



Process for Settlement of Criminal Road Traffic Accidents Through Mediation

Juhari Juhari

Faculty of Law, Universitas 17 Agustus 1945 Semarang Indonesia

Kastubi Kastubi

Faculty of Law, Universitas 17 Agustus 1945 Semarang Indonesia

Korespondensi penulis: juharish.mhum@gmail.com

Abstract: A road traffic accident is an unexpected and unintentional event on the road involving a vehicle with or without other road users which results in loss and/or loss of property. If the violation gives rise to criminal consequences attached to the violation, then the violation is a criminal offense. Law of the Republic of Indonesia Number 22 of 2009 concerning Road Traffic and Transportation, regulates *lex specialis*, regarding the process of resolving cases of criminal traffic accidents, However, the resolution of this case is also often carried out outside of court or in other words it is resolved through peace (*islah*) between the parties, this mechanism is often also called Alternative Dispute Resolution (ADR). Handling criminal cases that occur in society can be resolved using two methods, namely penal and non-penal. One of the non-penal solutions is Penal Mediation. Penal mediation itself is born from the culture that exists in society so that the content of its values is in accordance with the characteristics of the Indonesian nation. Mediation is a procedure based on "good faith" where the disputing parties convey suggestions through channels on how the dispute will be resolved by the mediator, because they themselves are unable to do so. Through this freedom, it is possible for mediators to provide innovative solutions through a form of resolution that cannot be carried out by the court, but the parties to the dispute obtain mutual benefits.

Keywords: Crime, Traffic Accidents, Mediation

INTRODUCTION

In this modern era, road traffic can be a problem for humans, because more and more people are moving or moving from one place to another. The large number of people who use road transportation means a high number of road traffic accidents. Road traffic accidents can occur due to human error or poor transportation facilities, both roads and motorized vehicles as a means of transportation.

The definition of an accident, according to the Big Indonesian Dictionary, is: an event that causes someone to suffer harm. In criminal law, an accident is a form of criminal act, if the victim suffers injuries, especially death. Road traffic accidents are regulated in Article 310, Law of the Republic of Indonesia Number 22 of 2009 concerning Road Traffic and Transportation, which reads::

- (1) Every person who drives a motorized vehicle whose negligence results in a traffic accident with damage to the vehicle and/or goods as intended in Article 229 paragraph (2), shall be punished with imprisonment for a maximum of 6 (six) months and/or a fine of a maximum Rp. 1,000,000.00 (one million rupiah)..

- (2) Every person who drives a motorized vehicle whose negligence results in a traffic accident with minor injuries and damage to the vehicle and/or goods as intended in Article 229 paragraph (3), shall be sentenced to a maximum imprisonment of 1 (one) year and/ or a maximum fine of IDR 2,000,000.00 (two million rupiah).
- (3) Every person who drives a motorized vehicle whose negligence results in a traffic accident with serious injuries to the victim as intended in Article 229 paragraph (4), shall be sentenced to a maximum imprisonment of 5 (five) years and/or a maximum fine of IDR 10,000,000. .00 (ten million rupiah).
- (4) In the event of an accident as intended in paragraph (3) which results in the death of another person, he shall be punished with imprisonment for a maximum of 6 (six) years and/or a fine of a maximum of IDR 12,000,000.00 (twelve million rupiah)..

Based on the article above, it can be concluded that the perpetrator of a road traffic accident can be brought to court to be held accountable for his actions, because the actions carried out by the perpetrator were negligent or there was no element of intention in his actions, even though in the chronology of the traffic accident, the actions were causing injury or death to people due to the victim's mistake in driving on the highway, the perpetrator who causes injury or death to someone remains in the category of criminal offense in accordance with the provisions in the two articles above, the main element of which is negligence which causes another person to suffer minor injuries, serious injury or death. (Romli Atmasasmita, 2017)

In its development, many perpetrators of road traffic accident crimes have provided compensation to their victims as a form of peace. Compensation for victims of road traffic crimes has now become an obligation to ensure peace, especially if the perpetrator of the crime is a person who has a strong economic position or has excess money. (Al Mahdi1, Mohd Din, Saifuddin Bantasyam). Pada proses persidangannya sendiri hakim akan selalu menanyakan kepada pelaku tindak pidana lalu lintas jalan raya, apakah sudah memberikan santunan kepada korban atau keluarganya. This is because victims of road traffic crimes generally suffer injuries or serious injuries, so they have to be treated in hospital which requires costs, and those who die require funeral costs.

