



## APPLYING RESTORATIVE JUSTICE FOR THE SETTLEMENT OF TRAFFIC ACCIDENT BY THE POLICE: AN EMPIRICAL STUDY

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### Abstract

*The Head of the National Police of the Republic of Indonesia is now promoting law enforcement at the police level by prioritizing restorative justice in the framework of great service to the community. The efforts of the Head of the National Police of the Republic of Indonesia, who stipulated National Police Chief Regulation Number 8 of 2021 about the Handling of Crimes Based on Restorative Justice, further support this. The National Police Chief's Regulations clarify how law enforcement should prioritize restorative justice in several situations, including those involving traffic accidents. This restorative justice procedure should be used to settle cases involving traffic accidents since it is a positive step toward reform. According to Friedman's view, legal content, legal organization, and legal culture all have an impact on how well law enforcement works. Nevertheless, in practice, these three requirements have not been met in the law enforcement system by restorative justice, preventing the optimal operation of the restorative justice system for the settlement of traffic accident cases.*

**Keywords:** *Restorative justice, traffic accident, police.*

### 1. INTRODUCTION

Traffic accidents are one of the issues that frequently arise in the sector of transportation. Traffic accidents can happen when a community's needs for road transportation cannot be met by current infrastructure, even though the community's population and rate of economic growth are both rising. As a result, the community's activities and the volume of its traffic must also rise, necessitating support from the state for the construction of new infrastructure.<sup>1</sup>To boost citizens' sense of security through reducing traffic accidents, the state must be present. The daily activities of the Indonesian people are significantly impacted by security, safety, order, and efficient traffic because all community activities must unavoidably pass via a road or traffic environment. Traffic collisions are extremely harmful and disturb the community's peace and safety. Traffic has a significant impact on society's ability to maintain order and safety in daily life. According to data from the Police Traffic Corps (Korlantas Polri), there were 95,906 road accidents in 2014; however, in 2016, there were 105,374 incidents, with a death toll of 25,859 persons. As stated in Table 1, the number of traffic accidents reduced to 103,645 instances and the number of fatalities decreased to 25,266 in 2021 when compared to 2016, however this level is still considered to be excessive when compared to 2014.<sup>2</sup>

According to a World Health Organization statistic, around 1.25 million people worldwide die because of traffic accidents every year (WHO). To increase the security and order of the Indonesian people, the public therefore sincerely wishes that the state will be involved in handling incidents of traffic accidents. For a country to be taken into consideration and brought to the

<sup>1</sup> Umi Enggarsasi, "Kajian Terhadap Faktor-Faktor Kecelakaan Lalu Lintas," *Perspektif* 22, no. 3 (2017): 228–37.

<sup>2</sup> Winda Aprianti et al., "K-Means Clustering Untuk Data Kecelakaan Lalu Lintas K-Means Clustering for Highway Traffic Accident Data in Pelaihari Sub District," *Teknologi Informasi Dan Ilmu Komputer* 5, no. 5 (2018): 613–20, <https://doi.org/10.25126/jtiik2018551113>.

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attention of the world, the death rate of people makes the degree of security and order in that country decline.<sup>3</sup> In the Kulon Progo Police jurisdiction, there have been 532 traffic-related events so far this year, resulting in 50 fatalities and 875 minor injuries. Unfortunately, it only lasts for August this year. The number of traffic accidents during August 2022 is similar to the total number of events in 2021 when compared to the number of incidents in 2021, which was 615, with the number of deaths reaching 69, serious injuries reaching 3, and minor injuries reaching 992.<sup>4</sup>

National police is a government mechanism that attempts to achieve homeland security, which includes preserving public safety and order, enforcing the law in an orderly and consistent manner, putting protection into practice, serving the community, and promoting public peace through defending human rights. For the people to have faith in the National Police, the National Police must be professional in how they carry out their tasks and obligations and they must also be more accessible to the community.<sup>5</sup> The National Police must therefore offer the best level of service to the community in terms of law enforcement, particularly in cases involving traffic accidents.

