the judge's decision in prisons.

As for the legal basis for Indonesian National Police investigators in law enforcement through restorative justice approach is Article 18 paragraph (1) and paragraph (2) of Law Number 2 of 2002 regarding Indonesian National Police, Article 7 paragraph (1) letter j Act no. 8 of 1981 on the Criminal Procedure Code.

The location of the research is the Resort Police of Semarang with the consideration that in this research location there is a traffic crime that is considered more appropriate to be resolved through restorative justice, and considering the system of the Indonesian National Police is a national police ie the working procedure or the mechanism of execution of police duty wherever in the whole of Indonesia is the same so that the Resort Police of Semarang can represent the Police as a whole. This is supported according to traffic accident data at Resort Police of Semarang on the last three years period from 2015 to 2017 as on table 1.

Based on the table above, it can be seen that traffic accidents occurring in the last three years are 2015 to 2017 as many as 1,553, with details resulting in death 429 or 27.62%, severe injuries 12 or 0.77%, minor injuries 1.112 or 71.6%, excluding non-levelled material loss (non-police) traffic accident.

Table 1. Type of Traffic Accident

Year	Type of Traffic Accident				Quantity
	Death	Serious Injuries	Minor Injuries	Material Loss	
2015	142	2	346	NON LP	490
2016	141	3	406	NON LP	550
2017	146	7	360	NON LP	513
Total	429	12	1.112	-	1.553

Source: Resort Police of Semarang (2018)

The data shows that traffic accidents resulting in deaths of 429 or 27.62% of the number of accidents that occur can be categorized quite large, and the existence of some people, especially the litigants want a solution outside the criminal justice process on the grounds of various aspects of both material and immaterial so it is considered important to be proposed a new idea that needs to be implemented restorative justice by Indonesian National Police Investigators in traffic accidents that result in death. All is for the benefit of criminal acts victims, offenders and community, in general.

The general problem proposed in this thesis is how the implementation of restorative justice by Indonesian National Police Investigators in traffic accidents resulting in death. Based on the background of research in writing this thesis, and then compiled the formulation of the problem as followed:

1. The importance of restorative justice by Indonesian National Police Investigators in traffic accidents resulting in death.

2. How to implement restorative justice by Indonesian National Police Investigators in traffic accidents resulting in death?

RESEARCH METHOD

Based on the description above, the research method used is a qualitative research approach, the type of socio- juridical research, the focus of research on the importance of restorative justice by Indonesian National Police Investigators in traffic accidents resulting in death and its implementation. Location of the research is in Resort Police of Semarang. Data sources are primary, secondary and tertiary. Data collection techniques that conduct are through documentation, observation, and interviews. Data validity is using triangulation technique. Data analysis techniques use interaction analysis model.

FINDING AND DISCUSSION

The Importance of Restorative Justice by the Indonesian National Police Investigators in the Traffic Accidents Resulting Death

Restorative justice positions parties together to establish a harmonious relationship and strive to create wholeness. Existence of restorative justice process is an alternative settlement of criminal case determined by knowledge and awareness of society and law enforcement apparatus. Mostopha (2005: 203) states that the concept of restorative justice, when there is a crime, conflict, and human rights violation, is perpetrated by the community of recovering or repairing the damaged relationship between the perpetrator and the victim and the community.

Aertsen et al. (2011: 8-9) states that the concept of restorative justice offers answers to important issues in the settlement of criminal cases, namely:

1. Criminal of criminal justice systems that do not provide a special opportunity for the victim (criminal justice system that disempowered the individual).
2. Eliminate conflicts, especially between the perpetrator and the victim and also the community (*taking away the conflict from them*).
3. The powerlessness experienced as a result of a criminal offense must be overcome to achieve improvement (*in order to achieve reparation*).

There are some important aspects of restorative justice by Indonesian National Police Investigators in traffic accidents that result in death, ie:

1. Philosophical aspects

Bondan (2011, p.72) states that within the philosophical framework, the presence of restorative justice approaches in criminal law is not intended to abolish criminal law, or merge criminal law and civil law, because of a restorative justice approach that prioritizes mediation between victims and perpetrators. Kusuma (2009: 31) states the philosophical basis of progressive legal thinking is an institution aimed at bringing people to a just, prosperous and happy life. Sudarto (1997: 44-48) argues that the use of criminal law should take account of the national development objectives of creating a just and prosperous society that is equally spiritual based on Pancasila.