In the criminal justice system, victims are forgotten subjects, in fact victims of criminal acts often become second victims after the completion of the criminal justice process, which is why victims of criminal acts experience lifelong trauma because of the events that happened to them. When the incident undergoes a process towards justice, he must become a witness, become an important subject in finding and bringing to light the occurrence of a criminal act. Entering the next stage, he becomes a witness in court at his own expense and recounts the

incident in court repeatedly. and if it ends with a judge's decision, the victim gets nothing or no compensation or restitution. With the judicial process taking a long time, criminal cases involving traffic accidents which result in minor and serious injuries and the death of the victim take shortcuts by peaceful means.

A road traffic accident is an unexpected and unintentional event on the road involving a vehicle with or without other road users which results in loss and/or loss of property. If the violation results in criminal consequences attached to the violation, then the violation is a criminal offense. The criminal consequences referred to are in the form of criminal charges before a criminal court and criminal sanctions if proven guilty.

Law of the Republic of Indonesia Number 22 of 2009 concerning Road Traffic and Transportation, regulates *lex specialis*, regarding the process of resolving cases of criminal traffic accidents, however, the resolution of these cases is also often carried out outside the court or in other words resolved through peace (*islah*) between the parties, this mechanism is often also called Alternative Dispute Resolution (ADR).

Alternative Dispute Resolution (ADR), which in Indonesian is translated as alternative dispute resolution, is an institution for resolving disputes through procedures agreed upon by the parties, namely settlement outside of court by means of consultation, negotiation, mediation, conciliation or expert assessment. Settlement of disputes or differences of opinion between parties in a particular legal relationship who have entered into an agreement which expressly states that all disputes or differences of opinion that arise or may arise from the legal relationship will be resolved through mediation.

Penal mediation or criminal mediation is also an alternative form of dispute resolution outside of court. In general, law in Indonesia can basically be divided into two types, namely: public law and private law or better known as Civil Law, out-of-court settlements are used in civil cases, not for criminal cases based on the laws in force in Indonesia. Currently it is positive law.

Peace in criminal law means that the resolution of a crime case is carried out outside of a judicial proceeding, namely by means of peace between the two parties, the same as in civil cases. This peace institution is not legally recognized formally in criminal law legislation, so its implementation is seen as wild and illegal because it has no basis in positive criminal law, even in Article 235, Article 236, Law of the Republic of Indonesia Number 22 of 2009 concerning Trafficking. Road Traffic and Transportation stated that providing compensation does not eliminate the judicial process. Based on the background of the problem above, the

formulation of the problem in this research is: What is the process of resolving criminal acts of road traffic accidents through mediation in the traffic accident unit?

RESEARCH METHODS

This research on the process of resolving criminal acts of road traffic accidents through mediation in the traffic accident unit, uses a normative juridical approach, namely by reviewing/analyzing secondary data in the form of legal materials, especially primary legal materials and secondary legal materials by understanding the law. as a set of positive rules or norms in the legal system that regulates human life. Normative legal research is research carried out by examining library materials. This normative legal research or literature includes: (1) research on legal principles; (2) research on legal systematics; (3) research on the level of vertical and horizontal synchronization; (4) comparative law; and (5) legal history. (Soerjono Soekanto dan Sri Mamuji, 2004)

This research on the process of resolving criminal acts of road traffic accidents through mediation uses a normative juridical type of research, namely by reviewing/analyzing secondary data in the form of legal materials, especially primary legal materials and secondary legal materials by understanding the law as a set of regulations. or positive norms in the legal system that regulates human life.

To paraphrase Ronald Dworkin's term, normative legal research is also referred to as doctrinal research, namely research that analyzes the law, whether written in the book (law as it is written in the book) or the law decided by judges through the court process (law as it is decided by judge through judicial process). (Bismar Nasution, 2003)

DISCUSSION

The development of law enforcement systems and methods in Indonesia tends to follow developments in societal justice. In the police environment, one form of non-litigation criminal law enforcement through police discretion is known as Restorative Justice. Restorative justice is a concept of justice that aims to empower victims, perpetrators, families and communities to correct unlawful acts, using awareness and conviction as a basis for improving social life. (Andri Winjaya Laksana, 2017).

Handling criminal cases that occur in society can be resolved using two methods, namely penal and non-penal. One of the non-penal solutions is Penal Mediation. Penal mediation itself is born from the culture that exists in society so that the content of its values is in accordance with the characteristics of the Indonesian nation.