Every traffic accident case must be thoroughly investigated by the National Police. A good settlement is one that benefits all parties involved in a traffic accident while doing no harm to any one of them. The National Police has made an effort to uphold the law in situations involving traffic accidents by giving restorative justice priority in order to correctly and fairly adjudicate such cases. The Republic of Indonesia's current National Police Chief has praised this kind of law enforcement. By establishing the Regulation of the Chief of Police of the Republic of Indonesia Number 8 of 2021 concerning Handling Crimes Based on Restorative Justice, the current Chief of Police of the Republic of Indonesia, General of Police Listyo Sigit Prabowo, demonstrates his seriousness regarding the application of restorative justice to law enforcement at the police level. The procedures that investigators must follow in order to apply restorative justice to a settlement case are outlined in this Police Chief regulation. General Listyo expects this kind of system to be presented and prioritized while resolving a case.

According to Bagir Manan, restorative justice is conceptually comprised of principles and ideas that foster collaboration between victims, offenders, and community organizations in order to resolve a criminal case. Victims, offenders, and community leaders are positioned in restorative justice as parties who collaborate to resolve an issue that arises in a case. That is, a dispute that arises and prompts one party to file a lawsuit against the other party will be settled amicably by deciding together on the type of accountability that must be assumed by the person that injured the other party.<sup>6</sup>

The Police Chief's Regulation explains restorative justice in terms of auto accidents. The Chief of Police of the Republic of Indonesia's Regulation No. 8 of 2021 about the Handling of Criminal Crimes Based on Restorative Justice states this in both article 7 letter C and article 10.<sup>7</sup> In accordance with article 7 of b, the following special conditions are listed in addition to illegal acts: (a) information and electronic transactions; (b) drugs; and (c) transportation. According to article 10's definition of traffic crimes, they must also cause accidents involving motor vehicles that result in material loss and/or minor injuries, or they must cause accidents involving motor vehicles that are the result of negligence and cause fatalities or significant property loss. Cases that can be settled using a restorative justice strategy include traffic accidents. The Police Chief's Regulation

<sup>3</sup> Kadek Aditya Yasa Putra, "Penanganan Terhadap Kecelakaan Lalu Lintas Di Kota Probolinggo Handling of Traffic Accidents in Probolinggo City," *Jurnal Sosiologi Dialektika* 14, no. 1 (2019): 59–67.

<sup>4</sup> The data was based on Law enforcement unit Kulon Progo police traffic accident unit

<sup>5</sup> Adamsyah Nadeak, "Implementasi Penegakan Hukum Diskresi Kepolisian Dalam Penyelesaian Kecelakaan Lalu-Lintas Di Tingkat Penyidikan," *Hermeneutika* 3, no. 1 (2019): 291–306.

<sup>6</sup> Nurfa Caesarini Putri, "Pendekatan Keadilan Restoratif Dalam Penanganan Tindak Pidana Pencurian Yang Dilakukan Oleh Anak," *Jurist-Diction* 4, no. 5 (2021): 1908.

<sup>7</sup> Article 7 of c and Article 10 of Police Regulation Number 8 of 2021 concerning Handling Criminal Cases Based on Restorative Justice .



must still be considered and consulted while handling traffic accident matters at the police level. However, it is stated in Law Number 22 of 2009 concerning Road Traffic and Transportation Article 235 Paragraphs (1) and (2) that traffic accidents that result in human victims—both injured and dead—cannot be considered criminal acts, even if the accident suspect has helped the victim or the victim's heirs (if the victim dies).

It is obvious that the Chief of Police falls under Law Number 22 of 2009 concerning Road Traffic and Transportation given the legal hierarchy, which places that position under Regulation of the Republic of Indonesia Number 8 of 2021 about Handling of Criminal Crimes Based on Restorative Justice. As a result, when carrying out a series of tasks to look into traffic accident cases, it is important to prioritize the Law's directives before turning to the Chief of Police's Regulation. Police detectives, who are viewed from the perspective of law enforcement in this literature, need to have a thorough understanding of and insight into how to solve crimes using restorative justice. To foster goodwill among litigants while still upholding the values of justice, expediency, and legal clarity, investigators must also possess the persuasive ability to seek the resolution of criminal crimes based on restorative justice.