Based on the thing above, the philosophical aspect related to the importance of restorative justice by Police Investigators in traffic accidents that

resulted in death by prioritizing the principles as existed in the precepts of Pancasila, as follows:

- a. Belief in the one supreme God, in this case the implementation of restorative justice is attentioned to the harmony of religious values that exist in society.
 - b. Justice and civilized humanity, in this case the implementation of restorative justice is a manifestation of human values, recognize equality of degree, rights and obligations, and uphold the dignity and human dignity.
 - c. The unity of Indonesia, in this case the implementation of restorative justice can restore and unify the relationship that is cracked or damaged by the occurrence of criminal acts.
 - d. The democracy led by understanding wisdom among honorable representatives, from the parliament house, in this case the implementation of restorative justice has the meaning that prioritizes deliberation in making decisions for the common interest, respect every decision deliberation, the decisions taken can be accounted morally to God Almighty, uphold the and human dignity, the values of truth and justice prioritize unity and unity for the common good.
 - e. Social justice of Indonesian people, in this case the implementation of restorative justice to provide a sense of justice for the parties, ie victims, perpetrators and the public.
2. Sociological Justice

Dewi and Syukur (2011: 32) states that in its implementation, restorative justice is based on the principle of establishing joint participation between perpetrators, victims and community groups in settling an event or a crime. Placing perpetrators, victims and communities as "stakeholders" who work together and immediately seek to find solutions that are deemed fair to all parties (win-win solution).

Criminal policy is not a stand-alone policy, apart from other policies, but it must be seen also in relation to the overall social policy, because as a law enforcement policy, this effort is included in the field of social policy. Therefore, criminal policy is part of the policy of law enforcement and social policy (Masyhar, 2009: 26-27).

Police as law enforcement officers have a very big influence in upholding the law in society. In this case, progressive and responsive law is a basic form, the doctrine of lawyers for law enforcement officers in performing a restorative justice act by the investigator as a public official and determining the effectiveness and sense of justice in society based on a wisdom to carry out the task daily policing in addition to his duty in tackling crime in the community.

The idea of progressive law as well as the responsive law of the jurists arose because of the poor performance of law enforcement officers. In relation thereto, the position of progressive and responsive law is not a law that law enforcers must adhere to, but a doctrine or contribution of thought from jurists who can be used as guidance in carrying out their duties and authority to provide comfort, fairness and expediency in the life of society, nation and state.

Taking into account the number of criminal case settlements of traffic accidents, especially those resulting in death, in the last three years 2015 to 2017 through restorative justice of 1,035 or 66.65%, it indicates that the majority of people who are in litigation of traffic accidents require a solution beyond the judicial process criminal or through restorative justice because it is considered to be

able to recover physical and non-physical damage, material or immaterial as a result of traffic accidents.

3. Juridical Aspect

The juridical aspect concerns on the importance of restorative justice by the Police Investigator in traffic accidents resulting in death, ie:

a. The 1945 Constitution

The provisions of the 1945 Constitution, which directly or indirectly regulate the existence, duties and authorities of the Police can be seen in the points of Preamble and Body of the 1945 Constitution. Furthermore, the main content of the Preamble of the 1945 Constitution is to protect the entire Indonesian nation, having equal status in law and government (Art. 27), seen here that the position of the Police is a law enforcement, which protects every citizen or society and creates the security of the citizen. While disciplining the community, on the second main content, it has a meaning that the citizens of society obey all the norms in the order of life that has been agreed (social order) to realize the order of society. Thus, the police task that upholds the security and public order is a radiance and in accordance with the 1945 Constitution. The consequence of this task requires authority, including the discretionary authority of the investigator.

The principle of equality before the law is the application of Article 28 D Paragraph (1) of the 1945 Constitution of the Fourth Amendment explicitly states: Everyone is entitled to equitable recognition, guarantee, protection and legal certainty and equal treatment before law. In addition to Article 28 D paragraph (1) of the 1945 Constitution of the Fourth Amendment, equal treatment before the law.

b. Law Number 8 of 1981 on Criminal Procedure Law

The basic implementation of the restorative justice by Indonesian National Police Investigators in traffic accidents resulting in death related to discretion in the Criminal Procedure Code is contained in Article 7 paragraph (1) letter i where it is explained that the investigator as intended in Article 6 paragraph (1) a because its obligation has the authority to suspend the investigation, but it should not be done haphazardly because in Article 7 paragraph (1) letter j also describes holding another action according to responsible law.

c. Law Number 2 of 2002 on the Indonesian National Police

The implementation basic of restorative justice by Indonesian National Police Investigators in traffic accidents resulting in death, that in the criminal case investigation in addition to the authorities stated in Article 18 paragraph (1) of Law Number 2 of 2002 on the Indonesian National Police also has an authority in the form of another measure according to its own judgment, is that it can perform another act in the public interest. The public interest here is a form of application of the discretionary principle by the Indonesian National Police Investigator as a public official in enforcing the criminal law in its jurisdiction. Elucidation of Article 18 Paragraph (1) of Law Number 2 of 2002 on Indonesian National Police is that for the public interest of the Indonesian National Police in performing its duties and authority may act in its own judgment.

d. Law Number 22 of 2009 on Traffic and Road Transportation

The implementation basic of the restorative justice by Indonesian National Police Investigators in traffic accidents resulting in death, that Law

Number 22 of 2009 on Traffic and Road Transport is a rule as part of the national transportation system should be developed its potential and role to realize security, safety, order, and smoothness of traffic and Road Transport.