The word mediation comes from the English "mediation", which means dispute resolution involving a third party as a mediator or mediated dispute resolution. (Khotibul umam, 2010). Mediation is a problem-solving negotiation process where an external, impartial, neutral party does not work with the parties to the dispute to help them reach a satisfactory negotiated agreement. Unlike judges and arbitrators, mediators have the authority to decide disputes between the parties, instead the parties empower the mediator to help them resolve the problems between them.

Mediation is a problem-solving negotiation process, where impartial parties work together with the disputing parties to find a mutual agreement. This outside party is called a mediator, who has no authority to decide the dispute, but only helps the parties to resolve the problems assigned to them.

Mediation is a peaceful process in which the disputing parties hand over the resolution to a mediator (someone who arranges a meeting between two or more disputing parties) to achieve a fair final result, without wasting too much money, but still effective and fully accepted by the party. both parties to the dispute voluntarily. Mediation is a procedure based on "good faith" where the disputing parties convey suggestions through channels on how the dispute will be resolved by the mediator, because they themselves are unable to do so. Through this freedom, it is possible for mediators to provide innovative solutions through a form of settlement that cannot be carried out by the Court, but the parties to the dispute obtain mutual benefits.

Experts explain the meaning of mediation in terms of etymology and terminology. (Syahrizal Abbas, 2009). Etymologically, the term mediation comes from the Latin "mediare" which means being in the middle. This meaning refers to the role played by a third party as a mediator in carrying out its duties to mediate and resolve disputes between the parties. "Being in the middle" also means that the mediator must be in a neutral and impartial position in resolving the dispute. He must be able to safeguard the interests of the disputing parties fairly and equally, thereby fostering trust among the disputing parties.

In the Big Indonesian Dictionary, the word mediation means the process of involving a third party in resolving a dispute as an advisor. This understanding contains three important elements, namely:

1. Mediation is a process of resolving disputes or disputes that occur between two or more parties.
2. The parties involved in dispute resolution are parties from outside the parties to the dispute.

3. The party involved in resolving the dispute acts as an advisor and does not have any authority in making decisions.

This etymological explanation of mediation emphasizes the existence of a third party or party whose role is to mediate between the two parties to the dispute and only explains the nature of mediation, without explaining mediation in depth. This third party bridges the parties to resolve the dispute. This also provides a difference between mediation and other alternative dispute resolution. This third party has a neutral nature between the two parties to the dispute and provides or finds an agreement that satisfies the parties.

The process for resolving traffic cases is regulated in the Letter of the Chief of Police No. Pol: B/3022/XII/2009/SDEOPS dated 14 December 2009 concerning Handling Cases Through Alternative Dispute Resolution (ADR) as well as Regulation of the Head of the National Police of the Republic of Indonesia Number 7 of 2008 concerning Basic Strategy Guidelines and Implementation of Community Policing in Carrying out Police Duties. The National Police Chief's letter regulates the main matters, including:

1. Striving to handle criminal cases that have small material losses, the resolution of which can be directed through the ADR concept
2. Settlement of criminal cases using ADR must be agreed upon by the parties involved in the case, but if there is no agreement, it will be resolved in accordance with applicable legal procedures in a professional and proportional manner.
3. Settlement of criminal cases using ADR must be based on the principle of deliberation and consensus and must be known to the surrounding community by including the local RT RW.
4. Settlement of criminal cases using ADR must respect social/customary legal norms and fulfill the principles of justice.
5. Empower Polmas members and play the role of FKPM in their respective areas to be able to identify criminal cases that have small material losses and can be resolved through the ADR concept.
6. For cases that have been resolved through the ADR concept so that they are no longer touched by other legal actions that are counter-productive to the aims of community policing.

In accordance with the Letter of the Chief of Police Nopol B/3022/XII/2009/Sdeops on 14 December 2009 concerning handling cases through Alternative Dispute Resolution (ADR), the Chief of Police issued Regulation of the Chief of Police Number 15 of 2013 concerning Procedures for Handling Traffic Accidents, Article 63 which reads:

- (1) The obligation to compensate for losses occurs through an amicable agreement between the parties involved in a traffic accident, to resolve the case can be resolved outside the court session.
- (2) A peace agreement between the parties involved in a traffic accident is stated in a peace statement.
- (3) Settlement of cases outside of court as regulated in paragraph (2) can be carried out as long as a police report has not been made.
- (4) In minor traffic accident cases, if the elements of a criminal offense are met and there is no peaceful agreement between the parties involved in the traffic accident, then the case will be resolved using a short procedure.
- (5) Settlement of cases outside the court session as regulated in paragraph (2) must be registered and a statement of peace agreement archived.