The possibility of a traffic accident is undoubtedly not something that anyone wants to happen, and nobody intends to be in one. To put it another way, since it is impossible to predict when or where a traffic collision will happen, restorative justice must be used to resolve the case. So that the resolution of traffic accident cases in the police with a restorative justice approach can work well, this study was prepared to analyze law enforcement in traffic accident cases by seeking settlement through a restorative justice system. Based on the description given above, how can the legislation be enforced at the police level in cases involving traffic accidents while also attempting to find a resolution through a restorative justice system?

## 2. IMPLEMENTATION METHOD

In a practical sense, legal research focuses on how the law is being applied, how the law appears to be being applied (law in action), or how the law is moving (*recht in beweging*).<sup>8</sup> Legal research methodologies are essential for any study in the field of legal science. Legal research methods are the process of identifying better legal doctrines, legal regulations, or other legal discoveries like new ideas or legal science concepts.<sup>9</sup> In order to examine how Law Number 22 of 2009 concerning Road Traffic and Transportation and Regulation of the Chief of Police of the Republic of Indonesia Number 8 of 2021 concerning Handling of Criminal Acts Based on Justice Rest are applied, this research employs empirical legal research methods with a sociological approach method. This research also examines investigators who handle traffic accident cases as well as individuals who experience or are involved in traffic accident cases.

Due to the fact that the data in this study came from research that was done specifically on the study's subject, it was gathered through primary data sources. Because primary legal materials, such as laws and regulations, such as Law Number 22 of 2009 concerning Road Traffic and Transportation and Regulation of the Chief of Police of the Republic of Indonesia Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, as well as secondary legal materials, such as journals that analyze the implementation, were used to gather the data for this research, secondary data sources were also used. This study employs primary data collection methods, where the author observes and conducts interviews with research participants, as well as secondary data collection methods, where the author gathers research information from literature reviews. Because the author classifies the data collected to draw research conclusions, the data analysis technique she employs is a qualitative data analysis technique.

<sup>8</sup> Ahmad Zuhdi Muhdlor, "Perkembangan Metodologi Penelitian Hukum," *Jurnal Hukum Dan Peradilan* 1, no. 2 (2012): 189, <https://doi.org/10.25216/jhp.1.2.2012.189-206>.

<sup>9</sup> Yati Nurhayati, Ifrani Ifrani, and M. Yasir Said, "Metodologi Normatif Dan Empiris Dalam Perspektif Ilmu Hukum," *Jurnal Penegakan Hukum Indonesia* 2, no. 1 (2021): 1–20, <https://doi.org/10.51749/jphi.v2i1.14>.

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**3. RESULTS AND DISCUSSION**

**3.1 Restorative Justice and Traffic Accident: The Conceptual Framework**

In article 1 of the Regulation of the Chief of Police of the Republic of Indonesia Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, restorative justice is defined as the resolution of criminal acts by involving the victim's perpetrator, the perpetrator's family, the victim's family, community leaders, religious leaders, traditional leaders, or stakeholders to jointly seek a fair solution through peace by emphasizing recovery back to the original situation.<sup>10</sup> A school of thought known as restorative justice responds to the evolution of the criminal justice system by placing a higher priority on the interests of victims who feel excluded by the current criminal justice system's operating mechanisms or community involvement.<sup>11</sup> The main goal of restorative justice is to give the community involved in the legal process a sense of justice by fostering good communication between the offender, victim, and community group in order to resolve a criminal event and turn it into a collaborative effort to find a resolution that is acceptable to all parties.<sup>12</sup>

According to Martin Wright, the restorative justice system or penal mediation is a procedure in which the perpetrator and the victim communicate with one another, assisted by a neutral third party (not taking sides anywhere), either directly or indirectly through a third party, that enables the victim to communicate his needs related to a problem that both parties face to be met by the perpetrator as a form of responsibility for the perpetrator for a criminal act that is done to the victim.<sup>13</sup> The restorative justice system, on the other hand, aims to resolve disputes or problems between the parties involved in the problem and make efforts to restore the original condition by giving the party who suffered a loss the chance to express that loss to the party who caused the loss, so that later the party who suffered the loss can provide an offer for the loss that has experienced and been held accountable by the party who caused the loss.<sup>14</sup>