- e. Regulation of Indonesian National Police's Head Number 15 of 2013 on the Traffic Accident Handling Procedures

The implementation basic of the of restorative justice by Indonesian National Police Investigators in traffic accidents resulting in death, that the purpose of this regulation is set forth in Article 2 of the Regulation of the Indonesian National Police's Head Number 15 of 2013 on the Traffic Accident Handling Procedures, namely:

- 1). As a guide for Indonesian National Police officers in handling traffic accidents and orderly administration of investigation.
- 2). The realization of the traffic accidents' handling professionally.

The Implementation of Restorative Justice by Indonesian National Police Investigators in Traffic Accidents Resulting in Death

The implementation model used to analyze restorative justice by Indonesian National Police Investigators in traffic accidents resulting in death is George C. Edward III model, which is influenced by several interrelated independent variables; the variables are communication, resources, disposition and bureaucratic structure.

1. Restorative Justice Communication By Police Investigators In Traffic Accidents Resulting in Death

Edward III (1980: 17) states that communication is crucial to the successful achievement of the public policy's objective implementation. Implementation will happen if the decision makers already know what they will do.

There are three dimensions included in the communication of restorative justice by Indonesian National Police Investigators in traffic accidents resulting in death of transmission, clarity, and consistency.

- a. Transmission

Submission of information to Indonesian National Police Investigators in the field of restorative justice by organizing socialization in the form of group discussion and training forum, while to the community is done through counseling and forum group discussion.
- b. Clarity

Indicators of traffic accidents resulting in deaths that can be resolved through restorative justice:

 - 1). Pure accident (accidentally or negligently).
 - 2). The offender is not drunk.
 - 3). The behavior of the perpetrator is not blameworthy.
 - 4). The principle of propriety not to be penalized.
- c. Consistency

Policies taken in the implementation of restorative justice by Indonesian National Police Investigators in traffic accidents resulting in death need to be carried out consistently, with the steps, as follows:

 - 1). There needs to be a clear indicator of traffic accidents that can be resolved through restorative justice.

- 2). There needs to be a clear Standard Operating Procedures (SOP) in the settlement of cases through restorative justice.
 - 3). Need to be continuously carried out understanding to the community related to settlement of settlement through restorative justice.
2. Restorative Justice Resources By Indonesian National Police Investigators In Traffic Accidents Resulting in Death

Resources are another important thing in implementing restorative justice well. Successful implementation of restorative justice is influenced by resources. Indicators used to look at the extent to which resources can work properly and neatly, i.e. staff, information, authority and facilities.

a. Staff or Employees or Human Resources

Resource related to restorative justice by Indonesian National Police Investigators in traffic accidents resulting in death requires adequate Human Resources (HR) through training, soft skill mapping (Indonesian National Police Investigator mapping), as well as upholding the Police code of ethics, with goal to create a healthier organizational culture and be able to motivate Human Resources (HR) to work better in providing services to the community.

b. Information

Information relating to how to implement restorative justice already exists in the form of Standard Operating Procedures (SOP), but the legal umbrella of restorative justice implementation until now still not clear and not yet firm or in other words still gray, that restorative justice is allowed but on the other hand is not a normative settlement case recognized by the Indonesian National Police institution.

Based on the explanation above, the information relating to the procedures for the implementation of the traffic accidents cases settlement through restorative justice needs to be strengthened with legal umbrella to be used as a guideline or legal basis by all parties to avoid misinformation and communication.

Investigators in taking a policy are expected to keep in mind the prevailing and growing norms within the local community, fulfill the sense of justice, the benefit in the settlement of traffic accident cases through restorative justice.

c. Authority

Implementation of restorative justice by Indonesian National Police Investigators in traffic accidents resulting in death is still debatable or pros and cons because there is no clear legal umbrella and, especially in the Indonesian National Police environment in practice, there is doubt and uncertainty for the investigator in taking a decision, so that needed a clear regulation in the handling of the case through restorative justice.

d. Facilities

Facilities to support the implementation of restorative justice, among others, in the form of transportation equipment, communication and office is still very limited, so still use the makeshift facilities. The explanation above shows the high dedication or the soul of the investigator in serving the public justice seekers, especially related to traffic accidents that result in death, therefore the need for government attention in meeting the needs of investigators in the implementation of their duties.