These two regulations are the basis for members of the police in the field of road traffic, to carry out out-of-court settlements of traffic accident cases as a manifestation of one of the police's discretionary powers. These regulations expressly stipulate that out-of-court settlements may only be made if they result in minor injuries to the victim and/or result in minor material losses. However, based on the policy of National Police Investigators, they allow settlement of traffic accident cases outside of court, even if they result in serious injuries or deaths, which of course must meet the criteria for resolving traffic accident cases outside of court and through certain mechanisms.

Proses penyelesaian perkara kecelakaan lalu lintas di luar pengadilan penerapannya dibagi menjadi dua jenis, yaitu :

1. The police use discretionary authority to resolve traffic accident cases outside the court before a police report is issued..

In this case, traffic accident cases are limited to victims who suffered minor injuries or little material loss. The resolution mechanism in this case is that the police investigator brings together the perpetrator and the victim regarding the resolution of the selected case. If the perpetrator and victim agree to make peace, the perpetrator is willing to compensate for material and immaterial losses, then a written peace agreement letter is made on a stamp which is signed by the perpetrator, the victim and witnesses known to the local RT/RW/Village Head/District Head. . Then the investigator records the traffic accident case in the register book and records it properly. However, when the perpetrator and victim cannot find an agreement, the case is continued in accordance with the mechanism for resolving traffic accident cases regulated by law.

2. The police use discretionary authority in resolving traffic accident cases after a police report is issued.

In this case, a traffic accident resulted in serious injuries and death to the victim. The mechanism for resolving the case is first aid to the victim by taking the victim to hospital, during treatment it is possible to reach an agreement between the perpetrator and the victim and/or the victim's heirs regarding peaceful efforts or resolving the traffic accident case outside the court. After the parties agree to make peace, this is realized by making a written peace agreement on a stamp which is signed by the perpetrator, the victim and witnesses known to the local RT/RW/Village Head/Subdistrict Head. Investigators continued to examine witnesses, examine suspects, confiscate evidence and then held a case led by the Deputy Chief of Police and attended by the Head of Traffic, Head of Intelligence, Head of Police, Provos, Head of Traffic Police and Traffic Police investigators. Each case title participant expressed his opinion regarding the results of the case title and the results were sent to the Police Chief as material for making a decision whether the case could be resolved outside of court or continue through the criminal justice system stage.

In resolving accident cases outside the court, the police only act as a bridge or intermediary in resolving traffic accident cases. The initiative in choosing a settlement model lies entirely with the parties. Police officers may not intervene or intervene if the parties involved in a traffic accident case choose to settle the traffic accident case outside the court. Apart from that, members of the police may not intervene regarding the contents of the clauses agreed upon by each party.

Specifically related to SPPP (Order to Stop Investigation), the role of the Police as a mediator in resolving traffic accident cases is interesting to analyze. The legal basis for the Police in determining a case to be in the SPPP category (Order to Stop Investigation) is Article 16, Law of the Republic of Indonesia Number 2 of 2002 concerning the State Police of the Republic of Indonesia, that "In order to carry out the duties as intended in Article 13 and Article 14.

The legal basis for the Police of the Republic of Indonesia is that "In the public interest, officials of the National Police of the Republic of Indonesia in carrying out their duties and authority can act according to their own judgment."

The main duties of the Republic of Indonesia State Police according to Article 13 of Republic Law Number 2 of 2002 concerning the Republic of Indonesia State Police are as follows:

- a) Maintain public security and order;;
- b) Enforcing the law; And
- c) Providing protection, guidance and service to the community.

Based on Article 14 letter "k" Republic Law Number 2 of 2002, it is further emphasized that "providing services to the community in accordance with the interests within the scope of police duties". In principle, every traffic case that results in the death of a victim is a criminal case and must be resolved through court. In daily practice, the police as investigators, especially in handling traffic cases that cause injury or death to other people, can accept that the settlement will be carried out outside of court even though the case is an ordinary offense. This arises because the law cannot accommodate all actions in society. There are settlements for traffic criminal cases that are resolved outside of court involving traffic accidents that cause the death of the victim, namely the settlement of cases between the parties involved without going to court.

The settlement process is carried out by the parties themselves because each party agrees to settle without going through a convoluted and time-consuming process. This happens because the court will study the existing evidence in order to find acceptable truth and justice. both sides. As for resolving cases outside of court above, the police's job as investigators and law enforcers is to serve as mediator for each party and if each party has an agreement regarding reimbursement of costs if the victim is first treated in hospital before dying, covering funeral costs, rescue until by completing it and giving a certain amount of money as condolence money and after that making a statement stating that the case has been completed and there is no re-prosecution from either party, the police will declare the case closed.