Tony F. Marshall added his perspective on restorative justice. He defined restorative justice as a procedure where the parties involved in a crime come together to discuss the issues they are currently facing because of the violation in order to find a solution that would benefit everyone involved in the future. The viewpoint on restorative justice held by Tony F. Marshall is equivalent to those of other specialists on the subject that have already been mentioned.<sup>15</sup> Criminal behavior is viewed in restorative justice because of the notion that it essentially ruins relationships between communities. As a result, justice is required from the best solutions for victims, perpetrators, and the community to solve problems that arise in Indonesian society.<sup>16</sup> In this manner, it is believed that via the resolution of cases with a restorative justice system, the connection that has been harmed in the community can be rebuilt once more.

<sup>10</sup> Article 1 of the Police Regulation Number 8 of 2021 concerning Handling Criminal Cases Based on Restorative Justice.

<sup>11</sup> Erni Herlin Setyorini, "Konsep Keadilan Restoratif Bagi Anak Yang Berkonflik Dengan Hukum Dalam Sistem Peradilan Pidana Anak," *Jurnal Ilmu Hukum* 16, no. 2 (2020): 155.

<sup>12</sup> Saut Parulian Manurung, "Fenomena Hukum Akibat Mekanisme Criminal Justice System Dan Keadilan Restoratif Dalam Perspektif Keadilan Utilitarianisme," *Jurnal Hukum Magnum Opus* 3, no. 2 (2020): 187.

<sup>13</sup> Kristiyadi Kristiyadi and Vincentius Patria Setyawan, "Mediasi Penal Dalam Tindak Pidana Ringan Untuk Mewujudkan Keadilan Restoratif," *Jurnal Kepastian Hukum Dan Keadilan* 4, no. 1 (2022): 17–30, <https://doi.org/10.32502/khdk.v4i1.4622>.

<sup>14</sup> Hesti Septianita, "Keadilan Restoratif Dalam Putusan Pidana Anak (Kajian Putusan Nomor 9/PID.SUS-ANAK/2016/PT.BDG)," *Jurnal Yudisial* 11, no. 2 (2018): 200.

<sup>15</sup> Yusi Amdani, "Konsep Restorative Justice Dalam Penyelesaian Perkara Tindak Pidana Pencurian Oleh Anak Berbasis Hukum Islam Dan Adat Aceh," *Probation Journal* 13, no. 1 (2016): 64–65.

<sup>16</sup> Nefa Claudia Meliala, "RechteRlijk PaRdon (Pemaafan Hakim): Suatu UPaya Menuju SiStem Peradilan Pidana Dengan Paradigma Keadilan ReStoratif RECHTERLIJK PARDON: (JUDICIAL PARDON): AN EFFORT TOWARD CRIMINAL JUSTICE SYSTEM WITH RESTORATIVE JUSTICE PARADIGM," *Jurnal IUS Kajian Hukum Dan Keadilan* 8, no. 3 (2020): 552–68.



Since the 19th century, the idea based on the recognition of wrongdoing has proven successful in American courts.<sup>17</sup> The Pancasila values must be strengthened in the system for this excellent thing to be continued and put into practice in Indonesia. The thing that must be considered in this compensation system is that its effectiveness must be evaluated not only in terms of the amount of compensation provided to the victim but also in terms of the loss that the victim must successfully address.<sup>18</sup> The community's method or channel of communication, traffic, plays a crucial role in advancing the nation's economy, progress, and dignity.<sup>19</sup>