3. Restorative Justice Disposition By Indonesian National Police Investigators In Traffic Accidents Resulting in Death

Edward III (1980: 89) suggests that the variables affecting the success rate of a policy are dispositions. The disposition or attitude of the policy implementer is the third important factor in the approach to the implementation of a policy.

Important things that need to be observed in the disposition variable are two factors in Disposition (Effect of Disposition) that is Effects of Disposition (level of compliance of executor) and Incentives (incentive).

a. Effect of Disposition

The compliance level of Indonesian National Police Investigators in the implementation of the restorative justice of traffic accidents which resulted in death, has been regulated by the Regulation of the Chief of Indonesian National Police Number 14 of 2011 on the Code of Ethics of Police Profession which are the norms or rules which are the unity of the ethical or philosophical basis which relates to the behavior or speech regarding the things that are required, prohibited, inappropriate or inappropriate to be done by the Indonesian National Police officers in performing their duties, authority and responsibilities. Ethics of the police profession is a crystallization of the values of attitudes and behaviors shown by each member of the Indonesian National Police.

b. Incentives

Intensive related to the implementation of restorative justice by Indonesian National Police Investigators in traffic accidents resulting in death, that Police investigators in the execution of their duties have earned salary and performance allowance every month according to the position or status of their respective duties or positions, while the parties other than investigators and police officers left entirely to the litigants with due regard to the ethics and fairness prevailing in the local community by wholeheartedly prioritizing the excellent service as mandated in Article 13 of Law Number 2 of 2002 concerning the Indonesian National Police.

4. Bureaucratic Structure of Restorative Justice By Indonesian National Police Investigators In Traffic Accidents Resulting in Death

Successful implementation of a policy is also influenced by bureaucratic structures. The bureaucratic structure or organizational structure of the Semarang Traffic Police Unit is based on the Regulation of the Indonesian National Police Chief Number 23 of 2010 on the Organizational Structure and Administration at Police Resort and Police Sector Level.

There are two important things in the bureaucratic structure that affect the achievement of restorative justice implementation namely Standard Operating Procedures (SOP) and Fragmentation.

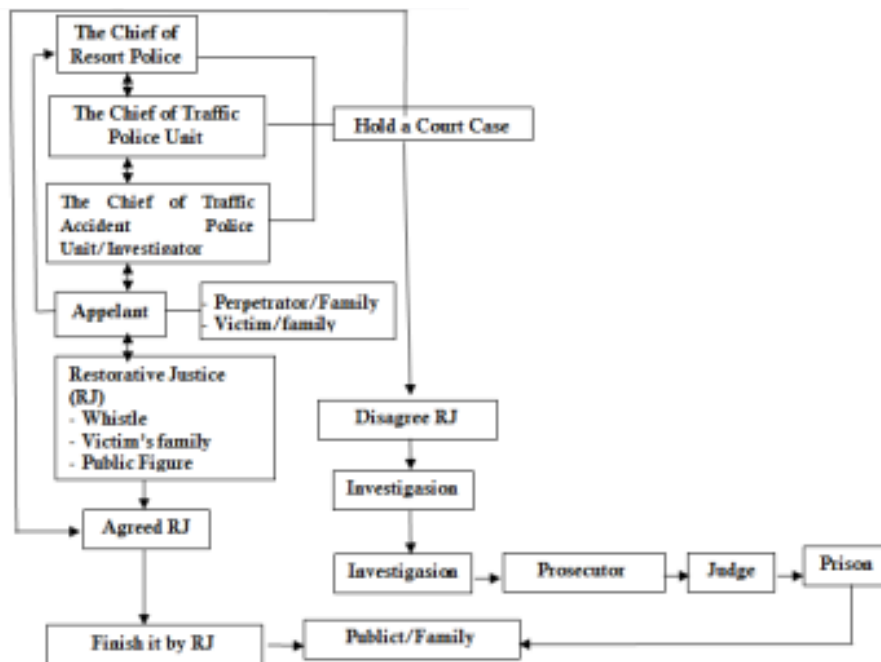
a. Standard Operating Procedures (SOP)

Standard Operating Procedures or settlement mechanisms for traffic accidents resulting in death through restorative justice, i.e.:

- 1). The parties or one of the litigants shall file a request for settlement of the matter in a familial or restorative justice manner to the traffic accident investigating officer who in this case is the Chief of the Resort Police (Kapolres) through the Head of the Traffic Unit (Kasatlantas).
- 2). Upon receipt of the request, the Chief of Police shall order Kasatlantas and Investigators to give space and time to the litigants for deliberation