The occurrence of traffic accidents that cause death generally does not have an element of intent and there is an element of negligence. The perpetrator and the victim's family are usually aware of each other so that when resolving the case they choose to choose outside of court or peacefully. So in summary, the form of resolving traffic cases outside of court in a peaceful manner means that the perpetrator and the victim's family agree after holding deliberations to resolve the case amicably.

The Traffic Police as investigators in handling traffic accident cases must first look at the causes of the traffic accident, so that whether or not the case can be resolved outside of court or must go through court. In determining these criteria, the police must have special expertise in the field of traffic because the police in handling the case must be able to resolve it well and fairly.

Penal mediation by the Police is the implementation of all the rules stated in Law of the Republic of Indonesia Number 2 of 2002 concerning the National Police of the Republic of Indonesia. Penal mediation by the Police implies the public's response to the Police's performance in handling traffic accident cases, because this penal mediation institution is actually a positive effort by the Police in resolving traffic accident cases through out-of-court channels/Alternative Dispute Resolution (ADR).(Roeslan Saleh, 1984).

In the mediation process, the police act as a mediator between the perpetrator and the victim/family member of the accident victim. The mediator provides a statement form to the victim/representative not to attempt to prosecute the case because everything agreed in the form has been fulfilled. The agreement includes, among other things, money for compensation/compensation for victims, money for funerals, salvation and so on. Witnessed by the mediator (Police) as a third party, the statement form becomes the basis for the mediator to issue a SPPP (Order to Stop the Investigation).

The Police Agency has the authority to determine whether an action will be continued or not continued in the criminal justice process for certain reasons. In traffic cases such as traffic accidents, if it only causes minor losses or minor injuries, it is usually resolved by mediation between the perpetrator and the victim, and the police as witnesses to the agreement reached, the case is not continued on the basis of a mutual agreement between the perpetrator and victim.

However, if the accident due to negligence causes major losses, such as life, then mediation cannot be carried out, while the payment of compensation in the form of hospital costs and burial of the victim's body is only one of the considerations that will be used by the judge in handing down a decision to the defendant.

Thus, the agreement to compensate for losses does not eliminate the criminal act, because the perpetrator is still investigated and processed in the criminal justice system. Furthermore, it is said that the penal mediation process carried out by police agencies in certain criminal acts, is not a form of police discretion, because in police discretion the decisions taken are in fact contrary to regulations so that they take a lot of strategic considerations for the interests of many people. Here too, the role of the police is not as a mediator, but only as a witness who witnesses the resolution of the criminal case through a peace agreement.

In this mediation, the victim can ask for compensation from the perpetrator, however, if there is an agreement between the victim and the perpetrator to compensate the loss, the agreement does not eliminate the prosecution, so that the judicial process continues as it should, and the compensation agreement is only a consideration for the prosecutor in holding

prosecution, the decision remains in the hands of the judge. Penal mediation here only serves to mitigate demands, because there is no law that regulates the implementation of mediation and the legal force of the deed of agreement resulting from penal mediation.

The issue of traffic accidents is regulated in Law of the Republic of Indonesia Number 22 of 2009 concerning Road Traffic and Transportation, as stated in the Criminal Provisions CHAPTER XX Articles 273 to 316. Not a few traffic accidents occur because drivers do not obey signs, -traffic signs or road markings, does not have a driving license (SIM), the vehicle does not meet roadworthy requirements or the driver is unable to drive the vehicle properly.

CONCLUSION

The process of resolving criminal acts of road traffic accidents through mediation in the traffic accident unit is based on: Article 18 paragraph (1) of Law of the Republic of Indonesia Number 2 of 2002 concerning the Police, which reads: In the public interest, officials of the State Police of the Republic of Indonesia in carrying out and carrying out their authority can act according to his own judgment. The mechanism for resolving cases that cause minor injuries is as follows: The police investigator brings the perpetrator and victim together regarding the chosen case resolution. If the perpetrator and victim agree to make peace, the perpetrator is willing to compensate for material and immaterial losses, then a written peace agreement letter is drawn up in on a stamp signed by the perpetrator and victim along with witnesses known by the local RT/RW Village Head/Subdistrict Head. Then the investigator records the traffic accident case in the registration book and records it properly. However, when the perpetrator and victim cannot find an agreement, the case is continued in accordance with the mechanism for resolving traffic accident cases regulated by law.

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