Traffic is one of the indications of success in promoting the nation. Smooth traffic is necessary for people to go about their everyday business. Yet, one issue that might impede the efficient flow of traffic is collisions. According to Law Number 22 of 2009 Concerning Road Traffic and Transportation, the state has established a legal framework managing traffic accidents. Law Number 22 of 2009 Concerning Road Traffic and Transportation regulates issues relating to road accidents. Unexpected and unplanned road events involving a vehicle, with or without other road users, that cause fatalities and/or property damage are known as traffic accidents.<sup>20</sup> Traffic accidents can result in damage to vehicles and/or commodities, minor injuries, serious injuries, and even fatalities, according to article 229 of Law Number 22 of 2009 regulating Road Traffic and Transportation.<sup>21</sup> Under the Road Traffic and Transport Act, it is also explained that traffic accident cases are treated by criminal justice in line with the terms of the laws and regulations.<sup>22</sup>

Law Number 12 of 2011 About the Creation of Laws and Regulations contains Regulation of the Chief of Police of the Republic of Indonesia Number 8 of 2021 concerning Handling of Criminal Crimes Based on Restorative Justice Explanation connected to Laws and Regulations. According to article 1 number 2 of the regulation, laws and regulations are written rules that contain generally binding legal standards and are created or decided upon by state institutions or authorized authorities in accordance with the rules and regulations' prescribed methods.<sup>23</sup> A statutory regulation created by the Chief of Police of the Republic of Indonesia that outlines social norms and values is called Regulation of the Chief of Police of the Republic of Indonesia Number 8 of 2021 about Handling of Criminal Crimes Based on Restorative Justice. For law enforcement, particularly at the police level, to be able to meet the legal needs of the Indonesian people while also satisfying the sense of justice for all parties, this regulation was created to provide clarity on the procedures for dealing with criminal acts in a restorative manner that is fair.

### 3.2 Analysis of Restorative Justice for the Settlement of Traffic Accident by the Police

The possibility of a traffic accident is undoubtedly not something that anyone wants to happen, and nobody intends to be in one. To put it another way, since it is impossible to predict when or where a traffic collision will happen, restorative justice must be used to resolve the case. According to Regulation of the Chief of Police of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Criminal Actions Based on Restorative Justice, the Police may attempt to resolve traffic accident cases through a restorative justice system when conducting an investigation. Based on Friedman's theory, according to which the content of the law, the legal system, and the legal culture all play a role in how successfully a law enforcement agency operates. This essay examines three elements of Friedman's theory to analyze the success of law enforcement in traffic accident cases by pursuing resolution through a restorative justice system at the police level.

<sup>17</sup> Robert E Keeton, "Compensation for Medical Accidents," *University of Pennsylvania Law Review*, 1973, 5.

<sup>18</sup> Yu Yan, "The Effectiveness of the Road Traffic Liability System," *Columbia Journal of Asian Law*, 2020, 4.

<sup>19</sup> Rendra Kurniawan Prasetya, "Diversi Dan Pelaku Kecelakaan Lalu Lintas," *DiH Jurnal Ilmu Hukum* 12, no. 24 (2016): 93.

<sup>20</sup> Article 1 of 24 of Law Number 22 of 2009 concerning Traffic and Road Transport.

<sup>21</sup> Article 29 of Law Number 22 of 2009 concerning Traffic and Road Transport.

<sup>22</sup> Article 230 of Law Number 22 of 2009 concerning Traffic and Road Transport.

<sup>23</sup> Article 1 of 2 Law Number 12 of 2011 concerning the Formation of Laws

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The essence of the law can be understood as the law, where the law is understood as what the regulations are, such as the laws and regulations or the rules, policies, and laws. Three elements make up the ideal and desirable content of law, namely the concepts of justice, expediency, and legal clarity.<sup>24</sup> If you want good law enforcement for the community, then one of the indicators, which is an indicator of the substance of the law, must be developed and shaped appropriately by taking into account fairness, expediency, and legal clarity in controlling the law enforcement process.