- by appointing a mediator from the community or community leaders or village government officials who are trusted and considered independent.
- 3). The deliberations' results of the litigants are reported to the investigator to be forwarded to the Chief of the Resort Police (Kapolres) through the Head of the Traffic Unit (Kasatlantas).
 - 4). If the result of deliberation, agreement of peace or settlement is settled in kinship or outside the criminal justice system or restorative justice, then the Investigating Team holds a case title or deliberation to prepare a recommendation to the Chief of Police Resort through the Head of Traffic Unit (Kasatlantas) as material consideration in taking a decision.
 - 5). When the litigants conduct a peace process or deliberation, the investigator shall continue the process of investigation in accordance with the procedure until the thorough, to compile the file of the case ready to be submitted to the Prosecutor, but the filing of the investigation case file considers the result of the deliberations of the litigants.
 - 6). If the result of deliberation from the litigants agrees to reconcile or settle the case outside the criminal justice process or restorative justice, then with the approval of the Chief of Police, traffic accidents cases are not submitted to the court through the Public Prosecutor.
 - 7). If in the future it turns out the parties break the promise of the peace agreement, then the case of traffic accidents can be submitted to the court through the Prosecutor.
 - 8). The initiator of the settlement of cases through restorative justice is the litigants.
 - 9). Mediator in the process of settlement of case through restorative justice is the society or apparatus govern village trusted and appointed by litigant party.
 - 10). The role of investigators in settlement of cases through restorative justice, only limited to facilitators.
 - 11). The final decision whether or not the settlement of a case through restorative justice is the Kapolres by considering the socio-juridical aspect.
 - 12). During the restorative justice process, the Investigator shall keep the investigation process until the "file of the case" is ready to be delegated to the Prosecutor.
 - 13). If agreed to restorative justice, the case file is kept by the Investigator.
 - 14). If it turns out to be restorative justice, it is not followed up according to the agreement, then the case file is delegated to the Prosecutor General.

Figure 1 Restorative Justice Mechanism of Traffic Accidents



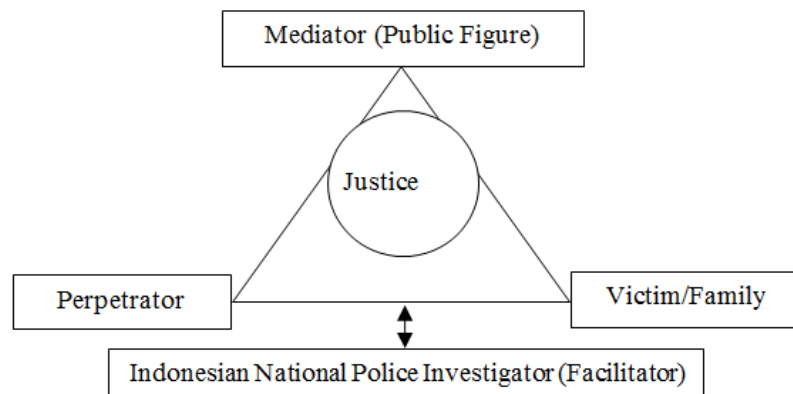
Adopting British criminologist Tony F. Marshal's thought in Braithwaite (2002: 11) states that restorative justice is a process whereby stakeholders in a particular breach meet together to solve the problem jointly how to resolve the consequences of the offense for the sake of the future. Similarly, United Nations (2006: 6) mentions that in relation to criminal law enforcement, restorative justice is an approach to solving criminal problems involving victims, perpetrators, and elements of society for the sake of a justice. Likewise Dewi and Gratitude (2011: 32) states that in practice, restorative justice is based on the principle of establishing joint participation between the perpetrator, the victim and the community in solving an event or a crime. Placing perpetrators, victims and communities as "stakeholders" who work together and immediately seek to find solutions that are deemed fair to all parties (win-win solution).

The implementation of restorative justice can be done through the Conferencing model which is a forum similar to Victim Offender Mediation (VOM), but in this form there is a difference, that involved in solving the problem not only perpetrators and direct victims (primary victim), but also indirect victims (secondary victim), such as close family or close friends and family and close friends of actors assisted by the mediator as coordinator and facilitator in the meeting (Dewi and Gratitude, 2011: 9).

Related to the implementation of this restorative justice, Pound's belief in Utari (2017: 73) on the legal effectiveness of social change is based on the idea that law as a social institution is a planned and systematic arts.