The Regulation of the Chief of Police of the Republic of Indonesia Number 8 of 2021 concerning Handling Criminal Actions Based on Restorative Justice serves as the legal foundation for investigators to seek the resolution of traffic accident cases, among other things. In order for investigators to implement the idea of legal certainty in resolving traffic accident cases through a restorative justice system, the police chief's regulation unquestionably needs to have good content. According to Article 5 of Law Number 12 of 2011 Concerning the Creation of Laws and Regulations, the creation of laws and regulations must be done in accordance with the following standards: a) clarity of purpose; b) appropriate institutional or shaping officials; c) conformity between types, hierarchies, and charge materials; d) enforceable; e) usefulness; f) clarity of formulation; and g) openness.<sup>25</sup>

The problem with the Chief of Police Regulation lies in the compatibility between one law and another. In the case of traffic accidents, restorative justice is explained in the Police Chief's Regulation. This is stated in article 7 letter c and article 10 of the Regulation of the Chief of Police of the Republic of Indonesia Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice. In accordance with article 7 of b, the following special conditions are listed in addition to illegal acts: (a) information and electronic transactions; (b) drugs; and (c) transportation. According to article 10's definition of traffic crimes, they must also cause accidents involving motor vehicles that result in material loss and/or minor injuries, or they must cause accidents involving motor vehicles that are the result of negligence and cause fatalities or significant property loss. Hence, instances that can be handled using a restorative justice strategy include those involving traffic accidents. The Police Chief's Regulation must still be taken into consideration and cited when traffic accident cases are resolved at the police level.

In the "enforceable" aspect of Article 5 of Law No. 12 of 2011 concerning the Establishment of Laws and Regulations, this Police Chief Regulation still needs analysis with the laws and regulations on it. This police chief's regulation explains that traffic accident cases can be resolved with a restorative justice approach.<sup>26</sup> However, based on Law Number 22 of 2009 concerning Road Traffic and Transportation Article 235 paragraphs (1) and (2), it is explained that traffic accidents that cause human victims, both injured and dead, criminal acts cannot die even though the suspect in the accident case has provided assistance to the victim or the victim's heirs (if the victim dies).<sup>27</sup>

It is clear that based on the hierarchy of legislation, the position of the Chief of Police Regulation of the Republic of Indonesia Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice is under Law Number 22 of 2009 concerning Road Traffic and Transportation. That way, the implementation of a series of investigation activities for traffic accident cases should prioritize the guidelines in the Law first, then after that it can refer to the Regulation of the Chief of Police. In other words, the Chief of Police Regulation still has problems related to the "enforceable" aspect.

One of the investigators of the Kulon Progo Police Department also argued that the absence of a legal basis in applying restorative justice raises doubts for investigators, even if the settlement of

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<sup>24</sup> Rismana and Hariyanto, "Perspektif Teori Sistem Hukum Dalam Kebijakan Vaksinasi Di Tengah Pandemi Covid-19."

<sup>25</sup> Article 5 of Law Number 12 of 2011 concerning the Formation of Laws

<sup>26</sup> Article 5 of Law Number 12 of 2011 concerning the Formation of Laws

<sup>27</sup> Article 235 section (1) and section (2) Law Number 22 of 2009 concerning Traffic and Road Transport



traffic accident cases through a restorative justice approach, can be said to be an unlawful activity. Aipda Wali Yoga reveals that the use of restorative justice has thus far been based on police discretion because investigators do not now have a solid legal foundation upon which to implement it. Although it is true that these actions allegedly contravene Article 235 of the Traffic Accident Law, they serve a good purpose by allowing us to carry out our desires and give back to the community. What needs to be recognized is that the application of restorative justice should not generate new difficulties to the community.

Regulations on the resolution of criminal cases using a restorative justice approach must have a legally binding and enforceable foundation, as well as a formation process that is compliant with the procedure and the content and content are clear or do not lead to double interpretation, in the hopes that they will allow the resolution of traffic accident cases using a restorative justice approach to proceed successfully and smoothly while still upholding the law. The government's law enforcement agencies make up the legal framework since they are entrusted with responsibilities and powers that are safeguarded and governed by the law.<sup>28</sup> The scope of law enforcement is very broad, including all parties or individuals that are either directly or indirectly involved in it. In this essay, the author focuses primarily on how the Indonesian National Police (Polri) interprets law enforcement as investigators inside the country's criminal justice system. Any process that, with the aid of a facilitator or mediator, actively involves victims, offenders, or individuals or members of the community who have been injured in order to resolve issues or issues resulting from crimes. When using restorative justice to resolve criminal cases, it is clear that the function of the facilitator or mediator—who in this case is an investigator—is crucial and necessary.<sup>29</sup>

Nonetheless, there are still some investigators today who still view the criminal justice system from a traditional perspective and believe that every resolution of a criminal case must be done so through the traditional channels of law or justice.<sup>30</sup> Nevertheless it is important to realize that criminal charges need not be settled through the legal system. In his book, *Avoiding the Marginalization and "McDonaldization" of Victim-Offender Mediation: A Case Study in Advancing Toward the Mainstream, Restorative Juvenile Justice Healing the Damage of Youth Crime*, Mark Umbreit expresses the following opinion:

*“Restorative justice provides a very different framework for understanding and responding to crime. Crime is understood as harm to individuals and communities, rather than simply a violation of abstract laws against the state. Those most directly affected by crime – victims, community members and offender punishment, restoration of the emotional and material losses resulting from crime is far more important”*<sup>31</sup>.

According to Mark Umbreit, crime is not merely the breach of impersonal laws against the state but also an act that harms people and society. In this approach, the necessity to uphold victims' rights or the perpetrator's obligation to the victim takes precedence over justice-system resolution. Hence, when working as facilitators in the resolution of criminal cases using a restorative justice strategy, investigators must possess reliable skills.

Most investigators in the traffic accident department already have a mindset that prioritizes a restorative justice system for solving traffic accident cases, whereas some investigators still have a conventional mindset toward the criminal justice system and believe that every criminal case settlement must be carried out conventionally or resolved through the judiciary. The number of

<sup>28</sup> Ridwan, “Efektivitas Penegakan Hukum Tindak Pidana Fidusia Dalam Proses Penyidikan (Studi Di Polres Banyumas).”

<sup>29</sup> Eka Fitri Andriyanti, “Urgensitas Implementasi Restorative Justice Dalam Hukum Pidana Indonesia,” *Jurnal Education and Development* 8, no. 4 (2020): 326–31, <https://garuda.kemdikbud.go.id/documents/detail/2042447>.

<sup>30</sup> Adam Prima Mahendra, “Mediasi Penal Pada Tahap Penyidikan Berlandaskan Keadilan Restoratif,” *Diction* 3, no. 4 (2020): 1168.

<sup>31</sup> Adam Prima Mahendra, “Mediasi Penal Pada Tahap Penyidikan Berlandaskan Keadilan Restoratif,” *Diction* 3, no. 4 (2020): 116

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traffic accident settlements in Indonesia in 2021, which are significantly larger in restorative justice cases than in continuing the cases to the public prosecution (P21).

Based on data from the National Police Corps on the settlement of traffic accident cases in 2021, the number of P21 traffic accident cases reaches 1,927 instances, while the number of traffic accident cases handled by restorative justice reaches 56,378 cases. This demonstrates that traffic accident cases are currently more frequently settled through a restorative justice approach by investigators of the traffic accident section than through settlements until a judicial verdict, though there are still some investigators who continue to believe that any settlement of criminal cases must be completed before there is a trial.

When serving as facilitators, investigators must be capable of carrying out their tasks professionally, maintaining the dignity of all parties, and being unbiased.<sup>32</sup> In that function, facilitators must show respect for one other and work for the parties concerned to reach a good solution for all parties. In addition, the investigator must also be able to comprehend well the culture or culture of the local and community and if required the victim, so that the investigator can behave properly and correctly according to all parties.<sup>33</sup>

The importance of the role of law enforcement officers or investigators in resolving traffic accident cases through a restorative justice approach is corroborated by a statement from one of the traffic accident investigators in the Gakkum Satlantas Unit of the Kulon Progo Police Unit who is very experienced in mediation and resolving traffic accident cases. The investigator was named Aipda Chris, He argued that investigators need a fresh perspective while trying to resolve a traffic accident case through restorative justice, specifically empathy for the victim or the victim's family. The investigator must also be able to communicate effectively so that, if at all possible, their words can ease the minds of the accident's participants while also preventing them from speaking too much legally. Also, since the majority of Kulon Progo's population speaks Javanese, it would be ideal to communicate in that language during mediation. But, it is more crucial that all parties involved in the traffic accident case can still understand what is being said.