Based on the above, the following description can be obtained as on Figure 2:

Figure 2 Restorative Justice Form



The form of restorative justice by Indonesian National Police Investigators in traffic accidents resulting in death, i.e. the perpetrator and the victim's family choose a mediator (community figure) who is independent. The authority possessed by the Police Investigator may give space to the perpetrator and the victim's family to make peace or penal mediation. If at the mediation stage of the penal has been agreed on the existence of peace then this agreement can be used as the reason for investigators to resolve the case.

b. Fragmentation

Edwad III in Winarno (2007: 155) explains that "fragmentation is the spreading of responsibility of a policy to several different bodies requiring coordination". In general, the greater the coordination needed to implement the policy, the less likely the success of the program or policy.

Based on this matter related to the fragmentation of bureaucratic structure in restorative justice by Indonesian National Police Investigator in traffic accident resulting in death, bureaucratic structure anticipates the change of environment both internal and external in order to create an organizational structure and culture that is able to reflect and transform the task and functions carried by the organization. That the organizational structure is a framework in a fixed pattern of relationships among functions, units, or positions, as well as persons who show different positions, duties, powers and responsibilities within an organization.

Traffic Accidents Resulting in Death Solved Through Restorative Justice

The development of traffic accidents in the jurisdiction of the Semarang Resort Police and the settlement either through criminal proceedings or outside the criminal justice process or known as restorative justice can be explained, as

on Table 2, Table 3, Table 4, and Table 5 below.

Table 2. Traffic Accident Data and its Completion in Semarang Resort Police of 2015

No	Kind of Traffic Accident	Amount	In Progress		Completed					
			Hit and Run	The Fingerprint Process	Abundant Prosecutors (P21)	Abundant Den-pem	Discontinued Investigation			
							SD	Diversion	ADR/RJ	Another
1.	Traffic Accidents Resulting in Death	142	21	0	10	3	31	0	77	
2.	Traffic Accident Resulting in Serious Injury	2	0	0	0	0	0	0	2	
3.	Traffic Accidents Resulting in Minor Injury	346	71	0	0	0	0	0	275	
4.	Traffic Accidents Resulting in Material Disadvantages	NON LP								
Amount		490	92	0	10	3	31		354	
			92		13		385			
			92		398					
			490							

Source: Traffic Unit of Semarang Resort Police (2018)

Table 3. Traffic Accident Data and its Completion in Semarang Resort Police of 2017

No	Kind of Traffic Accident	Amount	In Progress		Completed					
			Hit and Run	The Fingerprint Process	Abundant Prosecutors (P21)	Abundant Den-pem	Discontinued Investigation			
			4	5	6	7	8	9	10	11
1.	Traffic Accidents Resulting in Death	429	105	0	28	6	105	0	185	
2.	Traffic Accident Resulting in Serious Injury	12	3	0	0	0	0	0	9	
3.	Traffic Accidents Resulting in Minor Injury	1.112	265	0	4	2	0	0	841	
4.	Traffic Accidents Resulting in Material Disadvantages	NON LP								
Amount		1.553	373	0	32	8	105	0	1.035	
			373		40		1.140			
			373		1.180					
			1.553							

Source: Traffic Unit of Semarang Resort Police (2018)

Table 4. Total Traffic Accidents and Settlement in Semarang Resort Police Last 3 Years (2015-2017)

No	Kind of Traffic Accident	Amount	In Progress		Completed					
			Hit and Run	The Fingerprint Process	Abundant Prosecutors (P21)	Abundant Den-pom	Discontinued Investigation			
			4	5	6	7	8	9	10	11
1.	Traffic Accidents Resulting in Death	146	41	0	13	0	44	0	48	
2.	Traffic Accident Resulting in Serious Injury	7	2	0	0	0	0	0	5	
3.	Traffic Accidents Resulting in Minor Injury	360	86	0	2	1	0	0	271	
4.	Traffic Accidents Resulting in Material Disadvantages	NON LP								
Amount		513	129	0	15	1	44	0	324	
			129		16		368			
			129				384			
			513							

Source: Traffic Unit of Semarang Resort Police (2018)

EXPLANATION

1. Discontinued investigation because others = not a crime, not enough evidence, *nebis in idem*, expired.
2. Traffic Accidents Resulting in death = died victim or died suspect or died victim and died suspect
3. SD = Suspects Die.
4. Prosecutor = Public Prosecutor.
5. P21 = The proceeds of the investigation of the case have been declared complete by the public prosecutor in the event of the suspect's handover and the evidence.
6. ADR / RJ = Alternative Dispute Resolution / Restorative Justice = solving cases outside the criminal justice process
7. Traffic Accident data collection then selected the type of Traffic Accident then the most severe consequences.
8. NON LP = Case of accident which solved itself without publication of Police report.

Based on the table above, it can be seen that the implementation of restorative justice by Indonesian National Police Investigators in traffic accidents resulting in death is less than optimal as it is known that number of cases of traffic accidents still high, 77 cases (2015), 60 (2016), and 48 (2017).

Barriers to the implementation of restorative justice by Police Investigators in traffic accidents resulting in death, i.e.:

1. The weakness of the legal umbrella related restorative justice
 There is no Regulation that can be used as a guideline or procedural formal mechanism in the implementation of restorative justice. So that law enforcement, felt by society very weak. This is true, because in the institutions and legal system in Indonesia there are still many deficiencies and easily penetrated by certain interests

that become a gap for law enforcement officers in enforcing the law in society, it is very difficult for an investigator in doing restorative justice action.

2. The absence of understanding in the Police environment related to the settlement of criminal cases through restorative justice

Law enforcement practices carried out by Indonesian National Police Investigators have tended to be normative, while the settlement of criminal cases outside the criminal justice system through restorative justice has not been recognized as a settlement of cases. However, in practice certain criminal cases include traffic accidents, Indonesian National Police Investigators also settled through restorative justice, so that to some cases that have actually been resolved through restorative justice is not included in the list of settlement cases which consequently become dark number (arrears of the case).

3. Weak understanding of the litigants

There is lack of understanding of the perpetrators and victims' families who impact on the implementation of restorative justice conducted by investigators. Because ignorance of the restorative justice of the perpetrators and the families of the victims makes the lack of participation and activeness in providing everything needed by investigators in restorative justice. This greatly discourages investigators from performing restorative justice measures.

Efforts taken to overcome barriers to the implementation of restorative justice by Police Investigators in traffic accidents resulting in death are as follows:

1. To anticipate the weakness of the legal umbrella related restorative justice, the investigator refers to the rules that are directly or indirectly relevant.

This is based on the relevant direct rules related to the implementation of restorative justice, namely Article 7 paragraph (1) letter j of Law Number 8 of 1981 regarding Criminal Procedure Law and Article 18 paragraph (1) of Law Number 2 Year 2002 concerning the Indonesian National Police. The relevant indirect rules concerning the implementation of restorative justice are the legal norms that live in society. This indicates that the public upholds the family values so that in settlement, a matter is resolved by the foundation of consensus discussion.

2. To increase the understanding in the Police environment related to the settlement of criminal cases through restorative justice by organizing socialization, among others:

- a. Workshop

Workshop is an event in which several Police Investigators gather to solve a particular problem and find a solution. A group of Police Investigators with the same concern gathered together under the leadership of several experts to explore one or more specific aspects of a topic related to restorative justice. Subgroups are formed for the purpose of listening to lectures, by watching demonstrations, discussing various aspects of the topic, studying, doing, practicing, and evaluating them primarily related to restorative justice.

- b. Training

Training is a process of teaching and learning in order to improve the ability of Police Investigators in the field of restorative justice with the aim:

- 1). Change the paradigm / perspective, mindset, attitude patterns, and work patterns to achieve optimal performance.
- 2). Growing moral values, improving spiritual intelligence.
- 3). Character and identity building.

The existence of that, Police Investigators are expected to perform duties and responsibilities in accordance with the scope of his profession and

can build ethics and morality run synergistically in a profession can build a reliable nature so that the implementation of restorative justice by Police Investigators can be done well.

3. To increase the understanding of the litigants by organizing socialization, among others:

- a. Extension

Extension activities related to the settlement of criminal cases through restorative justice is an alternative enforcement outside the criminal justice process. Various media are expected to increase public awareness to understand restorative justice and bring a moral message to the importance of restorative justice. The State, in this case, mandates the Police to carry out its duties and obligations to serve the community in obtaining justice, benefit and legal certainty.

- b. Discussion

One form of socialization conducted by the Semarang Resort Police more emphasis on two-way communication both from Police Investigators and people who have influence or are viewed by the surrounding community so it is expected to provide a better explanation of the surrounding community.

The existence of socialization given to the community is intended to give understanding to the public about the importance of restorative justice. With this socialization, people understand about the benefits of restorative justice.

Based on the mentioned above that restorative justice on traffic accidents can be applied to events with any consequences including those who died, but there should be restrictions, as follows:

1. Pure accident (accidentally or negligently).
2. The offender is not drunk.
3. The perpetrator's behavior is not blameworthy.
4. The principle of propriety not to be subject to criminal law.