Investigators may understand how to position themselves, how to react or behave to all parties, and how to act, investigators need to be trained in conducting mediation in order to resolve traffic accident cases. This will enable communication throughout the mediation process to flow well and smoothly. Finding a solution to the issue between the parties concerned in the traffic accident case is the end goal.<sup>34</sup>

The legal culture indicator is another indication that has a significant impact on the legal system. If cultural values are viewed favorably by society, they will be embraced; conversely, if they are viewed negatively, they will be shunned. These values become abstract as a result. So, in order for the legal system to function well, it must also be able to uphold the principles of community-created customary law. The legal system will actively benefit the community if it can more closely reflect its cultural norms.<sup>35</sup> One of Friedman's theory's indications, notably the legal culture of its populace, has an impact on how well a law enforcement procedure works. The values found in Pancasila should be represented in Indonesian society's legal culture. These values—divine values, human values, values of unity, values of the people, values of justice—must be present in Indonesian society and legal culture.

Sociologists pay close attention to laws that are intended to control the behavior of their citizens, but they cannot focus solely on this because the law will not function effectively on its own.<sup>36</sup> The law is used, applied, and interpreted by citizens, and through comprehending the procedure, it will be clear how the law can work against community organizations and how

<sup>32</sup> Andriyanti, "Urgensitas Implementasi Restorative Justice Dalam Hukum Pidana Indonesia."

<sup>33</sup> Andriyanti, "Urgensitas Implementasi Restorative Justice Dalam Hukum Pidana Indones

<sup>34</sup> Andriyanti, "Urgensitas Implementasi Restorative Justice Dalam Hukum Pidana Indones

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<sup>36</sup> Soerjono Soekanto, *Pokok-Pokok Sosiologi Hukum* (Yogyakarta: Rajawali Press, 2014).





community groups can affect the legal system. In light of the description, it follows that a significant factor in influencing the effectiveness of Indonesian law enforcement is the community's legal culture.

There is no doubt that Indonesian society's legal culture evolves with time. The culture of analytical-positivist legal thought in the 19th century was gradually compelled to adopt ideas that placed the study of law in a wider perspective with reference to the evolution of social life rather than being purely focused on legislation.<sup>37</sup> In other words, the culture of legal thought in today's society should consider that enforcing the law should not just be concerned with the presence of a court but also with the advantages that accrue from doing so. Yet, it is challenging to shift most people's attitudes toward the law from the former culture of legal thinking, which focused on the harms caused by law enforcement, to the current culture of legal thought, which emphasizes the benefits received from law enforcement. Innovating in the way traffic accident cases are resolved using a restorative justice approach is one way to socialize the law to the community and help more people realize the advantages of law enforcement using a restorative justice approach.<sup>38</sup> Of course, the elements of the legal substance and legal structure mentioned in the previous sentence are also essential to the success of this endeavor.

#### 4. CONCLUSION

In the jurisdiction of the Kulon Progo Police, the effectiveness of a traffic accident settlement through a restorative justice strategy depends on elements of legal substance, legal structure, and legal culture. The laws and rules governing restorative justice, the skill and intelligence of investigators, and the community's legal culture, which still adheres to an antiquated attitude, are the three components that still need improvement. As a result, restorative justice processes to resolve traffic accident cases are still not working properly. By fixing any errors in the three elements, efforts can be made to make the restorative justice system as effective as possible in handling situations involving traffic accidents. The goal is to create laws and regulations that will serve as a solid legal foundation for the restorative justice system. Also, enhancing the resolution of traffic accident cases through the restorative justice system will increase community socialization by giving investigators training on the restorative justice system and improving their knowledge of it.

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<sup>38</sup> Brilian Capera, "Keadilan Restoratif Sebagai Paradigma Pemidanaan Di Indonesia," *Jurnal Lex Renaissance* 6, no. 2 (2021): 225–34, <https://doi.org/10.20885/jlr.vol6.iss2.art1>.

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