CONCLUSION

The importance of restorative justice by Indonesian National Police Investigators in traffic accidents resulting in death can be seen from the philosophical, sociological and juridical aspects. Implementation of restorative justice by police investigators in traffic accidents resulting in death is influenced by four factors: communication, resources, disposition, and bureaucratic structure. The settlement of traffic accident crime through restorative justice approach has not been fully understood by Indonesian National Police investigators as other responsible acts as regulated in Article 7 paragraph (1) letter j of Law Number 8 on 1981 regarding Criminal Procedure Code and police discretion authority as intended in Article 18 Paragraph (1) of Law Number 2 of 2002 regarding the Indonesian National Police, it is proven that the settlement of criminal traffic accident cases is not categorized as a normative settlement of crime, resulting in the consequence of being a dark number or an arrears of unending cases. Several obstacles related to the settlement of crime, especially the criminal acts of traffic accidents through restorative justice, among others: the understanding of legal umbrella related restorative justice is still weak, the absence of understanding in the Police environment related to the settlement of criminal cases through restorative justice, weak understanding of the litigants and the community is generally related to the

settlement of criminal cases through restorative justice. Efforts are made to anticipate the weakness of legal umbrella related restorative justice then the investigator refers to the rules that are directly or indirectly relevant. To increase the understanding in the Police environment related to the settlement of criminal cases through restorative justice by organizing socialization through workshops and training. It is an improvement of the understanding of the litigants and the public by organizing socialization through counseling and discussion.

Based on the conclusions above is suggested as follows:

1. The settlement of criminal acts of traffic accidents through restorative justice can be categorized as a normative settlement based on Article 7 paragraph (1) letter j of Law Number 8 of 1981 regarding Criminal Procedure Code and Article 18 paragraph (1) of Law No. 2 of 2002 on the Indonesian National Police.
2. The need for legislation governed the settlement of traffic accidents criminal acts through restorative justice with clear and unambiguous indicators and mechanisms.
3. The need for increased understanding of restorative justice both by law enforcement officers especially Police Investigators and the public at large.

BIBLIOGRAPHY

- Braithwaite, Jhon. *Restorative Justice & Responsive Regulation*. New York: Oxford University Press, 2011.
- Bondan, Gandjar L. *Reparasi dan Kompensasi Korban dalam Restorative Justice*. Jakarta: Kerjasama antara Lembaga Perlindungan Saksi dan Korban dengan Departemen Kriminologi FISIP UI, 2011.
- Dewi, DS. dan Fatahillah A. Syukur. *Mediasi Penal: Penerapan Restorative Justice di Pengadilan Anak Indonesia*. Bandung: Indi Publishing, 2011.
- Edwards III, George C. *Implementing Public Policy*. Washington, D.C: Congressional Quarterly Press, 1980.
- Ivo Aertsen, et.al. Restorative Justice and the Active Victim: Exploring the Concept of Empowerment. *Journal Temida*. Maret 2011.
- Kusuma, Mahmud. *Menyelami Semangat Hukum Progresif; Terapi Paradigmatik Atas Lemahnya Penegakan Hukum Indonesia*. Yogyakarta: Antony Lib bekerjasama LSHP, 2009.
- Masyhar, Ali. *Pergulatan Kebijakan Hukum Pidana Dalam Ranah Tatanan Sosial*. Semarang: Unnes Press, 2008.
- Muhammad Mustofa. Hak Asasi Manusia: Diskresi Kepolisian dan *Restorative Justice* di Indonesia Dalam Rangka Penegakan Hukum dan Ketertiban Sosial. *Jurnal Hukum dan Pembangunan*, 2005 (2): 202-216.
- Sudarto. *Hukum dan Hukum Pidana*. Bandung: Alumni, 1997.
- United Nations. *Handbook on Restorative Justice Programmes*. New York: United Nations Publication, 2006.
- Utari, Indah Sri. *Pengantar Filsafat Hukum*. Grobogan: CV Sarnu Untung, 2017.
- Winarno, Budi. *Teori dan Proses Kebijakan Publik*. Yogyakarta: Penerbit Media Pressindo, 2007.

Laws and Regulations

- 1945 Constitution, UUD 1945
 Indonesian Criminal Code, Kitab undang-Undang Hukum Pidana
 Law Number 8 of 1981 on Criminal Procedure Law
 Law Number 22 of 2009 on Traffic and Road Transportation
 Law Number 2 of 2002 on the Police of the Republic of Indonesia

- Government Regulation No. 27/1983 on the Implementation of the Criminal Procedure Code
- Government Regulation Number 58 of 2010 on Amendment to Government Regulation Number 27 of 1983 on the Implementation of the Criminal Procedure Code
- Government Regulation No. 92 of 2015 on the Second Amendment to Government Regulation Number 27 of 1983 on the Implementation of the Criminal Procedure Code
- Regulation of the Chief of Indonesian National Police Number 23 of 2010 on Organizational Structure and Administration at Police Level Resort and Police Sector
- Regulation of the Chief of Indonesian National Police Number 14 of 2011 on Code of Ethics of Police Profession of the Republic of Indonesia
- Regulation of the Chief of Indonesian National Police Number 15 of 2013 on the Procedures for Handling Traffic Accidents